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S. HRG. 113–515, Pt. 5

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 25, OCTOBER 30, and NOVEMBER 6, 2013

Serial No. J–113–1

PART 5

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WEDNESDAY, SEPTEMBER 25, 2013

UNITED STATES 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. Al Franken, presiding.

Present: Senators Franken, Hatch, and Lee.

OPENING STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator FRANKEN. Welcome, everyone. We will hear from four nominees today, each of whom has received the highest possible rating from the American Bar Association, from their Standing Committee on the Federal Judiciary; each of whom has the support of his or her home State Senators, U.S. Senators; and each of whom has had a very impressive legal career.

Judge McHugh has been the presiding judge on the Utah Court of Appeals since 2005. Judge Moody has heard well over a thousand cases in the Arkansas State court system. Vince Chhabria is a well-respected litigator, handling complex cases for the city of San Francisco. And Pamela Reeves, a managing partner at Reeves, Herbert and Anderson, P.A., has been recognized as one of Tennessee's most effective attorneys.

We are going to have some Senators testify on behalf of the nominees, and, Ms. Reeves, I understand that Senator Alexander plans to submit a statement for the record commending you.

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

Senator FRANKEN. These are qualified nominees, and I hope that we can act quickly and in a bipartisan manner to give them up-or-down votes. I look forward to hearing from each of them today.

Now, Ranking Member Hatch, would you like to give any opening remarks, and also introduce Judge McHugh?

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman. I am pleased to assist the Ranking Member, Senator Grassley, by filling in today, especially with the group of such highly qualified nominees. If my numbers are correct, with these nominees the Committee has held a hearing on 38 judicial nominees so far this year. That is about 60 percent ahead of the average hearing pace at the beginning of the second term for Presidents Bush, Clinton, and Reagan. And with yesterday's confirmation, the full Senate is about 45 percent ahead of the average confirmation pace per year.

We have got to do better here. The district court vacancies to which the nominees before us today have been named are all very recent. In fact, one of them opened up only a month ago. So I would say that the judicial confirmation process is moving along. I will have more to say about Judge Carolyn McHugh in just a second, who has been nominated to the Tenth Circuit Court of Appeals, and I will introduce her shortly to the Committee.

I just want to note that each of the nominees before us today has received the American Bar Association's highest well qualified rating. This looks like a very distinguished group of nominees. Mr. Chairman, I am very pleased to be here as part of this hearing because of these excellent nominees.

Now, Mr. Chairman and fellow Members of the Committee, I am very pleased to introduce Judge Carolyn B. McHugh, President Obama's nominee to the U.S. Court of Appeals for the Tenth Circuit. Judge McHugh received her undergraduate and law degrees from the University of Utah and has taught at both institutions. She is exactly the kind of outstanding nominee of varied legal experience that I set out to fill—that Senator Lee and I set out to find to fill this vacancy. She has both practiced and taught law. She has practiced in both State and Federal court. She has an extensive background both before and behind the bench. She has served both the State bar and the judiciary on committees and commissions. She has been widely recognized and awarded for her distinguished career in the law. And somehow along the way Judge McHugh has found time to serve her community with groups such as Big Brothers and Big Sisters, Voices for Utah Children, and Catholic Community Services of Utah. I have great respect for her.

Judge McHugh's 22 years of litigation experience was almost evenly split between State and Federal courts. In her 8 years on the Utah Court of Appeals, currently as presiding judge, she has heard more than 1,100 appellate civil and criminal cases that actually reached judgment. When she is confirmed to the Tenth Circuit, I think Judge McHugh may have one of the shortest learning curves on record.

When we have a judicial vacancy in Utah, both Senator Lee and I spend a lot of time talking to the lawyers and judges throughout

our State's legal community. Judge McHugh received praise for many things, but perhaps the most common description was simply that she works harder than anyone else. She is a prodigious worker. Her former law partners said it, judges said it. Over and over, the same thing came up: "She works incredibly hard."

Mr. Chairman, I have been doing this a long time and have participated in the nomination or confirmation of more than half of the judges who have ever served on the Tenth Circuit Court of Appeals. I know a first-rate nominee when I see one. I commend the President for this nomination. Judge McHugh's varied experience, her personal character and intelligence, and her work ethic make her one of the best.

I want to thank Senator Mike Lee, who certainly is my partner in this process. So, Mr. Chairman, I am very pleased to introduce Carolyn McHugh to the Committee, and I hope my colleagues will support her nomination.

Senator FRANKEN. Thank you, Senator Hatch. And Senator Lee is here. I am sure he would also like to say something on behalf of Judge McHugh, but since we have some colleagues who are not on our Committee and I know have busy schedules, I am very pleased that they are here, Senators Boxer and Pryor and Boozman, to introduce nominees from their home States. So I would like to give each of them an opportunity to go ahead with their remarks.

Senator Boxer.

PRESENTATION OF VINCE GIRDHARI CHHABRIA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA, BY HON. BARBARA BOXER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Thank you so much, Mr. Chairman, Senator Franken, Senator Hatch, Senator Lee. I am so honored to introduce to you Vince Chhabria, who has been nominated to the Northern District Court of California. Mr. Chhabria has distinguished himself as a very well respected attorney in California. He is a lawyer dedicated to public service with extensive civil and criminal law experience. He will be a tremendous addition to the Northern District.

Mr. Chhabria is here with his wife, Amy Krause, and their three children: Max 5, and twins, Brooke and Leo, 3. His parents, Joe and Camille; and his mother-in-law, Susan, are here with us today, and I wonder if they could all stand up, including Mr. Chhabria. Would you stand up with your family? And we welcome you all here. I know with those little kids, so far, so good.

[Laughter.]

Senator BOXER. After graduating from the University of California in Santa Cruz, Mr. Chhabria came to Washington, D.C., and he worked for a colleague of ours, Lynn Woolsey. After leaving Capitol Hill, he returned home to California. He attended Boalt Hall School of Law at UC-Berkeley, where he became the associate editor of the California Law Review.

After law school, he clerked at all three levels of the Federal judiciary, first for Judge Charles Breyer at the Northern District in California, then for Judge James Browning of the Ninth Circuit

Court of Appeals, and later for another Breyer, Justice Stephen Breyer of the Supreme Court. It was during his time as a clerk for Justice Breyer that Mr. Chhabria developed a strong appreciation of the importance of the district court in the uniform administration of justice.

Our candidate has also spent time in the private sector doing criminal defense work for a very respected firm, Keker and Van Ness, and Covington and Burling.

Since 2005, Mr. Chhabria has served as deputy city attorney for government litigation at the San Francisco City Attorney's Office, and in 2011, he took on the additional role of chief of appellate litigation.

Throughout his career, Mr. Chhabria has earned bipartisan accolades for his conscientiousness and diligent representation. A former adversary of Mr. Chhabria, the San Francisco Chamber of Commerce, writes, and I quote: "His deep respect for the boundaries of the law and for the parties on both sides of a dispute would make him an outstanding Federal judge."

And 25 of his fellow former Supreme Court clerks representing very differing viewpoints sent a letter to the Committee in support of Mr. Chhabria's nomination, and they write, in part, he is "someone whose foremost loyalty is to the rule of law," who "focuses on applicable precedent and the facts of each case," and "is someone of the highest ethical standards who is eminently qualified to serve as a Federal district court judge."

The San Francisco police chief writes that Mr. Chhabria "has been a highly effective advocate for the department and its officers while handling cases objectively, fairly, and with an hope mind."

I would ask that all these letters, Mr. Chairman, be entered into the record.

Senator FRANKEN. Without objection.

[The letters appear as submissions for the record.]

Senator BOXER. In his free time—it is hard to imagine you have any, sir—Mr. Chhabria is an active member of both the South Asian and National Asian Pacific Bar Associations. In addition, he spends time mentoring young lawyers, and I note that if he is confirmed, he would be the very first South Asian Federal district court judge in California.

In closing, let me say Mr. Chhabria would make a tremendous Federal judge, and I urge the Committee and the Senate to swiftly confirm him.

Thank you very much.

Senator FRANKEN. Thank you, Senator Boxer.

Now we will go to Senator Boozman from Arkansas to talk about Judge Moody.

PRESENTATION OF HON. JAMES MAXWELL MOODY, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS, BY HON. JOHN BOOZMAN, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator BOOZMAN. Thank you, Senator Franken and Senator Hatch, for allowing me to speak at this very important hearing today. I am proud to be here to support James J. Moody's nomination as United States District Judge for the Eastern District of Ar-

kansas. His extensive experience and impressive background unanimously qualify him for the position of district judge.

Born in El Dorado, Arkansas, Judge Moody graduated from the University of Arkansas with an undergraduate degree in 1986 and went on to receive his J.D. from the University of Arkansas School of Law where he has twice served as an adjunct professor, teaching workshops on trial advocacy and courtroom procedure.

In 1989, he was retained by Wright, Lindsey and Jennings, LLP, where he litigated insurance defense claims and accrued significant courtroom experience.

Judge Moody is currently serving as a circuit judge for the Third Division Circuit Court for the Sixth Judicial District of Arkansas, a position for which he was elected in 2003. This is a general jurisdiction trial court, including criminal, civil, domestic, juvenile, probate cases, a wide range of experience. In addition, Judge Moody has been assigned by the Arkansas Supreme Court to hear cases in other judicial districts within Arkansas.

Judge Moody is a member of the Arkansas Bar Association, the Arkansas Supreme Court Civil Rules Committee, and the Pulaski County Bar Association and Board of Directors. He has received numerous awards and honors, including Pulaski County Judge of the Year, Pulaski County Bar Association President's Award, and Arkansas Business' 40 Under 40.

In addition to his legal and judicial accomplishments, very importantly, Judge Moody teaches Sunday school classes and coaches his church basketball team.

In the many letters on his behalf, I have read of Judge Moody's love for the law, even temperament, and his outstanding professionalism. He is a well-experienced and highly knowledgeable member of the legal community who I believe would make an excellent U.S. District Judge for the Eastern District of Arkansas.

I believe and I know in talking to Senator Pryor, I think we both agree that one of the most important things that we do here is the process of selecting people with the right temperament and qualifications in confirming judges. I believe that Judge Jay Moody will do an excellent job and that we will all be proud of his future service on the bench. I congratulate him on his nomination and strongly support his confirmation.

And with that, I yield back. Thank you.

Senator FRANKEN. Thank you, Senator Boozman, for being here today. I know you have other matters to attend to. You are certainly welcome to stay for the rest of the hearing, but I know you have got a busy schedule, like Senator Boxer.

Now, Senator Pryor.

PRESENTATION OF HON. JAMES MAXWELL MOODY, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS, BY HON. MARK L. PRYOR, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator PRYOR. Thank you. Thank you very much, Mr. Chairman, and I want to thank the entire Committee for being here today and holding this very important hearing. And it is my privilege to introduce James Maxwell Moody, Jr., of Little Rock, Arkansas. It is great to have Jay and his family and friends in town, here

in Washington, D.C., and it is great to see him here on this very special day.

You know, considering Federal judges is something that I do not take lightly. We all know it takes a qualified individual to do this job. They must have the proper judicial temperament and the ability to be fair and impartial.

I am here today to tell you that Jay meets and exceeds all of those criteria. That is why I am so proud to nominate him today to be U.S. District Judge for the Eastern District of Arkansas.

Since 2003, Jay Moody has served as a circuit judge, and that is a State trial court judge, for the Third Division of the Sixth Judicial District of Arkansas. He previously worked at the firm of Wright, Lindsey and Jennings. He started at the Wright firm in 1989 and became a partner there in 1994.

During his time in private practice, he focused on civil litigation in both State and Federal courts, with a specialization in products liability and also in heavy trucking defense. He basically did what I think the lawyers in the room would understand to be as insurance defense.

He also spent some of his time as an adjunct professor at his alma mater, the University of Arkansas at Little Rock School of Law, now called the Bowen School of Law, where he received his J.D. in 1989. He earned his bachelor of science in business administration from the University of Arkansas in 1986, and I mentioned a few moments ago, Mr. Chairman, the term "insurance defense." So one might think that he might have quite a bit of opposition from the plaintiffs' bar, but the truth is it is quite the opposite. The plaintiffs' bar has been very supportive of this nomination. He has been on the other side of a lot of lawsuits with them, but they have immense respect for him, and they encouraged me to put forth this nomination.

As I talk to a lot of judges and lawyers around Arkansas, and especially around the Eastern District of Arkansas, about what kind of Federal judge they would like to see, they basically describe Jay Moody. And when I talked to one of our old law partners at the Wright firm—I used to practice there myself. When I talked to one of our old partners at the Wright firm, I said, "Tell me what you like in a judge," and he went through his criteria, and then I said, "What would you think about Jay Moody? And how has he been as a State court judge?" And he paused for a minute and said, "You know what? Jay gets his work done." And I think that is a compliment for any Federal judge. He gets his work done. You go in there, you file your case, you get on the docket, you try the case. When you file motions, he may have a hearing; he deals with those. When you are in the middle of the trial, you have got evidentiary issues, he deals with that. And he moves the case forward, and he gets it done. The old thing about justice delayed is justice denied? Well, that is not the case in his court because it is not delayed.

The other thing about Jay is even a casual observer in Arkansas, someone who reads the Arkansas Democrat Gazette, which is our statewide newspaper, like I do pretty much every day, they will notice that oftentimes when you are in Little Rock and there is a really sticky, difficult, controversial case, more often than not it is handled by Judge Jay Moody. The other judges there, if they do not

want to deal with it, somehow or another it always ends up on Jay's docket, and he does an outstanding job. He has handled hundreds and hundreds of cases. I have been very fortunate to know Jay both on a personal and professional level for a long time, and I have always been impressed with his abilities. And I am not alone in that. He was voted the Pulaski County—Pulaski County, by the way, is Little Rock—Judge of the Year in 2004, 2008, 2009, and 2011. In 2009, he won the Pulaski County Bar Association President's Award. In 2002, he was named to the Leadership of Greater Little Rock as well as Arkansas Business' 40 Under 40.

He is a member of the Board of Directors of the Pulaski County Bar Association. He is also a member, of course, of the Arkansas Bar Association. And he is a graduate of the National Judicial College General Jurisdiction and the National Institute of Trial Advocacy.

His accomplishments go on and on. All I can say, without any hesitation, is that Jay Moody is a man of strong character. He is prohibited from doing pro bono work right now because he is a judge, but he does continue to commit himself to helping folks in the community through his church and all kinds of other areas, and we are certainly proud to see that.

To those of you who know him, you know that Jay has been an exceptional judge. He will be an exceptional judge. He is an outstanding individual, and I look forward to him serving in the Eastern District of Arkansas with distinction. I strongly support his nomination and hope we can move it forward.

Thank you.

Senator FRANKEN. Thank you, Senator Pryor. Also, you are welcome to stay, but I know that you have other work to attend to. Thank you both for your great words for Judge Moody.

Now I would like to recognize Senator Lee to talk about Judge McHugh.

OPENING STATEMENT OF HON. MICHAEL S. LEE, A U.S. SENATOR FROM THE STATE OF UTAH

Senator LEE. Thank you very much, Mr. Chairman, and I am very pleased to join Senator Hatch in welcoming Judge Carolyn McHugh to join us today. This is a judge who, throughout her life, since long before she was a judge, has demonstrated a profound commitment to excellence in everything that she has done.

Her academic credentials have, of course, been mentioned, the fact that she graduated magna cum laude from the University of Utah, later graduated Order of the Coif from the University of Utah Law School, serving as an editor on the Law Review.

It has also been mentioned that she was a distinguished litigator long before she became a judge. But that is when I met her. I met her when I was working for then-Governor Jon Huntsman as his general counsel at the time when he had his opportunity to make his first judicial nomination. It happened to be to the Utah Court of Appeals. And he told me in no uncertain terms that it was my job to make sure that I found the best possible candidate for that judgeship. I knew my job depended on it. I knew my life depended on it. The Governor was surrounded by heavily armed men. And we succeeded. I kept my job and I kept my life because I found

Lynn McHugh. It was apparent to me from the very outset of the first interview that she was going to be an outstanding candidate, and with each question I asked her, she proved herself even more outstanding.

She has confirmed the outstanding nature of her quality as a jurist with each passing year that she has been on the bench in Utah, and I feel grateful for the fact that I know her and feel grateful that she has been willing to stand for this position and to be nominated to this position. And if confirmed to this position, I am certain that she will serve in the Federal judiciary with great distinction.

I will mention very briefly, before I close, one other factor that has not been brought up, which is that I am told, have it on very good authority, that Judge Lynn McHugh does have one real weakness, which is that she has a mean streak with a hockey stick, and she used that on her brother on one occasion. While Judge McHugh was in junior high, her brother played a nasty prank on her. Apparently she and her friend had just watched the movie "The Exorcist" against her parents' advice. Her brother hid under her bed later that night, and shaking the bed, bringing back memories from a scene from that movie, very unpleasant memories, Judge McHugh was, of course, alarmed. She immediately grabbed her field hockey stick, and it did not end well for her brother.

[Laughter.]

Senator LEE. This, too, speaks well to her tenacity and her fierceness that, when appropriately called upon, it will be brought out. And we hope that the hockey stick will be used only sparingly.

Thank you.

Senator FRANKEN. Thank you, Senator Lee, for those kind words, although there seemed to be a lot of violence in them.

[Laughter.]

Senator FRANKEN. Now I would like to ask Judge Carolyn McHugh to come forward, and as is customary in this Committee, I will administer the oath and swear in the witness. Will you raise your right hand? Carolyn McHugh, 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?

Judge MCHUGH. I do.

Senator FRANKEN. Thank you. You may be seated. Welcome, Judge McHugh, and congratulations on your nomination. I would like to give you an opportunity to introduce your family that is here, or friends, and maybe say hi to anybody who might be watching at home, and if you would like to make an opening statement as well.

STATEMENT OF HON. CAROLYN B. McHUGH, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT

Judge MCHUGH. Thank you, Senator Franken. Before I introduce my family, I would like to express my gratitude to Senator Hatch and to Senator Lee for those flattering comments—some of them were flattering.

[Laughter.]

Judge MCHUGH. And I would also like to thank the Committee for having the hearing today and you, Senator Franken, for chairing.

And, of course, I would like to thank President Obama for nominating me to this important position.

With me today I have my mother, Claire McHugh, who is behind me to the right.

Senator FRANKEN. Welcome.

Judge MCHUGH. My father, George McHugh, is deceased, but I know he is with me in spirit.

I also have with me my son, Bradley McCormack, who is in the second row behind me, and the only man in my group. His brother, Kevin McCormack, was unable to travel due to academic commitments.

I also have with me three of my seven siblings: my sister Dr. Anastasia Chirnside, and I am not sure where she is sitting.

Senator FRANKEN. Why don't you stand?

Judge MCHUGH. Maybe she can wave.

My sister Elizabeth McHugh; my sister, Dr. Catherine Garay; and my niece is also here, Katie Lane Chirnside.

With that, I am happy to answer whatever questions would assist you in assessing my fitness for this position.

[The biographical information of Judge McHugh appears as a submission for the record.]

Senator FRANKEN. Well, thank you, and welcome to all members of your family—three of eight siblings, did you say?

Judge MCHUGH. I am sorry?

Senator FRANKEN. How many siblings did you say you had?

Judge MCHUGH. I have seven siblings.

Senator FRANKEN. Okay, so eight children. How many have you hit with a hockey stick?

[Laughter.]

Senator FRANKEN. This speaks to temperament.

[Laughter.]

Judge MCHUGH. I am not sure. I caught my brother and actually hit him with the hockey stick, so it was more brandishing.

Senator FRANKEN. Okay. Well, I think that is a distinction that is important.

[Laughter.]

Senator FRANKEN. I would just ask you a couple questions. You have already served as an appellate judge for about 8 years. I imagine that experience will make for a relatively smooth transition to the Tenth Circuit.

What are some of the lessons you have learned from your time on the Utah Court of Appeals that you will bring to the Federal bench?

Judge MCHUGH. I think the lessons that I have learned is, number one, to be prepared, that you do not know the answer until you read the briefs, you do your homework, you read the statutes, you read the relevant precedents, and you listen to oral argument.

And then I have also learned that when you are participating in a group decision, it is important to be open to the ideas of your colleagues and that oftentimes they will alert you to issues in the

analysis that you did not pick up yourself. And so I think that I am committed to the idea that three heads is better than one.

Senator FRANKEN. Great. Are there any judges or Justices who you particularly admire, who you might consider a role model or just that you like the cut of their jib?

Judge MCHUGH. Well, I will preface this question with an admission that I am not an expert on all of the legal decisions or the judicial philosophies of all of the Supreme Court Justices. But I was impressed with some of the attributes that were shown by John Marshall Harlan II, a Justice on the U.S. Supreme Court.

Senator FRANKEN. Great. And why?

Judge MCHUGH. Justice Harlan, first of all, was known for the clarity and the analysis of his written decisions. He was also known for his patience and tolerance, his civility to different ideas and to his colleagues. In fact, although he and Justice Black were ideologically opposed, they were actually great personal friends.

I also like about Justice Harlan that he was very concerned about operating within the limits of his role as a member of the judicial branch. He was protective of the powers of the other branches and avoided encroachment, and he also was protective of States rights and the rights reserved to the people.

Senator FRANKEN. It seems like from your answers that you have a real focus on working with your colleagues, and you have authored several unanimous opinions during your time on the bench. How important is it, do you believe, to find consensus among judges on a panel? And what strategies do you have for working with your colleagues to find common ground, if that is possible?

Judge MCHUGH. One of the things that is very nice about the Utah Court of Appeals is that we are all on the same corridor of the building, and so if you get a comment from someone that they are going to dissent, it is very easy to discuss it with them, to be open-minded to it, and often you can avoid a plurality opinion or you can avoid a dissent because you can get to the same place maybe a little different way, that you do not necessarily need all parts of the analysis. And I look at it as if you can find a way go agreement without doing violence to your own convictions, that it is helpful to the people who are later going to rely on the opinion to have a unanimous opinion.

So if it is not something that I have to have in the opinion, I am often willing to work with my colleagues to massage the opinion so that they are happy with it.

Senator FRANKEN. Well, thank you, Judge.

Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman. Welcome to the Committee. A nomination hearing is important because it is likely the last time that Senators can hear directly from a judicial nominee.

As I said in my introduction, you certainly have a wealth of legal experience, and it is not just on the bench. You had a lot of private sector experience, too, and I know a number of attorneys who think very highly of you, some of the best lawyers in Utah.

Senators also want to know how you view your role and the power of a Federal appellate judge. Many people probably think, for example, that an appeal is simply a do-over, that the appeals

court wipes the slate clean and does it over again from scratch. But as you know, the role of an appeals court judge is narrower than that. Lawyers refer, for example, to certain standards of review that limit how an appeals court looks at issues and reviews cases.

Now, how important are such limitations on appellate courts? And please explain how you view the role of an appeals judge or appeals court—that the appeals court plays in our judicial system?

Judge MCHUGH. Thank you, Senator. The first thing I would say is it is not a do-over when you come to the court of appeals or to any appellate court. An appellate judge has different standards of deference to what happened in the trial court, depending what the issue is. And with respect to issues of fact, we defer to the fact finder, the jury or the trial judge who was present and heard the testimony of the witnesses and was able to assess the credibility of those witnesses. So I feel very strongly that it is inappropriate for me as an appellate judge to second-guess the trier of fact based on a written record that may not pick up the nuances of the testimony.

With respect to issues of law, questions of law, we have a different role, which is a role of correctness. So if a trial judge makes an error of law, it is our responsibility to correct that error and then assess from the record of the whole whether the error was harmful.

Senator HATCH. Great. Judges interpret and apply the law to decide the various cases. Now, Federal law is written—the Constitution, statutes, or regulations are all Federal law that we have to comply with, and we can all read what the law says. But judges have to figure out what the law means in order to apply the law to decide a case.

Judges can find the meaning of the Constitution or statutes in many places, and we have nominees before this Committee who are very creative in that regard. It sometimes sounds as if they are just making up what they want the law to mean in order to get the result that they want in certain kinds of cases. But I would like to hear your view on this. Where should judges look for the meaning of the Constitution or the statutes that are involved?

Judge MCHUGH. Well, with respect to any written document that I have tried to interpret during my 8 years on the Utah Court of Appeals, I have always looked at the language of the document itself, and the hope is that that language will be clear, because I have a lot of cases and I can move on.

In looking at that language, first you need to read it very carefully and consider the words that were used and give them the ordinary meanings that are applied to those words, unless, of course, the statute defines them differently.

You can also look at the context of how that provision is placed in the document as a whole in order to try to assess what the words on that page mean.

Senator HATCH. Great. I am very pleased to support your nomination, and you will make a great appeals court judge. And I think you will add greatly to the component of the Tenth Circuit Court of Appeals, and we would like to see that take place as soon as possible.

Judge MCHUGH. Thank you, Senator.

Senator FRANKEN. Senator Lee.

Senator LEE. Thank you very much, Mr. Chairman. And thanks again for joining us here today.

A few minutes ago, Senator Franken asked you about the importance of achieving unanimity on panels whenever possible, and I do not think there is anyone who disputes that when there is agreement, it is best to try to memorialize the court's ruling in a single unanimous opinion. But sometimes that does not happen, and sometimes you end up with a dissent or a concurring opinion.

What role do you think is played by the dissenting opinion in the appellate process?

Judge MCHUGH. Thank you, Senator. I think the dissents play a very important role, particularly if you are a judge on an intermediate court of appeals, either in the State system or, if I were confirmed, in the Federal system, because to a large extent you are talking to the court that will possibly be reviewing that decision. And so I think dissents are very valuable in advancing an alternative view to the approach taken by the majority, and I think that it is also helpful because when the higher court gets it, hopefully you have written it in such a way that you have teed it up for them by putting in the cases and the citations and the analysis that will be helpful to that court in choosing between the majority approach and the approach of the dissent.

Senator LEE. Yes, that is a good point. I suppose it also tends to sharpen the analysis for future cases that might be decided within your court as well, either in an en banc posture or perhaps in front of another panel, maybe something pointed out by a dissent might make something easier—might make it possible in a future case for people to see an aspect of the opinion that perhaps was not considered by the majority opinion. Would you agree with that?

Judge MCHUGH. I would agree with that, Senator.

Senator LEE. By the way, I like your choice in mentioning John Marshall Harlan II. He is an unsung hero in the last century or so, and I think a lot of people look to him these days as someone who had a strong commitment to finding the right answer in the law.

Do you believe that in most cases as a judge, most cases that you are asked to decide, is there usually a right answer?

Judge MCHUGH. I believe that there is if you apply the appropriate tools and apply them correctly, that you will get at the right answer.

Senator LEE. What happens when judges, especially appellate judges, cease to believe that there is a right answer? Do you think that ends up having a negative impact on the kind of jurisprudence produced by an appellate panel if a judge does not believe that there is a right conclusion in a case?

Judge MCHUGH. Well, I have been fortunate enough to have never served with any judges who take that view, so I really do not have an opinion.

Senator LEE. Wonderful. Wonderful.

There is some tension between two competing dynamics in appellate litigation. On the one hand, there is the necessarily deliberative pace of jurisprudence, especially appellate jurisprudence. In

the Supreme Court, in the courtyards of the building, for example, you will see lampposts held up by turtles. It is said that the architect of the Supreme Court building, Cass Gilbert, put those in there to reflect the necessarily slow pace of the appellate process. It is something that cannot be rushed. If you rush it, you do damage.

On the other hand, there does come a point at which justice delayed can become justice denied. My personal worst experience with the amount of time in an appellate case in front of a Federal court of appeals or case under advisement following oral argument was 27 months. I am not going to tell you which circuit it was in, but it had the number ten in it.

[Laughter.]

Senator LEE. I think most people would agree that that is too long.

The Supreme Court handles that by having the Court dispose of its entire caseload every single year. I do not know that there is necessarily a reason for appellate courts to adopt that same rule, but what can you tell me about your thoughts about how to balance on the one hand the need to dispose of cases with sufficient speed that you do not deny justice, but on the other hand make sure that you are not rushing it?

Judge MCHUGH. Well, I think if you look at my record on the Utah Court of Appeals that I get my work done in an efficient manner. But one of the things that is often difficult to predict or people cannot tell when they are looking from the outside in is you may have a decision that was written very quickly, circulated, someone wrote a dissent, the person who had originally joined the majority switched to the dissent, the dissent had to be rewritten as the majority, and then you maybe even have a situation where the person who is now in the dissent changes his or her mind, and you end up with a unanimous decision. So sometimes people are working very hard behind the scenes, but it is just not apparent.

That said, it is very important to issue decisions that are well written and reasoned as quickly and efficiently as possible.

Senator LEE. Although my time has expired, could I ask one short additional question, Mr. Chairman? If I promise to do it nicely and with a smile?

Senator FRANKEN. Okay.

Senator LEE. He is a very benevolent Chairman, and I appreciate Senator Franken in that regard.

When you sit in three-judge panels, which you will be doing—which you have been doing on the Utah Court of Appeals, which you will be doing most of the time on the Tenth Circuit, I would imagine—never having been a judge, I can only imagine how it works. But I can imagine that there is sometimes a temptation on the part of some judges to sort of wait and see how their colleagues might go on an issue rather than speak their mind, rather than make sure that they identify what they see as the proper resolution of the case and making sure that they exercise some degree of leadership.

What could you do as a Federal appellate judge, if confirmed, to make sure that you are always exercising what one might loosely call "judicial leadership" on each panel that you serve on?

Judge MCHUGH. Well, in the court that I am on now—and I do not know, if I were confirmed, what the rules are internally that govern the members of the court, but we have deadlines by which we have to respond to someone else's work. So the attempt, as I call it, to "play chicken," to make the other person in the equation act first, you only have a few days, you do not have much time to do it before you are late. So you are going to have to announce your view of the issue within a very short time.

Senator LEE. All right. Thank you very much, Judge McHugh.

Thank you, Mr. Chairman.

Judge MCHUGH. Thank you.

Senator FRANKEN. Thank you, Judge McHugh. You are a great nominee, and you have, I think, the support of everyone here in this hearing. Thank you very much.

Judge MCHUGH. Well, thank you. I appreciate it.

Senator FRANKEN. Okay. I would like now to ask Judge Moody, Mr. Chhabria, and Ms. Reeves to come to the witness table, and I would ask you all—I am going to administer the oath and swear you in, so please raise your right hand. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. REEVES. I do.

Mr. CHHABRIA. I do.

Judge MOODY. I do.

Senator FRANKEN. Thank you. You may be seated.

Welcome and congratulations on your nominations. I would like to give you each an opportunity to make an opening statement and to acknowledge the friends and family that are here.

Ms. Reeves, why don't we start with you, introduce friends and family that are here or maybe watching.

STATEMENT OF PAMELA L. REEVES, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TENNESSEE

Ms. REEVES. Thank you, Senator. First, I just want to say that I am very honored to be here today, and I really appreciate all of you all taking your time to let us come before you today.

I am also very honored today to have with me my husband, Charles Swanson; our son and daughter, Reedy and Amanda Swanson; three of my four sisters; and a dear friend from law school, Suellen Wideman.

Senator FRANKEN. Welcome and congratulations to you for having the wife and mom and sister and friend who has been nominated.

Ms. REEVES. Oh, and I just realized another friend that slipped in, and that is Meredith Whitfield from Knoxville.

Senator FRANKEN. Welcome. Thank you.

[The biographical information of Ms. Reeves appears as a submission for the record.]

Senator FRANKEN. Mr. Chhabria. Introduce your family again and would you all stand, please? I am sorry I did not have you guys stand, but could your family stand?

STATEMENT OF VINCE GIRDHARI CHHABRIA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mr. CHHABRIA. Thank you, Mr. Chairman.

First of all, briefly, I want to thank you, Mr. Chairman and Mr. Ranking Member, for having this hearing. I very much want to thank Senator Feinstein for her guidance and support through this process, to Senator Boxer for the excellent introduction, and to—and for recommending me, and to President Obama for accepting that recommendation.

I do have, as you said, my family here. First is my wife, Amy Krause. We met on the first day of law school. She spent 11 years as a prosecutor for the Santa Clara County district attorney's office and made the choice a little while ago to stay home with the kids. Most people would say that is a sacrifice. I think she would say it is a privilege because of how wonderfully well behaved they have been here today.

Senator FRANKEN. I have noticed.

[Laughter.]

Senator FRANKEN. By the way, I will not tolerate any outbursts from the children.

[Laughter.]

Mr. CHHABRIA. Those children are Max Chhabria, age 5½; Leo Chhabria, age 3½; and Brooke Chhabria, age 3½ also.

Also here is my dad, Joe Chhabria, directly behind me. My dad came to this country from India in the early 1960s. We also have my mom, Camille Chhabria. Her side of the family has been a little bit ignored in this nomination. She came from Quebec, Canada, in the 1960s to this country.

My mother-in-law, Susan Krause, is also here, so we do have one grandparent per child.

Also here is Kiran Jain. Kiran is a deputy city attorney in the city of Oakland and former president of the South Asian Bar Association. Kiran more than anybody else gave me the courage and the confidence to believe that I might actually be able to do this job.

And, finally, just very briefly, I would like to thank anybody who might be watching back home, and in particular, I would like to thank Ethan Sheiner and Matt Brown for not showing up at this hearing.

[Laughter.]

[The biographical information of Vince Chhabria appears as a submission for the record.]

Senator FRANKEN. Okay. I hope they take that the right way.

[Laughter.]

Senator FRANKEN. And, Judge Moody, please introduce your——

STATEMENT OF HON. JAMES MAXWELL MOODY, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

Judge MOODY. Thank you both, Senators, for this hearing. I am not unmindful that you all have things on your plate of very much importance, so I will be brief.

I would like to thank the President for nominating me. I would like to thank both Senator Boozman and Senator Pryor for their remarks. They were flattering and amazing.

I would like to thank the Justice Department staff that has helped us. They work hard and they do a really good job.

Behind me is my fiancee, Melinda Carelock.

Senator FRANKEN. Welcome.

Judge MOODY. Behind them, my father, Judge James Moody, and Lisa Moody. Behind them, my soon-to-be in-laws, Jimmy and Marjorie Carelock; my lifelong friend, Steve Kohler, who is also here over from Baltimore.

Unable to be here today, I would like to acknowledge both my daughters, Madison and Hannah, who have school commitments. I hope they are there instead of watching this.

And I would also like to acknowledge my staff back in Little Rock: Debra Bliss, Tammy Foreman, Casey Glenn, Kirby Moralia, and Rusty Watson, whose hard work has allowed me to turn out a good product and help the people of Arkansas.

With that, I thank you.

[The biographical information of Judge Moody appears as a submission for the record.]

Senator FRANKEN. Thank you, Judge Moody, and welcome to all of you.

It is somewhat customary for this Committee to ask nominees to describe their judicial philosophies. I take this to mean the approach you will take when deciding close cases, cases where the law is not quite clear or where the evidentiary record is disputed. I would like to ask each of you to address that issue and to tell the Committee a bit about your approach to judging. What can we expect of you, what can litigants expect of you when you are confirmed to the bench? So we will start with Ms. Reeves.

Ms. REEVES. Thank you, Senator Franken. Obviously not having been an active judge, I can only predict how I hope I will respond in this situation. But I think that my first goal is to be patient and to share respect to the people who appear before me, and I believe that I have done that in the practice of law with opposing parties, with my co-counsel, and with the people that I have dealt with in the years before coming here.

I think it is also extremely important to be able to listen carefully to the facts and then to apply the law, and the only way you can do that is to be willing to work hard. So that will be my guiding philosophy.

Senator FRANKEN. Mr. Chhabria.

Mr. CHHABRIA. Thank you, Senator. My approach would be to be objective, to be open-minded, as Ms. Reeves said, to try not to prejudge cases and make sure to take in fully the presentations of both parties before coming to a decision, to apply the law to the facts of the case as narrowly as possible, and not to opine on anything that does not need to be opined on in a judicial decision.

Senator FRANKEN. Now, Judge Moody, you presided over a lot of cases. How many?

Judge MOODY. A lot of cases. Yes, you are right, a lot of cases. Fortunately, I have been at it for 11 years, so I have not had to do them all last year, but we do have a fairly heavy case assign-

ment in Arkansas. My judicial philosophy essentially as a trial judge, most importantly, is a commitment to the rule of law. I do not get to make policy. I follow precedent.

Second of all, my most important part of my job is to dispense justice with civility to the litigants and counsel. They need to be respected, and they need to be given time to be heard, and they need to come away from the process feeling like they may not have gotten what they wanted but they got heard and they got some justice.

Finally, it is probably as important as the other two that I be prepared and that I know what the law is and that I know the arguments of counsel.

And with those three things taken care of, most of the rest of the stuff follows and takes care of itself.

Senator FRANKEN. Thank you. This is another question for each of you. I understand that each of you is involved in pro bono work or has been involved in volunteering in your communities.

I know, Judge Moody, that you are not allowed to actively be involved in pro bono work as a judge, but that you are actively involved in your church.

Mr. Chhabria, when you worked at Covington and Burling, you developed pro bono relationships between the firm and the Lawyers Committee for Civil Rights and the Marin County public defender's office.

Ms. Reeves, you have handled unemployment hearings on a pro bono basis during your career.

Being an attorney is a privilege, and I think that it is really important that attorneys give back to their communities and provide legal representation to those who otherwise might not have it.

Could you each talk a little bit about what you have learned from your pro bono work and the role of pro bono representation in the legal system? Ms. Reeves.

Ms. REEVES. I think that without access to justice for all people, then our system fails. So there are too many people who do not have a regular access to be in the courts and to help get assistance with their problems. There are many, many ways that lawyers can contribute to that. It can be as simple as going to court representing somebody at a hearing, or it can be doing other things, such as providing educational opportunities.

So I think it is the role of anybody who is an officer of the court to do what they can in their own way to help others have access to justice.

Senator FRANKEN. Mr. Chhabria.

Mr. CHHABRIA. Thank you, Senator. I agree with Ms. Reeves. Access to justice is a critical issue, and some of the most gratifying cases that I have worked on are cases in which I represented people who did not have enough money to afford their own lawyer so that their case could be heard in court and presented effectively in court. And if I were fortunate enough to be confirmed, of course, as a judge you cannot do pro bono work, but I would certainly try to take a leadership role in encouraging members of the bar to carry that torch.

Senator FRANKEN. Thank you. And, Judge Moody.

Judge MOODY. Yes, sir. Likewise, Senator, I think it is extremely important, and while I am limited to actively representing and taking care of pro bono people, I do the best I can to mentor those who have the ability to do so. And so if I can help young lawyers or encourage other lawyers to—"Hey, why don't you get involved in this? You said you had some extra time," I am able to do things on the fringe.

Also, with pretrial hearings and things, individuals who are pro se otherwise because they cannot hire lawyers to represent them, we often encourage them to try their cases to the court instead of a jury because I have a little more leeway in explaining the process of law rather than being in front of a jury where I cannot get involved and pretend—or appear that I favor one side or the other. And it is important that those people again feel like they have not been cheated by the system. And while I cannot take an active part in that, we do what we can to encourage other lawyers to take care of those people or encourage them to try their case in a forum where they can be helped some.

Senator FRANKEN. Thank you, and thanks to all of you.

Senator Hatch.

Senator HATCH. Well, thank you. I am pleased to have all of you before us today, and, Ms. Reeves, much of your recent legal experience has taken place in the field of alternative dispute resolution, commonly acting as a mediator. In other words, you have been helping people stay out of court. Now, should you be confirmed, you will be dealing with cases and individuals who must be in court. So that is an important distinction.

In what ways, if any, can you see your mediation experience informing your approach as a judge?

Ms. REEVES. Thank you, Senator, and thank you for being here today as presiding—as ranking Senator.

One of the great things about being a mediator and arbitrator over the last 12 years is that it has given me a great deal of experience in hearing both sides of a case or both sides of a dispute. And I have really come to appreciate much more than when I was an advocate that it is important to hear both sides and to let both sides express what their position is before you start making any decisions. And I think the experience I have had as a mediator will translate to the bench because I will understand that no matter how hard one side or the other is advocating, I cannot make a decision until I have heard all the evidence.

Senator HATCH. Thank you.

Judge Moody, you come well recommended as well. As a State circuit court judge, you presided over some mental health cases. The tragic events last week at the Navy Yard here in Washington raised once again whether individuals who need mental health services are getting what they need.

Now, many of these people at some point may end up in front of a judge. In your opinion, is the judicial system properly equipped to deal with these and steer these people toward the help that they need?

Judge MOODY. Senator Hatch, I am not sure I have an opinion about that. I have to deal with a case on a case-by-case basis with the tools I am provided with. And I have a small mental health as-

signment where I deal with civil commitments. And I deal with those people as they come before me, and we have a very strict statutory scheme that we deal with because it is a liberty interest essentially that we have to determine that they are a danger to themselves or others before we have them involuntarily committed.

I am not sure I can translate my experience in that court to your question, and I do not mean to dodge it. It is just I am not sure I have an opinion so much as a framework within which I work, and I am not allowed to go beyond that.

Senator HATCH. All right. As I understand it, you are involved in a number of small businesses, including some that appear to be family owned. Am I wrong on that?

Judge MOODY. Yes, sir, I have a business with my uncle, businesses in the sense that we have some property that grows pine trees. So I guess that is business, yes, sir.

Senator HATCH. Has that personal experience changed the way you approach cases and issues involving small businesses or business owners?

Judge MOODY. No, sir.

Senator HATCH. Okay. Now, Mr.—Chhabria, is it? Am I pronouncing that right?

Mr. CHHABRIA. Yes, Senator.

Senator HATCH. Knowing that you are a city attorney in San Francisco, I just want to raise a couple of issues, including those you may face as a Federal district judge. We have had some nominees before this Committee who question whether judges can or even should try to set aside their personal views, whether judges should try to be impartial. Now, I agree with that, and I believe that all judges have this duty, whatever their personal views may be.

When you take the oath of judicial office, you are pledging to do equal justice without regard to the identity of the parties before you. Now, would you please describe your view of judicial impartiality and how you plan to shift from the role of an advocate with strongly held personal views to the other side of the bench?

Mr. CHHABRIA. Yes, thank you, Senator. First of all, I agree with everything you just said. I believe that it is critical for judges to set aside any personal views they may have on a case and any views they may have developed in the course of prior advocacy and decide cases purely on the facts presented to them in the case and the law and binding precedent—in my case as a prospective judge on the Northern District, binding precedent from the Supreme Court and from the Ninth Circuit.

I also believe—you mentioned the point about transitioning from advocacy to judging. I believe that one of the biggest strengths of a good advocate is to keep an open mind and to be willing and able to recognize the strengths of the arguments on the other side and to treat those arguments and the people who make them with respect. And I believe that that has characterized my career as an advocate, so although absolutely personal views have no role in the judicial-making process, I believe that I carry with me the kinds of skills that will help me decide cases impartially.

Senator HATCH. Good. In my legal career before I came here, both in Pittsburgh where I was a partner in the oldest law firm,

and then also in my own law firm in Salt Lake City, I tried cases before some of the Federal judges who are anything but impartial. I happened to like them, and they liked me. But I really have difficulties when judges inject their own personal views into these cases.

We had a very interesting judge, a brilliant guy, named Judge Willis Ritter in Salt Lake City, and he was kind of renowned all over the country for being a curmudgeon on the bench. Now, I got along very well with him. He liked me and respected my ability to try those cases. But there were times when I felt like he leaned over backward for certain attorneys and even certain clients. And I was not alone in that feeling. A lot of people knew that.

So what we are suggesting here is that it is important that you be—people who have an open mind, have open minds and treat everybody the same, let them try their cases, and, of course, not allow your own personal views to cloud the issues that are before you in the courthouse. And these are things that naturally some of us are very concerned about, especially those of us who tried cases in Federal court, because these are very important courts, as you know.

I commend all three of you for your nominations. I think it is a real tribute to you, and it is a tribute to your work that you have done. All three of you are very intelligent people. All three of you have high ratings from the American Bar Association. And I personally intend to support each and every one of you. So that is in spite of my colleague here on the bench. See how grouchy he gets when you——

[Laughter.]

Senator FRANKEN. No, I was just offended for Judge Ritter's family.

[Laughter.]

Senator HATCH. Well, his family knew he was a curmudgeon, too.

Senator FRANKEN. Okay.

Senator HATCH. Maybe better than anybody else.

Senator FRANKEN. Well, in that case——

Senator HATCH. Except me, maybe. No, he was a great judge in many ways. I mean, he was brilliant. But he also injected himself in cases in ways that I felt judges should not. But I had a lot of respect for him in many ways, as I do for you having this opportunity to serve on the Federal bench. All three of you have excellent qualifications. Judge Moody, you come highly recommended by both Senators. I thought that was very interesting. And each of you is recommended by your individual Senators, and I personally appreciate that.

Thank you, Mr. Chairman.

Senator FRANKEN. Thank you, Senator Hatch.

I would like to once again congratulate all the nominees. We will hold the record open for 1 week for submission of questions for the witnesses and other materials.

This hearing is adjourned.

[Whereupon, at 3:32 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

UPDATED Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Judicial Nominations"

Wednesday, September 25, 2013
Dirksen Senate Office Building, Room 226
2:30 p.m.

Panel I

Carolyn B. McHugh, to be United States Circuit Judge for the Tenth Circuit

Panel II

Pamela L. Reeves, to be United States District Judge for the Eastern District of Tennessee

Vince Girdhari Chhabria, to be United States District Judge for the Northern District of California

James Maxwell Moody, Jr., to be United States District Judge for the Eastern District of Arkansas

Utah Court of Appeals

Chambers of
Judge Carolyn B. McHugh

450 South State Street
Salt Lake City, Utah 84114 - 0230
(801) 578-3950
FAX (801) 238-7981

January 6, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
437 Russell Senate Building
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I filed on May 24, 2013, in connection with my nomination to be a United States Circuit Judge for the Tenth Circuit Court of Appeals. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Question 6:

My two-year term as the presiding judge of the Utah Court of Appeals expired on December 31, 2013.

Question 8:

Community Leader in Civic and Character Education, The Utah Commission on Civic and Character Education (2013)

Question 9:

My term on the Utah Commission on Civic and Character Education expired in September 2013.

Question 12(c):

I made two additional reports to the Judicial Council, one on behalf of the Technology Committee on September 10, 2013, and one on behalf of the Outreach Committee on November 25, 2013. Council minutes for these meetings are attached to this letter.

Question 13(a) & 13(a)(i):

I have presided over 1,189 cases that reached judgment, 777 of which were civil and 412 of which were criminal. Of those 1,189 cases, approximately 65% were civil and 35% were criminal.

Question 13(b):

Please see attached supplemental list.

Question 13(f):

Turner v. University of Utah Hospitals & Clinics, 271 P.3d 156 (Utah Ct. App. 2011), *rev'd*, 310 P.3d 1212 (Utah 2013). This case involved an appeal from a jury verdict finding no cause of action against a hospital and medical professionals for injuries allegedly sustained while plaintiff was hospitalized after a tragic automobile accident. The Utah Court of Appeals rejected the various claims of error raised by the plaintiff and upheld the jury verdict. Among other things, the Court of Appeals held that: (1) even if a jury instruction on one theory advanced by the plaintiff was erroneous, plaintiff could not establish harm under Utah Supreme Court precedent because the jury could have reached its no-cause verdict on an alternative theory and (2) the plaintiff was precluded from raising the issue of juror bias on appeal under Utah's cure-or-waive rule, because she did not exercise a peremptory challenge which was available. On certiorari review, the Utah Supreme Court concluded that the Court of Appeals had interpreted the term "theory" too broadly and held instead that the plaintiff had argued only one "theory" because she had asserted only one cause of action – medical malpractice. The Utah Supreme Court also "abandoned" the cure-or-waive rule and adopted a new standard for preserving the issue of jury bias. Accordingly, the Utah Supreme Court reversed our decision and remanded the matter to the trial court for a new trial.

Jenkins v. Jordan Valley Water Conservancy Dist., 283 P.3d 1009 (Utah Ct. App. 2012), *rev'd*, ___ P.3d ___ (Utah 2013). This case involved the review of a summary judgment granted by the trial court in favor of the defendant on the plaintiffs' negligence claim. The Utah Court of Appeals concluded that the plaintiffs did not need an expert to establish the standard of care or breach of that standard under the unique facts of this case and proceeded to address the merits. The Utah Supreme Court granted the defendant's petition for certiorari and concluded that an expert was required and, therefore, reversed our decision without reaching the other issues raised on appeal.

With this letter, I have also enclosed an updated Net Worth Statement and Financial Disclosure Report. I thank the Committee for its consideration of my nomination.

Sincerely,

Carolyn B. McHugh

Judge Carolyn B. McHugh
Judge, Utah Court of Appeals

encls.
cc: w/ encls.
The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

JUDICIAL COUNCIL MEETING

Minutes
Monday, November 25, 2013
Matheson Courthouse
Salt Lake City, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:
Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, Vice Chair
Justice Jill Parrish
Hon. James Davis
Hon. Glen Dawson
Hon. George Harmond
Hon. Thomas Higbee
Hon. Brendan McCullagh for Hon. David Marx
Hon. Paul Maughan
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
John Lund, esq.

EXCUSED:
Hon. David Marx

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Alison Adams-Perlac
Dawn Marie Rubio
Debra Moore
Jody Gonzales
Rick Schwermer
Tim Shea
Nancy Volmer
Alyn Lunceford
Nini Rich

GUESTS:
Judge Carolyn McHugh
Judge Royal Hansen
Judge Kate Toomey

1. **WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant welcomed everyone to the meeting. A special welcome was extended to Judge McCullagh who was sitting in for Judge Marx.

Motion: Judge Maughan moved to approve the minutes from the October 28, 2013 Judicial Council meeting. The motion was seconded, and it passed unanimously.

2. **CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant reported on the following:
He, Mr. Becker and Mr. Wahl attended the groundbreaking ceremony for the Ogden Juvenile Courthouse on Monday, November 4. Chief Justice Durrant and Judge Frost spoke at the event.

3. **ADMINISTRATOR'S REPORT: (Daniel J. Becker)**
Mr. Becker reported on the following items:
Judicial Confirmations, Nominations and Retirements. The Senate confirmed the following judges last week: 1) Judge Sharon Sipes, Second District Juvenile Court; 2) Judge Brent Bartholomew, Fourth District Juvenile Court; and 3) Judge John Pearce, Court of Appeals.

Nominations are pending to fill the following vacancies: 1) the Second District Court vacancy, 2) the Third District Juvenile Court vacancy, and 3) the Fifth District Court vacancy. Mr. Becker mentioned the unofficial retirement notice from Judge Hans Chamberlain, with a tentative effective date of May 1, 2014.

Building Board. The Building Board met several weeks ago to prioritize building requests and land bank purchases. The Duchesne court remodel project ranked 13th.

Council Photo. Mr. Becker reminded Council members that the Council photo would be taken later in the meeting.

Executive Session. An executive session will be held later to discuss matters of professional competency.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

No meeting was held in November.

Policy and Planning Meeting:

Judge Maughan reported on the following items:

The Policy and Planning Committee spent the majority of their meeting reviewing and discussing the current process for conducting performance evaluations of senior judges and court commissioners.

Bar Commission Report:

Mr. Lund reported on the following:

He expressed the Bar Commission's pleasure in hearing the Council's decision to hold their July 2014 meeting in Snowmass, Colorado, in conjunction with the Bar's Summer Conference. He also noted that efforts would be made to utilize attendees on workshop panels.

Mr. Becker noted preliminary decisions that have been made relative to travel to the conference. He noted that an increase to the judicial operation's budget will be discussed further by the Council at their April meeting when the one-time spending plan for FY 2015 is considered.

5. OPEN AND PUBLIC MEETING LAW ORIENTATION: (Alison Adams-Perlac)

Ms. Adams-Perlac provided the annual training to members of the Council on the Open and Public Meetings Act as required by Rule 2-103. She highlighted the following: 1) the basic principles of the rule include—the meetings must be open unless they are closed in the proper way for the proper purpose, the requirements for an open meeting, and the intent to establish procedures consistent with the philosophy of the Utah Open and Public Meeting Act; 2) what a meeting is; 3) public notice must be given; 4) audio recording and minutes – what the minutes shall include and access to the meeting recording and minutes; 5) public access to the meeting; and 6) closed meetings – how the meetings are closed, reasons for closing a meeting, and limits on decisions in a closed meeting.

6. **LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)**

Mr. Schwermer provided a legislative update to the Council. He distributed a copy of the draft bill, Court System Task Force, as well as the November 2013 Interim Highlights. He highlighted the following in his update: 1) the Child Welfare Legislative Oversight Panel met, 2) Veteran's Reintegration Task Force Report, 3) court system modifications, 4) Divorce Orientation Course timing, 5) Drug Offender Reform Act (DORA), 6) retirement and independent entities, 7) Senate judicial confirmations, 8) appointment of Ms. Jacey Skinner as the Governor's legal counsel, 9) Executive Appropriations met, and 10) the Governor's 2015 budget recommendations will be released in December.

7. **JUDICIAL OUTREACH COMMITTEE UPDATE: (Judge Carolyn McHugh and Ms. Nancy Volmer)**

Chief Justice Durrant welcomed Judge McHugh to the meeting.

Judge McHugh provided an update to the Council on the activities of the Judicial Outreach Committee. She mentioned that the 2013-2014 Strategic Communication Plan was distributed to the Council members in their meeting packet. She highlighted the following in her update: 1) members of the committee were mentioned, 2) 2012-2013 public information office accomplishments, 3) noted the subcommittees and their work, 4) 2013-2014 Strategic Communication Plan goals, and 5) implementation of Rule 4-401 – Electronic media coverage of court proceedings. Judge McHugh mentioned that two outreach meetings were held during the past year.

The following 2012-2013 accomplishments of the Public Information Office were highlighted: 1) hosted the Conference of Court Public Information Officers in August, 2) wrote and distributed 56 news releases/media advisories, 3) responded to 775 media inquiries, 4) planned for and facilitated changes to Rule 4-401, 5) produced court publications including the Annual Report and the Court News employee newsletter, 6) managed the court's social media component.

For the 2013-2014 year, the committee included the following as goals in the Strategic Communication Plan: 1) look at ways to build a more positive view of the courts with diverse populations, 2) determine new ways to communicate with target audiences, 3) consider ways to better inform the public about the court's performance measures, and 4) explore creating an online media training program.

The following was highlighted relative to the change to Rule 4-401 - Electronic media coverage of court proceedings: 1) 74 requests for video pool for cameras were received since the changes to the rule took place, and 2) the first gavel to gavel media coverage that was streamed live took place during the MacNeill case.

Judge McHugh expressed her appreciation to Ms. Nancy Volmer for her support to the Committee.

Chief Justice Durrant thanked Judge McHugh for her update.

8. SUMMIT COUNTY COURTROOM EXPANSION: (Alyn Lunceford)

Chief Justice Durrant welcomed Mr. Lunceford to the meeting.

Documents relative to the proposed Summit County courtroom remodel were included in the documentation sent to Council members. Mr. Lunceford provided information relative to Summit County's need for expansion of one additional courtroom to handle the increased caseload.

Mr. Lunceford highlighted the following relative to the proposed remodel to the Summit County court facility: 1) a presentation was made to the Facilities Standing Committee on the proposed design of the expansion project, 2) Summit County has incorporated funding for the expansion into their 2014 budget, 3) architectural firm has been contacted regarding a planning and programming contract, and 4) once design has been finalized, the design will be presented to the Summit County Council and the Facilities Standing Committee for approval.

Mr. Lunceford highlighted the following relative to approval of the remodel project: 1) design of the remodel of the facility to be completed in January-February time frame, 2) construction phase 120-150 days upon completion of the design, 3) anticipated completion of the remodel project by September 2014, 4) an increase of $50,000 to the FY 2015 budget would be needed for lease payments, 5) thereafter, an adjustment of $100,000 would be needed for lease payments, 6) working with Summit County on a structure with payback terms within the existing lease term, and 7) current lease expires in 2022.

Mr. Becker mentioned that the Third District presiding judges, Judge Ryan Harris, and Judge Todd Shaugnessy were involved in remodel planning meetings, in addition to management staff.

Mr. Lunceford responded to questions asked relative to the proposed remodel project for the Summit County court facility.

Motion: Judge Skanchy moved to accept the proposal for the Summit County courtroom remodel project. Judge Maughan seconded the motion, and it passed unanimously.

9. UTA ECOPASSES: (Alyn Lunceford)

In an attempt to minimize air pollution statewide, State government has contracted with UTA to obtain Eco-Passes for state employees in UTA service districts at discounted rates. With this, 23 court sites or 928 court employees, will have the option of receiving an Eco-Pass in January of 2014 at no additional cost to the courts compared to the 89 employees that are currently receiving UTA transportation passes. An Eco-Pass provides unlimited travel on TRAX, all buses including express buses, S-Line and FrontRunner. The pass excludes ski buses and special services UTA transportation.

Mr. Lunceford was thanked for his update.

10. ADR COMMITTEE UPDATE: (Judge Royal Hansen and Ms. Nini Rich)

Chief Justice Durrant welcomed Judge Hansen and Ms. Rich to the meeting.

A copy of the ADR Program Overview was distributed to members of the Council.

Judge Hansen provided an update to the Council on the activities of the ADR Committee. He highlighted the following in his update: 1) available Alternative Dispute Resolution (ADR) programs, statewide; 2) ADR program statistics for 2013; 3) an overview of the committee membership; 4) 2013 program highlights, and 5) development and approval of a new website resource on Ethics and Discipline for ADR providers.

ADR program statistics highlights included: 1) more than 3,000 cases were mediated through court ADR programs; 2) four ADR staff mediators conducted 1,047 child welfare mediations, statewide; 3) more than 200 pro bono mediations were arranged by ADR staff; 4) over 1,100 pro bono mediations were provided through ADR program collaborations with non-profit community organizations and educational institutions; and 5) provided an annual 40-hour basic mediation training to over 200 court employees since 2007.

Ms. Rich provided an overview of the new Ethics and Discipline online resource available to ADR providers. She noted the availability of a roster of available providers can be found online, as well.

Judge Hansen expressed his gratitude to Ms. Rich and the IT staff involved in developing the online web-pages relative to the ADR program.

Ms. Rich answered questions relating to the mediation program.

Chief Justice Durrant expressed his gratitude to the ADR Committee and Ms. Rich for all they do for the court ADR programs.

11. THIRD DISTRICT COMMISSIONER APPOINTMENT: (Judge Royal Hansen and Peyton Smith)

Judge Hansen stated that the Third District Court has had a commissioner vacancy since the end of August. He outlined the process undertaken in selecting a new court commissioner.

The Third District Bench recommended Ms. Kim Luhn be hired to fill the vacancy for a court commissioner in the Third District Court.

Motion: Judge Maughan moved to accept the recommendation of the Third District Bench to appoint Ms. Kim Luhn to fill the vacancy for a court commissioner. Judge Hornak seconded the motion, and it passed unanimously.

12. PRESENTATION TO ASTAR FELLOWS: (Chief Justice Matthew B. Durrant)

Three judges from Utah completed the ASTAR Platform A Program through the National Courts and Science Institute. The judges include: 1) Judge Kate Toomey, 2) Judge L.A. Dever, and Judge Ric Oddone.

Chief Justice Durrant presented Judge Toomey with her certificate of completion as an ASTAR Science and Technology Fellow. Judge Dever and Judge Oddone were unable to attend.

Judge Toomey provided background information on the program and the training necessary to become certified in the program.

13. COUNCIL PHOTO

A photo of the Council was taken.

14. LANGUAGE ACCESS IN THE TRIAL COURTS OF RECORD: (Alison Adams-Perlac)

Ms. Adams-Perlac provided an update to the Council on language access in the trial courts between the years of 2011-2013. She highlighted the following in her update: 1) English fluency by Utah population; 2) language spoken at home; 3) speaks English less than very well; 4) types of credentialing categories for interpreters; 5) percent of hours interpreted by highest credentials available; 6) percent of Spanish language hours interpreted by a certified interpreter; 7) hours interpreted by district in 2013; 8) district court – total interpreted hearings; 9) juvenile

court – total cases and parties using interpreters; 10) interpreting costs, 2011-2013; 11) interpreting costs by district, 2011-2013; 12) change in language interpreting costs, 2012-2013; 13) travel costs, 2012-2013; 14) percent change in program costs vs. percent change in number of hearings; 15) statewide, costs have declined by 1%; 16) remote interpreting program; 17) staff interpreter program; 18) expected impact on program costs in 2014; and 19) language access recommendations.

The following are recommendations made on behalf of the Language Access Committee: 1) study remote interpreting program to determine whether expansion to other areas is feasible, 2) retain the four full-time staff interpreters in the Third District, and 3) study whether there are needs in other districts that warrant hiring staff interpreters.

Chief Justice Durrant thanked Ms. Adams-Perlac for her report.

Motion: Judge Harmond moved to accept the report to include further study of remote interpretation and staff interpreter needs in other districts. Judge Davis seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss a matter of professional competency. Judge Parkin seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION

An executive session was held at this time.

16. ADJOURN

The meeting was adjourned.

JUDICIAL COUNCIL MEETING

Minutes
Tuesday, September 10, 2013
Snowbird Resort
Snowbird, UT

Chief Justice Matthew B. Durrant, Presiding

ATTENDEES:
Chief Justice Matthew B. Durrant
Hon. Kimberly K. Hornak, vice chair
Justice Jill Parrish
Hon. Glen Dawson
Hon. George Harmond
Hon. Paul Maughan
Hon. Brendon McCullagh
Hon. David Mortensen
Hon. Reed Parkin
Hon. John Sandberg
Hon. Randall Skanchy
Hon. Larry Steele
John Lund, esq.

STAFF PRESENT:
Daniel J. Becker
Ray Wahl
Jody Gonzales
Debra Moore
Rick Schwermer
Tim Shea
Alison Adams-Perlac
Ron Bowmaster
Derek Byrne

GUESTS:
Judge Michele Christiansen
Judge Carolyn McHugh
Joanne Slotnik, JPEC

EXCUSED:
Hon. Gregory Orme

1. **WELCOME AND APPROVAL OF MINUTES: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant welcomed everyone to the meeting.

Motion: Judge Maughan moved to approve the minutes from the August 16, 2013 Judicial Council meeting. Judge Steele seconded the motion, and it passed unanimously.

Chief Justice Durrant recognized the outgoing members for their service and contribution to the Council. The outgoing members include: 1) Judge Larry Steele, and 2) Judge Brendon McCullagh.

Chief Justice Durrant swore in Judge Skanchy as a member of the Council.

2. **CHAIR'S REPORT: (Chief Justice Matthew B. Durrant)**
Chief Justice Durrant had nothing new to report.

3. ADMINISTRATOR'S REPORT: (Daniel J. Becker)

Mr. Becker reported on the following items:

State Supreme Courts. A book depicting the State Supreme Courts was circulated amongst the Council members for viewing. It will be placed in the Council Room at the Matheson Courthouse for further viewing.

Legislative Retirement Committee. The Legislative Retirement Committee will meet on September 25 with judicial retirement on their agenda for discussion. Chief Justice Durrant and Mr. Becker are on the agenda to address the importance of the present system.

Drug Court Grant. A drug court grant in the amount of $1.4 million has been received by the Department of Human Services (joint application by Utah Courts and DHS) to be used over a three-year period. Discussion of how the funding will be implemented will take place at a later date.

Judicial Vacancies. The following judgeship appointments are pending confirmation: 1) Mr. Brian Cannell, 1st District Juvenile Court; 2) Commissioner Catherine Conklin, Second District Court; 3) Mr. Samuel Chiara, Eighth District Court; 4) Mr. Keith Eddington, Eighth District Juvenile Court; and 5) Mr. Ryan Evershed, Eighth District Juvenile Court.

The following judicial vacancies are pending appointment by the Governor: 1) Second District Juvenile Court vacancy replacing Judge Paul Iwasaki, 2) Fourth District Juvenile Court vacancy replacing Judge Kay Lindsay, and 3) Court of Appeals vacancy replacing Judge Bill Thorne.

4. COMMITTEE REPORTS:

Management Committee Report:

Chief Justice Durrant reported that the Management Committee meeting minutes accurately reflect the issues discussed. The items needing to be addressed by the Council have been placed on today's agenda.

Liaison Committee Report:

Justice Parrish reported on the following items:

The Liaison Committee met prior to the Council meeting to review the proposed amendment to the Citation Section of the Code which would require law enforcement to note on the citation whether the offense is a domestic violence citation or not.

Feedback on the proposed amendment will be sought by the statewide association of prosecutors.

Policy and Planning Meeting:

Mr. Shea reported on the following items:

The Policy and Planning Committee met on Friday, September 6. The following was highlighted in his update: 1) reviewed guidelines for paying interpreters, 2) rules for final action are included on the agenda later in the meeting, 3) discussion took place regarding a request for an amendment relative to SB 281 – Debt Collection Information Amendments – to allow clerks to use judges' signature stamps in matters of disclosing information for debt collection by the Department of Workforce services.

Bar Commission Report:

Mr. Lund reported on the following:

The Bar Commission held their annual retreat at the end of August.

The 2014 Bar's Summer Conference will be held in Snowmass, Colorado.

A special election will be held in the Third District to replace Mr. Jim Gilson.

Ms. Joanne Slotnik and Mr. John Ashton, Judicial Performance Evaluation Commission (JPEC) members, presented information on the work of JPEC to the Bar.

Mr. Lund reported that the Bar Commission would be looking at the practice of law in the next 5-10 years as one of their priorities for the coming year.

5. LEGISLATIVE UPDATE AND INTERIM HIGHLIGHTS: (Rick Schwermer)

Mr. Schwermer provided a Legislative Update for the Council.

An interim session was not held in August. Mr. Schwermer highlighted the following in his update: 1) a legislator is considering resurrecting circuit courts to handle misdemeanors and domestic cases, and the justice courts would continue to handle infractions and local ordinances; 2) EEOC Appropriations Committee met at the Ogden Courthouse; and 3) the Prison Relocation and Development Authority (PRADA) met with Mr. Rick Schwermer, Ms Debra Moore, and Judge Kevin Allen making presentations.

Mr. Becker introduced Alison Adams-Perlac, the new AOC staff attorney and former juvenile court law clerk. Ms. Emily Iwasaki has been selected to fill the juvenile court law clerk vacancy and will begin working for the courts on Monday, September 16.

6. FY 2014 BUDGET ADJUSTMENTS: (Daniel J. Becker)

Mr. Becker reported that an additional $200,000 in unobligated carry forward funds is available after the books were closed for FY 2013.

He recommended the following adjustments to the FY 2014 budget: 1) set aside $44,000 for the Fourth District Juvenile clerical assistance as approved at the August Budget and Planning Session, 2) increase the senior judge budget by $56,000 to allow senior judge coverage while judicial vacancies are being filled and provide for commissioner vacancies, and 3) add $100,000 to the balance in the trust interest support account to address revenue shortfalls stemming from low interest rates.

Mr. Byrne provided an overview providing a comparison of the trust interest support account expenses to revenue over time.

Motion: Judge Parkin moved to approve the FY 2014 budget adjustment recommendations as presented by Mr. Becker. Judge Hornak seconded the motion, and it passed unanimously.

7. COURT COMMISSIONER CONDUCT COMMITTEE UPDATE: (Judge Michele Christiansen and Rick Schwermer)

Judge Christiansen provided an update to the Council on the activities of the Court Commissioner Conduct Committee. The following was highlighted in her update: 1) four complaints were received, 2) one complaint was dismissed, 3) one complaint was dismissed after investigation, and 4) one complaint – lost jurisdiction upon retirement of the commissioner.

Discussion will take place and feedback sought at the Presiding Judge luncheon tomorrow of Rule 3-111 – Performance Evaluation of Senior Judges and Court Commissioners.

8. E-FILING HARDSHIP EXEMPTION: (Debra Moore)

Ms. Moore received an e-filing hardship exemption from Mr. Steve Simpson, attorney in Bluff, UT due to inadequate internet access. A temporary exemption was granted by the Management Committee at their August 16 meeting to be discussed further at the September Council meeting.

Discussion took place.

Motion: Judge Mortensen moved to approve an exemption for 24 months. The motion was amended to approve an exemption for 12 months. Upon expiration of the 12-month period, Mr. Simpson would need to request approval for an extension to his exemption. Judge Dawson seconded the motion, and it passed unanimously.

9. THIRD DISTRICT COURT COMMISSIONER VACANCY AND SECOND DISTRICT COMMISSIONER VACANCY: (Daniel J. Becker)

Mr. Becker distributed data of the Second and Third District Court Judicial Weighted Caseload of Domestic Cases and Workload. He recommended filling both Commissioner vacancies.

Motion: Judge Maughan moved to approve filling the Third and Second District Commissioner vacancies. Judge Dawson seconded the motion, and it passed unanimously.

10. JUDICIAL PERFORMANCE EVALUATION COMMISSION UPDATE: (Joanne Slotnik)

Chief Justice Durrant welcomed Ms. Slotnik to the meeting.

Ms. Slotnik highlighted the following in her update: 1) the Commission will meet bi-weekly deliberating on judges up for retention in 2014; 2) the Supreme Court has appointed Professor Eric D. de Rosia, Brigham Young University, to replace Mr. Myron March on the Commission; 3) Ms. Diane Allison has replaced Ms. Jennifer Yim on the Commission; 4) the Utah Criminal Justice Center conducted an audit of the survey results and deemed the data accurate; 5) the timeframe to receive attorney survey data closed in mid August; 6) a request will be sent to the 2014 judges up for retention to update their bios; 7) any 2014 or 2016 judges up for retention, whose surveys reflect lower scores, will be notified by October 1 to be given an opportunity to meet with members of the Commission at the end of October to discuss their survey results further; 8) two writers have been hired to help prepare the judges' narratives; and 9) the 2014 retention reports will be distributed in January 2014.

Chief Justice Durrant thanked Ms. Slotnik and JPEC for their service.

11. STANDING COMMITTEE ON TECHNOLOGY UPDATE: (Judge Carolyn McHugh and Ron Bowmaster)

Chief Justice Durrant welcomed Judge McHugh to the meeting.

Judge McHugh expressed her gratitude to Ron and the IT staff for all they do to help the courts move forward technologically.

The following was highlighted in her report to the Council: 1) expansion of civil e-filing to include domestic and probate cases; 2) the transition to mandatory e-filing on April 1, 2013; 3) judicial workspace application became available for trial court judges and staff in January 2013; 4) juvenile court adopted a two-year electronic conversion plan; 5) the move to criminal e-filing is being addressed in county offices; 6) automated trust account disbursements being reviewed; 7) development of case management and workflow systems within the court systems; 8) development of e-filing in the Appellate Courts; 9) expansion of the judicial workspace application to justice courts; 10) adoption and expansion of mobile computing systems; 11) reviewing service delivery methods to remote court locations; and 12) e-filing and e-citation data was provided.

Judge McHugh was thanked for all she and the committee have done during the e-filing conversion.

The Council went back into an executive session.

12. RULES FOR FINAL ACTION: (Tim Shea)

The following Rules are being recommended for final action: 1) CJA 01-0205 – Standing and Ad Hoc Committees, 2) CJA 03-0306 – Court Interpreters, 3) CJA 03-0402 – Human Resources Administration, 4) CJA 04-0110 – Transfer of Juvenile Cases from District and Justice Courts to the Juvenile Court, 5) CJA 04-0404 – Jury Selection and Service, 6) CJA 04-0508 – Guidelines for Ruling on a Motion to Waive Fees, and 7) Rule 4-0408.01 – Responsibility for Administration of Trial Courts.

Rule CJA-03-0306 – Court Interpreters. The amendment creates a complaint process for failure to follow the requirements of the rule and clarifies that the rule is not authority to charge for language access costs, and includes qualifications for a second language stipend before engaging in a first-hand conversation with a person of limited English proficiency.

Rule CJA 04-404 – Jury Selection and Service. The amendment to this rule implements the requirement of Section 78B-1-110 that compliance with a summons satisfies a person's jury service obligation for two years. The effective date for this rule should be January 1, 2014. The remainder of the rules can have an effective date of November 1, 2013.

Rule 4-408.01 – Responsibility for Administration of Trial Courts. This rule has been amended to remove Morgan from the list of contract sites.

Clarification was requested relative to justice courts and second language stipends.

Motion: Judge McCullagh moved to approve the rules for final action with an additional amendment to Rule CJA-03-0306 – Court Interpreters, relative to justice courts and second language stipends. Judge Steele seconded the motion, and it passed unanimously.

13. SENIOR JUDGE CERTIFICATIONS: (Tim Shea)

Mr. Shea provided background information on certification of court commissioners and senior judges. He reported that the process for certifying court commissioners has remained the same for several years. The process for certifying senior judges, amended two years ago, includes reporting of attorney survey data to the survey contractor (National Center for State Courts). Mr. Shea outlined the process that should be taking place with the survey data. He reported ongoing problems exist with attorney survey data being reported to the survey contractor. He noted that short of the surveys, the senior judges meet the minimum performance

standards to be recertified.

Discussion took place.

Mr. Becker recommended that the Council act on the certification information for senior judges minus the attorney surveys and request the Policy and Planning Committee to review the process for certifying senior judges and modify the policy, if needed.

Motion: Mr. Lund moved to approve Mr. Becker's recommendations regarding the certification process for senior judges. Judge Steele seconded the motion, and it passed unanimously.

Motion: Judge Hornak moved to enter into an executive session to discuss matters of personnel. The motion was seconded, and it passed unanimously.

14. SENIOR JUDGES AND COURT COMMISSIONERS CERTIFICATION: (Tim Shea)

The following court commissioners terms will expire on December 31, 2013; and they have applied for reappointment: 1) Commissioner Michelle R. Blomquist, 2) Commissioner David S. Dillon, and 3) Commissioner Thomas R. Patton.

The following senior judges have terms that will expire on December 31, 2013; and they have applied for reappointment: 1) Judge Roger S. Dutson, 2) Judge Dennis M. Fuchs, 3) Judge Pamela G. Hefferman, and 4) Judge Sandra N. Peuler.

Motion: Judge Maughan moved to forward the recommendations, on behalf of the Council, to the local presiding judges to certify the court commissioners for reappointment and to the Supreme Court to certify the senior judges for reappointment. Judge Mortensen seconded the motion, and it passed unanimously.

15. EXECUTIVE SESSION:

An executive session was held at this time.

16. ADJOURN

The meeting was adjourned.

Supplement to attachment 13b

286. *Hahnel v. Duchesne*, 305 P.3d 208 (Utah Ct. App. 2013).

287. *Bonnie & Hyde v. Lynch*, 305 P.3d 196 (Utah Ct. App. 2013).

288. *In re M.J.*, 302 P.3d 485 (Utah Ct. App. 2013).

289. *Macris v. Sevea Intern., Inc.*, 307 P.3d 625 (Utah Ct. App. 2013).

290. *State v. Gunter*, 304 P.3d 866 (Utah Ct. App. 2013).

291. *Hadley v. Workforce Appeals Bd.*, 303 P.3d 1037 (Utah Ct. App. 2013).

292. *Wm. Douglas Horne Family Revocable Trust v. Wardley/McLachlan Development, LLC*, 304 P.3d 99 (Utah Ct. App. 2013).

293. *State v. Stone*, 305 P.3d 167 (Utah Ct. App. 2013).

294. *Snow v. Chartway Federal Credit Union*, 306 P.3d 868 (Utah Ct. App. 2013).

295. *Washington County School Dist. v. Labor Comm'n*, 309 P.3d 229 (Utah Ct. App. 2013), *cert. granted*, ___ P.3d ___ (December 16, 2013).

296. *State v. Daughton*, 308 P.3d 537 (Utah Ct. App. 2013).

297. *Sundial, Inc. v. The Villages at Wolf Hollow Condominium Homeowner's Assoc., Inc.*, 310 P.3d 1233 (Utah Ct. App. 2013).

298. *State v. Ekstrom*, ___ P.3d ___ (Utah Ct. App. 2013).

299. *State v. Cunningham*, ___ P.3d ___ (Utah Ct. App. 2013).

300. *Yuanzong Fu v. Rhodes*, 304 P.3d 80 (Utah Ct. App. 2013) (McHugh, J., concurring in part and dissenting in part), *cert. granted*, ___ P.3d ___ (Nov. 14, 2013).

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Carolyn Baldwin McHugh

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

   United States Circuit Judge for the Tenth Circuit

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

   Utah Court of Appeals
   450 South State Street
   Salt Lake City, Utah 84114

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

   1957; Abington, Pennsylvania

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.

   1979 – 1982, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law); J.D. (Order of the Coif), 1982

   1975 – 1978, University of Utah; B.A. (*magna cum laude*), 1978

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

   2005 – present
   Utah Court of Appeals
   450 South State Street
   Salt Lake City, Utah 84114

Presiding Judge (2012 – present)
Associate Presiding Judge (2010 – 2011)
Judge (2005 – 2009)

1991 – 1992; 2011
S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law)
332 South 1400 East
Salt Lake City, Utah 84112
Adjunct Professor

1983 – 2005
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84101
Shareholder (1987 – 2005)
Associate (1983 – 1987)

Fall 1986
University of Utah
College of Social and Behavioral Science
260 South Central Campus Drive, Room 205
Salt Lake City, Utah 84112
Adjunct Professor

1982 – 1983
United States District Court for the District of Utah
350 South Main Street
Salt Lake City, Utah 84101
Law Clerk to Judge Bruce S. Jenkins

Summer 1982
Ray Quinney & Nebeker
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
Summer Associate

1981 – 1982
S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law)
332 South 1400 East
Salt Lake City, Utah 84112
Legal Writing Teaching Assistant

Summer 1981
Latham & Watkins

355 South Grand Avenue
Los Angeles, California 90071
Summer Associate

1980 – 1981
S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law)
332 South 1400 East
Salt Lake City, Utah 84112
Criminal Law Tutor

Summer 1980
Berman & Giauque (now dissolved)
500 Kearns Building
Salt Lake City, Utah 84101
Summer Associate

1978 – 1979
Grinnell Brothers Music (now out of business)
1515 Woodward Avenue
Detroit, Michigan 48226
Data Control Clerk

Other Affiliations (uncompensated):

2004 – 2005
Legal Aid Society of Salt Lake
205 North 400 West
Salt Lake City, Utah 84103
Trustee

1996 – 2005
Salt Lake County Bar Association
c/o Judge Robert J. Shelby, President
United States District Court
350 South Main Street
Salt Lake City, Utah 84101
Trustee (1997 – 2005)
Ex Officio Trustee (1996 – 1997)

1996 – 2003
Catholic Community Services of Utah
745 East 300 South
Salt Lake City, Utah 84102
President, Board of Trustees (2002 – 2003)

Executive Committee (1999 – 2003)
Trustee (1996 – 2003)

1995 – 1997
Women Lawyers of Utah
c/o Utah State Bar
645 South 200 East
Salt Lake City, Utah 84111
President, Board of Trustees (1996 – 1997)
Executive Committee (1995 – 1996)

1991 – 1996
S.J. Quinney College of Law at the University of Utah
(formerly University of Utah College of Law) Alumni Association
332 South 1400 East
Salt Lake City, Utah 84112
Trustee

1991 – 1996
Voices for Utah Children
747 East South Temple, Suite 100
Salt Lake City, Utah 84102
Trustee

1982 – 1986
Big Brothers Big Sisters of Greater Salt Lake
1875 Murray Holladay Road
Salt Lake City, Utah 84117
Executive Committee (1984 – 1986)
Trustee (1982 – 1984)

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

   I have never served in the military. I was not required to register for selective service.

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

   Dorathy Merrill Brothers Award for the Advancement of Women in the Legal Profession, Utah State Bar (2009)
   Christine M. Durham Woman Lawyer of the Year, Women Lawyers of Utah (2001)

Young Alumnus of the Year, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) (1997)
Distinguished Committee Award, Needs of Children Committee, Utah State Bar (1996)
Utah Law Review Editorial Board, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) (1981 – 1982)
Eccles Merit Fellowship, Eccles Family Charitable Trust (1981 – 1982)
American Jurisprudence Awards: Antitrust, Constitutional Law II, Criminal Law, Evidence, Torts, and Trusts and Estates, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) (1979 – 1982)
William H. Leary Scholar, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) (1979 – 1982)

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

American Bar Association (intermittently 1988 – present)
Vice-Chairperson, Environmental Quality Committee (1992 – 1997)
Vice-Chairperson, Planning Committee, Conference on Environmental Law (1996 – 1997)
Co-Chairperson, Planning Committee, Conference on Environmental Law (1997 – 1999)
Litigation Section (intermittently 1982 – 2011)
Judicial Section, Appellate Division (2010 – present)
American Bar Foundation Fellow (2011 – present)
American Inns of Court (1985 – 1987, 2004 – 2011)
Barrister (1985 – 1987)
Master of the Bench (2004 – 2011)
Salt Lake County Bar Association (1982 – present)
Ex Officio Member, Board of Trustees (1996 – 1997)
Vice-Chairperson, Pamphlets Committee (1996 – 1997)
Chairperson, Art and the Law Committee (1997 – 1998)
Chairperson, Pamphlets Committee (1997 – 1998)
Trustee (1997 – 2005)
United States Department of Justice, Advanced Science and Technology Adjudication Resource Center
Fellow (2006 – present)
Utah Commission on Civic and Character Education (2011 – present)
Utah Judicial Conduct Commission (2010 – present)
Utah State Bar (1982 – present)
Committee on Courts and Judges (approximately 1983 – 1987)
Chairperson, Publications Subcommittee, Needs of Children Committee (1993 – 1994)
Chairperson, Needs of Children Committee (1995 – 1996)
Bar Examiners Committee (1988 – 1993)
Ex Officio Bar Commissioner (1998 – 1999)

Board Member and Judicial Representative, Appellate Section (2010 – present)
Planning Committee, Utah State Bar Spring Convention (2013)

Utah State Courts (2005 – present)
Member, Standing Committee on Judicial Outreach (2006 – present)
Chairperson, Standing Committee on Court Technology (2008 – present)
Chairperson, Standing Committee on Judicial Outreach (2010 – present)

Utah Supreme Court Advisory Committee on the Rules of Professional Conduct (1995 – 1998)

Women Lawyers of Utah (1982 – present)
Executive Committee (1995 – 1996)
President, Board of Trustees (1996 – 1997)
Judicial Representative (2008 – 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.

Utah, 1982

There have been no lapses in membership.

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

United States Court of Appeals for the Ninth Circuit, 1988
United States Court of Appeals for the Tenth Circuit, 1982
United States District Court for the District of Utah, 1982
Utah State Courts, 1982

My membership in the Ninth Circuit lapsed in 1989 because I did not renew it after completing an appeal on behalf of one of my clients. My memberships in the Tenth Circuit and the District of Utah lapsed in 2005 because I did not renew them after being appointed to the Utah Court of Appeals.

11. **Memberships**:

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

Big Brothers Big Sisters of Greater Salt Lake (1982 – 1986)
Trustee (1982 – 1984)
Executive Committee (1984 – 1986)
Catholic Community Services of Utah (1994 – 2005)
Awards Banquet Committee (1994 – 1998)
Trustee (1996 – 2003)
Resource Development Committee (1996 – 2003)
Executive Committee (1999 – 2003)
President, Board of Trustees (2002 – 2003)
Long Range Planning Committee (2003 – 2005)
Legal Aid Society of Salt Lake (2004 – 2005)
Trustee
S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) Alumni Association (1982 – present)
Co-Chairperson, Class Representative Committee (1994 – 1996)
Trustee (1991 – 1996)
Utah Office of the Guardian Ad Litem (1994 – 2003)
Volunteer Guardian Ad Litem
Voices for Utah Children (approximately 1989 – 2000)
Trustee (1991 – 1996)
Budget Advisory Committee (1991 – 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.

Oral History of Christine Durham, ABA Senior Lawyers Division, Women Trailblazers in the Law (2009 – 2010). Copy supplied.

Decisions from the Utah Court of Appeals, 2008, UTAH B.J., July – Aug. 2009. Copy supplied.

Past NAWJ President, Judith M. Billings, Retires from the Utah Court of Appeals, National Association of Women Judges (2009). Copy supplied.

With Michael J. Wilkins, *2007 Case Summaries*, UTAH B.J., May – June 2008. Copy supplied.

Separation of Powers, UTAH B.J., July – Aug. 2006. Copy supplied.

First Impressions, UTAH B.J., May – June 2006. Copy supplied.

A View from the Bench: Practice Pointers from Judge Kimball, SALT LAKE COUNTY B. ASS'N, Nov. 1999. Copy supplied.

With Craig G. Adamson et al., Letter to the Editor, UTAH B.J., Mar. 1997. Copy supplied.

It's Time for You to Be Part of the Solution to Unmet Legal Needs, UTAH B.J., Winter 1997. Copy supplied.

Recent Developments in Utah Law: Damaging Items of Separately Owned Property Held to Constitute Distinct Crimes, 1981 UTAH L. REV. 689 (1981). Copy supplied. The Recent Developments in Utah Law are a compilation of articles by members of the Utah Law Review. I authored the development identified, but I did not participate in drafting the other developments featured.

Application of the Sherman Act to Politically Motivated Boycotts – Missouri v. National Organization for Women, Inc., 1981 UTAH L. REV. 599 (1981). Copy supplied.

Recent Developments in Utah Law: Evidence of Pre-Decree Behavior as Grounds for Modification of a Child Custody Decree, 1981 UTAH L. REV. 212 (1981). Copy supplied. The Recent Developments in Utah Law are a compilation of articles by members of the Utah Law Review. I authored the development identified, but I did not participate in drafting the other developments featured.

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.

2010 – 2012 Utah Judicial Conduct Commission Annual Reports, prepared by the Executive Director and approved by the Commission members. Copy supplied.

1992 – 1995 Year in Review, American Bar Association, Natural Resources, Energy, and Environmental Law Section. Copy supplied.

To the best of my knowledge, I have not prepared or contributed in the preparation of any other reports, memoranda or policy statements on behalf of any bar association, conference, or organization.

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 made oral reports to the Judicial Council on behalf of the Technology Committee and the Outreach Committee of the Utah State Courts. Council minutes for the December 15, 2008, June 29, 2009, July 19, 2010, July 18, 2011, September 13, 2011, July 16, 2012, and November 19, 2012 meetings have been 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.

Throughout my career I have presented on many legal topics. I have listed all those that I can recall here after searching through my files and the internet.

March 15, 2013: Panelist, "What the Appellate Rules Won't Tell You, But You Need to Know," Utah State Bar Spring Convention, St. George, Utah. PowerPoint and handout supplied.

March 1, 2013: Panelist, 18th Annual Ethics CLE & Ski, Park City Bar Association, Park City, Utah. Handout supplied.

November 15, 2012: Panelist, Judicial Mentoring Seminar, Women Lawyers of Utah, Salt Lake City, Utah. I described my professional background and the process I went through to become a member of the Utah Court of Appeals. I then responded to questions from the audience. I have no notes, transcript, or

recording. The address for Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

November 13, 2012: Speaker, Closing Remarks, "Making the Connection: Connecting Civic and Character Education to Civic Engagement," Utah Commission on Civic and Character Education, Salt Lake City, Utah. Remarks supplied.

September 17, 2012: Speaker, Constitution Day Remarks, Utah State Courts, Salt Lake City, Utah. Notes supplied and a video is available at http://www.youtube.com/watch?v=Q-iPoA3Z-aU.

April 10, 2012: Judge, Traynor Moot Court Competition Finals, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law), Salt Lake City, Utah. I have no notes, transcript, or recording. The address of the S.J. Quinney College of Law at the University of Utah is 332 South 1400 East, Salt Lake City, Utah 84112.

February 24, 2012: Speaker, Presentation on Effective Oral Argument, Appellate Practice Seminar, Utah Association of Criminal Defense Lawyers, Salt Lake City, Utah. PowerPoint supplied.

February 7, 2012: Speaker, Remarks at the 2012 Campaign Kickoff for "And Justice For All," Salt Lake City, Utah. Remarks supplied.

January 25, 2012: Guest Lecturer, Judicial Process, "How Do Judges Decide When to "Write/Publish?", S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law). I gave a description of how the Court of Appeals handles published and unpublished decisions and how the individual judges decide whether to write an opinion or a memorandum decision. I then responded to questions from the students. I have no notes, transcript, or recording. The address of the S.J. Quinney College of Law at the University of Utah is 332 South 1400 East, Salt Lake City, Utah 84112.

November 10, 2011: Speaker, "Advocacy and Professionalism in Written Submissions to the Court," 2011 Conference of the Utah Attorney General's Office, Salt Lake City, Utah. Notes and PowerPoint supplied.

November 9, 2011: Speaker, "The Practical Applications of the Rules of Professional Conduct and Standards of Professionalism in the Private Practice Arena," the Utah Minority Bar and the Litigation Section of the Utah State Bar, Salt Lake City, Utah. My remarks focused on decisions from the Utah appellate courts in which sanctions were imposed against attorneys or their clients for failing to comply with the Code of Professional Conduct or the Standards on Professionalism and Civility. I have no notes, transcript, or recording. The address for the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

September 19, 2011: Speaker, Constitution Day Remarks, Utah State Courts, Salt Lake City, Utah. Notes supplied.

May 17, 2011: Speaker, "The Exhaustion of Administrative Remedies," Utah State Bar, Administrative Law Section, Salt Lake City, Utah. Notes, handout, and audio recording supplied.

April 20, 2011: Panelist, "Ethics, Professionalism, and Civility: How to Avoid the Office of Professional Conduct and Gain the Confidence of the Court," And Justice For All, Salt Lake City, Utah. Agenda used as an outline of my remarks is supplied.

March 7, 2011: Speaker, "The Importance of Understanding and Embracing the Standard of Appellate Review," Utah State Bar, Appellate Section, Salt Lake City, Utah. Notes supplied.

March 4, 2011: Panelist, 16th Annual Ethics CLE & Ski, Park City Bar Association, Park City, Utah. The panel discussed several hypothetical scenarios that raised ethical issues. I have no notes, transcript, or recording. The address for the Park City Bar Association is 445 Marsac Avenue, P.O. Box 1480, Park City, Utah 84060.

September 17, 2010: Speaker, Constitution Day Remarks, Utah State Courts, Salt Lake City, Utah. After the presentation of the colors, singing of the national anthem, and recitation of the pledge of allegiance, a group of judges read the preamble and Article III of the United States Constitution. I moderated the event. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Utah appellate courts is 450 South State Street, Salt Lake City, Utah 84111.

September 2010: Speaker, "Vexatious Litigants: Sanctions and Solutions," 2010 Utah Judicial Conference, Utah State Courts, Park City, Utah. Outline supplied.

June 29, 2010: Speaker, "2009-10 Decisions from the Utah Court of Appeals," Utah State Bar, Appellate Section, Salt Lake City, Utah. Handout supplied.

March 12, 2010: Panelist, 15th Annual Ethics CLE & Ski, Park City Bar Association, Park City, Utah. The Park City Bar Association provided several hypothetical scenarios that raised ethical issues. I have no notes, transcript, or recording. The address for the Park City Bar Association is 445 Marsac Avenue, P.O. Box 1480, Park City, Utah 84060.

Approximately 2010: Speaker, "Utah Appellate Decisions Regarding the Standards of Professionalism and Civility," Inns of Court, Salt Lake City, Utah. Handout supplied.

November 7, 2009: Panelist, "Civility, Professionalism, and Advocacy," Annual Retreat, Women Lawyers of Utah, Deer Valley, Utah. The panel drafted hypothetical scenarios and then used them to highlight issues of ethics and civility. We also discussed personal experiences with such issues. I have no notes, transcript, or recording. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

November 6, 2009: Speaker, Introductory remarks about Judith M. Billings, Annual Retreat, Women Lawyers of Utah, Deer Valley, Utah. I gave remarks on the retirement of Judge Judith M. Billings. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

April 23, 2009: Speaker, Presentation on the Indian Child Welfare Act, Juvenile Court Conference, Utah State Courts, Park City, Utah. Notes and PowerPoint supplied.

April 20, 2009: Speaker, "2008 Decisions from the Utah Court of Appeals," Utah State Bar, Appellate Practice Section, Salt Lake City, Utah. Handout supplied.

August 22, 2008: Speaker, Remarks to Incoming Law Students, S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law), Salt Lake City, Utah. Remarks supplied.

June 18, 2008: Mock Trial Facilitator, "Civic Workshop for Teachers and Pre-Service Teachers: The Branches of Civic Engagement." Mock trial script supplied.

June 4, 2008: Speaker, Promotion Address, Newman Elementary School, Salt Lake City, Utah. Remarks supplied.

January 31, 2008: Speaker, "2007 Cases from the Utah Court of Appeals," Utah State Bar, Appellate Practice Section, Salt Lake City, Utah. My remarks were published in the Utah Bar Journal and are supplied in response to Question 12a.

January 8, 2008: Speaker, "Effective Appellate Advocacy," J. Reuben Clark Law Society, Salt Lake City, Utah. Handout supplied.

November 9, 2007: Speaker, Ethics and Professionalism CLE, the Utah Minority Bar and the Litigation Section of the Utah State Bar, Salt Lake City, Utah. I discussed the importance of complying with the Canons of Professional Conduct and the Standards of Professionalism and Civility. I have no notes, transcript, or recording. The address for the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

May 12, 2006: Speaker, Remarks on Family Law, Utah State Bar, Family Law Section, Salt Lake City, Utah. I reviewed recent decisions from Utah's appellate courts on issues of interest to family law practitioners. I have no notes, transcript, or recording. The address for the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

May 1, 2006: Speaker, Law Day Speech on the Separation of Powers, Utah State Courts, Salt Lake City, Utah. My remarks were published in the Utah Bar Journal and are supplied in response to Question 12a.

January 20, 2006: Speaker, "Getting to Know Judge McHugh," Utah State Bar, Appellate Practice Section, Salt Lake City, Utah. I gave a brief description of my professional background and then responded to questions from the audience. I have no notes, transcript, or recording. The address for the Utah State Bar is 645 South 200 East, Salt Lake City, Utah 84111.

2006: Speaker, "Recent Decisions from the Utah Court of Appeals," Salt Lake County Bar Association, Salt Lake City, Utah. Handout supplied.

2005: Speaker, Remarks on Recent State and Federal Appellate Decisions, Utah State Bar, Banking and Finance Section, Salt Lake City, Utah. Notes supplied.

November 6, 2004: Panelist, "Effective Communication Inside and Outside of the Courtroom." Fall Retreat, Women Lawyers of Utah, Deer Valley, Utah. I spoke about the need for women attorneys to seek out opportunities to handle significant aspects of litigation matters. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

April 11, 2002: Speaker, Presented Christine M. Durham Woman Lawyer of the Year Award to Utah State Senator Patrice Arent, Salt Lake City, Utah. I discussed Senator Arent's professional and personal background, and emphasized her efforts to support women in the profession. I have no notes, transcript, or recording, but press coverage is supplied. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

March 11 – 14, 1999: Moderator, Remarks on Toxic Torts, Conference on Environmental Law, American Bar Association, Keystone, Colorado. I moderated a discussion of new developments in the law of toxic torts, including a discussion of multi-plaintiff litigation and class actions, causation, "fear of cancer" claims, damages for medical monitoring, and standards of proof. I have no notes, transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

September 1998: Panelist, Negotiation Strategies, Women Lawyers of Utah, Snowbird, Utah. I discussed the importance of understanding the strengths and

weaknesses of your case, explaining them to your client, being aware of what is and is not negotiable from your client's perspective, being open to creative solutions, honoring commitments made to opposing counsel, and carefully documenting the terms of any settlement reached. I have no notes, transcript, or recording. The address for the Women Lawyers of Utah is P.O. Box 932, Salt Lake City, Utah 84110.

March 14, 1998: Moderator, "Practicing Environmental Law in the Next Millennium – Environmental Expertise for the Near Future," 27th Annual Conference on Environmental Law, Keystone, Colorado. I moderated a discussion of climate control issues, alternate dispute resolution, indoor air pollution, risk management tools, pollution prevention, and environmental cost accounting. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

March 1997: Panelist, "Client Confidences and the Use of Outside Environmental Consultants," Conference on Environmental Law, American Bar Association, Keystone, Colorado. I participated in a role-play in which a client instructed an environmental attorney not to produce the unfavorable report of an environmental consultant. The panel then discussed the legal requirements governing the production of the reports of in-house and outside environmental consultants, with particular emphasis on recent decisions from the federal courts. I have no notes, transcript, or recordings. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

June 1992: Speaker, Solid and Hazardous Waste Overview, Utah Manufacturers Association, Salt Lake City, Utah. I provided a basic overview of the Resource Conservation and Recovery Act and its implications for manufacturers who generate hazardous waste. I have no notes, transcript, or recording. The address for the Utah Manufacturers Association is 136 East South Temple, Suite 1740, Salt Lake City, Utah 84111.

Unknown Date: Speaker, "Professionalism and Civility in the Private Practice Arena," Utah State Bar, Salt Lake City, Utah. Handout supplied.

Unknown Date: Speaker, "Preservation of the Record," Utah State Bar, Litigation Section, Salt Lake City, Utah. Notes supplied.

Unknown Date: Speaker, Remarks to a government class, West Jordan High School, West Jordan, Utah. 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.

The only interviews I recall having given are listed below; there may be some interviews on topics such as the Utah State Courts' celebration of Constitution Day or Law Day that I have inadvertently omitted.

Radio Interview on Constitution Day, Salt Lake City, Utah (September 19, 2012). Recording available at http://kcpw.org/blog/cityviews/2012-09-17/cityviews-91712-utah-radicals225th-constitutional-anniversary-wishes/.

Approximately 2012: Utah Commission on Civic and Character Education. Copy supplied.

Aaron Falk, *Judge Robert Hilder Retires After 17 Years on the Bench,* SALT LAKE TRIBUNE, July 31, 2011. Copy supplied.

Mark W. Pugsley, *Judicial Profile: Judge Carolyn McHugh*, B. & BENCH MAG., Fall 2005. Copy supplied.

AP Alert, *Carolyn Baldwin McHugh has been nominated from a field of seven candidates for the Utah Court of Appeals*, ASSOCIATED PRESS, June 14, 2005. Copy supplied.

Jill Schachner Chanen, *Guiding Principles: A Look Inside Some Inspired Mentor Relationships Shows How These Parings Build Careers – and Confidence*, A.B.A.J. (2005). Copy supplied.

Jennifer K. Nii, *Insurance License Pulled*, DESERET NEWS, Oct. 18, 2003. Copy supplied.

Peter Scarlet, *LDS' Monson Briefs Rotarians on Human Aid; Rotarians Get LDS Briefing on Human Aid*, SALT LAKE TRIBUNE, Nov. 22, 1997. Copy supplied.

George Tibbits, *Decision Coming – But Not Until Summer – in Radiation Suit*, ASSOCIATED PRESS, Apr. 26, 1983. 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 2005, I have served as a judge on the Utah Court of Appeals.

After my name was forwarded by a nonpartisan nominating commission, I was appointed by the Governor and confirmed by the Utah Senate in 2005. I was retained in the required periodic, nonpartisan retention elections in 2008. The Utah Court of Appeals has statutory original jurisdiction of criminal matters other than first degree felonies and capital cases, domestic relations cases, child welfare cases, cases originating in the juvenile and district courts, and most administrative proceedings from state agencies. In

addition, the Court of Appeals has jurisdiction to hear cases transferred to it from the Utah Supreme Court, with the exception of those for which the Supreme Court has original, exclusive jurisdiction. The Utah Supreme Court must retain capital felony cases; election and voting disputes, including reapportionment of election districts; cases involving the retention or removal of public officers; legislative subpoenas; lawyer discipline matters; and final orders of the Judicial Conduct Commission. In practice, with the exception of the matters on which it has exclusive jurisdiction, the Utah Supreme Court transfers all appeals to the Utah Court of Appeals. The Utah Supreme Court then sets its docket by issuing writs of certiorari to the Court of Appeals. As a result, the Utah Court of Appeals is the court of last resort for most criminal, civil, agency, and family law appeals in Utah.

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

I have presided over 1,118 cases that reached judgment, 719 of which were civil and 399 of which were criminal.

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0%
civil proceedings:	64%
criminal proceedings:	36%

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. *Cook Assocs., Inc. v. Utah Sch. and Inst. Trust Lands Admin.*, 243 P.3d 888 (Utah Ct. App. 2010).

This case required us to interpret the Utah Constitution and to determine whether it mandated that the School and Institutional Trust Lands Administration (SITLA) obtain the highest value possible for trust lands, even if to do so would violate the covenant of good faith and fair dealing implied into every contract. We held that, despite its constitutional mandate, SITLA was not free to breach the covenant of good faith with respect to a long-term ground lease.

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For Appellee:
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Thomas A. Mitchell
Special Assistant Attorney General
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2. *State v. Pacheco-Ortega*, 257 P.3d 498 (Utah Ct. App. 2011).

In this case, the State appealed the trial court's order dismissing the criminal charges against the defendant based on the State's failure to proceed at the preliminary hearing. We were required to interpret and apply controlling Utah Supreme Court due process authority to a factual scenario of first impression. We reversed the trial court's decision and remanded for further proceedings on the criminal charges.

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Chief, Appellate Section
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3. *Yirak v. Dan's Super Mkts., Inc.*, 188 P.3d 487 (Utah Ct. App. 2008).

This case required us to interpret Utah's Product Liability Act on an issue of first impression regarding the plaintiff's burden with respect to the passive retailer defense. We concluded that the trial court correctly granted summary judgment in favor of the defendant because it came forward with evidence that it had not participated in the design, manufacture, engineering, testing, or assembly of bagged salad offered for sale at its grocery store, and the plaintiff failed to dispute that evidence. Accordingly, we concluded that the retailer was a passive retailer as that term is used in the Act, and therefore not strictly liable for the injuries plaintiff suffered when ingesting glass contained in the salad. In doing so, we interpreted Utah's Product Liability Act consistently with the statutes of other jurisdictions which have expressly adopted a "sealed container" exception.

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4. *State v. Duran*, 131 P.3d 246 (Utah Ct. App. 2005), *aff'd*, 156 P.3d 795 (Utah 2007).

This case involved issues relating to the Fourth Amendment of the United States Constitution. First, we held that the evidence did not show that the defendant's landlord had common authority over the trailer in which defendant lived and therefore, could not give valid permission to search the trailer. We next held that the police officers could not have reasonably believed that the landlord had authority to consent to a search of the trailer. Although the smell of burning marijuana gave the officers probable cause to believe that a crime was being committed, we held that it did not create exigent circumstances that would permit a warrantless entry into the trailer.

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5. *Pete v. Youngblood*, 141 P.3d 629 (Utah Ct. App. 2006).

This case involved the interpretation of Utah Rule of Civil Procedure 26, which provides the requirements for the disclosure of fact and expert witnesses. We held that a party must identify any treating physician who will opine as to causation or the standard of care as an expert witness, rather than as a fact witness. We also determined that the doctrine of res ipsa loquitur obviated the need for the plaintiffs to offer expert testimony under the facts of this case.

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For Appellee:
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Williams & Hunt
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6. *In re Marriage of Kunz*, 136 P.3d 1278 (Utah Ct. App. 2006).

This case raised issues of first impression regarding the competing interests of plural wives in the estate of their deceased husband. We first ruled that Utah's unsolemnized marriage statute contained a statute of repose, rather than a statute of limitations. Accordingly, we concluded that the statute of repose was not subject to equitable tolling. We next held that the decedent's legal marriage to one claimant was voidable, as opposed to void, for alleged immigration fraud.

Because the marriage had not been challenged during the life of the spouses, however, it remained valid for purposes of determining the legal beneficiary of the estate.

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7. *State v. Davis*, 155 P.3d 909 (Utah Ct. App. 2007).

This case involved the issue of a defendant's right to a jury trial on every element of the offense. We ruled that the trial court erred by instructing the jury that a bicycle path is a public park, rather than submitting that factual issue to the jury. The determination of that issue was relevant to whether the defendant had committed his crimes in a drug-free zone, which was defined by statute to include a certain distance from a public park. As a result, we reversed the conviction and remanded for a new trial.

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For Appellee:
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Joanne C. Slotnik
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8. *State v. Van Dyke*, 223 P.3d 465 (Utah Ct. App. 2009), *cert. denied*, 230 P.3d 127 (Utah 2010).

This case required us to consider the extent to which a police officer can rely on information provided by the police dispatcher, including the report of a citizen informant, to support the officer's reasonable suspicion that the defendant is engaged in criminal activity. We held that the police officer was entitled to rely on the information in the dispatch and that there was sufficient evidence to support the officer's traffic stop of the defendant's vehicle.

For Appellant:
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(deceased)

For Appellee:
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9. *Ellison v. Stam*, 136 P.3d 1242 (Utah Ct. App. 2006).

The issues in this case required us to interpret the Utah stalking statute. We first held that the test for emotional distress under the statute required the trial court to consider whether a reasonable person under all of the circumstances present would have been distressed. We next held that the trial court should consider the stalker's conduct cumulatively in light of all of the facts and circumstances to determine if an act constituted an episode of stalking. Accordingly, we reversed the trial court's denial of a stalking injunction and remanded for reconsideration under the correct standard.

For Appellant:
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For Appellee:
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Timothy J. Curtis
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10. *GLFP, Ltd. v. CL Mgmt., Ltd.*, 163 P.3d 636 (Utah Ct. App. 2007).

This case involved the distinction between individual actions and derivative actions in the context of limited partnerships. The opinion also interpreted the close corporation exception to the derivative rule, and required us to address the interplay between the rules related to derivative claims and the dissolution rights provided by statute. We concluded that the trial court correctly identified most of the claims as derivative and that therefore the summary judgment in favor of the partnership was correct as to those claims. However, we reversed the summary judgment on the appellant's claim for dissolution.

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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. *Forsberg v. Bovis Lend Lease, Inc.*, 184 P.3d 610 (Utah Ct. App. 2008), *cert. denied*, 199 P.3d 367 (Utah 2008).

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2. *State v. Perkins*, 222 P.3d 1198 (Utah Ct. App. 2009).

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3. *Ervin v. Lowe's Cos.*, 128 P.3d 11 (Utah Ct. App. 2005).

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4. *State v. High*, 282 P.3d 1046 (Utah Ct. App. 2012).

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5. *Richards v. Brown*, 222 P.3d 69 (Utah Ct. App. 2009), *aff'd on other grounds*, 274 P.3d 911 (Utah 2012).

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For Appellee:
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6. *Millet v. Logan City*, 147 P.3d 971 (Utah Ct. App. 2006), *cert. denied*, 168 P.3d 819 (Utah 2007).

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7. *State v. Nguyen*, 246 P.3d 535 (Utah Ct. App. 2011), *aff'd*, 293 P.3d 236 (Utah 2012).

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8. *Ameritemps, Inc. v. Labor Comm'n*, 128 P.3d 31 (Utah Ct. App. 2005), *aff'd*, 152 P.3d 298 (Utah 2007).

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9. *Stonehocker v. Stonehocker*, 176 P.3d 476 (Utah Ct. App. 2008).

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For Appellee:
Robert A. Echard
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10. *Jenkins v. Jordan Valley Water Conservancy Dist.*, 283 P.3d 1009 (Utah Ct. App. 2012), *cert. granted*, 293 P.3d 376 (Utah 2012).

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For Appellee:
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Sara E. Spencer
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e. Provide a list of all cases in which certiorari was requested or granted.

I am unaware of any cases in which certiorari to the United States Supreme Court 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.

Wasatch County v. Okelberry, 153 P.3d 745 (Utah Ct. App. 2006), *rev'd*, 179 P.3d 768 (Utah 2008). The Utah Supreme Court clarified the test for determining what acts interrupt the running of the ten-year period necessary for the dedication of a road for public use. Although the Supreme Court reversed our decision, it indicated that "the court of appeals thoughtfully sought to bring some coherency and consistency to this area."

Sachs v. Lesser, 163 P.3d 662 (Utah Ct. App. 2007), *rev'd*, 207 P.3d 1215 (Utah 2008). The issue in this case was whether the sale of the stock of a company that primarily holds real property is a business opportunity involving real property. We adopted the minority position on this issue of first impression in Utah, holding that the sale of stock was the sale of personal property. The Utah Supreme Court instead adopted the majority position and held that the sale of 100% of the stock of a real estate holding company is the sale of real property. Therefore, the Supreme Court reversed our decision.

Ameritech Library Servs. v. Labor Comm'n, 169 P.3d 784 (Utah Ct. App. 2007), *rev'd*, 218 P.3d 582 (Utah 2009). This case required us to interpret the term "compensation" in Utah's Occupational Disease Act to determine if medical expenses for carpal tunnel syndrome should be apportioned. We upheld the decision of the Labor Commission, holding that the expenses should not be apportioned and that therefore, the claimant was entitled to 100% of her medical expenses. The Utah Supreme Court disagreed and limited the claimant's award accordingly.

Dale T. Smith & Sons v. Labor Comm'n, 2007 UT App 306 (unpublished), *rev'd*, 218 P.3d 580 (Utah 2009). This case was issued as a companion case to

Ameritech Library Servs. v. Labor Comm'n, 169 P.3d 784 (Utah Ct. App. 2007), *rev'd*, 218 P.3d 582 (Utah 2009). As in *Ameritech*, the issue was the proper interpretation of the term "compensation" in Utah's Occupational Disease Act. We followed our decision in *Ameritech*, holding that the medical expenses were not compensation and therefore, did not need to be apportioned. The Utah Supreme Court disagreed with our interpretation and reversed.

State v. McClellan, 179 P.3d 825 (Utah Ct. App. 2008), *rev'd*, 216 P.3d 956 (Utah 2009). The defendant claimed that when his prior defense attorney resigned and joined the County Attorney's Office, the entire office should have been disqualified. This was an issue of first impression in Utah. We adopted the majority position on assessing such conflicts. Applying that test, we held that although a presumption arose that the defendant's prior lawyer shared confidences with the members of the County Attorney's Office, the presumption had been rebutted. Our decision was based on inferences from an incomplete record. On appeal the Supreme Court affirmed our adoption of the majority rule, but held that the prosecution was charged with any gaps in the record because it bore the burden of proving that the presumption had been rebutted. Accordingly, it reversed and remanded to the trial court for a new trial.

State v. Candedo, 176 P.3d 459 (Utah Ct. App. 2008), *aff'd but criticized*, 232 P.3d 1008 (Utah 2010). We did not reach one of the defendant's issues because we concluded that he had not preserved it. The Utah Supreme Court held that constitutional challenges to a sentence can be raised for the first time on appeal. However, the Supreme Court rejected the defendant's argument on the merits.

State v. Clopton, 186 P.3d 1004 (Utah Ct. App. 2008), *rev'd*, 223 P.3d 1103 (Utah 2009). In this case, we applied existing law with respect to the admissibility of expert opinion on the unreliability of eyewitness testimony. However, we urged the Utah Supreme Court to reexamine that authority based on more recent information on the ineffectiveness of jury instructions alone to dispel the jury's tendency to give undue weight to eyewitness accounts. The Utah Supreme Court obliged us and changed the rule, resulting in the reversal of our decision.

State v. Palmer, 189 P.3d 69 (Utah Ct. App. 2008), *aff'd but criticized*, 220 P.3d 1198 (Utah 2009). Applying the United States Constitution and United States Supreme Court authority, the majority concluded that the defendant was not entitled to have the question of whether he had been convicted of prior DUIs submitted to the jury. We did not also address this issue under the Utah Constitution because we did not consider it adequately briefed. On appeal, the Utah Supreme Court suggested that a different result might be reached under the state constitution, stating that the Court of Appeals "declined to address whether the state constitution affords such a right." However, the Utah Supreme Court did not reach this issue, holding instead that the defendant had raised only questions of law regarding the prior convictions. Applying concepts of federal

constitutional law, the Utah Supreme Court affirmed, holding that the defendant had no right to submit pure questions of law to the jury.

Merrill v. Labor Comm'n, 163 P.3d 741 (Utah Ct. App. 2007), *rev'd*, 223 P.3d 1089 (Utah 2009). This case involved a constitutional challenge to a Utah statute providing that a permanently disabled worker's disability payments could be reduced after six years by half of the amount of the worker's social security retirement benefits. Applying the rational basis test and considering federal authority, we concluded that the statute did not violate the federal Equal Protection Clause. We also held that the statute did not violate the Uniform Operation of Laws Provision in the Utah Constitution. We noted that some states had reached similar results. The Utah Supreme Court found the authority from states that had held to the contrary more persuasive and also characterized the purpose of disability payments as providing an exclusive remedy for workplace injuries, while our analysis considered the purpose as wage replacement for injured workers. Ultimately, the Supreme Court concluded that the statute was unconstitutional under the Utah Uniform Operation of Laws Provision.

In re R.B.F.S., 218 P.3d 908 (Utah Ct. App. 2009), *rev'd*, 258 P.3d 583 (Utah 2011). By statute, Utah district courts, unlike Utah juvenile courts, may only terminate parental rights when it is necessary to facilitate an adoption. To adopt, the prospective parent must have lived with the child for at least six months or establish that there is good cause to waive the six-month requirement. In this case, the prospective adoptive parent had not lived with the children for at least six months and the trial court had not yet determined whether good cause existed to waive that requirement. Nevertheless, the district court enforced a voluntary relinquishment the biological father executed several years before the biological mother sought to enforce it. In the interim, the biological father had continued to parent the children and to contribute to their support. The biological father appealed the termination order. While the appeal was pending, the prospective adoptive father withdrew his adoption petition. We held that the exercise of the district court's jurisdiction over the termination of the biological father's parental rights was premature because until the court determined that there was good cause to waive the six-month requirement, the termination could not facilitate an adoption. The Utah Supreme Court disagreed, holding that the determination of good cause was not jurisdictional. As a result, it remanded to us for consideration of the merits of the biological father's appeal. Our decision on remand holds that under the plain language of the statute, the father's voluntary relinquishment of his parental rights could not be revoked. That decision is *In re R.B.F.S.*, 278 P.3d 143 (Utah Ct. App. 2012). Legislation has been proposed to address this issue.

Lopez v. United Auto Ins. Co., 222 P.3d 1192 (Utah Ct. App. 2009), *aff'd in part and rev'd in part*, 274 P.3d 897 (Utah 2012). We held that the form an automobile insurer provided to the insured waiving underinsured motorist (UIM) coverage did not comply with statutory authority and was therefore invalid. However, we concluded that the passenger who was riding in the insured's car at

the time of the accident was not entitled to UIM coverage. The Supreme Court agreed with our interpretation of the statute, but extended UIM coverage to the passenger.

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.

Of the decisions I have authored, approximately 12% are not available in the Pacific Reporter. All of the decisions of the Utah Court of Appeals from 1997 forward are available online at www.utcourts.gov/opinions/index.html and all can be cited in briefs to the court. Decisions issued both before and after 1997 are available through Westlaw and Lexis.

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 routinely issue decisions on state and federal constitutional matters, including the right to counsel, the right to be free from unreasonable searches and seizures, the right against self-incrimination, the right to allocution, the right to due process, and the right not to be placed in jeopardy twice for the same crime. The following cases are some significant examples, although not exhaustive.

State v. Mahi, 125 P.3d 103 (Utah Ct. App. 2005)

Ervin v. Lowe's Cos., 128 P.3d 11 (Utah Ct. App. 2005)

Salt Lake City v. Williams, 128 P.3d 47 (Utah Ct. App. 2005)

State v. Duran, 131 P.3d 246 (Utah Ct. App. 2005), *aff'd*, 156 P.3d 795 (Utah 2007)

State v. Davis, 155 P.3d 909 (Utah Ct. App. 2007)

State v. Miller, 170 P.3d 1141 (Utah Ct. App. 2007)

State v. Harry, 189 P.3d 98 (Utah Ct. App. 2008)

State v. Balfour, 198 P.3d 471 (Utah Ct. App. 2008)

State v. Barber, 206 P.3d 1223 (Utah Ct. App. 2009)

State v. Perkins, 222 P.3d 1198 (Utah Ct. App. 2009)

State v. Van Dyke, 223 P.3d 465 (Utah Ct. App. 2009), *cert. denied*, 230 P.3d 127 (Utah 2010)

State v. Johnson, 224 P.3d 720 (Utah Ct. App. 2009)

Gardiner v. York, 233 P.3d 500 (Utah Ct. App. 2010), *cert. denied*, 238 P.3d 443 (Utah 2010)

State v. Pacheco-Ortega, 257 P.3d 498 (Utah Ct. App. 2011)

State v. Duran, 262 P.3d 468 (Utah Ct. App. 2011)

Jenkins v. Jordan Valley Water Conservancy Dist., 283 P.3d 1009 (Utah Ct. App. 2012), *cert. granted*, 293 P.3d 376 (Utah 2012)

West Valley City v. Walljasper, 286 P.3d 948 (Utah Ct. App. 2012)

State v. Sessions, 287 P.3d 497 (Utah Ct. App. 2012)

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

I have never sat by designation on a federal court of appeals.

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

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

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

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

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

The Utah Court of Appeals employs an automatic recusal system that compares a recusal list provided by each judge to the captions and appearances of counsel on the briefs. If a judge has listed a person or entity involved in the appeal on his or her recusal list, the Clerk of the Court automatically eliminates that judge from the panel that will hear the case.

When I receive the briefs for the cases to which I have been assigned, I perform my own review to be certain that I do not have an actual or perceived conflict with any of the persons or entities involved. On a few occasions, I have initiated a sua sponte recusal due to the involvement of a person or entity overlooked by the Clerk of the Court, not included on my recusal list, or because I had personal knowledge of the case. When I discover a ground for recusal after assignment, I return the briefs to the Clerk of the Court, and she substitutes a different case. Due to our efforts to identify conflicts before assignment to a panel, this happens rarely. The court does not keep records of our voluntary recusals. No party or litigant has ever requested that I recuse myself.

I recuse myself based on two criteria: (1) whether my relationship with a person associated with the appeal, either as an attorney, a party, witness, or trial judge, is such that it would affect my ability to be impartial; and (2) whether the perception of my relationship with a person associated with the appeal, either as an attorney, a party, witness, or trial judge, is such that it would create the appearance of impropriety. For purposes of the first test, I examine my feelings toward the person and if I have any doubt that my association with that person will remain irrelevant, I recuse. As to the second test, I consider whether the relationship would have made me uncomfortable as an attorney or party on the opposing side of the matter. If the relationship would have caused me concern had I been on the other side, I recuse even if I do not believe the relationship would actually affect my 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 never held public office other than judicial office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

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

the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held an office in or rendered services to any political party or election committee. I have never 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 1982 to 1983, I served as a law clerk to Judge Bruce S. Jenkins, United States District Court Judge for the District of Utah.

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

I have never practiced law alone.

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

1983 – 2005
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84101
Associate (1983 – 1987)
Shareholder (1987 – 2005)

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 completed training and was accepted as an arbitrator by the American Arbitration Association for complex civil litigation. However, I was appointed to the Utah Court of Appeals before the cases assigned to me were ready for arbitration.

b. Describe:

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

During my 22 years of private practice, I primarily represented clients in complex civil litigation. For the first six years of my career, from 1983 to 1989, my practice was general litigation. During this period, I was involved in a number of large construction disputes, accountant's malpractice, antitrust, and other corporate litigation. In 1989, I began to develop an expertise in environmental litigation. I handled matters arising under the Superfund Act, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"),the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, the Clean Water Act, and the regulations implementing these laws over the ensuing years. During this time, I also continued to represent clients in other types of complex litigation. From the mid-1990s until I was appointed to the bench in 2005, I handled a number of cases involving legal issues related to mortgage lending and financing, title insurance, commercial fraud, and real estate.

In addition, I maintained an active pro bono practice throughout my career. As a result, I have represented clients of limited means in litigation related to tax disputes, custody, paternity, parental termination, adoption, divorce, guardianship, and contract disputes. I have also tried misdemeanor cases in cooperation with the Salt Lake City prosecutor's office, accepted appointments from district court judges to represent prisoners in habeas corpus proceedings, and served as a volunteer guardian ad litem.

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

During my private practice years, I represented corporate and industrial clients, including: Geneva Steel Corporation; Atlantic Richfield Corporation; Getty Oil; Magnesium Corporation of America; Komatsu Equipment Company; Phillips Petroleum; Westmont Tractor Company; Peterbilt Trucks; Avocet Artemia, Inc.; Haworth, Inc.; Fritz Tile Company; and Deseret Generation & Transmission Cooperative. In addition, I represented companies involved in real estate and financing transactions including: F.C. Stangl Co.; Watts Construction; Watts Development; Courtyard at Jamestown; Boyer Construction; Countrywide Home Loans, Inc.; and Attorneys Title Guaranty Fund, Inc. My practice also included the representation of companies in business disputes, including: Duplication Group, Inc.; Natures Way; Prometric; Sunwest NOP, Inc.; John Alden Life Insurance Co.; Bass Enterprises; Rocky Mountain Machine Co.; and Ultralife Batteries. As a result of my pro bono practice, I represented private individuals, including children, in contract, domestic, and other smaller 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.

Almost 100% of my practice was in litigation. I appeared in court regularly. I have argued motions to dismiss, discovery motions, motions in limine, motions related to jury instructions, motions for summary judgment, and post-trial motions. I have tried some smaller cases on my own and served as second chair on larger disputes. Most of my trials have been to a jury.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 45%
   3. other courts: 0%
   4. administrative agencies: 5%

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

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

To the best of my recollection, I have tried 11 cases to verdict. In approximately four of those cases, I was sole or lead counsel; in the others, I was associate counsel.

i. What percentage of these trials were:
   1. jury: 60%
   2. non-jury: 40%

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

I 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.

My former law firm instituted a document retention policy subsequent to my departure from the firm that has resulted in the loss of my private practice files. The following list of litigation matters is based on a search of available databases, review of what few records still exist, and my best recollection. Accordingly, this list is not exhaustive and some requested information is not available.

1. *Westmont Tractor Co. v. Touche Ross & Co.*, No. CV 82-102-M-CCL (D. Mont. 1986) (Judge Charles C. Lovell), *aff'd*, 862 F.2d 875 (9th Cir. 1988).

I was associate counsel for Westmont Tractor Company on an accountant's malpractice action tried to a jury in the United States District Court for the District of Montana. I was significantly involved in this litigation from the initial assessment of whether the firm should accept the matter on a contingent fee basis, through discovery, pre-trial motions, preparation of jury instructions, trial, post-trial motions, and appeal. The jury found that the accountants had committed malpractice in performing audits of our client, a farm equipment company, and awarded it $5 million in damages. The accountants appealed and I prepared the appellate brief which was successful in the Ninth Circuit Court of Appeals.

For Westmont Tractor:
Stephen G. Crockett
(retired)

Gregory D. Phillips
Phillips, Ryther & Winchester
560 East 500 South, # 200
Salt Lake City, Utah 84102
(801) 935-4935

Robert W. Minto, Jr.
Worden Thane & Hayes, P.C.
111 North Higgins, Suite 200
P.O. Box 9169
Missoula, Montana 59807
(406) 728-3113

For Touche Ross:
John T. Behrendt
Kathryn Surace-Smith
Gibson Dunn & Cruthcher
200 Park Avenue, # 47
New York, New York 10166
(212) 351-4000

Sherman V. Lohn
Garlington, Lohn & Robinson
350 Ryman Street
Missoula, Montana 59807
(406) 523-2500

2. *AMS Salt Indus. v. Magnesium Corp. of America*, No. CV 95-0451 (3d Dist. Ct., Utah 1995) (Judge Pat Brian), *aff'd*, 942 P.2d 315 (Utah 1997).

I was associate counsel for Magnesium Corporation on this case involving a negligence claim against our client for damages allegedly caused to a neighboring business when our client's dike on the Great Salt Lake breached during a storm. The trial court granted summary judgment in favor of our client on the ground that Magnesium Corporation did not have a duty to protect AMS from the high water levels created by the storm. The plaintiff appealed and the Utah Supreme Court affirmed the decision of the trial court. I was instrumental in drafting the summary judgment motion in the trial court and the brief on appeal.

For AMS Salt:
Gary R. Howe
Zachary T. Shields
Callister Nebeker & McCullough
10 East South Temple, # 900
Salt Lake City, Utah 84133
(801) 530-7300

P. Bryan Fishburn
Attorney at Law
4505 South Wasatch Boulevard, # 215
Salt Lake City, Utah 84124
(801) 277-0333

For Magnesium Corporation:
Judge Clark Waddoups
(formerly Parr Brown Gee & Loveless)
United States District Court for the District of Utah
350 South Main Street

Salt Lake City, Utah 84101
(801) 524-6600

3. *Beck's Office Furniture & Supplies, Inc. v. Haworth, Inc.*, 2:90-cv-00472 (D. Utah, jury trial 1994) (Judge Thomas Greene), *aff'd in part and rev'd in part*, 94 F.3d 655 (10th Cir. 1996).

I was associate counsel for Haworth from 1990 to 1994 before Judge Thomas Greene of the United States District Court for the District of Utah, defending against a claim that our client had breached a dealership agreement. After a two-week trial, the jury entered a judgment against our client and we appealed. The Tenth Circuit affirmed in part and reversed in part. I was involved in both the trial and the appeal.

For Beck's Office Furniture:
Jeffrey R. Oritt
Eisenberg & Gilchrist
215 South State Street, # 900
Salt Lake City, Utah 84111
(801) 366-9100

For Hayworth:
Judge Clark Waddoups
(formerly Parr Brown Gee & Loveless)
United States District Court for the District of Utah
350 South Main Street
Salt Lake City, Utah 84101
(801) 524-6600

Terry Welch
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111
(801) 532-7840

Justice Jill N. Parrish
(formerly Parr Brown Gee & Loveless)
Utah Supreme Court
450 South State Street, Fifth Floor
Salt Lake City, Utah 84111
(801) 578-3900

4. *Gold Standard, Inc. v. Getty Oil Co.*, CV-86-374 (3d Dist. Ct., Utah 1994) (Judge Frank G. Noel), *aff'd*, 915 P.2d 1060 (Utah 1996).

I was associate counsel on a fraud case brought by Gold Standard against our client, Getty Oil. After a six-week trial, the jury returned a $404 million verdict against our client. I was involved in trial preparation, including pre-trial motions and jury instructions. During trial, I used the daily transcripts to prepare a motion for judgment notwithstanding the verdict and a motion for a conditional new trial, which we anticipated may be necessary. After the jury returned its historic verdict against our client, we filed these motions and the trial court granted them both. I was also heavily involved in drafting the appellate brief. We prevailed in the Utah Supreme Court.

For Gold Standard:
Judge Deno G. Himonas
(formerly Jones Waldo)
Third District Court
450 South Main Street
Salt Lake City, Utah 84111
(801) 238-7300

James S. Lowrie
Jones Waldo
170 South Main Street, # 1500
Salt Lake City, Utah 84101
801-521-3200

For Getty Oil:
Stephen G. Crockett
(retired)

Mark F. James
Hatch James & Dodge
10 West Broadway, # 400
Salt Lake City, Utah 84101
(801) 363-6363

Brian J. Romriell
(retired)

5. *In re N. L.* (4th Dist. Juv. Ct., Utah 1994) (Judge Leslie Brown).

I was sole counsel representing a foster mother seeking to terminate the parental rights of the biological father of N.L. for child sexual abuse. The biological mother had voluntarily relinquished her rights due to drug addiction. After a

three-day bench trial, the juvenile court judge terminated the father's parental rights. I then represented the foster parents in the proceedings to adopt N.L.

For the State:
Sterling Sainsbury
(Retired—formerly Deputy Utah County Attorney)

6. *R.W. Davis Constr. v. F.C. Stangl* (3d Dist. Ct., Utah 1989) (Judge David Young).

I served as chief counsel representing the defendant in a construction litigation claim tried to a jury. After the plaintiff had rested, I moved for a directed verdict. The trial judge recommended that the plaintiff accept our last offer, rather than risk a ruling on the motion. The plaintiff followed that advice and the matter settled mid-trial.

For Davis:
Michael N. Zundel
Prince Yeats & Geldzahler
15 West South Temple, # 1700
Salt Lake City, Utah 84101
(801) 524-1000

For Stangl:
Bruce A. Maak
Maak & Maak
185 South State Street, Suite 1300
Salt Lake City, Utah 84101
(801) 532-7840

7. *Barclays Am. Corp. v. Kane* (D. Utah 1984) (Judge Juan Burciaga).

I was associate counsel for defendants in an action brought by the bank to foreclose on our clients' homes. The homeowners counterclaimed for securities fraud, claiming that the bank had participated in a fraudulent scheme that involved the sale of unregistered securities and resulted in the homeowners' execution of the subject trust deeds. I was involved in discovery, motion practice, and trial of this matter. After a three-week trial, the jury was unable to reach a verdict. After Judge Burciaga declared a mistrial, the parties reached a settlement favorable to our clients.

For Barclays:
Robert L. Lofts
(retired)

For Homeowners:
Judge Clark Waddoups
(formerly Parr Brown Gee & Loveless)
United States District Court for the District of Utah
350 South Main Street
Salt Lake City, Utah 84101
(801) 524-6600

8. *Gold Mountain Dev., L.L.C. v. Missouri Flat, Ltd.*, CV-000600006 (6th Dist. Ct., Utah) (Judge David Mower), *aff'd*, 2005 UT App 276.

This was a quiet title action in which the parties filed cross motions for summary judgment. The trial court ruled that our client, Missouri Flat, did not own the property in fee simple. On appeal, the majority affirmed the decision of the trial court; the dissenting judge agreed with our position. I was primarily involved in the appeal.

For Gold Mountain:
Richard G. Allen
Attorney at Law
2975 Executive Parkway, # 509
Lehi, Utah 84043
(801) 766-1580

For Missouri Flat:
Ronald G. Russell
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, Utah 84111
(801) 257-7942

9. *Provident Bank v. Attorneys Title Guar. Fund*, Case No. 000907527 (3d Dist. Ct., Utah approximately 2000 - 2003) (Judge Glen Iwasaki).

This was a dispute concerning whether the bank or ATGF was liable for losses incurred as a result of the wrongful actions of a limited title agent. I was sole counsel for ATGF and after extensive discovery and motion practice, the matter was resolved through a confidential settlement agreement.

For the Bank:
Judge David Connors
(formerly Chapman and Cutler, LLP)
Second District Court
800 West State Street
Farmington, Utah 84025
(801) 447-3822

10. *Faucett Field Ditch Co. v. Does*, Civil No. 020405560 (4th Dist. Ct., Utah 2004 - 2005) (Judge James Taylor).

I was lead counsel for Courtyard at Jamestown in this real estate dispute, which was tried to the bench. My best recollection is that a dispute arose after the sale of certain real property involving the ownership of water rights, among other issues. The trial court ruled in my client's favor and none of the parties appealed.

For Faucett Field:
Richard H. Thornton
Glen R. Bronson
Prince Yeats & Geldzahler
15 West South Temple, # 1700
Salt Lake City, Utah 84101
(801) 524-1000

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

While in private practice, I regularly represented clients before state and federal agencies. For example, I represented Geneva Steel, Philips Petroleum, and Deseret Generation and Transmission before the Utah Department of Environmental Quality and before Region Eight of the Environmental Protection Agency. When Utah adopted a lobbyist disclosure and regulation law in 1991, my law firm registered me as a lobbyist for Geneva Steel out of an abundance of caution. Although I was registered as a lobbyist for Geneva Steel for the next few years, I have no recollection of engaging in any lobbying activities on behalf of the company.

I have also litigated many other matters in the state and federal courts, as associate or sole counsel, that were resolved before trial. Examples of my federal cases include: an action on behalf of a domestic steel mill against foreign importers under the 1916 Anti-Dumping Act; cost recovery and penalty actions under federal environmental laws; corporate disputes asserting claims of breach of fiduciary duty, waste of corporate assets, constructive trust, and accounting; breach of contract and fraud actions resulting from business disputes; employment disputes; title insurer liability, and claims under the Racketeering Influenced and Corrupt Organizations Act. My representation of clients in the state courts has included civil litigation arising out of real estate disputes, mechanics lien claims, water rights, business fraud, distributorship and franchise conflicts, and construction claims.

As a result of my pro bono activities, I have also practiced in juvenile court, handling adoptions, parental terminations, and other child welfare matters. While serving as a volunteer guardian ad litem, I interviewed children, their parents, stepparents, relatives, and teachers, and prepared reports for the district court judges to be used in making custody and parent time orders.

Throughout my career, I also participated in community and professional organizations. For many years I served on the Board of Trustees of Catholic Community Services, a group which provides various charitable services, including a local soup kitchen, homeless resource center, refugee resettlement, and rehabilitation services for persons suffering from addiction. I have also served as a trustee of organizations dedicated to advancing the needs of children in Utah, including Big Brothers Big Sisters, and Voices for Utah Children.

During my private practice years, I was active in the Utah State Bar and the American Bar Association, serving on and chairing various professional committees, including the Environmental Quality Committee, the Bar Examiners Committee, and the Supreme Court Advisory Committee on the Rules of Professional Conduct.

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 semester of 2011, I taught a course at the S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) entitled, "The Judicial Process." This course was offered to law students who had accepted positions as interns or law clerks for active judges. We discussed judicial review, the debate on the ratification of the United States Constitution, and issues affecting modern courts. Syllabus supplied.

    In the fall semester beginning in 1991, I taught a course at the S.J. Quinney College of Law at the University of Utah (formerly University of Utah College of Law) entitled, "Counseling and Negotiations." This course was designed to educate law students about the strategies and ethical constraints involved in giving legal advice and resolving legal disputes. I have been unable to locate a copy of the syllabus.

    In the fall semester of 1986, I taught Constitutional Law at the University of Utah College of Social and Behavioral Science. This course provided a general overview of the United States Constitution to undergraduates majoring in political science. I have been unable to locate 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.

To the best of my knowledge, I am not entitled to any deferred income, stock options, uncompleted contracts, or future benefits from previous business arrangements.

I became vested in the State Courts retirement system after six years of service. Therefore, I will receive a pension upon retirement which will be calculated based on my years of service and the average of my three highest years of salary.

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

    If confirmed, I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I am not aware of any family members or parties, categories of litigation, or financial arrangements that are likely to present potential conflicts of interest. However, Judge Clark Waddoups of the United States District Court and I worked closely together when we were in private practice. Although it has been almost eight years since we were law partners and we do not socialize, I likely would recuse on his matters, if I am confirmed. In addition, I have some former law partners and close personal friends who practice in the Tenth Circuit. I would recuse on their matters.

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

If confirmed, I will consult and abide by the rules and decisions that govern conflicts of interest for federal judges, including 28 U.S.C. Section 455 and the Code of Conduct for United States Judges.

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

While in private practice, I handled many pro bono cases. I consider the parental termination trial and subsequent adoption I handled on behalf of a foster mother to be one of my most important cases because a child's future was at stake. I have handled on a pro bono basis many divorces, names changes, the expungement of prior criminal records, step-parent and foster parent adoptions, and paternity actions. I have also tried a fraud case to a jury, served as a volunteer guardian ad litem in many cases before the state's juvenile courts, resolved parent time issues, and handled a dispute with the IRS at no charge. Throughout my career, I have tried to be generous with my time, have encouraged my firm to support pro bono activity, and have supervised younger attorneys in their efforts to assist individuals who could not afford a lawyer.

I have also been actively involved in supporting Utah organizations that provide legal services on a low cost and no cost basis, including And Justice For All, the Disability Law Center, and Utah Legal Services. I continue to participate in fund raising events for these organizations to the extent the Code of Judicial Conduct allows.

26. **Selection Process**:

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

In January 2013, I submitted a cover letter and resume to Senator Orrin Hatch and to Congressman Jim Matheson for a possible position on the Tenth Circuit. On January 16, 2013, I interviewed with Senator Hatch and Senator Mike Lee, and on January 30, 2013, I interviewed with Congressman Jim Matheson. On February 4, 2013, I was notified by Senator Hatch that he and Senator Lee would be

recommending me to the White House for consideration. The following week, I was contacted by an official from the White House Counsel's Office and interviewed with him by telephone. Since February 19, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 20, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 16, 2013, 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.

AFFIDAVIT

I, Carolyn B. McHugh, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 16, 2013
(DATE)

Carolyn B McHugh
(NAME)

NANCY M. DUNYON
Notary Public State of Utah
My Commission Expires on:
December 29, 2015
Comm. Number: 651407

Nancy M Dunyon
(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Pamela Lynn Reeves

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

   United States District Judge for the Eastern District of Tennessee

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

   Reeves, Herbert & Anderson, P.A.
   2607 Kingston Pike, Suite 130
   Knoxville, Tennessee 37919

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

   1954; Marion, Virginia

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

   1976-1979, George C. Taylor College of Law, University of Tennessee Knoxville; J.D. 1979

   1972-1976, University of Tennessee Knoxville; B.A., 1976

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

   2002-present
   Reeves, Herbert & Anderson, P.A.
   (Formerly known as Reeves, Herbert & Murrian, P.A. (2008-2012); Anderson, Reeves & Herbert, P.A. (2005-2008); and Anderson, Reeves & Cooper, P.A. (2002-2005))

2607 Kingston Pike, Suite 130
Knoxville, Tennessee 37919
Managing Attorney (2008-present)
Attorney (2002-2008)

1987-2002
Watson, Hollow & Reeves, P.L.C.
(Formerly known as Watson, Reeves & Beeler, P.L.C. (1988-1991); Law Office of Robert H. Watson, Jr. (1987-1988))
Post Office Box 131
Knoxville, Tennessee 37901
Partner (1988-2002)
Associate (1987-1988)

1991-1996
University of Tennessee College of Law
1505 Cumberland Avenue
Knoxville, Tennessee 37916
Adjunct Professor Trial Practice

1985-1988
Knoxville College
901 Knoxville College Drive
Knoxville, Tennessee 37921
Instructor in the Paralegal Program

1985-1987
Morrison, Morrison, Tyree & Dickenson
Market Street
Knoxville, Tennessee 37902
Associate

1979-1985
Griffin, Burkhalter, Cooper & Reeves
901 Bearden Drive
Knoxville, Tennessee 37919
Attorney

Other Affiliations (uncompensated unless otherwise indicated)

2009-present
Tennessee Bar Foundation
618 Church Street, Suite 120
Nashville, Tennessee 37219
Chair-Elect (2012-present)
Trustee (2009-present)

2007-present
American College of Civil Trial Mediators
20 North Orange Avenue; Suite 704
Orlando, Florida 32801
Board Member (2011-present)
President (2009-2011)
Board Member (2007-2009)

1999-2013
Medic Regional Blood Center
1601 Ailor Avenue
Knoxville, Tennessee 37921
Secretary (2009-2013)
Board Member (1999-2009)

2003-2009
Knox County Election Commission (compensated)
300 W. Main Street
Knoxville, Tennessee 37902
Chair

1993-1994, 2006
Executive Women's Association
Post Office Box 5081
Knoxville, Tennessee 37928
Secretary (2006)
Executive Committee (1993-1994)

1993-2000, 2003-2006
Tennessee Bar Association
221 Fourth Avenue North, Suite 400
Nashville, Tennessee 37219
Board of Governors (1988-1990, 1993-2000)
President (1998-1999)
Vice-President (1997-1998)
Moving Vice-President (1996-1997)

1993-1994, 2004-2005
Fellows of the Tennessee Young Lawyers Division
221 Fourth Avenue North, Suite 400
Nashville, Tennessee 37219
President (2004-2005)
Board of Directors (1993-1994)

2003-2005
Federal Defender Services of Eastern Tennessee
800 South Gay Street, Suite 2400
Knoxville, Tennessee 37902
Board of Directors

2000-2004
American Inns of Court Foundation
1229 King Street, Second Floor
Alexandria, Virginia 22314
National Trustee

2000-2003
American National Lawyers Insurance Reciprocal
(No longer in existence)
Board of Directors

1996-1998
Tennessee Supreme Court Historical Commission
c/o Joy Day
341 Cool Springs Boulevard, Suite 430
Franklin, Tennessee 37067
Treasurer

1989-1996
Tennessee Supreme Court Lawyer's Fund for Client Protection Commission
221 Fourth Avenue North, Suite 500
Nashville, Tennessee 37219
Treasurer (1995-1996)
Board Member (1989-1996)

1984-1985, 1989-1990, 1992-1995
Knoxville Bar Association
505 Main Street, Suite 50
Knoxville, Tennessee 37902
Secretary (1994, 1995)
Board of Governors (1984-1985, 1992-1994)
Knoxville Barristers President (1984)

1994
Hamilton Burnett Inn of Court
Inn Administrator

1986-1989
Legal Aid of East Tennessee
502 South Gay Street

Knoxville, Tennessee 37902
Board Member

1985-1987
Agape, Inc.
428 East Scott Avenue
Knoxville, Tennessee 37902
Board of Directors
Advisory Board

1980-1984
Knoxville Women's Center
(No longer in existence)
Board of Directors

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

   I have never been a member of any branch of the U.S. Military. I was not required to register for selective service.

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

   Best Lawyers in America (2006-2012)
   Best Lawyers in Knoxville (approximately 2008-2013)
   Knoxville Bar Association Dicta Award (2011)
   Knoxville Bar Association Governors' Award (2008)
   Knoxville YWCA Finalist for Tribute to Women Award (2007)
   American College of Civil Trial Mediators Fellow (2004)
   Tennessee Bar Association's President's Award (2004)
   Knoxville Bar Foundation Fellow (2002)
   University of Tennessee College of Law Citation for Outstanding Public Service (1999)
   American Bar Foundation Fellow (1998)
   Knoxville YWCA Finalist for Tribute to Women Award (1997)
   Tennessee Bar Foundation Fellow (1992)
   Top 50 Women in the Mid-South (2012)
   Top 100 Lawyers in Tennessee (2006-2012)
   University of Tennessee Law School Dean's List (1976-1979)
   Am-Jur Award for Contracts (1977)
   University of Tennessee Torch Bearer (1976)
   University of Tennessee B.A. with Highest Honors (1976)
   Mortar Board (1976)

Omicron Delta Kappa (1976)
Phi Beta Kappa (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 (1979-present)
ABA Alternative Dispute Section

American Board of Trial Advocates (1997-present)

American College of Civil Trial Mediators (2004-present)
Board Member (2011-present)
President (2009-2011)
Board Member (2007-2009)

American Inns of Court Foundation (2000-present)
National Trustee (2000-2004)

Defense Research Institute (1992-2006)

East Tennessee Lawyers Association for Women (2007-present)

Federal Bar Association (2005-present)

Federal Defender Services of Eastern Tennessee (2003-2005)
Board of Directors

Fellows of the Tennessee Young Lawyers Division (1993-1994, 2004-2005)
President (2004–2005)
Board of Directors (1993–1994)

Hamilton Burnett Inn of Court
Master Emeritus (1999-present)
Master of the Bench (1994-1998)
Inn Administrator (1994)

Knoxville Bar Association (1979-present)
Alternative Dispute Resolution Section
Chair (2003)
Knoxville Bar Association Blue Ribbon Panel on Professional Etiquette (2001-2002)
Knoxville Bar Association Task Force on the Future
Co-Chair (2000)
Secretary (1994, 1995)

Board of Governors (1984-1985, 1992-1994)
Editor of DICTA, the KBA's monthly newsletter (1990-1991)
Knoxville Barristers President (1984)

Sixth Circuit Standing Committee on Local Rules (2004-2008)

Sixth Circuit Court of Appeals Life Member (2006-present)

Tennessee Bar Association (1979-present)
Tennessee Bar Association Leadership Law Steering Committee Co-Chair (2009-2011)
Chair of Committee on Local Rules of Federal Court (2003-2006)
Board of Governors (1988-1990, 1993-2000)
Past President (1999-2000)
President (1998-1999)
Vice-President (1997-1998)
Moving Vice-President (1996-1997)
President Elect Advisory Committee Member (1994)
Tennessee Young Lawyer's Division, President (1989-1990)
House of Delegates Member (1986-1993)
Alternative Dispute Resolution Section
Commission on Women and Minorities

Tennessee Bar Foundation (2009-present)
Chair-Elect (2012-present)
Trustee (2009-present)
IOLTA Grant Review Committee (1988)

Tennessee Board of Judicial Conduct Special Panel (2012-2013)

Tennessee Court of the Judiciary (2007-2012)

Tennessee Judicial Selection Commission (2008-2009)

Tennessee Lawyers' Association for Women (1996-1999)

Tennessee Supreme Court Advisory Commission on the Rules of Practice and Procedure (2008)

Tennessee Supreme Court Task Force on Public Trust and Confidence in the Judiciary (1998)

United States District Court Eastern District Tennessee Magistrate Judge Selection Committee Chair (2002)

10. **Bar and Court Admission**:

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

Tennessee, 1979.

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 Sixth Circuit, 1983
United States District Court for the Eastern District of Tennessee, 1980
United States District Court for the Middle District of Tennessee, 1996
United States District Court for the Western District of Tennessee, 1997
Supreme Court of Tennessee, 1979

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.

Agape, Inc. (1985-1987)
Board of Directors
Advisory Board
American National Lawyers Insurance Reciprocal (2000-2003)
Board of Directors
Big Brothers/Big Sisters of Knoxville (1986-1997)
Church Street United Methodist Church (1998-present)
Staff Parish Committee (2004-2006)
City of Knoxville Better Building Board (2000-2002)
Co-Chair (2001-2002)
Executive Women's Association (1985-present)
Secretary (2006)
Executive Committee (1993-1994)
Knox County Election Commission (2003-2009)

Chair
Knoxville Leadership (1997-present)
Knoxville Private Industry Council (1995-1997)
Knoxville Women's Center (1980-1984)
Board of Directors
Legal Aid of East Tennessee (1986-1989)
Board Member
Medic Regional Blood Center (1999-2013)
Secretary (2009-2013)
Board Member (1999-2009)
National Academy of Distinguished Neutrals (2011-present)
Tennessee Academy of Mediators and Arbitrators (2010-present)
Tennessee Young Lawyer's Division (1991-present)
Tennesseans for Fair and Impartial Courts (2010-2013)
Tennessee Supreme Court Historical Commission (1996-present)
Treasurer (1996 – 1998)
Tennessee Supreme Court Lawyers Fund for Client Protection Commission (1989-1996)
Treasurer (1995-1996)
Board Member (1989-1996)
The Historical Society for the United States District Court, Eastern District of Tennessee
United States Supreme Court Historical Society (2001-present)
University of Tennessee Chancellor's Associates (1996-1998)
University of Tennessee College of Law Speakers Series Advisory Committee (1996-1999)
University of Tennessee History Department, Board of Visitors (2002)
University of Tennessee Women's Council (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 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.

Understand the Terms when Signing a Non-Compete Agreement, Knoxville News Sentinel (May 18, 2013). Copy supplied.

Be Careful Responding to Harassment Charges, Knoxville News Sentinel (Apr. 20, 2013). Copy supplied.

A Jail House Love Affair, 40 DICTA 4, 15 (Apr. 2013). Copy supplied.

Employers Need Consistent Sexual Harassment Policies, Knoxville News Sentinel (Mar. 17, 2013). Copy supplied.

Mind the Law When Your Firm Hires Interns, Knoxville News Sentinel (Feb. 17, 2013). Copy supplied.

Workers Can be Required to Take Flu Shots, Knoxville News Sentinel (Jan. 20, 2013). Copy supplied.

Dealing with Pregnancy Issues in Workplace, Knoxville News Sentinel (Dec. 16, 2012). Copy supplied.

Avoid the Risk of Improperly Monitored Email, Knoxville News Sentinel (Nov. 18, 2012). Copy supplied.

EEOC Takes Strong Position on Preferences, Knoxville News Sentinel (Oct. 21, 2012). Copy supplied.

Understanding New Law on Jobless Benefits, Knoxville News Sentinel (Sept. 16, 2012). Copy supplied.

Are Strippers Employees or Contractors?, Knoxville News Sentinel (Aug. 19, 2012). Copy supplied.

Employers Should be Aware of NLRB Social Media Rulings, Knoxville News Sentinel (July 15, 2012). Copy supplied.

Be Cautious When Traveling with Co-workers, Knoxville News Sentinel (June 17, 2012). Copy supplied.

Obesity Discrimination Can Spark Employee Suits, Knoxville News Sentinel (May 20, 2012). Copy supplied.

Employers Should Know Rules When Hiring Veterans, Knoxville News Sentinel (Apr. 15, 2012). Copy supplied.

Businesses Should Make Twitter Policies Clear, Knoxville News Sentinel (Mar. 18, 2012). Copy supplied.

Privacy Rights Evaporate in Public Settings, Knoxville News Sentinel (Feb. 18, 2012). Copy supplied.

State Judges Center of Regulatory Debate, Knoxville News Sentinel (Jan. 14, 2012). Copy supplied.

Suit Shows Bloggers Should Think before Posting, Knoxville News Sentinel (Dec. 18, 2011). Copy supplied.

Dicta in the Rear View Mirror, 38 DICTA 11, 12 (Dec. 2011). Copy supplied.

State Law Clear about Reporting Sexual Abuse, Knoxville News Sentinel (Nov. 20, 2011). Copy supplied.

Dicta in the Rear View Mirror, 38 DICTA 10, 12 (Nov. 2011). Copy supplied.

States, Courts Protecting Gender Identity, Knoxville News Sentinel (Oct. 15, 2011). Copy supplied.

Dicta in the Rear View Mirror, 38 DICTA 9, 12 (Oct. 2011). Copy supplied.

EEOC Suit Challenges Company's Alcohol Policy, Knoxville News Sentinel (Sept. 17, 2011). Copy supplied.

Dicta in the Rear View Mirror, 38 DICTA 8, 12 (Sept. 2011). Copy supplied.

Economy Doesn't Justify Financial Malfeasance, Knoxville News Sentinel (Aug. 21, 2011). Copy supplied.

Comment, http://www.billhaltom.com/blog, "*The Woman Who Empowered a Princess*." (Aug. 24, 2011). Copy supplied.

Dicta in the Rear View Mirror, 38 DICTA 7, 12 (Aug. 2011). Copy supplied.

Starbucks Suit Shows EEOC Trend, Knoxville News Sentinel (July 17, 2011). Copy supplied.

Weiner Story Offers Good Lesson, Knoxville News Sentinel (June 19, 2011). Copy supplied.

Dicta in the Rear View Mirror, 38 DICTA 6, 12 (June 2011). Copy supplied.

Review Work Harassment Policies, Knoxville News Sentinel (May 15, 2011). Copy supplied.

Dicta in the Rear View Mirror, 38 DICTA 5, 16 (May 2011). Copy supplied.

Couple's Luck Goes from Bad to Worse, Knoxville News Sentinel (Apr. 17, 2011). Copy supplied.

Dicta in the Rear View Mirror, 38 DICTA 4, 14 (Apr. 2011). Copy supplied.

Judge Selection an Open Process, Knoxville News Sentinel (Mar. 20, 2011). Copy supplied.

Work's Rules Trump Life's Issues, Knoxville News Sentinel (Feb. 20, 2011). Copy supplied.

Board Service Requires Due Care, Knoxville News Sentinel (Jan.16, 2011). Copy supplied.

Private Information Leaks Illegal, Knoxville News Sentinel (Dec. 19, 2010). Copy supplied.

Social Media Ruling Affects Employers, Knoxville News Sentinel (Nov. 21, 2010). Copy supplied.

Certain Firings Made More Difficult, Knoxville News Sentinel (Oct. 17, 2010). Copy supplied.

Different Kind of Alumni Cruise, Tennessee Law Between the Lines (Oct. 1, 2010). Copy supplied.

Legal Issues in Church Staffing, Knoxville News Sentinel (Sept. 19, 2010). Copy supplied.

Legal Issues College Kids Face, Knoxville News Sentinel (Aug. 15, 2010). Copy supplied.

Under Law, Cleaver Days are Gone, Knoxville News Sentinel (July 18, 2010). Copy supplied.

Watch Online Postings in New Job, Knoxville News Sentinel (June 20, 2010). Copy supplied.

Is Drug Abuse Covered by ADA?, Knoxville News Sentinel (May 16, 2010). Copy supplied.

EEOC Files Lawsuit against Lowe's, Knoxville News Sentinel (Apr. 18, 2010). Copy supplied.

Digital Trail Follows Employees, Knoxville News Sentinel (Mar. 21, 2010). Copy supplied.

Background Checks Problematic, Knoxville News Sentinel (Feb. 21, 2010). Copy supplied.

Comment, http://www.billhaltom.com/blog, "*Any Country That Can't Put a Man on the Moon....*" (Feb. 3, 2010). Copy supplied.

Unemployment Law Better Defined, Knoxville News Sentinel (Jan.17, 2010). Copy supplied.

Postnups Still Must Follow Rules, Knoxville News Sentinel (Dec. 20, 2009). Copy supplied.

Accused Must Have a Good Defense, Knoxville News Sentinel (Nov. 15, 2009). Copy supplied.

Avoid Dating Problems at Work, Knoxville News Sentinel (Oct. 18, 2009). Copy supplied.

Careless Tweet May Mean Trouble, Knoxville News Sentinel (Sept. 20, 2009). Copy supplied.

Your Cell Can Be Used Against You, Knoxville News Sentinel (Aug. 16, 2009). Copy supplied.

Lawyers Held to Code of Standards, Knoxville News Sentinel (July 19, 2009). Copy supplied.

Take Part in Judicial Selection, Knoxville News Sentinel (July 5, 2009). Copy supplied.

Employers Need E-mail Policies, Knoxville News Sentinel (June 21, 2009). Copy supplied.

On the Internet, Buyer Beware, Knoxville News Sentinel (May 17, 2009). Copy supplied.

Deal with Problem Worker Correctly, Knoxville News Sentinel (Apr. 19, 2009). Copy supplied.

Up-front Legal Research May Pay Off, Knoxville News Sentinel (Mar. 15, 2009). Copy supplied.

Courts Uphold Employment Contract, Knoxville News Sentinel (Feb. 15, 2009). Copy supplied.

Reasons for Termination Needed, Knoxville News Sentinel (Jan. 18, 2009). Copy supplied.

Be Informed on How Judges are Chosen, Knoxville News Sentinel (Dec. 20, 2008). Copy supplied.

Case Affects Workers' Comp Action, Knoxville News Sentinel (Nov. 16, 2008). Copy supplied.

Workplace Conduct a Good Lesson, Knoxville News Sentinel (Oct. 19, 2008). Copy supplied.

Net Scams Getting More Sophisticated, Knoxville News Sentinel (Sept. 21, 2008). Copy supplied.

Mediation Can Settle Succession, Knoxville News Sentinel (Aug. 17, 2008). Copy supplied.

Retaliation Protection Includes Family, Knoxville News Sentinel (July 20, 2008). Copy supplied.

Law Targets Genetic Discrimination, Knoxville News Sentinel (June 15, 2009). Copy supplied.

Hang on to Electronic Documents, Knoxville News Sentinel (May 18, 2008). Copy supplied.

Little Fish Halted Work on Big Dam in '78, Knoxville News Sentinel (Apr. 20, 2008). Copy supplied.

Grisham Novel Mirrors Real-life Case, Knoxville News Sentinel (Mar. 16, 2008). Copy supplied.

Create Recovery Plan in Case of Disaster, Knoxville News Sentinel (Feb. 17, 2008). Copy supplied.

Supervisors Held to High Standard, Knoxville News Sentinel (Jan. 20, 2008). Copy supplied.

When a Christmas Gift Isn't a Gift, Knoxville News Sentinel (Dec. 16, 2007). Copy supplied.

Web Postings can Bring Legal Peril, Knoxville News Sentinel (Nov. 18, 2007). Copy supplied.

Guidelines Help Caregivers, Employers, Knoxville News Sentinel (Oct. 21, 2007). Copy supplied.

In Whose Court Does Comp Claim Fall?, Knoxville News Sentinel (Sept. 16, 2007). Copy supplied.

Businesses Enforcers of Smoking Ban, Knoxville News Sentinel (Aug. 19, 2007). Copy supplied.

Employers Liable for Client Actions, Knoxville News Sentinel (July 15, 2007). Copy supplied.

Developers Left with Cleanup Costs, Knoxville News Sentinel (June 17, 2007). Copy supplied.

Do-gooder Employees get a Little Help, Knoxville News Sentinel (May 20, 2007). Copy supplied.

State Supreme Court Makeup in Limbo, Knoxville News Sentinel (Apr. 15, 2007). Copy supplied.

Internet Posts May Turn up in Job Search, Knoxville News Sentinel (Mar. 18, 2007). Copy supplied.

Construction Runoff Can Be a Nuisance, Knoxville News Sentinel (Feb. 18, 2007). Copy supplied.

Essential Travel Must Be Compensated, Knoxville News Sentinel (Jan. 21, 2007). Copy supplied.

Vacation Not an Automatic Benefit, Knoxville News Sentinel (Dec. 17, 2006). Copy supplied.

Racial Harassment Can Be Expensive, Knoxville News Sentinel (Nov. 19, 2006). Copy supplied.

Food-borne Illnesses Pose Legal Issues, Knoxville News Sentinel (Oct. 15, 2006). Copy supplied.

Employers Must Prove "Good Cause," Knoxville News Sentinel (Sept. 17, 2006). Copy supplied.

Orientation Harassment Can Be Costly, Knoxville News Sentinel (Aug. 20, 2006). Copy supplied.

Victims of Discrimination Get a Win, Knoxville News Sentinel (July 16, 2006). Copy supplied.

E-Discovery May Be the Latest Plague, Knoxville News Sentinel (June 18, 2006). Copy supplied.

A Twist on Workplace Sexual Harassment, Knoxville News Sentinel (May 21, 2006). Copy supplied.

Employment Insurance is Often Helpful, Knoxville News Sentinel (Apr. 16, 2006). Copy supplied.

Parents Can Be Liable for Youth Drinking, Knoxville News Sentinel (Mar. 19, 2006). Copy supplied.

Court Dismisses Case of Unread Contract, Knoxville News Sentinel (Feb. 19, 2006). Copy supplied.

Internet Porn Raises Risks for Employers, Knoxville News Sentinel (Jan. 15, 2006). Copy supplied.

'Don'ts' Can Make Workplace Merry, Knoxville News Sentinel (Dec. 18, 2005). Copy supplied.

Outspoken Worker Equals Dilemma, Knoxville News Sentinel (Nov. 20, 2005). Copy supplied.

State of Residence Not Valid Defense, Knoxville News Sentinel (Oct. 16, 2005). Copy supplied.

Incorporation Requires Strict Bookkeeping, Knoxville News Sentinel (Sept. 18, 2005). Copy supplied.

Ensure Employee Handbooks Current, Knoxville News Sentinel (Aug. 21, 2005). Copy supplied.

Short-Circuit Political Incorrectness, Knoxville News Sentinel (July 17, 2005). Copy supplied.

Lessons Learned from Liability Suit, Knoxville News Sentinel (June 19, 2005). Copy supplied.

Train Workers on Workplace Conduct, Knoxville News Sentinel (May 15, 2005). Copy supplied.

Background Checks Can Curb Problems, Knoxville News Sentinel (Apr. 17, 2005). Copy supplied.

Employee Dating a Precarious Affair, Knoxville News Sentinel (Mar. 20, 2005). Copy supplied.

Hospital Worker Needed to Read Contract, Knoxville News Sentinel (Feb. 20, 2005). Copy supplied.

Get-Rich-Quick Scheme Backfires, Knoxville News Sentinel (Jan. 16, 2005). Copy supplied.

Lucien Pera, Richard L. Hollow & Pamela L. Reeves, *Survey of Tennessee Employment Privacy Law*, Media Law Resource Center 50 State Survey (Oxford University Press, 1999-2006). 2005 edition supplied. I have been unable to locate the other editions, but they are substantially similar to the 2005 edition.

Lucien Pera, Richard L. Hollow & Pamela L. Reeves, *Survey of Tennessee Employment Libel Law*, Media Law Resource Center 50 State Survey (Oxford University Press, 1999-2006). 2005 edition supplied. I have been unable to locate the other editions, but they are substantially similar to the 2005 edition.

OT Ghost Could Haunt Employers, Knoxville News Sentinel (Dec. 19, 2004). Copy supplied.

Severance Packages Can Get Dicey, Knoxville News Sentinel (Nov. 21, 2004). Copy supplied.

Nashville Offers Case Study of Hiring Bias, Knoxville News Sentinel (Oct. 17, 2004). Copy supplied.

Stay Out of Trouble – Stay Professional, Knoxville News Sentinel (Sept. 19, 2004). Copy supplied.

Every Outfit Needs a Wardrobe Policy, Knoxville News Sentinel (Aug. 15, 2004). Copy supplied.

For Employers, FMLA Can Be Tricky, Knoxville News Sentinel (July 18, 2004). Copy supplied.

Contract Fight Shows Power of Words, Knoxville News Sentinel (June 20, 2004). Copy supplied.

Picture Phones Create Privacy Issues, Knoxville News Sentinel (May 16, 2004). Copy supplied.

In the Workplace, Age Talk Has No Place, Knoxville News Sentinel (Apr. 18, 2004). Copy supplied.

Personal Liability Possible if Fine Print Ignored, Knoxville News Sentinel (Mar. 21, 2004). Copy supplied.

Non-Compete Pacts Must Be Reasonable, Knoxville News Sentinel (Feb. 15, 2004). Copy supplied.

Logic, Legality Can Differ in Hiring, Knoxville News Sentinel (Jan. 18, 2004). Copy supplied.

Religion Can Be Trouble in Workplace, Knoxville News Sentinel (Dec. 21, 2003). Copy supplied.

Detailed Written Records Avert a Suit, Knoxville News Sentinel (Nov. 16, 2003). Copy supplied.

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Workplace Needs Policy on Violence, Knoxville News Sentinel (Sept. 21, 2003). Copy supplied.

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If Employees Wed, One May Be Let Go, Knoxville News Sentinel (Apr. 20, 2003). Copy supplied.

Wiretapping Is Legal Minefield, Knoxville News Sentinel (Mar. 16, 2003). Copy supplied.

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Working It Out: Mediation Advice for Employment Law Disputes, 39 TENN. B.J. 2, 34 (Feb. 2003). Copy supplied.

Irritation at Time-Consuming Requests Can Cost, Knoxville News Sentinel (Jan. 19, 2003). Copy supplied.

Even Small Judgments Can Cost Companies Big, Knoxville News Sentinel (Dec. 15, 2002). Copy supplied.

Thin Line Separates Improper, Legitimate Business Practices, Knoxville News Sentinel (Nov. 17, 2002). Copy supplied.

Punitive Damages Can Become an Extremely Costly Surprise, Knoxville News Sentinel (Oct. 20, 2002). Copy supplied.

Adult Children May Seek Support from Fathers Who Never Knew Them, Knoxville News Sentinel (Sept. 15, 2002). Copy supplied.

Businesses Not Always Liable for Injuries on Their Premises, Knoxville News Sentinel (Aug. 18, 2002). Copy supplied.

Reach of Long Arm of Law Limited in Web Purchases, Knoxville News Sentinel (July 21, 2002). Copy supplied.

Do-It-Yourself Not Best Tack in Discrimination-Suit Defense, Knoxville News Sentinel (June 16, 2002). Copy supplied.

Seniority Can Justify Saying No to Some Requests, Courts Rule, Knoxville News Sentinel (May 19, 2002). Copy supplied.

Employers Must Not Ignore Same-Sex Harassment at Work, Knoxville News Sentinel (Apr. 21, 2002). Copy supplied.

Applying Protections to Former Employees, Knoxville News Sentinel (Mar. 17, 2002). Copy supplied.

Many Women Have Benefited from Education Act of 1972, Knoxville News Sentinel (Feb. 17, 2002). Copy supplied.

Americans with Disabilities Act – Minor Impairments, Knoxville News Sentinel (Jan. 20, 2002). Copy supplied.

Intemperate Use of Alcohol Can Take Joy out of Christmas, Knoxville News Sentinel (Dec. 16, 2001). Copy supplied.

The Power of Potter, Newsweek Magazine (Dec. 10, 2001), at 18. Copy supplied.

General Sessions Court Often Flooded by Delinquent Actions, Knoxville News Sentinel (Nov. 18, 2001). Copy supplied.

State Lags Behind Michigan's Cyber Court, But Advancing, Knoxville News Sentinel (Oct. 21, 2001). Copy supplied.

How Does the Call to Duty Affect Current Employment?, Knoxville News Sentinel (Sept. 16, 2001). Copy supplied.

Police Officers Authorized to Use Reasonably Necessary Force, Knoxville News Sentinel (Aug. 19, 2001). Copy supplied.

Legislators Ponder Caps on State Tort Liability Awards, Knoxville News Sentinel (June 17, 2001). Copy supplied.

In Business It's Important to Know Regimen of Depositions, Knoxville News Sentinel (May 20, 2001). Copy supplied.

Businesses Liable for Off-Duty Officers Who Provide Security, Knoxville News Sentinel (Apr. 15, 2001). Copy supplied.

Bill Aims to Protect Kids when Parents Split Up, Knoxville News Sentinel (Mar. 18, 2001). Copy supplied.

Defamation Lawsuits in Workplace Slippery Slope, Knoxville News Sentinel (Feb. 18, 2001). Copy supplied.

Employer Can't Take Cash Owed From Final Check, Knoxville News Sentinel (Jan. 21, 2001). Copy supplied.

Introduction to Bill Haltom, In Search of Hamilton Burger: The Trials and Tribulations of a Southern Lawyer (2000). Copy supplied.

Office Parties Wane as Harassment Suits Increase, Knoxville News Sentinel (Dec. 17, 2000). Copy supplied.

'Outrageous Conduct' Cause for Legal Action, Knoxville News Sentinel (Nov. 19, 2000). Copy supplied.

Malicious Harassment Redefined in Recent Case, Knoxville News Sentinel (Oct. 15, 2000). Copy supplied.

Handle Firings Carefully to Avoid Future Lawsuits, Knoxville News Sentinel (Sept. 17, 2000). Copy supplied.

Employers Need to be Wary of Discrimination, Knoxville News Sentinel (Aug. 20, 2000). Copy supplied.

Sudden Work Stress May be Valid Claim, Knoxville News Sentinel (July 16, 2000). Copy supplied.

Employers Must Take Care Not to Retaliate, Knoxville News Sentinel (June 18, 2000). Copy supplied.

Employers Must Use Care in Disability Cases, Knoxville News Sentinel (May 21, 2000). Copy supplied.

Unemployment Claims are Difficult to Contest, Knoxville News Sentinel (Apr. 16, 2000). Copy supplied.

Reasons to Not Hire Must be Truly Valid, Knoxville News Sentinel (Mar. 19, 2000). Copy supplied.

Conducting Sexual Harassment Investigations, Knoxville News Sentinel (Feb. 20, 2000). Copy supplied.

Employee Handbook Can Constitute Contract, Knoxville News Sentinel (Jan. 16, 2000). Copy supplied.

Santa May Not Get a Peek at Personnel Files, Knoxville News Sentinel (Dec. 19, 1999). Copy supplied.

Pregnant Women's Job Security Explained, Knoxville News Sentinel (Nov. 21, 1999). Copy supplied.

Drug Testing Rules Differ for Public, Private Firms, Knoxville News Sentinel (Oct. 17, 1999). Copy supplied.

Employers Required to Enable Jury Service, Knoxville News Sentinel (Sept. 19, 1999). Copy supplied.

Warning: Federal Law Protects Trade Secrets, Knoxville News Sentinel (Aug. 15, 1999). Copy supplied.

Office Romance Can Turn into Sexual Harassment, Knoxville News Sentinel (July 18, 1999). Copy supplied.

Employers Must Be Able to Avoid Violence, Knoxville News Sentinel (June 20, 1999). Copy supplied.

TBA Plays Vital Role in Speaking for Legal Profession, 35 TENN. B.J. 6, 3 (June 1999). Copy supplied.

Difficult for Employee to Prove Case Under "Whistleblower" Act, Knoxville News Sentinel (May 16, 1999). Copy supplied.

Phenomenal Facilities at Pinehurst Will Give Convention a Boost, 35 TENN. B.J. 5, 3 (May 1999). Copy supplied.

Non-Compete Contracts Can Ambush Employers, Knoxville News Sentinel (Apr. 18, 1999). Copy supplied.

Online CLE is a Great Member Benefit, 35 TENN. B.J. 4, 3 (Apr. 1999). Copy supplied.

Supreme Court Adds to School Budget Woes, Knoxville News Sentinel (Mar. 19, 1999). Copy supplied.

Legal Community Makes Me Proud in Aftermath of Tornado, 35 TENN. B.J. 3, 3 (Mar. 1999). Copy supplied.

Convenient E-mail Also May Be a Danger, Knoxville News Sentinel (Feb. 21, 1999). Copy supplied.

A National Plan to Improve Public Trust, 35 TENN. B.J. 2, 3 (Feb. 1999). Copy supplied.

New Tennessee Law Allows Legal Separation, Knoxville News Sentinel (Jan. 17, 1999). Copy supplied.

Developing Relationships Helpful in Law Practice, 35 TENN. B.J. 1, 3 (Jan. 1999). Copy supplied.

A Few Tips to Help You Understand Lawyers, Knoxville News Sentinel (Dec. 20, 1998). Copy supplied.

Prospective Hires Must be Told of Background Checks, Knoxville News Sentinel (Nov. 15, 1998). Copy supplied.

TBA Outgrows Building, Needs Your Help, 34 TENN. B.J. 6, 3 (Nov./Dec. 1998). Copy supplied.

Personal Data Easily Found Via Computer, Knoxville News Sentinel (Oct. 18, 1998). Copy supplied.

Downtown Knoxville Entertains, Informs, Knoxville News Sentinel (Sept. 20, 1998). Copy supplied.

Strategic Plan Will Keep TBA in Forefront, 34 TENN., B.J. 5, 3 (Sept./Oct. 1998). Copy supplied.

Firing Older Worker Can Open Door to Lawsuit, Knoxville News Sentinel (Aug. 16, 1998). Copy supplied.

It's a Time of Great Change at the TBA, 34 TENN. B.J. 4, 3 (July/Aug. 1998). Copy supplied.

ADA Hasn't Brought Predicted Nightmares, Knoxville News Sentinel (July 16, 1998). Copy supplied

New Rules Affect Firms' Drug-Testing Policies, Knoxville News Sentinel (June 21, 1998). Copy supplied.

Tape Recordings Can Turn up at Any Time, Knoxville News Sentinel (May 17, 1998). Copy supplied.

Adequate Liability Policy Mandatory for Business, Knoxville News Sentinel (Apr. 19, 1998). Copy supplied.

Selection Process for High Court Complicated, Knoxville News Sentinel (Mar. 15, 1998). Copy supplied.

Mediation Often Solves Legal Issues Out of Court, Knoxville News Sentinel (Feb. 15, 1998). Copy supplied.

Firms Need Safeguards Against Harassment, Knoxville News Sentinel (Jan. 18, 1998). Copy supplied.

Pamela L. Reeves & Charles W. Swanson, *Ten Reasons to Read* The Life of the Law, 23 DICTA 2, 6 (Feb. 1997). Copy supplied.

Author's Preface and Chapter 14: Discovery and Mandatory Disclosures (with William H. Haltom, Jr.), Federal Civil Procedure Before Trial -- Sixth Circuit (Lawyers Cooperative Publishing, 1996). Copy supplied.

Pathways to Leadership, 31 TENN. B.J. 4, 22 (July/Aug. 1995). Copy supplied.

Attorney Profile: Bruce A. Anderson, 16 DICTA 10, 4 (Nov. 1991). Copy supplied.

Attorney Profile: Hugh C. Simpson, 16 DICTA 9, 4 (Oct. 1991). Copy supplied.

Attorney Profile: Lawyers in Fatigues, 16 DICTA 6, 4 (June 1991). Copy supplied.

Lawyers Become Clients, 16 DICTA 3, 6 (Mar. 1991). Copy supplied.

TYLC: A Historical Perspective, 6 THE QUARTERLY 7 (Spring 1990). Copy supplied.

Young Lawyer Receives Supreme Compliment, 6 THE QUARTERLY 1 (Winter 1990). Copy Supplied.

Ed Air: Young Lawyer at Large, 6 THE QUARTERLY 1 (Fall/Winter 1989). Copy supplied.

We Want to Focus on You, 6 THE QUARTERLY 4 (Summer 1989). Copy supplied.

Prepaid Legal Plans: A Glimpse of the Future, 47 TENNESSEE L. REV. 148 (1979). 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.

During the years from 2007 until 2012 when I served on the Tennessee Court of the Judiciary, the Tennessee Administrative Office of the Courts issued an annual report. Copies of the reports from 2008 to 2012 are supplied.

The Tennessee Court of the Judiciary issues public reprimands to judges in Tennessee. Although, as a member of the Court of the Judiciary, my name has appeared on the letterhead for these reprimand letters, I may or may not have had a role in the drafting or approving of the letters, depending on whether I was a member

of the particular investigative panel or not. Most of these letters are included as attachments to the annual reports supplied above. The following are additional reprimand letters in which my name appears on the letterhead.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge John Gasaway, (June 27, 2012) regarding a public reprimand. Copy supplied.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge Johnny D. Houston, (June 21, 2012) regarding a public reprimand. Copy supplied.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge Sheridan Randolph, (June 15, 2012) regarding a public reprimand. Copy supplied.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge Jimmy C. Smith, (April 2, 2012) regarding a public reprimand. Copy supplied.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge John Bell, (February 23, 2012) regarding a public reprimand. Copy supplied.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge A. Andrew Jackson, (January 27, 2012) regarding a public reprimand. Copy supplied.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge Robert L. Moon, Jr., (January 3, 2012) regarding a public reprimand. Copy supplied.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge Ronnie Zachary, (December 21, 2011) regarding a public reprimand. Copy supplied.

Letter from Chris Craft, Presiding Judge, Court of the Judiciary to Judge David Bales, (December 6, 2011) regarding a public reprimand. Copy supplied.

Report of the Knoxville Bar Association Task Force on the Future (Aug. 2001). Copy supplied.

The Knoxville Bar Association Blue Ribbon Panel on Professional Etiquette produced a continuing legal education program as opposed to a report on March 30, 2001. PowerPoint and handouts supplied.

The Tennessee Supreme Court Task Force on Public Trust and Confidence in the Judiciary may have released a report in 1998, but I do not have copies of any information generated by this Task Force. The Administrative Office of the Courts in Nashville has advised me that they do not have a copy of any reports. Elizabeth Sykes, Executive Director, 511 Union Street, Suite 600, Nashville, Tennessee 37219. Sometime during 1998 or 1999, as part of this Task Force, I gave a speech

somewhere on Threats and Intimidation on the Judicial Campaign Trail. Transcript supplied.

Summary Report of the Tennessee Bar Association President-Elect Advisory Committee, Jan. 11, 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.

When I was on the Board of Governors of the Tennessee Bar Association, the Tennessee Bar Association took official positions on certain legislative issues in accordance with their policies. Copies of the TBA's Public Policy statement and copies of the minutes of the Tennessee Bar Association Board of Governors meetings from 1988 to 1990 and 1994 to 2000 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.

February 19, 2013: Speaker, "Deal or No Deal – The Mediator's Role in Getting to Deal No Matter What the Dispute," Tennessee Valley Mediation Association, Knoxville, Tennessee. Copy of CLE materials supplied.

February 5, 2013: Speaker, "Top 10 Tips to Avoid Being Sued," The Knoxville Downtown Rotary Club, Knoxville, Tennessee. Transcript supplied.

January 12, 2013: Speaker, "Ten Commandments for Leaders," Tennessee Bar Association Law Leadership Retreat, Dickson, Tennessee. Transcript supplied.

September 10, 2012: Co-Speaker, "Mediating a Business Dispute," Knoxville Bar Association Alternative Dispute Resolution Section, Knoxville, Tennessee. Copy of CLE materials supplied.

January 2012: Speaker, "Ten Commandments for Leaders," Central United Methodist Church, Knoxville, Tennessee. I used the same notes supplied for the January 12, 2013 event.

September 21, 2011: Speaker, "Heroines of the Law," East Tennessee Lawyers Association, Knoxville, Tennessee. Transcript supplied. I have given variations of this presentation on numerous occasions especially around 1998 to 1999 when I was state bar president. I do not have records on all the places or dates I have given this speech, but I recall giving it to the Knoxville Executive Women's Association, Knoxville, Tennessee, to the Memphis Bar Association, Memphis, Tennessee, to the Mississippi State Bar Association, Destin, Florida, to various local bar associations, to the Knoxville Women's Political Caucus, Knoxville, Tennessee and to the Roane County Rotary Club, Harriman, Tennessee.

September 12, 2011: Speaker, "In Their Own Words – What Expert Employment Lawyers Say About Mediating Employment Cases," Knoxville Bar Association Alternative Dispute Resolution Section, Knoxville, Tennessee. Copy of CLE materials supplied.

September 8, 2011: Speaker, "A Lesson in Leadership," Knoxville Nucleus, Knoxville, Tennessee. Transcript supplied.

March 11, 2011: Co-Presenter, "Master Mediators – Lessons from the Trenches," University of Tennessee College of Law. I have no notes, transcript or recording. The address of the University of Tennessee College of Law is 1505 Cumberland Avenue, Knoxville, TN 37996.

January 2011: Speaker, "Ten Commandments for Leaders," Tennessee Bar Association Law Leadership Retreat, Dickson, Tennessee. I used the same notes supplied for the January 12, 2013 event.

September 10, 2010: Speaker, "The Anatomy of a Personal Injury/Wrongful Death Mediation," Knoxville Bar Association, Knoxville, Tennessee. Copy of CLE materials supplied.

January 2010: Speaker, "Ten Commandments for Leaders," Church Street United Methodist Church, Knoxville, Tennessee. I used the same notes supplied for the January 12, 2013 event.

May 20, 2009: Speaker, "Top Ten Reasons Why Mediations Fail," East Tennessee Lawyers Association for Women, Knoxville, Tennessee. Copy of CLE materials supplied.

May 4, 2009: Speaker, "Mediator Liability – When the Mediator Becomes the Party," Knoxville Bar Association Alternative Dispute Resolution Section, Knoxville, Tennessee. Copy of CLE materials supplied.

December 12, 2008: I made brief remarks when I was awarded the Knoxville Bar Association's Governors' Award at the annual meeting in Knoxville, Tennessee. I

have no notes, transcript or recording. The address of the Knoxville Bar Association is 505 Main Street, Suite 50, Knoxville, TN 37902.

November 29, 2007: Speaker, "Sex in the Workplace – Litigating Sexual Harassment and Sexual Discrimination Claims," Knoxville Bar Association's Master in the Law series, Knoxville, Tennessee. Copy of CLE materials supplied.

November 16, 2007: Participant, An American Board of Trial Advocates Masters of Trial Presentation at the University of South Carolina School of Law, Columbia, South Carolina. The program was sponsored by ABOTA and involved conducting a mock trial. I have no notes, transcript or recording. The address of ABOTA is 2001 Bryan Street, Suite 3000, Dallas, TX 75201.

June 14, 2007: Speaker, "We're Not Your Daddy's Bar Association Any More—A Brief History of Women and Minorities in the Tennessee Legal System," Tennessee Bar Association Annual Meeting, Nashville, Tennessee. Transcript supplied.

June 2007: Speaker, "Top 10 Reasons Why Mediations Fail," Tennessee Lawyers Association for Women, Nashville, Tennessee. Copy of CLE materials supplied.

April 18, 2007: Speaker, "Deal or No Deal – the Mediator's Role in Getting to Deal," Tennessee Bar Association, Nashville, Tennessee. Copy of CLE materials supplied.

Spring 2007: Speaker, "Backpacks to Briefcases," National Society of Collegiate Scholars at the University of Tennessee, Knoxville, Tennessee. Transcript supplied.

February 7, 2007: Speaker, "Mediation Advocacy: A Program for Those Interested in Mediation and Mediating," University of Tennessee College of Law. I have no notes, transcript or recording. The address of the University of Tennessee Law School is 1505 Cumberland Avenue, Knoxville, Tennessee 37916.

October 12, 2006: Speaker, the Tennessee Attorney General public hearings, Nashville, Tennessee. I spoke briefly in support of my candidacy and introduced the two speakers who spoke on my behalf. I have no notes, transcript or recording. The address of the Tennessee Administrative Office of the Courts is 511 Union Street, Suite 600, Nashville, TN 37219.

August 18, 2006: Participant, American Board of Trial Advocates (ABOTA) Masters in Trial Demonstration, Nashville, Tennessee. The program was sponsored by ABOTA and involved a mock trial presentation. I have no notes, transcript or recording. The address of ABOTA is 2001 Bryan Street, Suite 3000, Dallas, TX 75201.

June 2006: Speaker, the Tennessee Bar Association Dispute Resolution Section CLE program on the concept of "good faith." I have no notes, transcript or recording.

The address of the Tennessee Bar Association Dispute Resolution Section is 221 4th Avenue North, Suite 400, Nashville, TN 37219.

April 2005: Speaker, "Jury Reform" Knoxville Bar Association's Law Day Luncheon, Knoxville, Tennessee. Transcript supplied.

May 5, 2004: Speaker, "Getting to Home Plate in Commercial Mediations," Knoxville Bar Association Alternative Dispute Resolution Section, Knoxville, Tennessee. Copy of CLE materials supplied.

February 5, 2003: Speaker, "Sex in the Law Firm – A Horror Story, How to Keep Your Law Firm from Becoming Another Firm's Client," Blount County Bar Association, Maryville, Tennessee. I gave a similar presentation to the Tennessee Bar Association but I do not know the exact date. Copy of CLE materials supplied.

January 20, 2003, Speaker: "Setting Up a Mediation Practice," Tennessee Valley Mediator's Association, Knoxville, Tennessee. Copy of CLE materials supplied.

November 2002: Participant, "Adam's Rib – a Morality Play in 2 Acts," Knoxville Bar Association, Knoxville, Tennessee. Copy of CLE materials supplied.

February 13, 2002: Speaker, "Swearing in Ceremony" United States Magistrate Judge Clifford Shirley. Knoxville, Tennessee. Transcript supplied.

2000-2002: Speaker, City of Knoxville Better Building Board monthly meetings. As co-chair, I presided over or spoke at monthly meetings where the Board determined to affirm or alter the public officer's decisions regarding repairs or demolition of unfit structures in the City of Knoxville. I have no notes, transcript or recording. The address of the City of Knoxville Better Building Board is 400 Main Street, Knoxville, Tennessee 37902.

June 1999: Speaker, Tennessee Bar Association Annual Convention, Pinehurst, North Carolina. I summarized the activities of the Tennessee Bar Association during my year as President. I have no notes, transcript or recording. The address of the Tennessee Bar Association is 221 Fourth Avenue N., Suite 400, Nashville, TN 37219.

March 18, 1999: Federal Court Naturalization Ceremony Speech. Knoxville, Tennessee. Transcript supplied.

December 3, 1998: Speaker, Harriman, Tennessee Rotary Club. The talk was a history of women in the legal profession similar to Heroines of the Law speech referenced earlier. Press coverage supplied. I have no notes, transcript or recording. Harriman Rotary Club, Post Office Box 633, Harriman, TN 37748.

December 1998, Speaker, UT Law School Commencement Address, University of Tennessee Law School Commencement, Knoxville, Tennessee. Transcript supplied.

November 1998: Speaker, "New Lawyer Swearing In Ceremony," Tennessee Supreme Court, Nashville, Tennessee. Notes supplied.

August 1998: Speaker, 4-H Round Up speech, Knoxville, Tennessee. Transcript supplied.

June 1998: Speaker, Tennessee Bar Association Annual Convention Acceptance Speech, Nashville, Tennessee. Transcript supplied.

April 17, 1997, Speaker "Welcome to the Big League" United States District Court New Admittees Ceremony. Transcript supplied.

1995: My CLE records indicate that I gave a presentation on sexual harassment to the Knoxville Bar Association in Knoxville Tennessee. I do not have notes, transcript or recording. The address of the Knoxville Bar Association is 505 Main Street, Suite 50, Knoxville, TN 37902.

May 6, 1994: Speaker, "Discovery Goals, Strategies & Tactics (From a Trial Practice Point of View)," Knoxville Bar Association, Knoxville, Tennessee. Copy of CLE materials supplied.

Approximately 1990: I believe I gave a presentation at a Knoxville Bar Association Lunch and Learn on the Americans with Disabilities Act in Knoxville, Tennessee shortly after the ADA was passed in 1990. I have no notes, transcript or recording. The address of the Knoxville Bar Association is 505 Main Street, Suite 50, Knoxville, Tennessee 37902.

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.

Laura Ayo, *Group Seeks to Match Volunteers with Legal Needs*, Knoxville's Best Lawyers, 2013. Copy supplied.

Anything is Possible (NBC television broadcast, Mar. 3, 2013 and July 22, 2012.) That interview can be found at www.blip.tv/anythingispossible.

Georgiana Vines, *Interest High in Retiring Federal Judge's Job*, Knoxville News Sentinel (Nov. 12, 2012). Copy supplied.

Sara Shookman, *Can You Be Fired for what You Post on Facebook?*, WVLT, Nov. 10, 2010. Copy supplied.

Report Critical of Knox Greenwaste Facility Management, WBIR TV, Mar. 19, 2010. Copy supplied.

Sara Shookman, *The Pizza Kitchen Faces Social Media Libel Lawsuit*, WVLT, Sept. 21, 2009. Copy supplied.

Heather Haley, *Voter Turnout was Noticeably Low in Knox County*, WVLT, Aug. 8, 2008. Copy supplied.

Yasmine Alotaibi, *Early Voting Centers Open Wednesday for Knox County*, Daily Beacon, Jan. 14, 2008. Copy supplied.

Gary Loe, *Voting Machine Problems Continue in Knox County*, WVLT, 2006. Copy supplied.

Knox Co. Deputies Get Pension Plan After Vote Retrieval, WATE, Nov. 9, 2006. Copy supplied.

Georgiana Vines, *Reeves Has Eye on State AG Position*, Knoxville News Sentinel, May 10, 2006. Copy supplied.

Jeff Lennox, *Knox Co. Election Commission Seeks Answers on Key Questions*, WATE, April 21, 2006. Copy supplied.

Amelia Graham, *Despite Lawsuits, Knox Co. Election Comm. Certifies Results*, WATE, Feb. 20, 2004. Copy supplied.

Bryan Massey, *Writer, Attorney, Advocate is New TBA Vice President*, Daily News, Feb. 27, 2003. Copy supplied.

Ex-UT Aide Claims Gilley Pressured, Harassed Her, Charleston Gazette (Feb. 22, 2003). Copy supplied.

Tennessee Bar Association Moves Convention from Grove Park Inn to Pinehurst Resort, Tennessee Bar Journal (April 1999). Copy supplied.

TBA Announces Executive Staff Realignment, Tennessee Bar Journal (Mar. 1999). Copy supplied.

Support from Family, Law Partners and Friends Make Presidency Possible, 34 TENN. B.J. 4, 18 (July/Aug. 1998). Copy supplied.

Packets Offer Voters Data on Judges, Maryville Daily Times. (July 16, 1998). Copy supplied.

Rebecca Ferrar, *Knox Lawyer to Be First Female Head of State Bar,* Knoxville News Sentinel (July 8, 1998). Copy supplied.

Attorney Profile Pam Reeves, 22 DICTA 6, 4 (June 1996). 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 any elected judicial offices. I was appointed in 2000 to sit as a special hearing officer for a matter before the Knox County Sheriff's Merit Board. My job was to preside over hearings and rule on admissibility of evidence, but not to make decisions on the merits. The matter was styled *Dunn v. Hutchison* and was resolved in 2008 prior to a final hearing.

I have also sat as Impartial Hearing Officer under the Tennessee School Teacher Tenure Act pursuant to T.C.A. 49-5-512 on four occasions from 2011 to 2012.

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

Four.

i. Of these, approximately what percent were:

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

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

None of the opinions have any official citations.

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. *Carico v. Hawkins County Board of Education*

The Hawkins County Board of Education had terminated Ms. Carico due to an incident where she lost control in the classroom and touched a student repeatedly on the arm with a pen. She later refused to comply with the School Board's Corrective Action Plan. She was terminated for incompetent, inefficient, negligent, unprofessional conduct and for insubordination. I upheld the school

board's decision to terminate in an opinion rendered on August 6, 2010. Copy supplied.

Attorney for Teacher: Virginia McCoy, Staff Attorney; Tennessee Education Association, Legal Services Division; 801 Second Avenue North, Nashville, Tennessee 37201; (615) 242-8392.

Attorney for School Board: Larry Giordano, Lewis, King, Krieg & Waldrop, P.C., Post Office Box 2425, Knoxville, Tennessee 37901; (865) 546-4646.

2. *Ingle v. Anderson County Board of Education*

The Anderson County Board of Education had terminated Mr. Ingle due to a series of erratic incidents in his classroom and due to the fact that he was routinely late showing up for work. The school board determined that he was inefficient, neglectful of his duties and that he displayed unprofessional conduct. I upheld the school board's decision in an opinion rendered on May 8, 2012. Copy supplied.

Attorney for Teacher: Virginia McCoy, Staff Attorney; Tennessee Education Association, Legal Services Division; 801 Second Avenue North, Nashville, Tennessee 37201; (615) 242-8392

Attorney for School Board: Sal Varsalona, Pratt & Varsalona, Post Office Box 398, Clinton, Tennessee 37716. (865) 463-6010.

3. *Wilder v. Union County Board of Education*

The Union County Board of Education terminated Ms. Wilder after an incident occurred at her home where a group of underage people from another county were found to be in possession of alcohol. The Board of Education determined that this incident constituted unprofessional conduct justifying her termination despite many years of excellent teaching service. In an opinion issued on November 28, 2012, I recommended that she be suspended without pay for two months and reinstated. Copy supplied.

Attorney for Teacher: Virginia McCoy, Staff Attorney; Tennessee Education Association, Legal Services Division; 801 Second Avenue North, Nashville, Tennessee 37201; (615) 242-8392.

Attorney for School Board: Chris W. McCarty, Lewis, King, Krieg & Waldrop, P.C., Post Office Box 2425, Knoxville, Tennessee 37901; (865) 546-4646.

4. *Hickerson v. Greeneville City Schools*

The Greeneville City School System terminated Ms. Hickerson after she entered a guilty plea to reckless endangerment following an arrest for DUI by consent and resisting arrest. The Board of Education also relied upon the fact that Ms. Hickerson had been counseled for many performance issues in her tenure at the school system and the fact that she had not kept the school system adequately advised of the status of her criminal charges. The Board found that she was unprofessional and incompetent. In an opinion issued February 11, 2013, I upheld the school system's dismissal. Copy supplied.

Attorney for Teacher: Virginia McCoy, Staff Attorney; Tennessee Education Association, Legal Services Division; 801 Second Avenue North, Nashville, Tennessee 37201; (615) 242-8392

Attorney for School Board: Chris W. McCarty, Lewis, King, Krieg & Waldrop, P.C., Post Office Box 2425, Knoxville, Tennessee 37901; (865) 546-4646.

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. *Carico v. Hawkins County Board of Education*

Opinion rendered: August 6, 2010. Copy supplied.

Attorney for Teacher: Virginia McCoy, Staff Attorney; Tennessee Education Association, Legal Services Division; 801 Second Avenue North, Nashville, Tennessee 37201; (615) 242-8392.

Attorney for School Board: Larry Giordano, Lewis, King, Krieg & Waldrop, P.C., Post Office Box 2425, Knoxville, Tennessee 37901; (865) 546-4646.

2. *Ingle v. Anderson County Board of Education*

Opinion rendered: May 8, 2012. Copy supplied.

Attorney for Teacher: Virginia McCoy, Staff Attorney; Tennessee Education Association, Legal Services Division; 801 Second Avenue North, Nashville, Tennessee 37201; (615) 242-8392.

Attorney for School Board: Sal Varsalona, Pratt & Varsalona, Post Office Box 398,Clinton, Tennessee 37716; (865) 463-6010

3. *Wilder v. Union County Board of Education*

Opinion rendered: November 28, 2012. Copy supplied.

Attorney for Teacher: Virginia McCoy, Staff Attorney; Tennessee Education Association, Legal Services Division; 801 Second Avenue North, Nashville, Tennessee 37201; (615) 242-8392.

Attorney for School Board: Chris W. McCarty, Lewis, King, Krieg & Waldrop, P.C., Post Office Box 2425, Knoxville, Tennessee 37901; (865) 546-4646.

4. *Hickerson v. Greeneville City Schools*

Opinion rendered: February 11, 2013. Copy supplied.

Attorney for Teacher: Virginia McCoy, Staff Attorney; Tennessee Education Association, Legal Services Division; 801 Second Avenue North, Nashville, Tennessee 37201; (615) 242-8392.

Attorney for School Board: Chris W. McCarty, Lewis, King, Krieg & Waldrop, P.C., Post Office Box 2425, Knoxville, Tennessee 37901; (865) 546-4646.

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.

None.

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

None of the opinions were ever published. Copies of the opinions are stored electronically on the office system at Reeves, Herbert & Anderson, P.A., and hard copies are maintained in the firm's files.

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

None of the opinions involved any 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 never sat by designation on any federal court of appeals.

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

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

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

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

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

I have never been asked to recuse myself or recused myself sua sponte. When I am asked to sit as Impartial Hearing Officer, I determine if we have any conflicts within my law office. We have a database that contains a list of every file that the attorneys in our office have ever worked on that we use to cross-reference potential new cases. Additionally, we check with the attorneys to ensure there are no conflicts.

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.

Chair, Knox County Election Commission, 2003-2009, appointed by State of Tennessee Election Commission.

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.

Treasurer, Randy Nichols for Knox County Attorney General, 1994, 1998.

In addition, on occasion, I was listed as a host for fundraising events for Roy Herron from 1990 to 2010 in his various campaigns for State Representative, State Senator and Governor.

During now-Governor Bill Haslam's campaign in 2010, I was listed as a "Democrat for Haslam" and accompanied him when he came to speak at the Tennessee Bar Association Annual Meeting in June 2010.

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

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

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

I have never served as a clerk for any judge.

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

I have not practiced law alone. However, I have practiced as a sole proprietor in the following associations of attorneys:

1979-1985
Law offices of Griffin, Burkhalter, Cooper and Reeves
901 Bearden Drive
Knoxville, Tennessee 37919
Sole proprietor

2002-present
Reeves, Herbert & Anderson, P.A.
(Formerly known as Reeves, Herbert & Murrian, P.A. (2008-2012);
Anderson, Reeves & Herbert, P.A. (2005-2008); and
Anderson, Reeves & Cooper, P.A. (2002-2005))
2607 Kingston Pike, Suite 130
Knoxville, Tennessee 37919
Managing Attorney

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.

1979-1985
Law offices of Griffin, Burkhalter, Cooper and Reeves
901 Bearden Drive
Knoxville, Tennessee 37919
Sole proprietor

1985-1987
Morrison, Morrison, Tyree & Dickenson
Market Street
Knoxville, Tennessee 37902
Associate

1987-2002
Watson, Hollow & Reeves, P.L.C.
(Formerly known as Watson Reeves & Beeler, P.L.C. (1988 – 1991); Law Office of Robert H. Watson, Jr. (1987 – 1988))
Post Office Box 131
Knoxville, Tennessee 37901
Partner

2002-present
Reeves, Herbert & Anderson, P.A.
(Formerly known as Reeves, Herbert & Murrian, P.A. (2008-2012); Anderson, Reeves & Herbert, P.A. (2005-2008); and Anderson, Reeves & Cooper, P.A. (2002-2005))
2607 Kingston Pike, Suite 130
Knoxville, Tennessee 37919
Managing Attorney

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

I have served as both a mediator and an arbitrator in alternative resolution proceedings. Below, I describe nine mediations and one arbitration in which I have presided.

1. Age Discrimination: The most significant case I have arbitrated to conclusion involved a claim of age discrimination under the Age Discrimination in Employment Act and under the Tennessee Human Rights Act. The plaintiff claimed he was terminated because of his age and that the reasons given for his termination were pretextual. The case

was tried over the course of two days in Nashville, and approximately 15 witnesses testified. I rendered a lengthy written opinion finding in favor of the employer.

2. Environmental Spill: The most significant case I have ever mediated is one in which I am currently involved. I was chosen in January 2013 by the parties and appointed by the federal district judge as co-mediator to mediate the claims arising from the release of coal ash from the TVA Kingston Steam Plant facility in Roane County, Tennessee. There are more than 872 plaintiffs in this matter. The issues involve whether the ash spill constituted a nuisance or trespass to the plaintiffs' land and if so, the amount of damages. The case is not a class action, but there are nine plaintiffs' law firms involved in this dispute representing many different types of plaintiffs, some of whom are located much closer to the actual spill site than others. Since the defendant is a public utility, there are also issues with regard to the ratepayers' interests. This mediation is on-going.

3. Products Liability: In 2010, I was chosen by the federal district court in the Western District of Kentucky to coordinate a panel of four mediators in a multi-district litigation matter involving all-terrain vehicles. The plaintiffs claimed that the vehicles were defectively designed and that the vehicles would roll over causing severe injuries. The plaintiffs were represented by many law firms from all across the country. I mediated approximately 25 of these claims over the course of about two weeks.

4. Medical Malpractice: I mediated a medical malpractice claim where a very young child died allegedly as a result of the negligence of the treating physician and the hospital staff. There were multiple defendants, including the treating doctor, the hospital, the nurse, and the medical group.

5. Business Dissolution: I mediated the dissolution of a law firm that involved separating assets of a very successful law firm. The assets included a significant number of pending lawsuits that potentially represented several million dollars. The mediation lasted for 17 hours.

6. Prison Conditions: I have mediated a number of civil rights cases involving situations where inmates in local detention facilities died or suffered damage as a result of the alleged failure to provide proper medical treatment. One of the most significant cases involved a young woman in her early twenties who was suffering from drug withdrawal after being incarcerated in a county jail in Tennessee. The young woman died in the county jail before she was transported for medical treatment. The primary issue was whether jail officials had been deliberately indifferent to the medical needs of the young woman. There were also

issues with regard to the monetary value of her life because she had never been gainfully employed.

7. Americans with Disabilities Act: I mediated an Americans with Disabilities Act case involving the United States Department of Agriculture and an employee who had experienced psychological problems resulting in performance issues. The legal issues were whether the employer had failed to reasonably accommodate the illness of the employee and whether she had been terminated because of her disability. The damages were potentially significant because the employee was a highly compensated professional. In addition, a significant amount of attorneys' fees were at issue.

8. Comparative Fault: I mediated a case involving a young college student who was raped in her on-campus apartment resulting in permanent emotional and psychological damages. The issue was whether the college had provided adequate security. There were also issues of comparative fault because the defendant alleged that the student had left her apartment door unlocked. This matter is still on-going.

9. Religious Discrimination: I mediated a case involving a claim that a woman was the victim of religious discrimination because her supervisor was religiously opposed to homosexuality. The plaintiff contended that she had chosen this particular company to work for in part because it had a policy that it did not discriminate based on sexual orientation. She claimed that she initially received glowing reviews, but that when her female supervisor learned she was gay, she was suddenly criticized for her performance on the job and was constructively discharged.

10. Hostile Work Environment: I mediated a case where a female employee was initially involved in a consensual relationship. There was also evidence that suggested that the woman had, at some point, attempted to end the relationship and that her supervisor continued to pursue her until she quit her job. Ultimately the supervisor sent the female a text suggesting she could be promoted to a manager's position if she would engage in sexual relations with him. There were issues regarding the voluntary nature of the relationship, whether she had timely complained about his actions, and constructive discharge.

b. Describe:

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

From 1979 until 1987, I was engaged in a general civil practice that involved juvenile court representation, domestic relations representation,

plaintiff's personal injury representation, employment discrimination (both plaintiff and defendant), bankruptcy, collections work and other general civil matters. I was frequently appointed by different judges to serve as *guardian ad litem* in juvenile or chancery court.

From 1987 to 2002, I represented many governmental entities, school boards and law enforcement agencies across the state of Tennessee in federal courts on civil rights cases, including First Amendment claims, due process claims, claims of excessive force, jail constitutionality claims, and other constitutional violations. I also represented governmental entities in state court on governmental tort liability claims.

From 1996 to 2002, I was also the Tennessee Municipal League Risk Management Pool's primary defense attorney on employment matters in both eastern and western Tennessee. I represented governmental entities in all phases of employment discrimination claims, including responding to charges of discrimination, conducting discovery, filing motions for summary judgment, representing the defendants in mediation and federal judicial settlement conferences, at trial and if necessary, on appeal. During this time period, I also represented private employers in discrimination and other employment matters, individual plaintiffs in employment cases, and other clients in tort and commercial matters.

From 2002 to date, my law practice has focused on alternative dispute resolution with approximately 60-70% of my time being spent on mediation and arbitration. I regularly serve as a mediator all across the state, especially in the areas from Nashville to the Tri-Cities. From time to time, other lawyers will ask me to conduct an independent investigation on employment issues for their clients. In that capacity, I interview witnesses and make a recommendation to the attorneys or companies as to whether I think there is an issue and, if so, what disciplinary action should be taken. I continue to represent a limited number of clients in employment matters (both on behalf of employees and employers). I also advise clients on other commercial and contract issues.

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

Tennessee Supreme Court Rule 21 Section 10 prevents attorneys from claiming to be specialists in any field unless they have complied with the requirements of the Rule 21. I have never attempted to become certified as a specialist in any area of the law. However, my legal practice has consistently involved work in the employment law area. I have represented both plaintiffs and defendants in employment matters in both state and federal courts.

From 1979 until 1987, my clients were primarily individuals or small companies who were involved in a unique legal matter. From 1987 to 2002, the majority of my work was for the Tennessee Municipal Risk Management Pool. This was the group that administers claims for members of the Tennessee Municipal League. The law firm where I worked during this time was one of the Pool's primary defense firms. In that capacity, I represented cities, towns, other governmental entities, agencies and employees all across the state of Tennessee. I also regularly did legal work for the Tennessee Risk Management Trust, which was the group that administers claims for counties insured through the county insurance pool. I did the same type of work for counties and school boards insured through the Tennessee Risk Management Trust that I did for the Tennessee Municipal League Risk Management Pool. This included civil rights defense and the defense of employment matters for counties and their officials.

From 2002 to date, I have represented approximately five companies or organizations on an ongoing basis primarily involving employment and contract issues. My remaining clients during this time period have generally been individuals or companies who were involved in a specific legal dispute. Due to the nature and demand of my mediation and arbitration practice, I have not been as actively involved representing clients in the last ten years.

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 2002, my practice involved a great deal of litigation, and I was in court very frequently. Since 2002, when I started focusing more on mediations, I have been in court only occasionally. My practice has been primarily civil litigation though I did serve as the attorney of record in one federal criminal case.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 35%
   3. other courts: 12%
   4. administrative agencies: 3%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 99.9%
   2. criminal proceedings: 0.1%

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

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

Before 2002, I would estimate that I tried at least 30 cases in state court and at least 10 cases in federal court. Since 2002, most of the cases in which I have served as counsel of record have settled. I would ordinarily have been the sole counsel for state court cases. I would have been lead counsel or sole counsel on the federal court cases.

i. What percentage of these trials were:
   1. jury: 33%
   2. non-jury: 67%

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.

1. *Doe v. Claiborne County Board of Education, et al.* 103 F.3d 495 (6th Cir. 1996).

This case involved a claim by the mother of a 14-year-old girl who had been involved in a sexual relationship with a high school teacher. The plaintiffs sued under Title IX of the Educational Act and Section 1983 claiming due process violations and deliberate indifference on the part of my clients and other school board members and employees. I was lead counsel for three school board superintendents in their individual capacities who had served at various times during the teacher's term of employment. United States District Judge Leon Jordan presided over the case. I served as primary counsel on the defense team conducting the discovery depositions of the minor child, her mother and several of her witnesses. I prepared the motion for summary judgment, and I argued a number of pretrial motions which resulted in the case being dismissed at the trial level. On appeal, I was the primary author of the defense brief, and I argued the case before the Sixth Circuit on behalf of the defendants. The Court of Appeals held, among other things, that no special relationship existed between the student and the Board of Education that gave rise to a duty to protect the student from sexual abuse under the Fourteenth Amendment due process clause, that agency principles applicable to Title VII applied equally to Title IX claims and that my superintendent clients did not act with

deliberate indifference to the student's rights. The case was dismissed as to my clients by the Sixth Circuit.

Counsel for the Plaintiffs were Eddie Pratt and Mike Kinnard, Post Office Box 1792, Knoxville, Tennessee 37901, 865-549-7000. My Co-counsel was Robert H. Watson, Jr., Post Office Box 131, Knoxville, Tennessee 37901, 865-637-1700. Counsel for other defendants were C. Clifford Shirley (now United States Magistrate Judge), Howard H. Baker, Jr., United States Courthouse, 800 Market Street, Suite 144, Knoxville, Tennessee 37902, 865-545-4260, Donald Howell, Post Office Box 39, Knoxville, Tennessee 37901, 865-546-9321, Frank Q. Vettori, 7610 Gleason Drive, Suite 200, Knoxville, Tennessee 37919, 865-546-7190, Albert Harb, Post Office Box 869, Knoxville, Tennessee 37901, 865-292-2307, and Elizabeth A. Townsend and John W. Baker, Jr., Post Office Box 1708, Knoxville, Tennessee 37901, 865-637-5600.

2. *Waters v. City of Morristown, TN, et al.*, 242 F.3d 353 (6th Cir. 2001).

This case involved a woman who worked as a veterinary assistant for a city alderman in Morristown, Tennessee. The Plaintiff claimed that the alderman used his official position as a city alderman to imprison her at his veterinary clinic, to arrange for Morristown Police Department employees to force her to accompany him from her boyfriend's home to her apartment where the alderman beat her, and to harass the people who had helped her attempt to escape from him. She alleged he ultimately attempted to hire a hit man to kill her, a crime to which the alderman pled guilty. The plaintiff sued the alderman in his official and individual capacity, a police lieutenant in his official capacity, and a local rental agency claiming violations of her constitutional rights under 42 U.S.C. Section 1983. I represented the alderman and the police lieutenant in their official capacities. I was primarily responsible for taking the depositions of the plaintiff and her witnesses, and I defended numerous depositions of my parties and witnesses. United States District Judge Thomas Hull presided, and the case was dismissed at the trial level on a motion for summary judgment. The plaintiff appealed to the Sixth Circuit, where I briefed and argued the case. It was dismissed on appeal.

Counsel for the Plaintiff was Elaine Burke, 612 South Gay Street, Suite 1, Knoxville, Tennessee 37902, 865-522-8767 and Jim Moore, 713 Market Street, Second Floor, Knoxville, Tennessee 37909, 865-637-8810. Counsel for the other Defendants were Denise Stapleton and Charles Terry (now deceased), 918 West First North Street, Morristown, Tennessee 37815, 423-586-5800, Edwin Treadway, Post Office Box 3740, Kingsport, Tennessee 37664, 423-378-8800, Richard Jessee and Herbert Bacon, 1135 West Third North Street, Morristown, Tennessee 37814, 423-586-5291.

3. *Trump, et al. v. Cowan, et al.*, No. 2:94-cv-00044, (E.D. Tenn. 1994)

This case involved a claim by six former employees of the town of Bluff City, Tennessee, who were terminated following a municipal election. The plaintiffs contended they were terminated in violation of their First Amendment rights because they had not supported the winning candidates. I represented the mayor and five council members in their

official capacity, and I served as lead defense counsel for the defense team. The case involved many discovery depositions, including the individual plaintiffs, all of the named defendants, the City Attorney, and numerous fact witnesses. Judge Thomas Hull presided. My co-counsel and I prepared the motion for summary judgment that resulted in the dismissal of the case at the trial level. The case was appealed to the Sixth Circuit but was resolved prior to briefing and oral argument.

Counsel for the Plaintiffs were Anthony A. Seaton, 118 East Watauga Avenue, Johnson City, Tennessee 37601, 423-282-1041, Earl R. Booze, Post Office Box 629, Johnson City, Tennessee 37605, 423-929-7113 and Robert J. Jessee, Post Office Box 997, Johnson City, Tennessee 37605, 423-928-7175. My co-counsel was John R. Duffy, Post Office Box 11007, Knoxville, Tennessee 37939, 865-766-0904. Counsel for the remaining Defendants were Julie C. West and M. Lacy West (now deceased), Post Office Box 1404, Kingsport, Tennessee 37662, 423-246-8176, Thomas J. Garland, Post Office Box 1060, Greeneville, Tennessee 37744, 423-639-6811, and Thomas McKee, Post Office Box 1160, Johnson City, Tennessee 37605, 423-434-4700.

4. *Letsinger v. Braaten,* No.: 3:91-cv-403 (E.D. Tenn. 1991)

This case involved a claim by a former police officer of the City of Oak Ridge, Tennessee, that she had been discriminated against and harassed by the Chief of Police at the City of Oak Ridge and that she had been wrongfully terminated in violation of Title VII and in violation of her First Amendment rights. I represented the City and the Police Chief. I handled all pre-trial discovery and all pretrial motions. The case was tried in federal court, United States District Judge Thomas Hull presiding, over several days and resulted in a mistrial. Before the second trial, I filed a motion for summary judgment that was granted as to the Title VII claims, but denied as to the First Amendment claims. We were preparing to file a qualified immunity appeal on behalf of the Police Chief in his individual capacity when the case was settled.

Counsel for Plaintiff were Carol Nickel, 722 Luttrell, Knoxville, Tennessee 37917, 865-523-0203 and Jennifer Morton, 8217 Pickens Gap Road, Knoxville, Tennessee 37920, 865-577-0708. My co-counsel were Robert H. Watson, Jr., Post Office Box 131, Knoxville, Tennessee 37901, 865-637-1700 and Howard Vogel, 7610 Gleason Drive, Suite 200, Knoxville, Tennessee 37919, 865-546-7190.

5. *Eaves v. City of Alcoa, et al.*, No. 91-068 (Blount Co. Tenn. 1989)

This case was filed against the City of Alcoa, the City Manager, the Mayor and members of City Council by the former Personnel Director. The plaintiff claimed violations of the Tennessee Human Rights Act because of discrimination and retaliation and violation of the Equal Pay Act. Specifically, the plaintiff contended that a former city manager had asked her to investigate a charge of sexual harassment against the city finance director but that the city attorney later directed them to stop the investigation. She claimed that both she and the former city manager were subsequently terminated as part of an alleged cover-up of the claimed harassment. I represented all of the defendants in this matter. I

conducted and defended many depositions. Judge Dale Young presided and the case was tried for approximately seven days before a Blount County jury that ultimately rendered a defense verdict as to all defendants.

Counsel for the Plaintiff were Robert Olive, 9111 Cross Park Drive, Knoxville, Tennessee 37923, 865-690-5300 and Kittie Grubb, current address unknown.

6. *Keisling v. Horne, et al.*, No. 2:97-cv-00400 (E.D. Tenn 1997)

This case was brought against the City of Kingsport, the police chief and several police officers by an individual who alleged that the defendants had violated his constitutional rights by using excessive force in a police pursuit situation. The plaintiff had called the Kingsport police dispatcher and advised the dispatcher that he was going to break the windows at several local establishments. He then proceeded to do exactly as he had advised. When the officers confronted him at a local restaurant, he left the scene and proceeded in his car at a slow rate of travel toward his home. When he arrived at his residence, he exited the car and, ignoring the instructions of the officers who had pursued him, reached into the back seat to retrieve an object that the officers believed to be a sawed off shotgun. One of the officers fired at the plaintiff, causing him severe injuries. His medical expenses were in the hundreds of thousands of dollars. He brought suit under 42 U.S.C. Section 1983 claiming that the officer had used excessive force under the circumstances. I represented the officer who had fired the weapon in his individual capacity, and I was lead counsel for the defense team. After much discovery, motions for summary judgment were filed on behalf of the defendants. The trial judge, United States District Judge Thomas Hull, overruled my client's motion which was based on qualified immunity. I filed an interlocutory appeal to the Sixth Circuit. The case was briefed and I argued it at the Court of Appeals but the case was resolved before an opinion was entered.

Counsel for the Plaintiff was John Foley, 1437 Grainger Avenue, Knoxville, Tennessee 37917, 865-522-5578. My co-counsel was Nathan Rowell, Post Office Box 131, Knoxville, Tennessee 37901, 865-637-1700. Counsel for the other Defendants were Arthur F. Knight, III, 800 South Gay Street, Suite 600, Knoxville, Tennessee 37929, 865-971-1701, Julie West, Lacy West (now deceased), Post Office Box 1404, Kingsport, Tennessee 37662, 423-246-8176 and Michael Billingsley, 225 W. Center Street, Kingsport, Tennessee 37660, 423-229-9464.

7. *Moore v. Roane Co. et al.*, No. 3:92-cv-00277 (E.D. Tenn. 1992)

This case involved a claim that local law enforcement officers from Roane County, the City of Harriman, and the Drug Task Force violated the constitutional rights of the plaintiff under 42 U.S.C. Section 1983 when the plaintiff was stopped and arrested without probable cause and assaulted with excessive force. The plaintiff claimed damage to his reputation as well as physical injuries resulting from the assault. I represented the City of Harriman and three of its officers in their official and individual capacities. I was primary counsel for the defense team. Motions for summary judgment were filed on

behalf of all the defendants and ultimately, United States District Judge Jimmy Jarvis dismissed all of the defendants except for my client, the Harriman police officer who actually engaged in the physical altercation, and the Drug Task Force officer. The case was tried in federal court before a jury, and I served as lead trial counsel. A judgment was rendered against my client, but only for $500 in compensatory damages and $100 in punitive damages.

Counsel for Plaintiffs were Stacey A. Hickox and Dorothy Stulberg (now deceased), 136 S. Illinois Avenue, Suite 104, Oak Ridge, Tennessee 37830, 865-482-4466. My co-counsel were Robert H. Watson, Jr., Post Office Box 131, Knoxville, Tennessee 37901, 865-637-1700 and John C. Duffy, Post Office Box 11007, Knoxville, Tennessee 37939, 865-766-0904. Counsel for other defendants were Scott McCluen, 111 Deer Haven Court, Harriman, Tennessee 37748, 865-388-0017, Craig Troutman, 1804 Tanger Lane, Knoxville, Tennessee 37919, 865-384-5153 and Pete Van de Vate, Post Office Box 30201, Knoxville, Tennessee 37930, 865-539-9684.

8. *Roberson v. Knox County Government, et al.*, No. 3:90-cv-00878 (E.D. Tenn 1990)

This case was filed by a former employee who worked for the child support attorney at Knox County Juvenile Court. The plaintiff claimed that she had been subjected to a severe and pervasive hostile work environment in that her boss acted inappropriately in the workplace, provided her with sexually suggestive materials, made sexually suggestive comments to her and even exposed himself to her while on the job. She further claimed that she was constructively discharged as a result of the hostile work environment. I was asked to represent the defendant in his official and individual capacities. I was lead counsel in the discovery phase of this case and multiple depositions were taken of the plaintiff, her witnesses and the defense witnesses. The case was tried for two days before United States District Judge Leon Jordan, and I served as lead trial attorney. At the close of trial, I argued a motion to dismiss my client in his individual capacity. The judge issued an order finding a hostile work environment and constructive discharge against the County and my client in his official capacity, and awarded the plaintiff damages of $17,356. The judge dismissed my client in his individual capacity.

Counsel for Plaintiff was Dorothy Stulberg (now deceased). Counsel for the other Defendant was John Owings, 900 South Gay Street, Suite 703, Knoxville, Tennessee 37902, 865-522-2717.

9. *Trosper v. Town of Oneida*, 776 S.W.2d 72 (Tenn. 1989)

This worker's compensation claim was filed by the niece of the Mayor of the Town of Oneida. She alleged that after going to work for the Town as the police dispatcher, she experienced ongoing sexual harassment in the workplace. She alleged that the stress of dealing with this hostile work environment caused her to sustain emotional and mental injuries sufficient to constitute a mental occupational disease. She further alleged that she sustained a back injury in 1987 while moving a desk at work. I represented the Town as the sole counsel at all phases of this litigation. I conducted and defended numerous

depositions of the parties and witnesses. The Chancellor ultimately ruled that the plaintiff failed to prove that she had given timely notice of the alleged back injury and that the emotional and mental injuries she had experienced were caused by other factors in her life, as opposed to sexual harassment in the workplace. The case was appealed to the Tennessee Supreme Court. I briefed and argued it at the Supreme Court, which upheld the Chancellor's decision.

Counsel for Plaintiff was David Dunaway, 100 South Fifth Street, LaFollotte, Tennessee 37766, 423-562-7085.

10. *Blackburn v. Allgood*, No. 1CCV-484 (Benton County, Tennessee Circuit Court, 2001)

This case involved a claim under the Tennessee Human Rights Act by a former employee of Allgood Salvage and Discount Bargain Center against the owner of these companies. The complaint, filed in state court, alleged that my client had forced the plaintiff to engage in unwanted sexual activity over the course of many months. She contended that the work environment had become so hostile that that she had suffered great emotional distress and had been constructively discharged from her employment. Because the case was filed under the THRA, the first my client knew of the lawsuit was when the explicit allegations of the complaint were printed in the local newspaper in the small town where his business was located. My client was a successful business person in the community and a minister of a small church who adamantly denied that any relationship had ever existed between himself and the former employee. The case required numerous depositions and significant investigatory work. I was the primary defense counsel, taking and defending all of the depositions, including medical depositions. The case was set for trial before Benton County Circuit Court Judge Julian P. Guinn. The case was dismissed by the plaintiff two days before trial with no payment ever being made by my client or his companies. We filed a motion to recover costs under the THRA, which was granted.

Counsel for the Plaintiff was William T. Looney, 127 North Poplar Street, Paris, Tennessee 38242, 731-642-2903. My co-counsel were John Whitworth and Andy Frazier, 116 E. Main Street, Camden, Tennessee 38320, 731-584-6013.

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.)

From time to time over the past ten years I have been asked to serve as an independent investigator and to conduct an investigation into specific issues in a workplace or other situation and make a recommendation to other attorneys or officials as to how I think the situation should be handled. One of the most challenging investigations involved a

situation in Knox County where a private contractor that was operating the County's organic waste disposal site was sued in a qui tam action by a local citizen. The original case was filed in Knox County Chancery Court. As a result of a ruling in the qui tam action, the Knox County Law Director retained me to conduct an investigation to determine if there was misconduct or improper dealings between the Knox County Solid Waste department and the contractor. I reviewed thousands of pages of deposition testimony and exhibits and met with numerous witnesses. I issued a 58-page report detailing my investigation, findings and recommendations.

I have conducted similar investigations, primarily dealing with claims of workplace discrimination or harassment, for numerous governmental agencies, including the City of Red Bank, Tennessee, and the City of Cleveland, Tennessee. I have also conducted the same type of investigations for many private companies.

In addition to the matters described above, I had the opportunity to prepare two *amicus curiae* briefs on matters before the Tennessee Supreme Court in 1997, while I was handling a number of cases for the Tennessee Municipal League Risk Management Pool. Since I was handling so many Tennessee Human Rights Act cases for governmental entities, the Tennessee Municipal League and the City of Knoxville asked me to represent them on two cases where federal district courts had certified legal questions to the Tennessee Supreme Court. I briefed and participated in oral argument on the case of *Carr v. United Parcel Service*, 955 S.W. 2d 832 (Tenn. 1997), where the issue was whether the Tennessee Human Rights Act allowed for individual liability on claims of sexual harassment. I briefed and participated in oral argument on the case of *Carver v. Citizen Utilities Company d/b/a Citizens Telecommunications Company of Tennessee*, 954 S.W. 2d (Tenn. 1997), where the issue was whether punitive damages were available as a remedy under the Tennessee Human Rights Act.

I have never performed lobbying or registered as a lobbyist. From 2010 to 2013, however, I served as member of a group called Tennesseans for Fair and Impartial Courts. This group raised money and hired lobbyists to persuade the Tennessee legislature to maintain a merit based judicial selection process as opposed to adopting a partisan election process for appellate judges in the state of Tennessee.

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

From 1991 to 1996, I was an Adjunct Professor at the University of Tennessee College of Law. I taught Trial Practice classes. These classes involved teaching students the art of direct and cross examination, effective use of the rules of evidence in the courtroom, and how to use expert witnesses in the courtroom. I do not have copies of any of the syllabi I used.

I also taught some classes for paralegals at Knoxville College form 1985 to 1988. I have no records of the classes I taught or the syllabi I used.

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 expectation of any receipts from deferred income, stock options, uncompleted contracts or other future benefits from any previous business relationships, professional services, firm memberships, former employers, clients or customers. I have no arrangements to receive any compensation in the future for any financial or business interest.

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

    I have no plans, commitments or agreements to pursue any outside activities if 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).

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        If confirmed, I will recuse in any litigation where I have ever played a role. For a period of time, I anticipate recusing in all cases where any member of my current firm, Reeves, Herbert & Anderson, P.A., represents a party. I will also recuse

myself in any case where Charles W. Swanson, my husband and the City Law Director for the City of Knoxville, Tennessee, represents any party. Lastly, I will evaluate any other real or potential conflict, or relationship that could give rise to appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel including recusal where necessary.

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 carefully review and address any real or potential conflicts by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other laws, rules, and practices governing such circumstances.

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 always actively worked to help provide legal services to those who might otherwise be denied access to the court system. I have provided legal services for free to clients who did not have financial resources, especially clients who needed assistance at unemployment hearings or who had other workplace issues. For more than five years, I have advised an area non-profit school on employment issues. I have also assisted local and state bar groups in providing legal advice at legal clinics. Last year, I partnered with a young lawyer through the Knoxville Bar Association's mentoring program to provide legal advice to a local non-profit agency.

Additionally, I have worked continuously with the local and state bar in participating in activities that improve the law, the legal system or the legal profession which under Rule 6.1 of the Tennessee Rules of Professional Conduct is one of the ways by which lawyers can meet their pro bono requirements. For example, for the past five years, I have served on the steering committee or as co-chair of the Tennessee Bar Association Law Leadership program. This organization produces at least seven one to two-day programs between January and June each year designed to help younger lawyers learn more about the legal, judicial and legislative processes in the state and to provide them with leadership skills so that they will be better, more responsible members of the legal community.

Finally, I have regularly supported Legal Aid of East Tennessee and the Tennessee Justice Center through financial contributions, and I served on the Board of the Legal Aid of East Tennessee from 1986-1989. I have accepted pro bono clients through the local pro bono referral. I was on the Pro Bono Honor Roll in 2011 and 2012. I have served on the board and as chair-elect of the Tennessee Bar Foundation, which is the group in

Tennessee that administers IOLTA funds and provides funding to all the legal aid agencies in Tennessee.

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.

Beginning in the fall of 2012, I was asked by various individuals in the legal community if I was interested in being considered to serve on the Eastern District of Tennessee bench, and I advised anyone who asked that I was indeed interested. On February 20, 2013, I met with Congressman Jim Cooper in Knoxville, Tennessee, to discuss my interest and qualifications. On February 25, 2013, I was advised by a Justice Department official that I had been recommended to fill this vacancy. Since that time, I have had contact with representatives from the Department of Justice's Office of Legal Policy. On April 2, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On May 16, 2013, 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. 1/2013

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
Reeves, Pamela L.	United States District Court Eastern District of Tennessee	05/16/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
United States District Judge	☑ Nomination Date 05/16/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 05/15/2013
7. Chambers or Office Address		
2607 Kingston Pike, Suite 130 Knoxville, TN 37919		

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.***

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Reeves, Herbert & Anderson, P.A.
2.	Secretary and member Board of Directors	Medic Regional Blood Bank
3.	Chair elect and Member Board of Trustees	Tennessee Bar Foundation
4.	Past president and Member Board of Directors	American College of Civil Trial Mediators
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 11	Name of Person Reporting Reeves, Pamela L.	Date of Report 05/16/2013

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2011	Self employed attorney net income	$223,563.00
2.	2012	Self employed attorney gross income	$370,631.48
3.	2013	Self employed attorney gross income	$155,598.12
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	Salary City of Knoxville
2.	2013	Salary City of Knoxville
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 11	Name of Person Reporting Reeves, Pamela L.	Date of Report 05/16/2013

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 11	Name of Person Reporting Reeves, Pamela L.	Date of Report 05/16/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Rental property #1 Salisbury N.C.	B	Rent	K	W	Exempt				
2. Rental Property #2 Salisbury, N.C.	B	Rent	K	W					
3. Business property #1 Knoxville TN	E	Rent	M	W					
4. Charles Schwab Money Market Fund	A	Int./Div.	K	T					
5. Advanced Auto Parts Common Stock		None							
6. Alliance SE Common Stock		None							
7. American Express Common Stock	A	Int./Div.							
8. American Intl Group Common Stock		None	J	T					
9. Apple Computer		None	J	T					
10. Aspen Insurance Holding LTD. Common Stock	A	Int./Div.	J	T					
11. Astrazenecca PLC Common Stock	A	Int./Div.	J	T					
12. BP PLC Common Stock	A	Int./Div.							
13. Bank of America Corp. Common Stock	A	Int./Div.	J	T					
14. Berkshire Hathaway Common Stock		None	K	T					
15. Biglari Holdings Inc.Common Stock		None	J	T					
16. Calamos Asset Management Inc. Common Stock		None	J	T					
17. Chesapeake Energy Corp. Common Stock	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT Page 5 of 11	Name of Person Reporting Reeves, Pamela L.	Date of Report 05/16/2013

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. Cisco Sys Inc Common Stock	A	Int./Div.	J	T					
19. Conoco Phillips Common Stock	A	Int./Div.							
20. Crimson Wine Group Common Stock		None							
21. Dell, Inc. Common Stock	A	Int./Div.							
22. DirecTV Common Stock		None	J	T					
23. Douglas Dynamics, Inc. Common Stock	A	Int./Div.	J	T					
24. Fairfax Financial Holdings LTD. Common Stock	A	Int./Div.	J	T					
25. First Financial Bancorp Common Stock	A	Int./Div.	J	T					
26. General Electric Common Stock	A	Int./Div.							
27. Goldman Sachs Common Stock	A	Int./Div.	J	T					
28. H & R Block Common Stock	A	Int./Div.							
29. Ingram Micro, Inc. Common Stock	A	Int./Div.							
30. Intel Common Stock	A	Int./Div.	J	T					
31. J.P. Morgan & Co. Common Stock	A	Int./Div.	J	T					
32. Legg Mason, Inc. Common Stock	A	Int./Div.							
33. Leggett & Platt, Inc. Common Stock	A	Int./Div.							
34. Leucadia National Corp. Common Stock	A	Int./Div.	J	T					

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

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. Lockheed Martin Common Stock	A	Int./Div.	J	T					
36. Loews Corp. Common Stock	A	Int./Div.	J	T					
37. Markel Corp. Common Stock		None	J	T					
38. Microsoft Common Stock	A	Int./Div.	J	T					
39. Oaktree Capital Group Common Stock	A	Int./Div.	J	T					
40. Pfizer, Inc. Common Stock	A	Int./Div.							
41. Phillips 66 Common Stock		None							
42. Plum Creek Common Stock	A	Int./Div.							
43. ProShares UltraShort Barclays 20+ Trsy Common Stock		None							
44. Quest Diagnostics, Inc. Common Stock	A	Int./Div.							
45. RenaissanceRe Holdings Ltd. Common Stock	A	Int./Div.	J	T					
46. Tesco PLC ADRF Common Stock		None	J	T					
47. The Charles Schwab Corp. Common Stock	A	Int./Div.							
48. Unilever PLC ADR Common Stock		None	J	T					
49. UnitedHealth Group Common Stock	A	Int./Div.	J	T					
50. Verizon Communications Common Stock	A	Int./Div.							
51. Vodafone Group Common Stock	A	Int./Div.	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 7 of 11	Name of Person Reporting Reeves, Pamela L.	Date of Report 05/16/2013

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. Walgreen Co. Common Stock		None							
53. Waste Mangement Common Stock		None							
54. Xerox Corp. Common Stock	A	Int./Div.							
55. iPath DJ AIG Natural Gas TR Sub-Idx ETN Common Stock		None							
56. American Fund Washington Mutual Investors Fund, Inc.	A	Int./Div.	J	T					
57. Weitz Value Portfolio	A	Int./Div.	J	T					
58. American Fund New Perspective Fund	A	Int./Div.	J	T					
59. Nationwide Investors Destination Moderately Conservative Fun		None	J	T					
60. Vanguard Energy Fund Investor	A	Int./Div.	J	T					
61. Vanguard Health Care Fund Investor	A	Int./Div.	J	T					
62. Vanguard Windsor II Fund Investor	A	Int./Div.	J	T					
63. Vanguard Growth and Income Fund	A	Int./Div.	J	T					
64. SunAmerica Strategic Bond Cl C	A	Int./Div.	J	T					
65. SunAmerica Money Market Cl A	A	Int./Div.	J	T					
66. SunAmerica Focused Multi Asset Cl C	A	Int./Div.	J	T					
67. SunAmerica Focused Alpha Growth Cl C	A	Int./Div.	J	T					
68. SunAmerica 2015 High Watermark Cl C	A	Int./Div.							

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
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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 "(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. SunAmerica Focused StarALPHA CL C	A	Int./Div.							
70. Prudential Guaranteed Income Fund	A	Int./Div.	J	T					
71. PIMCO Total Return Fund	A	Int./Div.	J	T					
72. Black Rock Equity Fund Dividend R	A	Int./Div.	J	T					
73. Wells Fargo Advantage Growth A	A	Int./Div.	J	T					
74. Victory Established Value A		None							
75. Prudential Jenn Mid Cap Growth A	A	Int./Div.	J	T					
76. JPMorgan Mid Cap Value A	A	Int./Div.	J	T					
77. Fidelity Adv Small Cap Fund	A	Int./Div.	J	T					
78. Perkins Small Cap Value R	A	Int./Div.	J	T					
79. American Funds EuroPac Gr R3	A	Int./Div.	J	T					
80. CREF Money Market	A	Int./Div.	J	T					
81. CREF Bond Market Fund	A	Int./Div.	J	T					
82. CREF Global Equities	A	Int./Div.	J	T					
83. CREF Growth	A	Int./Div.	J	T					
84. CREF Equity Index	A	Int./Div.	J	T					
85. Calvert Short Duration Income A	A	Int./Div.	J	T					

1. Income/Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
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H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
V =Other
W =Estimated

3. Value Method Codes (See Column C2)
Q =Appraisal
U =Book Value

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Reeves, Pamela L.	05/16/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. Transamerica Stable Value	A	Int./Div.	J	T					
87. American Funds AMCAP A	A	Int./Div.	J	T					
88. Ivy International Core Equity A	A	Int./Div.	J	T					
89. Calvert Income A	A	Int./Div.	J	T					
90. Pioneer Equity Income A	A	Int./Div.	J	T					
91. Sit Dividend Growth Fund	A	Int./Div.	J	T					
92. AllianceBertein Small Cap Growth A	A	Int./Div.	J	T					
93. Columbia Small Cap Value Fund I Class A	A	Int./Div.	J	T					
94. City of Knoxville TN Pension Plan G Option 1	A	Int./Div.	J	T					
95. First Tennessee Bank cash accounts	A	Int./Div.	K	T					
96. Avivia Advantage Builder Series III whole life Insurance pol	A	Int./Div.	K	T					
97. Guardian Modified Benefit whole life insurance policy	A	Int./Div.	J	T					
98. Hartford whole life insurance policy	A	Int./Div.	J	T					
99. Lincoln National universal whole life insurance policy	A	Int./Div.	K	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting	Date of Report
	Reeves, Pamela L.	05/16/2013

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

The firm where I currently practice law changed names in September 2012 when Robert Murrian retired and Heather Anderson joined us. At that time the name changed from Reeves, Herbert & Murrian, P.A. to Reeves, Herbert & Anderson, P.A.

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Reeves, Pamela L.	Date of Report 05/16/2013

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/ Pamela L. Reeves**

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		32	000	Notes payable to banks-secured (auto)		22	242
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		381	705	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		9	700
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		162	511
Real estate owned – see schedule		875	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000				
Cash value-life insurance		87	253				
Other assets itemize:							
City of Knoxville Pension Plan		2	092				
				Total liabilities		194	453
				Net Worth	1	258	597
Total Assets	1	453	050	Total liabilities and net worth	1	453	050
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 International Group stock	$ 12,688
Apple Computer stock	10,350
Aspen Insurance Holdings, Ltd. stock	4,562
Astrazeneca PLC stock	2,602
Bank of America Corp. stock	8,568
Berkshire Hathaway stock	16,296
Biglari Holdings, Inc.	7,215
Calamos Asset Management, Inc. stock	4,185
Chesapeake Energy Corporation stock	4,331
Cisco Sys Inc. stock	4,166
DirecTV stock	10,131
Douglas Dynamics, Inc. stock	1,766
Fairfax Financial Holdings Limited stock	11,793
First Financial Holdings Limited stock	1,526
Goldman Sachs stock	7,269
Intel stock	6,829
JP Morgan & Co stock	9,752
Leucadia National Corporation stock	10,952
Lockheed Martin stock	4,794
Loews Corporation stock	6,813
Markel Corp. stock	2,667
Microsoft stock	8,205
Oaktree Capital Group stock	3,217
RenaissanceRe Holdings Ltd stock	9,128
Tesco PLC ADRF stock	6,864
Unilever PLC ADRF stock	4,344
UnitedHealth Group stock	8,838
Vodafone Group stock	9,860
AllianceBerntein Small Cap Growth Fund	200
American Funds AMCAP Fund	748
American Funds EuroPacific Growth Fund	1,500
American Funds New Perspective Fund	12,959
American Funds Washington Mutual Investors Fund	11,810
BlackRock Equity Dividend Fund	913
Calvert Income Fund	499
Calvert Short Duration Income Fund	748
Charles Schwab Money Market Fund	29,346
Columbia Small Cap Value Fund I	192
CREF Bond Market Fund	506
CREF Equity Fund	716
CREF Global Equities Fund	528
CREF Growth Fund	540

CREF Money Market Fund	307
Fidelity Advisor Small Cap Fund	261
Ivy International Core Equity Fund	748
JPMorgan Mid Cap Value Fund	545
Nationwide Investors Destination Moderately Conservative Fund	9,587
Perkins Small Cap Value Fund	260
PIMCO Total Return Fund	1,235
Pioneer Equity Income Fund	399
Prudential Guaranteed Income Fund	796
Prudential Jennison Mid-Cap Growth Fund	196
Sit Dividend Growth Fund	349
SunAmerica Focused Alpha Growth Fund	6,557
SunAmerica Focused Multi-Asset Strategy Fund	9,331
SunAmerica Money Market Fund	5,912
SunAmerica Strategic Bond Fund	3,133
Transamerica Stable Value Fund	748
Vanguard Energy Fund	2,196
Vanguard Growth and Income Fund	11,643
Vanguard Health Care Fund	38,970
Vanguard Windsor II Fund	21,886
Weitz Value Portfolio	4,815
Wells Fargo Advantage Growth Fund A	915
Total Listed Securities	$ 381,705

Real Estate Owned	
Personal residence	$ 330,000
Undeveloped land #1	100,000
Undeveloped land #2 (50% interest)	50,000
Family residence #1 (20% interest)	20,000
Rental property #1 (50% interest)	25,000
Rental property #2 (50% interest)	25,000
Vacation home (50% interest)	175,000
Business address (50% interest)	150,000
Total Real Estate Owned	$ 875,000

Real Estate Mortgages Payable	
Personal residence – mortgage	$ 116,321
Personal home equity line of credit	46,190
Total Real Estate Mortgages Payable	$ 162,511

AFFIDAVIT

I, PAMELA L. REEVES, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5-17-2013
(DATE)

Pamela L Reeves
(NAME)

Pamela L Simpson
(NOTARY)

PAMELA D. SIMPSON
STATE
OF
TENNESSEE
NOTARY
PUBLIC
KNOX COUNTY

My Commission Expires:
March 6, 2016

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Vince Girdhari Chhabria

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

   United States District Court 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.

   Office: San Francisco City Attorney's Office
   City Hall, Room 234
   One Dr. Carlton B. Goodlett Place
   San Francisco, California 94102

   Residence: Corte Madera, California

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

   1969; 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.

   1995 – 1998, Berkeley Law School (Boalt Hall); J.D., 1998

   1987 – 1991, University of California, Santa Cruz; B.A., 1991

   July 1990 – August 1990, Casa Nicaraguense de Espanol; no degree

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

2005 – present
San Francisco City Attorney's Office
City Hall, Room 234
One Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Deputy City Attorney for Government Litigation (2005 – present)
Co-Chief of Appellate Litigation (2011 – present)

2002 – 2004
Covington & Burling, LLP
One Front Street, 35th Floor
San Francisco, California 94111
Litigation Associate

2001 – 2002
Supreme Court of the United States
One First Street, NE
Washington, DC 20543
Law Clerk to Associate Justice Stephen G. Breyer

2001
Keker & Van Nest, LLP
633 Battery Street
San Francisco, California 94111
Litigation Associate

1999 – 2000
United States Court of Appeals for the Ninth Circuit
The James R. Browning Courthouse
95 Seventh Street
San Francisco, California 94103
Law Clerk to Judge James R. Browning

1998 – 1999
United States District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102
Law Clerk to Judge Charles R. Breyer

Summer 1997
Office of Policy Development (now Office of Legal Policy)
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
Summer Law Intern

Summer 1996 (now defunct)
Graham & James, LLP
Los Angeles, California
Summer Associate

1992 – 1995
Representative Lynn C. Woolsey (Ret.)
United States House of Representatives
Washington, DC 20515
Legislative Assistant, Washington Office (1995)
Deputy Campaign Manager, Petaluma (1994)
Legislative Assistant, Washington Office (1993 – 1994)
Campaign Field Coordinator, Petaluma (1992)

1992
University of California at Santa Cruz
1156 High Street
Santa Cruz, California 95064
Teaching Assistant, Politics Department

1991
Atchison, Barisone, Condotti & Kovacevich
333 Church Street
Santa Cruz, California 95060
Legal Assistant

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

   I have not served in the military. I timely 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.

   California Lawyers of the Year, The Recorder (2009)

   Best Lawyers Under 40, National Asian Pacific American Bar Association (2009)

   Top 20 Lawyers Under 40 in California, The California Daily Journal (2008)

   Young Public Lawyer of the Year, International Municipal Lawyers Association (2008)

   Order of the Coif, Boalt Hall School of Law (1998)

Honors in the Politics Major, University of California at Santa Cruz (1991)

Honors in the Politics Oral Examination, University of California at Santa Cruz (1991)

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

Asian American Bar Association of the Greater Bay Area
California Bar Association
National Asian Pacific American Bar Association
North American South Asian Bar Association
South Asian Bar Association of Northern California

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, 2001

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 Supreme Court, 2005
Ninth Circuit Court of Appeals, 2002
Northern District of California, 2001
Central District of California, 2001
Southern District of California, 2001
Eastern District of California, 2001
California Courts, 2001

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 Constitution Society for Law and Policy
(approximately 2006 – present)

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

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

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

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

Tribute, *Play Soft Music For Them*, 73 Mont. L. Rev. 1, 9 (Winter 2012). Copy supplied.

Blog, *49er Huddle*, San Jose Mercury News (2006 – 2007). Partial collection supplied. Due to a server change, the San Jose Mercury News has lost most of my blog entries from this site. I was able to recover the following entries from the internet archive, and have supplied copies of them:

Chronicles Of A Quarterbacking Disaster (Nov. 12, 2007)

Rock Bottom (Oct. 28, 2007)

Finally, An End-Around (Sept. 11, 2007)

Final Roster Cuts: Is Williams On A Scholarship? (Sept. 3, 2007)

Why Patrick Willis Scares Me (Apr. 19, 2007)

"Youth" Not The Reason For 49ers' Failings (Oct. 17, 2006)

Observations: Bad Defensive Coaching, Bad Defensive Players, Or Both? (Oct. 15, 2006)

49ers-Chargers: What To Look For (Oct. 12, 2006)

Will Smith Prove Himself Worthy Of The #1 Pick? (Oct. 11, 2006)

Observations: Win Deflects Criticism Of Defense . . . For Now (Oct. 8, 2006)

49ers-Raiders: What To Look For (Oct. 5, 2006)

John York Or Al Davis: Which Owner Would You Prefer? (Oct. 3, 2006)

49ers-Chiefs: Searching Desperately For A Bright Side (Oct. 1, 2006)

49ers-Chiefs: What To Look For (Sept. 28, 2006)

No Comparison Between Nolan's Decision And Mariucci's (Sept. 26, 2006)

49ers-Eagles: Observations (Sept. 24, 2006)

49ers-Eagles: What To Look For (Sept. 21, 2006)

Should 49ers Spell Gore A Bit? (Sept. 20, 2006)

Win Puts A Rosy Gloss On Bryant's Outburst (Sept. 18, 2006)

49ers-Rams Observations (Sept. 17, 2006)

49ers-Rams: What To Look For (Sept. 14, 2006)

49ers' 2-Tight End Sets Part Of Growing League Trend (Sept. 13, 2006)

49ers-Cardinals: Observations (Sept. 11, 2006)

49ers-Cardinals: What To Look For (Sept. 8, 2006)

Managing Expectations (Sept. 7, 2006)

Rating The Rookies (Sept. 5, 2006)

The Final Roster Cuts (Sept. 4, 2006)

49ers-Chargers: Observations (Sept. 2, 2006)

The 49ers And Your Fantasy Draft (Sept. 1, 2006)

With T. Stewart, *Courts Wrongly Continue Bias Against Gays*, Daily Journal (Sept. 25, 2006). Copy supplied.

Letters to the Green, *Make A Deal*, San Francisco Chronicle (Apr. 9, 2006). Copy supplied.

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

I have not prepared or contributed to the preparation of any reports, memoranda or policy statements on behalf of any bar association, committee, conference, or organization of which I am or was a member.

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

Joint letter to Senate Judiciary Committee supporting nomination of Alison J. Nathan to become a judge on the United States District Court for the Southern District of New York (2011). Copy supplied.

Letter to the Administrative Office of the U.S. Courts, Committee on Rules of Practice and Procedure, opposing an amendment to the Federal Rules of Appellate Procedure allowing unpublished memorandum dispositions to be cited as precedent by litigants. (2004). Copy supplied.

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

March 27, 2013: Speaker, San Francisco Affirmative Litigation Program Seminar, Yale Law School, New Haven, Connecticut. I discussed strategic issues in

constitutional litigation, focusing on San Francisco's legal defense of its universal health care program and its challenge to California's ban on same-sex marriage. I have no notes, transcript or recording. The address of Yale Law School is 127 Wall Street, New Haven, CT 06511.

June 25, 2011: Panelist, "Supreme Court Term Review," North American South Asian Bar Association (NASABA), Annual Convention, Los Angeles, California. I have no notes, transcript or recording. NASABA can be contacted through its president, Nadeem Bezar, Kolsby Gordon LLP, 2000 Market Street, 28th Floor, Philadelphia, PA 19103.

Summer 2011: Co-Speaker, Brown Bag Lunch, United States District Court for the Northern District of California, San Francisco, California. I spoke to a group of law clerks and externs about working at the City Attorney's Office. I have no notes, transcript or recording. The address of the United States District Court for the Northern District of California is 450 Golden Gate Avenue, San Francisco, CA 94102.

May 10, 2011: Panel moderator, "Judgment Day for Class Actions at the Supreme Court," sponsored by the Northern California Chapter of the Association of Business Trial Lawyers, San Francisco, California. The panel focused on the then-pending Supreme Court decisions in *Wal-Mart v. Dukes*, Case No. 10-277, and *AT&T Mobility v. Concepcion*, Case No. 09-893. I have no notes, transcript or recording. The Executive Director of the Northern California Chapter of the Association of Business Trial Lawyers, Michele Bowen, can be reached at P.O. Box 696, Pleasanton, CA 94566.

September 2010: Panelist, Annual Law Clerk Orientation, Ninth Circuit Court of Appeals, San Francisco, California. The panel consisted of former Ninth Circuit clerks describing their experiences. I have no notes, transcript or recording. The address of the Ninth Circuit Court of Appeals is the James R. Browning Courthouse, 95 Seventh Street, San Francisco, CA 94103.

Summer 2010: Co-Speaker, Brown Bag Lunch, United States District Court for the Northern District of California, San Francisco, California. I spoke to a group of law clerks and externs about working at the City Attorney's Office. I have no notes, transcript or recording. The address of the United States District Court for the Northern District of California is 450 Golden Gate Avenue, San Francisco, CA 94102.

June 5, 2010: Panelist, "Innovation in Law and Public Policy," National Asian Pacific American Bar Association (NAPABA), Western Regional Conference, San Francisco, California. This panel consisted of lawyers and legislators, and focused on the relationship between lawyers and legislators in the policymaking process. I have no notes, transcript or recording. NAPABA can be contacted

through its Executive Director, Tina Matsuoka, at 1612 K Street, NW, Suite 1400, Washington, DC 2006.

February 2, 2010: Speaker, "American Constitution Society Presents Vince Chhabria," University of San Francisco Law School, San Francisco, California. I spoke to students about San Francisco's universal health care program and our office's defense of that program in court. I have no notes, transcript or recording. This event was sponsored by the University of San Francisco student chapter of the American Constitution Society, whose address is 2199 Fulton Street, San Francisco, CA 94117.

September 2009: Panelist, Annual Law Clerk Orientation, Ninth Circuit Court of Appeals, San Francisco, California. This panel consisted of former Ninth Circuit clerks describing their experiences. I have no notes, transcript or recording. The address of the Ninth Circuit Court of Appeals is James R. Browning Courthouse, 95 Seventh Street, San Francisco, CA 94103.

June 26, 2009: Panelist, "Appellate Advocacy," North American South Asian Bar Association (NASABA), Annual Convention, Vancouver, Canada. This panel provided guidance to practitioners on how to brief and argue appeals. I have no notes, transcript, or recording. NASABA can be contacted through its president, Nadeem Bezar, Kolsby Gordon LLP, 2000 Market Street, 28th Floor, Philadelphia, PA 19103.

Spring 2009: Speaker, Seminar on Advanced Issues In Constitutional Law, Berkeley Law School, Berkeley, California. I spoke to students about San Francisco's challenge to California's ban on same-sex marriage. I have no notes, transcript or recording. The address of Berkeley Law School is University of California, Berkeley, Boalt Hall, Berkeley, CA 94720.

Fall 2008: Speaker, Seminar on Local Government Law, Berkeley Law School, Berkeley, California. I spoke to a seminar of students about issues in local government law, including the relationship between attorneys and legislators. I have no notes, transcript or recording. The address of Berkeley Law School is University of California, Berkeley, Boalt Hall, Berkeley, CA 94720.

June 18, 2008: Panelist, "Former Clerks Share Advice on Clerkship Applications And Experiences," Bay Area Lawyer Chapter of the American Constitution Society, San Francisco, California. This panel spoke to law students about the experience of clerking in the federal courts and the process of applying for federal judicial clerkships. I have no notes, transcript or recording. The address of the American Constitution Society is 1333 H Street Northwest, 11th Floor, Washington, DC 20005.

May 2, 2008: Panelist, "Health Care Reform: Does the Federal Law Prevent Local Governments from Providing Universal Health Care to Their Citizens?," Bay

Area Lawyer Chapter of the American Constitution Society, San Francisco, California. This panel discussed the litigation involving San Francisco's universal health care program and its implications for health reform in other jurisdictions. I have no notes, transcript or recording. The address of the American Constitution Society is 1333 H Street Northwest, 11th Floor, Washington, DC 20005.

February 7, 2007: Participant, affirmative litigation workshop, Berkeley Law School, Berkeley, California. This course was taught by lawyers from the San Francisco City Attorney's Office in conjunction with Berkeley Law School faculty. I attended the February 7 session to review and provide feedback to students' affirmative litigation ideas relating to youth and family issues. I have no notes, transcript or recording. The address of Berkeley Law School is Boalt Hall, Berkeley, CA 94720.

April 1994: Speaker, Meeting of the Marin Interfaith Task Force on Central America, Petaluma, California. I spoke on behalf of Rep. Lynn Woolsey about my experience as an election monitor at the 1994 presidential election in El Salvador. I have no notes, transcript or recording. The address of the Marin Interfaith Task Force on Central America (which is now called the Marin Interfaith Task Force on the Americas) is P.O. Box 925, Larkspur, CA 94925.

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 addition to the interviews listed below, on several occasions I have spoken with groups of reporters on behalf of my clients outside the courthouse immediately following hearings in my high-profile cases. Although transcripts are not available for these sessions with reporters, my comments are essentially captured by the articles that quoted me from these sessions. I have listed all such articles below. In addition, although local television and radio stations were typically present at these courthouse media sessions, in most instances footage of the local television and radio reports are unavailable on the internet and unavailable from the stations themselves. I have included in the list below all television and radio interviews identified to me by the local stations, as well as all television and radio interviews I was able to recall independently or find online.

Ronnie Cohen, Steve Gorman, Scott Malone, Nick Zieminski, *San Francisco Surrenders In Fight Over Cell Phone Warnings*, Reuters News (May 8, 2013). Copy supplied. (Reprinted in multiple outlets).

Adam Liptak, *Marriage Ban Led Lawyers To Shift Role*, New York Times (Mar. 19, 2013). Copy supplied. (Reprinted in multiple outlets).

Stephanie M. Lee, *Mixed Reaction From Experts After Italian Ruling On Brain*

Tumor, San Francisco Chronicle (Nov. 7, 2012). Copy supplied. (Reprinted in multiple outlets).

Laird Harrison, *SF Recycling Center Takes Inspiration From 1967 Hippie Protest*, KQED Bay Area News Blog (Sept. 14, 2012). Copy supplied.

Television interview regarding Haight-Ashbury Recycling Center, KTVU (Sept. 14, 2012). I have no notes, transcript or recording, but press coverage is supplied.

Bob Egelko, *New Review Of S.F. Permit Rules For Tow Trucks Ordered*, San Francisco Chronicle (Aug. 29, 2012). Copy supplied.

C.W. Nevius, *On San Francisco: Car Theft Victim Gets Taken For Costly Ride*, San Francisco Chronicle (Aug. 14, 2012). Copy supplied.

Josh Wein, *Robust Supreme Court First Amendment Jurisprudence Could Prove Problematic For San Francisco Cellphone Law*, Communications Daily (Aug. 10, 2012). Copy supplied. (Reprinted in multiple outlets).

Marguerite Reardon, *San Francisco Faces Wireless Industry In Court Over Radiation Warnings*, CNET News (Aug. 9, 2012). Copy supplied. (Reprinted in multiple outlets).

C.W. Nevius, *Infinite Democracy – And Endless Delays*, San Francisco Chronicle (July 7, 2012). Copy supplied.

C.W. Nevius, *Haight Recycling Center Finished – Isn't It?*, San Francisco Chronicle (July 5, 2012). Copy supplied.

Robert Iafolla, *Behind-Closed-Doors Process Is High Stakes*, Daily Journal (May 14, 2012). Copy supplied.

The War Room with Jennifer Granholm, *The Justices Turn Hostile During The Second Day Of The Health Care Case*, CurrentTV (March 27, 2012). I have been unable to obtain a complete copy, but a clip is available at http://current.com/shows/the-war-room/videos/the-justices-turn-hostile-during-the-second-day-of-the-health-care-case.

Cynthia Foster, *Cell Industry Lawyers Thrown Curve On Fee Request*, The Recorder (Jan. 4, 2012). Copy supplied.

Kate Moser, *Youth Movement In Santa Clara*, The Recorder (Dec. 2, 2011). Copy supplied.

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Lawrence Hurley, *Did Fates Conspire To Allow Kagan To Duck Health Care Issue?*, Washington Briefs Blog (Apr. 7, 2011). Copy supplied.

Kent German, *CTIA Argues SF Cell Phone Law Violates First Amendment*, CNET News (Apr. 1, 2011). Copy supplied. (Reprinted in multiple outlets).

Rachel Gordon, Heather Knight, *Park Vendor Goes To Court*, San Francisco Chronicle (Mar. 10, 2011). Copy supplied.

Andrew S. Ross, *Radiation Postings Delayed*, San Francisco Chronicle (Feb. 27, 2011). Copy supplied.

Ginny LaRoe, *Catholics Get Standing To Sue S.F. (but Don't Win)*, The Recorder (Nov. 1, 2010). Copy supplied.

Bob Egelko, *Court Rejects Suit Over S.F.'s Blast At Vatican*, San Francisco Chronicle (Oct. 23, 2010). Copy supplied. (Reprinted in multiple outlets).

Julia Cheever, *Catholic Church's Suit Against SF Supes Condemnation of Archbishop's 'Hateful' Statement Dismissed*, The San Francisco Appeal (Oct. 22, 2010). Copy supplied.

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Amanda Bronstad, *S.F. Restaurant Owners Seek Review Of Health Care Law*, The Recorder (June 26, 2009). Copy supplied.

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Bob Egelko, *Judge Sets Hearing For Possible Injunction*, San Francisco Chronicle (Oct. 10, 2008). Copy supplied. (Reprinted in multiple outlets).

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Donna Domino, *Tenant Buyout Provision Appears Safe, For Now*, Daily Journal (Jan. 25, 2006). Copy supplied.

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Bob Egelko, *Terror Rulings Highlight Supreme Court Term; Liberals, Conservatives Can Count Victories, But Justices Leave Many Questions Hanging*, San Francisco Chronicle (July 5, 2004). Copy supplied.

John Scheibe, *Cross Issue Solution Pleases All: City Avoids Costly Legal Fight; People Can Still Enjoy Landmark*, Ventura County Star (Sept. 24, 2003). Copy supplied. (Reprinted in multiple outlets).

Tom Kisken, *Defender Of Faith – Or Assailant? Group Opposed To Cross Says It's Protecting Rights*, Ventura County Star (Sept. 21, 2003). Copy supplied.

Steve Chawkins, *Future A Bit Dimmer For Ventura Cross*, Los Angeles Times (Aug. 23, 2003). Copy supplied.

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Tracy Wilson, Steve Chawkins, *Ventura's Plan To Sell Cross Is On Shaky Ground, Suit Says*, Los Angeles Times (May 10, 2003). Copy supplied. (Reprinted in multiple outlets).

John Scheibe, *Conservative Legal Group Offers To Defend Cross: Mayor Says Ventura Hopes To Settle Out Of Court*, Ventura County Star (Apr. 23, 2003). Copy supplied.

Sean Scully, *Ventura Faces Suit Over Park's Cross; Atheists, Agnostics Say Christian Symbol 'Treads On Their Rights'*, Washington Times (Apr. 14, 2003). Copy supplied.

Steve Chawkins, *Ventura's Hilltop Cross Now A Beacon for Controversy*, Los Angeles Times (Apr. 3, 2003). Copy supplied.

John Scheibe, *Attorney Takes Aim At Cross Above Ventura: Religious Symbol On City Parkland Violates Constitution, Says S.F. Lawyer Representing Group Of County Residents*, Ventura County Star (Mar. 29, 2003). Copy supplied.

Sylvia Rubin, *Singing the Praises of 'Sopranos'; Bay Area Fans Have Their Own Club*, San Francisco Chronicle (June 29, 1999). Copy supplied.

Patrick May, *For Some, It Was A Non-Event; Many TV Viewers Had Hoped For A Discussion Of Sex Allegations*, San Jose Mercury News (Jan. 28, 1998). Copy supplied.

John D. O'Connor and John Flynn, *Stories Tell Of The Awful And Absurd*, Denver Rocky Mountain News (Oct. 20, 1989). Copy supplied.

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

I have not held any judicial office.

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

i. Of these, approximately what percent were:

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

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

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

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

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

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

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

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

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

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

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

I have never been a judge.

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

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

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

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

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

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

I have not held 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.

From September to November 1992, I served as a field coordinator for the campaign of Lynn C. Woolsey, then vice-mayor for the City of Petaluma, to become a member of the U.S. House of Representatives for the Sixth Congressional District of California. I was responsible for coordinating the activities of campaign volunteers in the areas of fundraising and voter outreach.

From April to November 1994, I served as deputy campaign manager for Representative Woolsey's reelection campaign. I was responsible for fundraising, voter outreach and media relations.

I served as an election weekend volunteer for then-Assemblyman Mike Honda's campaign to become a member of the U.S. House of Representatives in 2000 and for then-Senator John Kerry's campaign to become president in 2004.

In 2012, I periodically volunteered for the campaign of City Attorney Dennis J. Herrera to become mayor of San Francisco.

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 1998 to 1999, I was a law clerk to Judge Charles R. Breyer, District Judge of the United States District Court for the Northern District of California.

From 1999 to 2000, I was a law clerk to Judge James R. Browning, Circuit Judge of the United States Court of Appeals for the Ninth Circuit.

From 2001 to 2002, I was a law clerk to Justice Stephen G. Breyer, Associate Justice of the Supreme Court of the United States.

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.

2001
Keker & Van Nest, LLP
633 Battery Street
San Francisco, California 94111
Litigation Associate

2002 – 2004
Covington & Burling, LLP
One Front Street, 35th Floor
San Francisco, California 94111
Litigation Associate

2005 – present
San Francisco City Attorney's Office
City Hall, Room 234
One Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Deputy City Attorney for Government Litigation (2005 – present)
Co-Chief of Appellate Litigation (2011 – present)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

In 2001, between my clerkships for the Ninth Circuit and the Supreme Court, I worked as a litigation associate at Keker & Van Nest, LLP, in San Francisco. I primarily defended corporate clients in intellectual property disputes.

From 2002 to 2004, I worked as a litigation associate at Covington & Burling, LLP, in San Francisco. I primarily defended corporate clients and corporate executives in white collar criminal cases and related civil matters. I also developed a pro bono relationship with the Marin County Public Defender's Office, for which I tried two cases and handled numerous others that resolved before trial.

Since February 2005, I have practiced as a member of the Government Litigation Team in the San Francisco City Attorney's Office. In this capacity, I defend the voters of San Francisco, the Mayor, the Board of Supervisors, and other government agencies in challenges to local ordinances, regulations or policies. In almost every instance, I serve as lead counsel, briefing and arguing all motions, responding to media inquiries on behalf of the clients, and overseeing discovery when applicable. In addition to my duties as a member of the Government Litigation Team, I began serving as Co-Chief of Appellate Litigation for the office in 2011, overseeing all appeals. In this capacity I review and edit briefs, provide strategic guidance, prepare attorneys for oral argument, and personally handle certain appellate arguments. Sometimes I also do trial work in the City Attorney's Office, assisting the Trial Team in defending the City or its employees at trial. I occasionally participate in affirmative litigation matters as well.

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

At Keker & Van Nest, LLP, I primarily defended corporations in intellectual property disputes.

At Covington & Burling, LLP, I primarily defended corporations and corporate executives in criminal and civil proceedings. For example, I defended a natural gas derivatives trader charged with price manipulation, a credit card company CEO in criminal and civil securities fraud proceedings, a nursing home corporation in a criminal investigation regarding nursing home practices and procedures, an elected official in a trial involving allegations of political corruption, and a medical device company CFO in criminal and civil securities fraud proceedings.

Since coming to the City Attorney's Office in February 2005, I have primarily defended the voters of San Francisco, the Mayor of San Francisco, the San Francisco Board of Supervisors, San Francisco's various departments and commissions, and the San Francisco Unified School District. These cases usually involve challenges to local ordinances, regulations or policies. In my capacity as Co-Chief of Appellate Litigation at the City Attorney's Office, my clients are the City and its individual employees. Most commonly in this capacity I defend San Francisco police officers who have been accused of violating the rights of criminal suspects, and other employees who have been accused of engaging in employment discrimination or other unlawful conduct.

I am primarily a generalist due to the variety of litigation matters generated by my clients, but I have developed some specialization in the areas of First Amendment and preemption law based on the frequency

with which those issues have arisen in lawsuits challenging ordinances, regulations and policies.

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

Virtually 100% of my practice has been in litigation throughout my career. In my capacity as a Deputy City Attorney, I appear in court regularly. While in private practice in 2001 and again from 2002 to 2004, I appeared in court occasionally, except during the six-month period in which I handled matters for the Marin County Public Defender's Office, during which I appeared in court regularly.

While in private practice, a higher percentage of my practice was in state court and in criminal proceedings. While at the City Attorney's Office, a higher percentage of my practice has been in federal court, and all of it has been in civil proceedings. Averaging the two, I estimate that 75% of my practice has been in federal court and 75% of my practice has been in civil proceedings.

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: 75%
   2. criminal proceedings: 25%

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

I have tried two criminal cases as sole counsel, one criminal case as associate counsel, two civil cases as co-counsel, and one civil case as associate counsel.

i. What percentage of these trials were:
   1. jury: 67%
   2. non-jury: 33%

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

I have not argued before the Supreme Court of the United States. I have served as associate counsel in one case for which the Court granted certiorari: *Hollingsworth v. Perry*, No. 12-144.

I have served as counsel of record, supervising counsel or amicus counsel in nine cases in which the Court denied certiorari. The briefs from these ten cases are supplied and are listed below:

Hollingsworth v. Perry, No. 12-144 (Brief in Opposition to Petition for a Writ of Certiorari, 2012 WL 3724711; Brief of Respondent City and County of San Francisco, 2013 WL 662703)

Alvis v. Espinosa, No. 11-84 (Petition for a Writ of Certiorari, 2011 WL 2877873; Reply in Support of Petition for a Writ of Certiorari, 2011 WL 6098047)

Catholic League for Religious and Civil Rights v. City and County of San Francisco, No. 10-1034 (Brief in Opposition to Petition for a Writ of Certiorari, 2011 WL 1155225)

Florence v. Board of Chosen Freeholders of the County of Burlington, No. 10-945 (Brief of City and County of San Francisco, International Municipal Lawyers Association, and California State Association of Counties as Amici Curiae in Support of Respondents, 2011 WL 3821290)

Beer v. United States, No. 09-1395 (Brief of the International Municipal Lawyers Association as Amicus Curiae in Support of Petitioners, 2010 WL 2481443)

Hollingsworth v. United States District Court, No. 09-1238 (Brief in Opposition to Petition for a Writ of Certiorari, 2010 WL 2665549)

Rodis v. City and County of San Francisco, No. 09-275 (Brief in Opposition to Petition for a Writ of Certiorari, 2009 WL 4709547)

Golden Gate Restaurant Association v. City and County of San Francisco, No. 08-1515) (Joint Response to Application for Order Vacating Stay of District Court Judgment, copy supplied; Joint Response to Application for Order Staying Mandate and Vacating Stay of District Court Judgment, copy supplied; Brief for Respondent in Opposition, 2009 WL 2625866; Supplemental Brief of Respondent, 2010 WL 2354754)

City and County of San Francisco v. Harman, No. 07-1377 (Petition for a Writ of Certiorari, 2008 WL 1958626; Reply Supporting Petition for a Writ of Certiorari,2008 WL 2323311)

City and County of San Francisco v. Rodis, No. 07-1376 (Petition for a Writ of Certiorari, 2008 WL 1958625; Reply Supporting Petition for a Writ of Certiorari, 2009 WL 4882612)

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.

    The following cases are listed in reverse chronological order from start date:

    1. *Conley v. City and County of San Francisco, et al.*, U.S. District Court Case No. 12-00454; Honorable Joseph C. Spero (N.D. Cal.); 2013.

    I serve as co-counsel representing the City and a police officer in a wrongful conviction lawsuit brought under 42 U.S.C. section 1983. I briefed and argued the defendants' motion for summary judgment, assisted in trial preparation strategy, and am currently handling the appellate work. The plaintiff alleges he was wrongfully convicted and imprisoned for murder based on a Brady violation by the police officer, and that the City is for the officer's conduct based on an alleged custom of allowing officers to commit Brady violations. The defendants contend there was no Brady violation, the City has no custom of allowing officers to commit Brady violations, and that in any event the police officer is entitled to qualified immunity.

    Co-Counsel:

    Peter Keith
    Joshua White
    San Francisco City Attorney's Office
    1390 Market Street
    San Francisco, CA 94102
    415-554-4700

Opposing Counsel:

Daniel Purcell
Keker & Van Nest
633 Battery Street
San Francisco, CA 94111
415-773-6697

2. *Mattingly v. City and County of San Francisco*, U.S. District Court Case No. 10-0193; Honorable Jacqueline Scott Corley (N.D. Cal.); 2011-2012.

I served as co-counsel representing a police officer in a federal jury trial, handling eight witnesses, including direct examinations, cross-examinations, and expert testimony. I also prepared and argued jury instructions and motions in limine. The plaintiff alleged the officer broke his arm during an arrest, while the officer contended the plaintiff was highly intoxicated during the arrest and that his injury must have occurred before the arrest. The trial lasted approximately two weeks. The jury returned a verdict for the officer.

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Opposing Counsel:

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3. *BHR v. City and County of San Francisco*, San Francisco Superior Court Case No. 10-498514; Honorable Richard A. Kramer; 2011 – present.

I served as co-counsel for the City in a state-court bench trial, handling the witnesses who testified at trial, delivering the opening statement, and serving as lead author in pre-trial briefing. The case involves a challenge to a regulation implementing San Francisco's hotel occupancy tax. The plaintiffs argue that the regulation represents an unreasonable interpretation of the underlying tax ordinance, and that San Francisco is barred from enforcing the regulation because tax officials enforced the ordinance in a manner inconsistent with the regulation prior to its enactment. The City argues that the regulation is authorized by the

ordinance and that its tax officials did not interpret the ordinance differently prior to the regulation's enactment. The matter is presently under submission.

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Opposing Counsel:

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4. *CTIA – the Wireless Association v. City and County of San Francisco*, Ninth Circuit Case Nos. 11-17707 and 11-17773, 494 Fed.Appx. 752, Honorable Consuelo Callahan, Mary Schroeder and Edward Korman (by designation); 827 F.Supp.2d 1054 (N.D. Cal. 2011); Honorable William Alsup (N.D. Cal.); 2010 – 2013.

I served as lead counsel for the City, handling all discovery, motions, and arguments. This case involved a First Amendment and federal preemption challenge to an ordinance requiring retailers to disclose information about the possible health effects of radiofrequency energy from cell phones. The district court granted in part and denied in part the Cellular Telecommunications Industry Association's (CTIA) motion for a preliminary injunction, ruling that the disclosure requirement was not preempted and would satisfy First Amendment scrutiny so long as certain potentially misleading aspects of it were removed. The parties cross-appealed, and the Ninth Circuit held for the plaintiff, ruling in an unpublished opinion that the First Amendment precludes governments from requiring disclosures about the possible health effects of radiofrequency energy from cell phones because there is disagreement in the scientific community about its possible health effects, and because the Federal Communications Commission has determined that cell phones compliant with its guidelines are safe for use. The Ninth Circuit denied the City's petition for rehearing en banc, and the City reached a settlement with the plaintiff whereby a stipulated judgment was entered against the City in exchange for a waiver of attorney's fees.

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202-719-7135

5. *Walgreen Co. v. City and County of San Francisco*, 185 Cal.App.4th 424 (2010), Honorable William McGuiness, Stuart Pollak, Martin Jenkins (First District Court of Appeal); Superior Court Case No. 479553, Honorable Peter Busch (S.F. Superior); 2008 – 2010.

I served as lead counsel defending the City, handling all motions and arguments. The case involved an equal protection challenge to an ordinance banning the sale of tobacco products in drug stores. Plaintiff argued that the City violated equal protection by banning tobacco sales in drug stores that contained pharmacies, but not grocery stores or big box stores that contained pharmacies. Plaintiff also argued that the City violated Proposition I, a local initiative measure, by enacting the legislation prior to the preparation of an economic impact report. The trial court ruled in favor of the City. The California Court of Appeal reversed on the equal protection issue, holding that the complaint stated a claim for violation of the equal protection provisions of the federal and state constitutions. The appellate court affirmed the trial court's ruling that the City did not violate Proposition I. The San Francisco Board of Supervisors, to obviate the need for litigation on the appropriate remedy for the equal protection violation on remand, enacted legislation extending the tobacco sales ban to grocery stores and big box stores that contain pharmacies. Safeway challenged the amended ordinance in federal court on equal protection and other grounds, but the district court granted the City's motion to dismiss, and Safeway did not appeal.

Opposing Counsel:

Daniel Kolkey
Rebecca Justice Lazarus
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415-393-8240

6. *Catholic League for Religious and Civil Rights v. City and County of San Francisco*, United States Supreme Court Case No. 10-1034; 624 F.3d 1043 (9th Cir. 2011) (en banc), Honorable Alex Kozinski, Pamela Ann Rymer, Andrew Kleinfeld, Michael Hawkins, Sidney Thomas, Barry Silverman, Susan Graber, Margaret McKeown, Richard Clifton, Jay Bybee, Sandra Ikuta; 567 F.3d 595 (9th Cir. 2009), Honorable Richard Paez, Marsha Berzon and Proctor Hug; 484 F.Supp.2d 938 (N.D. Cal. 2006), Honorable Marilyn Hall Patel (N.D. Cal.); 2006 – 2011.

I served as lead counsel defending the City, handling all briefing and argument. The case involved an Establishment Clause challenge to a resolution enacted by the Board of Supervisors criticizing the Vatican's statements that children should not be placed for adoption with same-sex couples. The plaintiffs argued that the resolution expressed hostility towards religion in violation of the Establishment Clause. The City argued that the resolution was directed at discrimination rather than religion. Under San Francisco law, the Board of Supervisors can enact nonbinding resolutions without involvement of the City Attorney's Office, but the Office defends the Board in any lawsuit arising from such resolutions. The district court granted the City's motion to dismiss, and a three-judge panel of the Ninth Circuit affirmed. The full Ninth Circuit ordered rehearing en banc, and again affirmed, with five judges concluding that the plaintiffs lacked standing, and three judges concluding that the plaintiffs had standing but failed to state an Establishment Clause claim. Plaintiff filed a petition for a writ of certiorari with the Supreme Court, which was denied.

Opposing Counsel:

Robert Muise
American Freedom Law Center
3000 Green Road, No. 131098
Ann Arbor, MI 48113
855-835-2352

7. *Golden Gate Restaurant Association v. City and County of San Francisco*, United States Supreme Court Case No. 10-1034; 546 F.3d 639 (9th Cir. 2008) (opinion on the merits), 512 F.3d 1112 (9th Cir. 2008) (opinion granting

emergency stay application), Honorable Stephen Reinhardt, William Fletcher, Alfred Goodwin (Ninth Circuit); 535 F.Supp.2d 968 (N.D. Cal. 2007); Honorable Jeffrey White (N.D. Cal.); 2006 – 2010.

I served as lead counsel defending the City, handling all discovery, briefing, and argument. The case involved a preemption challenge to the portion of San Francisco's universal health care program that requires employers to make health care expenditures on behalf of employees. The plaintiff argued that the health care spending requirement was preempted by the Employee Retirement Income Security Act of 1974 ("ERISA") on the ground that local governments may not impose employee benefit spending requirements on employers. The City argued that the ordinance was not preempted because it gave employers a reasonable, non-ERISA option for complying with the spending requirement (namely, paying the City to fund Healthy San Francisco, the City's government-run health care program). The district court granted summary judgment for the plaintiff, but the Ninth Circuit stayed the district court's ruling and ultimately reversed, holding that the ordinance was not preempted by ERISA. The plaintiff filed a petition for a writ of certiorari. The Supreme Court called for the views of the Solicitor General and then denied the petition.

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8. *The Marriage Cases* (2007 – 2013).

I have served as associate counsel in San Francisco's challenge to California's ban on same-sex marriage. In *In re Marriage Cases*, 43 Cal.4th 757 (2008), I served as lead brief writer and assisted in oral argument in the California Supreme Court phase of San Francisco's challenge to California's statutory ban on marriage by same-sex couples. The California Supreme Court ruled that California's statutory ban on marriage by same-sex couples violated the due process and equal protection provisions of the California Constitution. In *Strauss v. Horton*, 46 Cal.4th 364 (2009), I played the same role in an original writ petition brought by San Francisco in the California Supreme Court challenging Proposition 8 on the ground that it constituted a "revision" rather than an "amendment" to the state constitution and therefore was not enacted pursuant to the procedures set forth in Article 18 of the California Constitution. The Supreme Court rejected the petition. In *Hollingsworth v. Perry*, U.S. Supreme Court Case No. 12-144; 671 F.3d 1052 (9th Cir. 2012); 704 F.Supp.2d 921 (N.D. Cal. 2010), I have served as associate counsel in the City's challenge to Proposition 8 on federal equal protection and due process grounds, assisting in discovery and witness preparation at trial, the preparation of the briefs at the Ninth Circuit and Supreme Court, and preparation for oral argument in the Ninth Circuit and Supreme Court. The district court, after a bench trial, ruled that Proposition 8 violates the federal due process and equal protection provisions, and the Ninth Circuit affirmed. The United States Supreme Court vacated the judgment of the Ninth Circuit, ruling that the petitioners (the official proponents of Proposition 8) lacked standing to appeal.

Co-Counsel:

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9. *Brennan v. San Francisco Unified School District*, Superior Court Case Nos. 404817 and 448383 (S.F. Superior), Honorable James Warren, Kevin McCarthy and Harold Kahn; 2005 – 2010.

I served as lead counsel defending the San Francisco Unified School District in two class action lawsuits, handling all motions and arguments, and handling or supervising all discovery. The cases involved the school district's imposition of developer fees (fees imposed by school districts on residential and commercial development to mitigate the impact of development on school enrollment). In the first lawsuit, the plaintiffs contended that the school district had used developer fee revenue for purposes other than those set forth in the developer fee statutes, namely, construction and reconstruction of school facilities. They sought an order requiring the school district to refund $17 million in fees to the owners of the properties for which the fees had been paid. In the second lawsuit, the plaintiffs contended that the school district was not entitled to collect developer fees in the first place, because such fees were unnecessary for the construction and reconstruction of school facilities in light of declining enrollment. On the eve of trial, after extensive discovery and motions practice and after the school district defeated a class certification motion in the second case, the parties agreed to a settlement in both cases.

Co-counsel:

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Opposing Counsel:

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Hennefer Finley & Wood
425 California Street, 19th Floor
San Francisco, CA 94111
415-296-0111

10. *People v. Wharton Brown*, Marin County Superior Court Case No. 125595A, Honorable James Ritchie; 2003.

I served as defense counsel in a criminal jury trial involving charges that the defendant committed domestic abuse and resisted arrest. The trial lasted approximately one and one half weeks, with approximately ten witnesses taking the stand. The jury acquitted on one domestic abuse count, hung on another domestic abuse count, and convicted on the resisting arrest count.

Opposing Counsel:

Melissa Alonzo
Deputy District Attorney
Marin County District Attorney's Office
3501 Civic Center Drive, Room 130
San Rafael, CA 94903
415-499-6450.

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

The vast majority of my practice has always involved litigation. However, I occasionally provide written or verbal advice, outside the context of litigation, to the Mayor, the Board of Supervisors, members of San Francisco's agencies or commissions, or the San Francisco Unified School District, regarding legal risks associated with proposed policies or practices. For example, over the course of several years I provided legal advice to the school district as it considered how to revise its student assignment plan, and I am providing legal advice to the Mayor and Board of Supervisors about the interaction between the Affordable Care Act and San Francisco's universal health care program.

I also recently assisted the City Attorney in creating the Surcharge Fraud Enforcement Program in response to allegations that businesses were imposing surcharges on their customers for employee health care, but not using that money to provide health care to

employees. Through this program, the City Attorney provided an amnesty period in which businesses could agree to distribute a set amount of money to current and former employees to remedy past violations, in exchange for an agreement not to take further legal action against the businesses for those violations. Dozens of businesses participated in this program, resulting in the distribution of approximately $2 million to current and former employees.

I am not a registered lobbyist, and I have not performed any lobbying activities on behalf of any clients or organizations.

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

    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 am a member of the San Francisco Employees' Retirement System defined benefit plan, which has vested.

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

    If confirmed, I have no plans, commitments, or agreements to pursue any outside employment during judicial service.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

If confirmed, I would recuse myself from any case in which I had previously participated as an attorney. I also anticipate recusing myself for a period of time from any case in which a party is represented by the San Francisco City Attorney's Office. Otherwise, I am unaware of any individuals, whether relatives or otherwise, who would be likely to present a conflict of interest. I would review, on a case-by-case basis, the existence of a potential conflict of interest arising from any personal or former client relationships or financial interests, and would apply generally applicable principles and rules concerning ethics and conflicts of interest in conducting such an inquiry and assessing whether a recusal is warranted.

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

I would consult applicable rules, canons and decisions addressing conflicts of interest, including 28 U.S.C. § 455, the Code of Conduct for United States Judges, and the American Bar Association's Model Code of Judicial Conduct.

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

While at Covington & Burling's San Francisco office, I devoted substantial time to pro bono activities. I handled several individual matters, but the large majority of my pro bono time was devoted to establishing and executing two long-term relationships between the office and entities within the community. These relationships enabled other attorneys to devote substantial pro bono time as well. First, I arranged for the office to participate in the "Tuesday Night Clinic" for the Lawyers' Committee for Civil Rights whereby associates would conduct intake interviews of indigent people with legal problems, and handle their cases where appropriate. I handled one such matter through that clinic. Second, I established a pro bono relationship between the firm and the Marin County Public Defender's Office, whereby an associate would spend a period of six months handling selected misdemeanor cases, while still working out of the firm's office and representing the firm's paid clients. I was the first such associate, and handled numerous misdemeanor cases, including two trials.

26. **Selection Process**:

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

In March 2013, I submitted an application to Senator Boxer's judicial selection committee, and I interviewed with this committee on May 6, 2013. The committee recommended my nomination, and Senator Boxer submitted my name to the White House. Thereafter, I was in contact with officials with the Office of Legal Policy at the Department of Justice. On June 21, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 25, 2013, 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. 1/2013

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
Chhabria, Vince G.	U.S. District Court, Northern District of California	07/25/2013
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**
Nominee to be a United States District Judge	☑ Nomination Date 07/25/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 07/10/2013
7. Chambers or Office Address		
Office of the City Attorney City Hall, Room 234 San Francisco, CA 94110		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Deputy City Attorney	San Francisco City Attorney's Office
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.	2007	San Francisco Employees' Retirement System Defined Benefit Plan, no control
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Chhabria, Vince G.	Date of Report 07/25/2013

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	Salary from employment in the San Francisco City Attorney's Office	$145,960.00
2.	2012	Salary from employment in the San Francisco City Attorney's Office	$159,437.00
3.	2013	Salary from employment in the San Francisco City Attorney's Office	$71,578.00
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 7	Name of Person Reporting Chhabria, Vince G.	Date of Report 07/25/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Chhabria, Vince G.	Date of Report 07/25/2013

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. American Funds American High-Income Trust	A	Dividend	J	T					
2. American Funds AMCAP Fund	A	Dividend							
3. American Funds Mortgage Fund	A	Dividend	J	T					
4. American Funds American High-Income Trust	C	Dividend	K	T					
5. American Funds Capital World Bond Fund	A	Dividend	J	T					
6. American Funds EuroPacific Growth Fund	A	Dividend							
7. American Funds Growth Fund of America	A	Dividend							
8. American Funds International Growth And Income Fund	A	Dividend							
9. American Funds Investment Company Of America	A	Dividend							
10. American Funds New World Fund	A	Dividend							
11. American Funds SMALLCAP World Fund	A	Dividend							
12. American Funds Washington Mutual Investors Fund	A	Dividend							
13. Wells Fargo Bank Account	A	Interest	K	T					
14. Bank of America Bank Account	A	Interest	J	T					
15. San Francisco Deferred Comp. Plan Core Bond Portfolio		None	J	T					
16. San Francisco Deferred Comp. Plan Core Equity Portfolio		None	K	T					
17. San Francisco Deferred Comp. Plan Int'l Equity Portfolio		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
V =Other
W =Estimated

3. Value Method Codes (See Column C2)
Q =Appraisal
U =Book Value

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Chhabria, Vince G.	Date of Report 07/25/2013

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. San Francisco Def. Comp. Plan Large Cap Growth Equity Port.		None	K	T					
19. San Francisco Def. Comp. Plan Large Cap Value Equity Port.		None	K	T					
20. San Francisco Def. Comp. Plan Mid Cap Core Equity Port.		None	K	T					
21. Vantagepoint Model Portfolio Long-Term Growth Fund	D	Int./Div.	M	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
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 Chhabria, Vince G.	Date of Report 07/25/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Chhabria, Vince G.	Date of Report 07/25/2013

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/ Vince G. Chhabria

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		25	486	Notes payable to banks-secured (auto)		8	970
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		248	422	Notes payable to relatives			
Unlisted securities – see schedule		208	578	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		709	353
Real estate owned – personal residence	1	040	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance							
Other assets itemize:							
CalPERS pension plan		126	961				
SFERS pension plan		123	258				
				Total liabilities		718	323
				Net Worth	1	104	382
Total Assets	1	822	705	Total liabilities and net worth	1	822	705
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 American High-Income Trust	$ 54,517
American Funds Capital World Bond Fund	8,742
American Funds Mortgage Fund	9,696
Vantagepoint Model Portfolio Long-Term Growth Fund	175,467
Total Listed Securities	$ 248,422

Unlisted Securities	
San Francisco Deferred Comp. Plan Core Bond Portfolio	$ 8,953
San Francisco Deferred Comp. Plan Core Equity Portfolio	32,311
San Francisco Deferred Comp. Plan International Equity Portfolio	35,298
San Francisco Deferred Comp. Plan Large Cap Growth Equity Port.	46,229
San Francisco Deferred Comp. Plan Large Cap Value Equity Port.	45,032
San Francisco Deferred Comp. Plan Mid Cap Core Equity Portfolio	40,755
Total Unlisted Securities	$ 208,578

AFFIDAVIT

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

7/29/13
(DATE)

(NAME)

Anita Murdock
(NOTARY)

ANITA MURDOCK
Commission # 1876213
Notary Public - California
San Francisco County
My Comm. Expires Jan 11, 2014

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   James Maxwell Moody, Jr. (Jay Moody)

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

   United States District Judge for the Eastern District of Arkansas

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

   Pulaski County Courthouse
   401 West Markham, Room 240
   Little Rock, Arkansas 72201

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

   1964; El Dorado, Arkansas

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, University of Arkansas Bowen School of Law; JD, 1989

   1982 – 1986, University of Arkansas; BSBA, 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.

   2003 – present
   Third Division Circuit Court for the Sixth Judicial District of Arkansas
   Pulaski County Courthouse
   401 West Markham, Room 240

Little Rock, Arkansas 72201
Circuit Judge

Spring Semester 2004, Spring Semester 2006
University of Arkansas Bowen School of Law
1201 McMath Avenue
Little Rock, Arkansas 72202
Adjunct Professor

1989 – 2003, Summer 1988
Wright Lindsey & Jennings LLP
200 West Capitol, Suite 2300
Little Rock, Arkansas 72201
Partner (1994 – 2003)
Associate (1989 – 1994)
Summer Associate (1988)

January 1987 – September 1987
Wilson, Engstrom, Corum & Dudley
200 West Commerce, Suite 600
Little Rock, Arkansas 72203
Law Clerk

Other Affiliations (uncompensated):

2007 – present
Circle S Ranch, Inc.
2901 North Fillmore
Little Rock, Arkansas 72207
One-Tenth Voting Shareholder

2007 – present
Little Prairie Land Company
322 Cypress Creek Road
Scott, Arkansas 72142
One-Tenth Voting Shareholder

2000 – present
James M. Moody Irrevocable Trust
From my private residence
(Trustee for Father's trust)

1997 – present
Moody's Manor, LLC
(Entity holds family real estate)
401 West Markham Room 240

Little Rock, Arkansas 72201
Managing Member
(As Managing Member I facilitate the collection of oil royalties and control the management of pine plantation acreage)

1997 – present
Hannah Neal Moody Irrevocable Trust
From my private residence
(Trustee for Daughter's trust)

1994 – present
Madison Elise Moody Irrevocable Trust
From my private residence
(Trustee for Daughter's trust)

2010
Pulaski County Bar Association
1201 McMath Avenue, Room 101
Little Rock, Arkansas 72202
Board of Directors

2005
The Cathedral School
310 West 17th Street
Little Rock, Arkansas 72206
School Board

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

   I have not served in the U.S. Military. I timely registered for the selective service.

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

   Pulaski County Judge of the Year (2004, 2008, 2009, 2011, 2013)
   Pulaski County Bar Association President's Award (2009)
   Graduate of the National Judicial College General Jurisdiction (2003)
   Leadership Greater Little Rock (2002)
   Arkansas Business 40 Under 40 (2002)
   Graduate of the National Institute of Trial Advocacy (1991)

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

   Arkansas Bar Association (1989 – present)
   Arkansas Supreme Court Civil Rules Committee (2012)
   Pulaski County Bar Association (1990 – present)
   Board of Directors (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.

       Arkansas State Bar, 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.

       All courts of Arkansas, 1989
       United States District Court for the Eastern District of Arkansas, 1989
       United States District Court for the Western District of Arkansas, 1989
       Unites States Court of Appeals for the Eighth Circuit, 1989
       Supreme Court of the United States, 1989

       There have been no lapses in my 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.

       Arkansas Association of Defense Counsel (1989 – 2003)
       Arkansas Judicial Counsel (2003 – present)
       Bailes Best Made Pet Food (family business) (1991 – 1995)
       Circle S Ranch, Inc. (family business) (2007 – present)
       One-Tenth Voting Shareholder
       Defense Research Institute (1989 – 2003)

Little Prairie Land Company, Inc. (family business) (2007 – present)
One-Tenth Voting Shareholder
The Country Club of Little Rock (2003 – 2009)
Little Rock Racquet Club (2007 – present)
Moody's Chickens, LLC (family business) (1997 – 2005)
Moody's Manor, LLC (family business) (1997 – present)
Managing Member
William R. Overton Inns of Court (1995 – 2009)

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.

During my membership with the Country Club of Little Rock, it did not discriminate on the basis of race, sex, religion or national origin, but before I became a member, it did historically have an all-white membership. None of the other organizations listed above currently discriminates or has 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.

Defense Research Institute, *Products Liability Defenses, A State by State Compendium (Arkansas chapter)*, 2001. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed to the preparation of any 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.

I am required to go before the Pulaski County Quorum Court annually for approval of my operating budget. These appearances are largely ceremonial and have only resulted in my answering questions on one occasion, which occurred on November 8, 2005. I have no notes, transcripts or recordings of this testimony, 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.

Starting in 1995, I have been asked from time to time to speak at continuing education sessions of both the Arkansas Bar Association and the Pulaski County Bar Association. On each of these occasions I spoke without written materials, an outline, or notes other than handwritten notes I did not retain. Each of these sessions essentially reviewed the requirements of the Arkansas Model Rules for Professional Conduct. I have only spoken on the subjects of practical tips for lawyers in the courtroom and civility among lawyers and judges. I have listed the details for the events that I could recall based on a review of my records and the Internet.

May 2, 2013: Speaker, "A Day with the Judges, Civility in the Courtroom," Pulaski County Bar Association, Little Rock, Arkansas. I spoke with members of the Pulaski County Bar Association regarding civility to one another and the court. I have no notes, transcripts, or recording of this talk. The address for the Pulaski County Bar Association is 1201 McMath Avenue, Room 101, Little Rock, Arkansas 72202.

April 29, 2013: Panelist, "Civility in the Courtroom," Arkansas Trial Lawyers Association, Little Rock, Arkansas. I spoke to the Arkansas Trial Lawyers Association regarding civility among one another and to the court. I have no notes, transcripts, or recording of this talk. The address for the Arkansas Trial Lawyers Association is 1400 West Markham, Suite 307, Little Rock Arkansas 72201.

October 13, 2011: Speaker, "A Day with the Judges," Pulaski County Bar Association, Little Rock, Arkansas. I spoke to members of the Pulaski County Bar Association on practical tips for trial preparation in my court. Topics included handling of exhibits, the manner in which I conduct voir dire, and objections. I have no notes, transcripts, or recording of this talk. The address for the Pulaski County Bar Association is 1201 McMath Avenue, Room 101, Little Rock, Arkansas 72202.

May 4, 2011: Speaker, "Pulaski County Bar Association Law Week, Judicial CLE," Pulaski County Bar Association, Little Rock, Arkansas. I spoke to members of the Pulaski County Bar Association on practical tips for trial preparation in my court. Topics included handling of exhibits, the manner in which I conduct voir dire, and objections. I have no notes, transcripts, or recording of this talk. The address for the Pulaski County Bar Association is 1201 McMath Avenue, Room 101, Little Rock, Arkansas 72202.

June 11, 2009: Panelist, "Infallibles v. Hoi Polloi," Arkansas Bar Association, Hot Springs, Arkansas. This appearance consisted of a mock game show mimicking the Family Feud television show with legal trivia. I have no notes, transcripts, or recording of this talk. The address for the Arkansas Bar Association is 2224 Cottondale Lane, Little Rock, Arkansas 72202.

August 22, 2008: Speaker, "A Day with the Judges," Pulaski County Bar Association, Little Rock, Arkansas. I spoke to members of the Pulaski County Bar Association on practical tips for trial preparation in my court. Topics included handling of exhibits, the manner in which I conduct voir dire, and objections. I have no notes, transcripts, or recording of this talk. The address for the Pulaski County Bar Association is 1201 McMath Avenue, Room 101, Little Rock, Arkansas 72202.

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

Matthew S.L. Cate, *Arkansans Flock to Fill Seats on Federal Bench*, Arkansas Democrat Gazette, February 1, 2009. Copy supplied.

40 under 40, Arkansas Business, June 17, 2002. Copy supplied.

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

In 2003, I was elected to a six-year term as the circuit judge for the Third Division of the Sixth Judicial District in Arkansas. This position is a state court general jurisdiction trial

court, including over criminal, civil, domestic, juvenile, and probate cases. During my first term, I was assigned primarily civil cases and later some domestic cases. In 2009, I was re-elected to the same position and continued to handle mostly civil cases. I currently am assigned only civil cases but sit occasionally for mental health cases. In addition, during this time period I have been assigned by the Arkansas Supreme Court to hear cases in other judicial districts within Arkansas.

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

During the ten years that I have served as a judge, I have been assigned approximately 1400 cases a year. Of those cases roughly 100 have gone to a jury and final verdict. I have presided over approximately 350 bench trials during this period. The remainder of the cases either settled, default judgments were entered or the cases were dismissed.

i. Of these, approximately what percent were:

jury trials:	30%
bench trials:	70%
civil proceedings:	99.9%
criminal proceedings:	0.1%

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

According to Rule 58 of the Arkansas Rules of Civil Procedure, "upon a general or special verdict, or upon a decision by the court granting or denying the relief sought, the court may direct the prevailing party to promptly prepare and submit, for approval by the court and opposing counsel, a form of judgment or decree which shall then be entered as the judgment or decree of the court." Therefore, I have not written any opinions in the traditional sense, but rather approved opinions drafted by the prevailing party in a case. If I disagreed with the prevailing party's draft opinion, I would require them to correct any misstatements of law or fact before approving them.

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. *Farm Fresh Producers, LLC v. Catfish Producers, LLC*, Pulaski County Circuit Court No. 60CV-04-8775.

This case involved alleged fraud and breach of contract in the purchase and sale

of a catfish processing plant in southeast Arkansas. The defendants, a group of catfish farmers, purchased a catfish processing plant to have a ready market for their fish, essentially vertically integrating their product chain. The plant was mismanaged and was in financial distress. Another group of farmers, the plaintiffs, was invited to invest. The plant failed, and millions of dollars were lost by all involved. The case took six weeks to try, and the jury found in favor of all defendants. The case was subsequently settled while on appeal.

Counsel for Farm Fresh Producers, LLC

Stuart W. Hankins
Hankins Law Firm, P.A.
800 West Fourth Street
North Little Rock, AR 72114
(501) 371-9226

David Hargis
Attorney at Law
807 West Third Street
Little Rock, AR 72201
(501) 371-0900

Counsel for Baxter

Honorable Kristine G. Baker
United States District Court for the Eastern District of Arkansas
(Formerly of Quattlebaum, Grooms, Tull & Burrow)
500 West Capitol Avenue
Little Rock, AR 72201
(501) 604-5351

John E. Tull III
Quattlebaum, Grooms, Tull & Burrow, PLLC
111 Center Street, Suite 1900
Little Rock, AR 72201
(501) 379-1705

John M. Jewell
Baxter & Jewell, P.A.
One Information Way, Suite 210
Little Rock, AR 72202
(501) 664-9555

Counsel for Pugh

Richard N. Watts

Watts, Donovan & Tilley, P.A.
200 River Market Avenue, Suite 200
Little Rock, AR 72201
(501) 372-1406

Counsel for Yocum

Dylan Potts
Gill Ragon Owen, P.A.
425 West Capitol Avenue, Suite 3801
Little Rock, AR 72201
(501) 801-3808

John P. Gill
Gill Ragon Owen, P.A.
425 West Capitol Avenue, Suite 3801
Little Rock, AR 72201
(501) 801-3802

Counsel for Friday, Eldredge & Clark, LLP

Robert L. Henry III
Barber Law Firm
400 West Capitol Avenue
2700 Regions Center
Little Rock, AR 72201
(501) 372-6175

Counsel for Arkansas Development Finance Authority

James Dowden
Attorney at Law
212 Center Street, Tenth Floor
Little Rock, AR 72201
(501) 324-4700

2. *The Ruth R. Remmel Revocable Trust v. Regions Financial Corporation*, 369 Ark. 392, 255 S.W.3d 453 (2007).

This case involved fraud and breach of contract claims in the sale of a family owned insurance agency. The Remmel family alleged that it had been defrauded by Regions as to the value of the agency. The agency became much more lucrative after the sale and under Regions' management. I granted Regions' motion to compel arbitration of the complaint and also referred the defendants' joint counterclaim to arbitration. The arbitrator denied the Remmel family's claims and Regions' counterclaim. I denied the Remmel family's motion to

vacate the award, confirmed the award, and dismissed the Remmel family's third amended complaint that had been filed the day the order to arbitrate was entered. The appellate court affirmed.

Counsel for the Remmel Family

James H. Penick III
Eichenbaum Liles, P.A.
124 West Capitol Avenue, Suite 1900
Little Rock, AR 72201
(501) 376-4531

Counsel for Herrington

Jess L. Askew III
Williams & Anderson, PLC
111 Center Street, 22nd Floor
Little Rock, AR 72201
(501) 396-8810

Counsel for Regions Financial Corporation and McDowell

Philip E. Kaplan
Williams & Anderson, PLC
111 Center Street, 22nd Floor
Little Rock, AR 72201
(501) 396-8432

William A. Waddell, Jr.
Friday, Eldredge & Clark, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, AR 72201
(501) 370-1510

3. *Crawford v. Arkansas State Board of Education*, 363 Ark. 281, 213 S.W.3d 607 (2005).

This was a school consolidation case that was covered extensively in the press. A small rural school was being incorporated into a much larger school district 45 minutes away. The case was brought under the Arkansas Administrative Procedure Act and sought a temporary restraining order. Originally, I granted the temporary restraining order but denied a permanent restraining order. That order was dissolved by the Arkansas Supreme Court on the basis that the Bryant School District was a necessary party. I ultimately affirmed the decision of the Board of Education to close the school under the Administrative Procedure Act. Plaintiffs

appealed, but the appeal was abandoned prior to review by the Arkansas Supreme Court.

Counsel for Crawford

Christopher Heller
Friday, Eldredge & Clark, LLP
400 West Capitol Avenue, Suite 2000
Little Rock, AR 72201
(501) 376-2011

Counsel for Bryant School District

James M. Llewellyn
Thompson and Llewellyn, P.A.
412 South 18th Street
Fort Smith, AR 72902
(479) 785-2867

Counsel for Arkansas Board of Education

D. Scott Smith
Arkansas Attorney General's Office
#4 Capitol Mall, Room 404-A
Little Rock, AR 72201
(501) 370-1510

4. *Campbell v. Asbury Automotive Group, Inc.*, 2011 Ark. 157, 381 S.W.3d 21 (2011).

This was a class action lawsuit against local car dealerships who were charging a documentary fee to complete bills of sale and purchase contracts with the sale of each new car. The complaint alleged these actions were the unauthorized practice of law and also alleged unjust enrichment and deceptive trade violations. During the years this case was litigated, both parties filed motions for summary judgment and renewed motions for summary judgment on different aspects of the case. The plaintiffs filed two separate motions to certify a subclass, both of which I denied for different reasons. After I entered summary judgment to the defendants on the claims that had not previously been addressed by order, the plaintiffs filed an appeal and the defendants cross-appealed on the multiple decisions I had made to date.

On direct appeal, the Arkansas Supreme Court affirmed the denial of the plaintiffs' motion to amend their complaint and motion for class certification to add a claim for breach of fiduciary duty. It also affirmed on each of the three issues raised in the defendants' cross-appeal: the granting of plaintiffs' motion for

summary judgment on the issues of the unauthorized practice of law, the finding of a fiduciary relationship, and my ruling that the defendants were not entitled to the defense of good-faith reliance. The court reversed the decision to grant the defendants' motion for summary judgment on the Arkansas Deceptive Trade Practices Act and the claim of unjust enrichment and to deny the plaintiffs' motion for class certification on the financing-fee claim. The case was subsequently settled.

Counsel for Campbell

H. Gregory Campbell
Campbell Law Firm
212 Center Street, Suite 700
Little Rock, AR 72201
(501) 372-5659

Counsel for Asbury

E. Powell Miller
The Miller Law Firm, P.C.
950 West University Drive, Suite 300
Rochester, MI 48307
(248) 841-2200

Edwin L. Lowther, Jr.
Wright, Lindsey & Jennings, LLP
200 W. Capitol Ave, Suite 2300
Little Rock, AR 72201
(501) 212-1294

David Donovan
Watts, Donovan & Tilley, P.A.
200 River Market Avenue, Suite 200
Little Rock, AR 72201
(501) 372-1406

5. *Dockery v. Morgan*, 2011 Ark. 94, 380 S.W.3d 377 (Ark. 2011). (Order Granting Defendants' Motion to Dismiss supplied).

This issue in this case was whether proceeds from natural gas leases should be retained and spent by the Arkansas Game & Fish Commission (AGFC) or whether the proceeds should go into the general revenue of the state. The case dealt with Arkansas constitutional issues but did not change existing law. I ruled that the AGFC was a separate constitutional entity and could sign leases and collect revenue without tendering it to general revenue. The Arkansas Supreme Court affirmed.

Counsel for Dockery

Samuel Perroni
Attorney at Law
13804 West Highway 16
Fayetteville, AR 72704
(Phone number unavailable)

Counsel for the Game and Fish Commission

Robert K. Jackson
John P. Marks
Arkansas Game & Fish Commission
Two Natural Resources Drive
Little Rock, AR 72205
(501) 223-6327

Steven W. Quattlebaum
Quattlebaum, Grooms, Tull & Burrow, PLLC
111 Center Street, Suite 1900
Little Rock, AR 72205
(501) 379-1700

6. *Arkansas Surgical Hospital v. Bowman*, Pulaski County Circuit Court No. 60CV-08-4335.

This case came to me as an administrative appeal under the Arkansas Administrative Procedure Act. The Arkansas Insurance Commission ruled against Arkansas Surgical Hospital's request for relief. The ground for appeal was that Bowman, the chairman of the commission, made the ruling, which was beneficial to a competitor while actively negotiating employment with that competitor. I ruled that, at a minimum, the negotiations between Bowman and the competitor amounted to an appearance of impropriety and remanded the case back to the commission to be decided without Bowman's participation.

Counsel for Arkansas Surgical Hospital, LLC

Samuel Perroni
Attorney at Law
13804 West Highway 16
Fayetteville, AR 72704
(479) 444-6712

Counsel for The Surgical Hospital of Jonesboro, LLC, Ouachita Regional Diagnostic, and Surgery Center

Thomas Staley
Williams T. Marshall
Robinson, Staley, Marshall & Duke
400 West Capitol Avenue, Suite 2891
Little Rock, AR 72201
(501) 374-3818

Counsel for Bowman and Arkansas Insurance Commissioner

Zane Chrisman
Arkansas Insurance Department
1200 West Third Street
Little Rock, AR 72201
(501) 371-2820

Robert Alexander
Arkansas Insurance Department
1200 West Third Street
Little Rock, AR 72201
(501) 371-2820

Counsel for Arkansas Blue Cross & Blue Shield

Steven W. Quattlebaum
Joseph Falasco
Quattlebaum, Grooms, Tull & Burrow, P.L.L.C.
111 Center Street, Suite 1900
Little Rock, AR 72205
(501) 379-1700

Counsel for QCA Health Plan, Inc.

John R. Tisdale
Wright, Lindsey & Jennings, LLP
200 West Capitol Avenue, Suite 2300
Little Rock, AR 72201
(501) 212-1256

Counsel for United Healthcare of Arkansas, Inc. and United Healthcare Insurance Co.

Allan Gates
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201
(501) 688-8816

Counsel for Arkansas Medical Society

Emily Sneddon
Mitchell, Blackstock, Ivers & Sneddon, P.L.L.C.
1010 West Third Street
Little Rock, AR 72201
(501) 378-7870

7. *Butler v. Union Planters Bank*, Pulaski County Circuit Court No. 60CV-02-4985.

This was a malicious prosecution case brought by Butler against Union Planters because the bank failed to recall a warrant for a hot check charge after Butler had repeatedly informed the bank that they had the wrong Butler. Butler was pulled over for speeding then arrested on the hot check warrant. He spent a night in jail. The bank failed to answer the complaint and was found in default. A six-person jury trial on damages was held. The jury returned a verdict for $9 million dollars. Once the bank received the judgment, they entered an appearance asking that the judgment be set aside. I set the verdict aside, granted the bank a new trial on damages, but maintained the default judgment. The case was later settled.

Counsel for Butler

Jack Wagoner III
Wagner Law Firm, P.A.
1320 Brookwood, Suites D & E
Little Rock, AR 72202
(501) 663-5225

John Ogles
Ogles Law Firm
200 South Jeff Davis
Jacksonville, AR 72078
(501) 982-8339

Counsel for Union Planters Bank

Robert Trammell
Attorney at Law
13608 Kanis Road
Little Rock, AR 72211
(501) 223-3100

8. *Gatzke v. Weiss*, 375 Ark. 207, 289 S.W.3d 455 (2008).

This case was filed by several local contractors against the State of Arkansas for an interpretation of the meaning of Article 19, Section 16 of the 1874 Arkansas Constitution, which requires bidding for certain contracts. Historically only contracts at the county level required bids. The contractors wanted the bid requirement to apply to all state contracts. I found as a matter of law that the phrase "in any county" meant contracts for county work. The Arkansas Supreme Court affirmed.

Counsel for Gatzke

Ronald A. Hope
Hope, Trice, & O'Dwyer, P.A.
211 Spring Street
Little Rock, AR 72201
(501) 372-4144

Counsel for Nabholz Construction Corp., CDI Contractors, and DEL-JEN, Inc.

Jeffrey H. Moore
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Little Rock, AR 72201
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Counsel for Potts

Lucinda McDaniel
Arkansas State University
P.O. Box 3077
Jonesboro, AR 72403
(870) 932-0900

9. *Rose v. Arkansas State Plant Board*, 363 Ark. 281, 313 S.W.3d 607 (2005).

This case involved a group of cotton farmers from northeast Arkansas contesting the Arkansas Plant Board's imposition of monetary assessments to finance an eradication program under the Arkansas Boll Weevil Eradication Act, Ark. Code Ann. §2-16-601 and Ark. Code Ann. §2-16-614. It was the plaintiffs' contention

that the regulations promulgated under the statutes were not authorized by law. A non-jury trial was held and I rendered a verdict for the plant board. The case was appealed and affirmed.

Counsel for Rose

Allan Gates
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425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201
(501) 688-8816

Cal McCastlain
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425 West Capitol 37th Floor
Little Rock, AR 72201
(501) 375-9151

Allen Dobson
Cross, Gunter, Witherspoon & Galchus, P.C.
500 President Clinton Avenue
Little Rock, AR 72201
(501) 371-9999

10. *Redus v. Beebe*, Jefferson County Circuit Court No. 35CV-12-502 (Assigned to me by the Arkansas Supreme Court.).

This case was brought by Mayor Redus of Pine Bluff asking for an interpretation of Ark. Code Ann. §14-43-303, Ark. Code Ann.§14-43-305 and Ark. Code Ann. §14-37-113. Arkansas mayoral elections are held at different election cycles depending on the size of a city's population. Pine Bluff's population had risen and fallen above and below the 50,000 bench mark, leaving a question as to when the mayoral election should take place. I ruled that an election should take place in 2012.

Counsel for Redus

Gene McKissick
McKissick, Gene & Associates
Post Office Box 9587
Pine Bluff, AR 71611
(870) 534-6332

Counsel for Beebe

D. Scott Smith
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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.

As noted above, Rule 58 of the Arkansas Rules of Civil Procedure provides for the prevailing party to prepare a draft judgment or decree and submit it to the court for approval. Although I have required parties to correct any misstatements of law or fact before approving the judgment, I have not written any opinions in the traditional sense.

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.

Although I have not written opinions in the traditional sense, I have provided a summary of all cases in which my substantive or procedural rulings were reversed or criticized.

Evins v. Carvin, 2013 Ark. App. 185 (Ark. Ct. App. 2013). I denied the defendant's motion to dismiss a third action by the same plaintiff because the second action had been dismissed without prejudice. The Arkansas Court of Appeals reversed on the basis that the language of the rule dictated that the second dismissal operated as an adjudication on the merits and barred the filing of a third complaint.

White v. Clay, 2013 Ark. App. 166 (Ark. Ct. App. 2013). The plaintiff moved to strike the answer and for default judgment on the basis that the answer was not signed by the defendant or by an attorney on his behalf and was void. I denied the motion to strike and for default, and I granted the defendant's motion for summary judgment on the basis of the statute of limitations. The Arkansas Court of Appeals, noting that there were no Arkansas cases directly on point with these

particular facts, relied on a case from Virginia to reverse the denial of the motion to strike.

Johnson v. Windstream Communications, Inc., 2012 Ark. App. 590 (Ark. Ct. App. 2012). I granted summary judgment for the defendant in a suit pursuant to the Americans with Disabilities Act and the Arkansas Civil Rights Act. The Arkansas Court of Appeals reversed and remanded for further findings of fact.

Guy Maris Trust v. Truemper, 2012 Ark. App. 232(Ark. Ct. App. 2012). After finding that my interpretation that the logging statute applied was correct and affirming the summary decision on the negligence claim, the Arkansas Court of Appeals reversed the granting of summary judgment, concluding that genuine issues of material fact remained regarding agency.

Grayson & Grayson v. Couch, 2012 Ark. App. 20, 388 S.W.3d 96 (Ark. Ct. App. 2012). The Arkansas Court of Appeals affirmed the granting of summary judgment on the lawyer's counterclaim but reversed as to the portion of the decision granting summary judgment in favor of the firm, finding that there were questions of material fact remaining.

Carter v. Cline, 2011 Ark. 474, 385 S.W.3d 745 (Ark. 2011). A jury entered a verdict for the sellers, and I denied the prospective buyer's motion for judgment notwithstanding the verdict, including a Rule 54(b) certification. After approving the Rule 54(b) certification, the Arkansas Supreme Court agreed with the prospective buyer that a condition precedent regarding financing had not been met and, therefore, reversed the denial of his motion for directed verdict and subsequent motion for judgment notwithstanding the verdict.

PHH Mortgage Corporation v. Yeager, 2011 Ark. App. 313 (Ark. Ct. App. 2011). The Arkansas Court of Appeals affirmed the decision to let a default judgment stand but reversed as to the damage calculation.

Campbell v. Asbury Automotive, Inc., 2011 Ark. 157, 381 S.W.3d 21 (Ark. 2011). The Arkansas Supreme Court reversed the granting of defendants' motion for summary judgment on the issue of the applicability of the Arkansas Deceptive Trade Practices Act, the denial of subclass certification of a hidden financing fee claim, and the granting of defendant's motion for summary judgment on the claim of unjust enrichment. However, the Arkansas Supreme Court affirmed the decision to deny the plaintiffs' attempt to amend the complaint post-certification and the rulings as to the three issues raised by the defendants in their cross appeal.

Quality Petroleum, Inc. V. Windward Petroleum, Inc., 2011 Ark. App. 116, 378 S.W.3d 818 (2011). The Arkansas Court of Appeals reversed the grant of defendant's motion for summary judgment acknowledging that neither party had identified a case directly on point and relying on the Restatement (Second) of

Torts. The Court concluded that questions of material fact remained now that it had determined that the claim was not extinguished as a matter of law.

McClane Southern, Inc. v. Arkansas Tobacco Control Board, 2010 Ark. 498, 375 S.W.3d 628 (2010). This was an action for judicial review of decision of the Arkansas Tobacco Control Board and for declaratory judgment. While the Arkansas Supreme Court affirmed the decisions regarding the denial of declaratory relief and the plaintiff's lack of standing, it disagreed in its *de novo* review of the Board's opinions with my affirmance of the Board's interpretation of a portion of the statute at issue, Arkansas Code Annotated § 4-75-701.

Young v. Kajkenova, 2010 Ark. App. 783 (Ark. Ct. App. 2010). I granted the defendant's motion to strike the plaintiff's medical expert for failure to comply with a discovery order. The Court of Appeals reversed and remanded for additional analysis. On remand, I again struck the witness after hearing further argument. On the second appeal, my decision was affirmed.

Turley v. Staley, 2009 Ark. App. 840, 372 S.W.3d 821 (Ark. Ct. App. 2009). After a bench trial, I dismissed the buyer's complaint, granted the trustee's counterclaim and granted the seller husband's complaint for possession of the property. The Arkansas Court of Appeals reversed the decision, relying on the maxim that forfeitures are not favorites of the law and on the seller's lack of clear renunciation of their acceptance of untimely payments.

Roeben v. BG Excelsior Limited Partnership, 2009 Ark. App. 646, 344 S.W.3d 93 (Ark. 2009). The Arkansas Court of Appeals affirmed the decision as to the application of the statute of limitations to dismiss *BG* but found that genuine issues of material fact remained requiring reversal of the summary judgment as to the two defendant employees.

Staton v. State, 372 Ark. 387, 277 S.W.3d 190 (Ark. 2008). In a previous class action, the plaintiffs had obtained a consent judgment. The plaintiff class subsequently filed a petition for judicial review of the Board's decision to deny the plaintiff's request that it make demand on the bonds posted by the deferred-presentment corporation. I affirmed the decision of the Board, relying on the language of the bonds that limited their coverage to a violation of the Check-Cashers Act or a Board rule or regulation. In its *de novo* review of the Board's decision, the Arkansas Supreme Court reversed the finding of the Board.

Bomar v. Moser, 369 Ark. 123, 251 S.W.3d 234 (Ark. 2007). This was a legal malpractice action against two lawyers. I granted summary judgment to one of the lawyers. The Arkansas Supreme Court reversed my decision, finding that there were fact questions on the standing issue and also on the issue of whether fraudulent concealment tolled the statute of limitations.

Miller v. Centerpoint Energy Res. Corp., 98 Ark. App. 102, 250 S.W.3d 574 (Ark. Ct. App. 2007). I granted the owners' motion for summary judgment, which was affirmed, and granted the gas company's motion to dismiss based on the statute of limitations. The Arkansas Court of Appeals reversed the granting of Centerpoint's motion to dismiss finding that the wrongful-death claim was not derivative of the survival claim in this case because the survival claim had not been reduced to a final judgment and was thus not barred by the statute of limitations.

Arkansas State Board of Education v. Honorable James M. Moody Jr., 367 Ark. 181, 238 S.W. 3d 607 (Ark. 2006). The Arkansas Supreme Court reversed and dissolved my entry of a temporary restraining order after concluding that the Bryant School District should be added as a necessary party in the case.

Garrison v. Pickering, Arkansas Court of Appeals No. CA06-59 (unpublished opinion, copy supplied.). I granted the defendant sellers' motion for summary judgment based on the lack of proof of justifiable reliance on any statements made by the sellers, relying on the contractual disclaimers and the decision by the buyers to hire two inspectors. The Arkansas Court of Appeals reversed, concluding that the contractual disclaimers did not bar reliance as a matter of law and that there were material fact questions remaining.

Chandler v. AR APPR. LIC., 92 Ark. App. 423, 214 S.W.3d 861 (2005). This was an administrative appeal in which I affirmed the Board's decision and on appeal the Arkansas Court of Appeals raised the issue *sua sponte* of the lack of findings of fact by the Board. The Court remanded the case to me so that I could remand it to the Board for findings of fact to support its decision.

UNUM Life Ins. Co. v. Edwards, 362 Ark. 624, 210 S.W.3d 84 (2005). The jury returned a verdict in favor of the plaintiff on the breach of contract claim, which was not appealed, and on the bad faith claim. I granted the plaintiff's motion for statutory penalty and attorney's fees. On appeal, the Arkansas Supreme Court found that there was not substantial evidence to support the jury's verdict of bad faith and overturned the verdict but affirmed the award of penalty and fees.

Wilmans v. Sears, Roebuck and Co., 355 Ark. 668, 144 S.W.3d 245 (2004). This was an action by a plaintiff seeking a declaratory judgment. She offered that it may have been her daughter, who now lived in Mexico, who had made the unauthorized charges. The defendant moved to dismiss based on the plaintiff's failure to join the daughter as a necessary party. I granted the motion, and the Arkansas Supreme Court reversed with two dissents.

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

There are no published opinions or decisions from my court. In March 2013 the

Pulaski County Circuit Clerk began electronic filing. Prior to that time paper records were filed and later scanned into digital records. While records can be retrieved by case name or number, they cannot be searched electronically for content. Records prior to 2005 are kept in off-site storage in paper form.

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.

Although I have not written opinions in the traditional sense, I have presided over the following cases involving constitutional issues, which are summarized in the appellate decisions listed below.

Munson v. Arkansas, 375 Ark. 549, 294 S.W.3d 409 (Ark. 2009)
Gatzke v. Weiss, No. CV2007-3981, *aff'd* 375 Ark. 2007, 289 S.W.3d 455 (Ark. 2008)
McLane Southern v. Davis, No. CV 03-7958 (Final Judgment supplied), *aff'd* 366 Ark. 164, 233 S.W.3d 674 (Ark. 2006)
Rose v. Arkansas State Plant Board, 363 Ark. 281, 313 S.W.3d 607 (Ark. 2005)
Brooks v. Bd. of Certified Court Reporters Examiners, 360 Ark. 296, 200 S.W. 3d 900 (Ark. 2005)

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

I have never sat by designation on a federal court of appeals.

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

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

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

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

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

The circuit courts of Arkansas do not have an automatic recusal system. Each case I accept is evaluated on a case-by-case basis. There have been a few occasions in which every judge in this judicial district has recused. Those cases usually involve a judge or local government official as a party or a lawyer who has a large number of cases before a large number of the judges.

I have recused on very few cases and each has been sua sponte as a result of a personal relationship I have had with a party.

I have one lawyer on my permanent recusal list. He is Luther Sutter recently of Harrill and Sutter. His cases are assigned to other judges regardless of the nature of the case. I believe other judges in this district as well as federal judges in the Eastern District of Arkansas likewise recuse on Mr. Sutter's cases. I have recused in the following cases which were filed by Luther Sutter:

Briggs v. The Kroger Co., Pulaski County Circuit Court Case No. CV-13-222 (2013).

Lillian Agee v. Starbucks Corporation, Pulaski County Circuit Court Case No.CV-12-2362 (2012).

Leon Dulmer v. City of Little Rock, Pulaski County Circuit Court Case No. CV-11-4400 (2011).

Sharon McCluler v. University of Arkansas System, Pulaski County Circuit Court Case No. CV-11-2641 (2011).

Linda Webb v. Department of Workplace Services, Pulaski County Circuit Court Case No. CV-11-484 (2011).

Cheryl Matthews v. Lisa Hayes et al., Pulaski County Circuit Court Case No. CV-10-3447 (2010).

Janann Johnson v. Windstream. Pulaski County Circuit Court Case No. CV-09-7248 (2009).

I have also recused myself sua sponte in the following cases:

Thomas Koller v. ADF&A, Pulaski County Circuit Court Case No. CV-13-1366 (2013). I recused sua sponte because my daughter was on the same basketball team as the defendant. An order was entered notifying the parties.

U.S. Bank v. Welch and Kitchens, Pulaski County Circuit Court Case No. CV-13-1091 (2013). Chip Welch is a sitting circuit judge in my judicial

district. The administrative judge entered an order recusing every judge in this district.

Jim Lynch v. Mark Stodola, Pulaski County Circuit Court Case No. CV-13-360 (2013). Mark Stodola served as my campaign manager during my first election. An order of recusal was entered sua sponte notifying the parties.

Bennie O'Neil v. Alice Gray et al., Pulaski County Circuit Court Case No. CV-12-816 (2012). Alice Gray is a sitting circuit judge in my judicial district. The administrative judge entered an order recusing every judge in this district.

James Warren et al. v. Herman Anderson, Pulaski County Circuit Court Case No. CV-12-437 (2012). Judge Warren is a sitting circuit judge in my judicial district. The administrative judge entered an order recusing every judge in this district.

John Doe v. Arkansas State Agency, Pulaski County Circuit Court Case No. CV-11-3977 (2011). This was a suit to forbid the sealing of records. The administrative judge entered an order recusing every judge in this district.

Justin Couch v. Cameryn Miller, Pulaski County Circuit Court Case No. CV-10-6140 (2010). I recused sua sponte because Miller's father is a close friend. An order was entered notifying the parties.

Willard Proctor v. Charlie Daniels, Pulaski County Circuit Court Case No. CV-10-1439 (2010). This case was filed by Willard Proctor, a sitting judge in my district. The administrative judge entered an order recusing every judge in this district.

Janann Johnson v. Windstream, Pulaski County Circuit Court Case No. CV-09-7248 (2009). The parties originally agreed to waive any appearance of impropriety stemming from the fact defense counsels was a law partner of mine six years earlier. The case was tried, appealed and reversed for further findings. After the appeal, plaintiff's counsel announced he would run against me in the next election so I recused sua sponte.

First Security Bank v. Bamco Gas, LLC. Pulaski County Circuit Court, Case No. CV-09-3281 (2009). I recused sua sponte due to my personal relationship with Ernest Barlett, a principle in Bamco. Our daughters are friends and basketball team mates. An order was entered notifying the parties.

Tina K. Williams v. RPM, Inc. et al., Pulaski County Circuit Court Case No. CV-02-10148 (2002). The case involved a class action asserting claims under the Arkansas Deceptive Trade Practices Act. I recused sua sponte due to the fact that defense counsel was a law partner of mine the previous year. I notified the parties by letter.

Jane Tagle Amy v. Al Mccorkle, Pulaski County Circuit Court Case No. CV- 02-4724 (2002). I recused sua sponte because defense counsel, Scott Clevenger defended me in civil law suit involving an automobile collision. I notified the parties of my recusal by letter.

There have also been cases in which I have notified the parties of a familiarity I might have with a party and invite the parties to accept or decline to have me preside over their case. On each of these occasions I have been asked by all of the parties to remain on their respective cases. The following is a list of the cases in which a personal relationship with a party was identified but a waiver was entered by the parties and I was asked to remain on the case:

Wendolyn Brandon v. Benton Brandon, Pulaski County Circuit Court Case No. DR-05-5617 (2005). This was a divorce case in which I knew both of the parties socially. Both parties waived any conflict verbally on the record. The case was ultimately settled.

Farm Fresh Producers v. Catfish Producers, Pulaski County Circuit Court Case No. CV-04-8775 (2004). I informed the parties that I had a social relationship with Pugh, one of the defendants. I had each party to the law suit sign a letter acknowledging awareness of this fact and further acknowledging that they wanted me to continue to preside over the case. Each party did so. The same procedure was followed midway through the case regarding an attempted *ex parte* communications with the court by a defendant. They parties again signed a letter acknowledging the information and waiving any conflict.

Carolyn and John Brockway v. Daniel Dillard, MD, Pulaski County Circuit Court Case No. CV-01-3072 (2001). Winslow Drummund represented my father in a wrongful death case. The parties were made aware of this fact and agreed to waive any potential conflict verbally on the record.

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 served as a public officer other than as a circuit judge.

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

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

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

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

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

I have not clerked for a judge.

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

I did not practice alone for any of my legal career.

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

1989 – 2003
Wright, Lindsey & Jennings
200 West Capitol, Suite 2300
Little Rock, Arkansas 72201
Associate (1989-1994)
Partner (1995 – 2003)

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 nature of my law practice both as an associate and a partner at Wright, Lindsey & Jennings was to litigate insurance defense claims. When I first began my practice, I would try 12 to 15 cases a year and would try these alone. These cases were low-exposure cases. As my practice developed and the potential exposure of cases rose, I would try five to six cases a year. Although I was lead counsel on most of these cases, due to the complexity of these cases I usually had co-counsel.

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

Initially, most of the litigation I handled was automobile claims as well as wrongful arrest claims involving shoplifters. My clients included Target, Nationwide Insurance, The Travelers, CNA, Allstate, Insurisk, and other like casualty companies. Later into my practice, I began to focus more on products liability defense as well as heavy trucking defense. I represented Hyster, Yamaha, GE, Whirlpool, Van Liner, United Trucking, USA Trucking, and Maverick Trucking among other clients.

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 involved litigation, and I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 25%
   2. state courts of record: 75%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

I have tried approximately 60 cases to verdict in a court of record as a lawyer. I

would estimate that in 60% of these cases I was lead counsel. In the other 40% of these cases, I was second chair.

i. What percentage of these trials were:
1. jury: 80%
2. non-jury: 20%

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

There was one case that I defended, *Smith v. Buford*, 4:96-cv-00950-SMR (E.D. Ark.), where the plaintiff in a state court case moved for certiorari, which was denied. After reviewing the docket and my records, I do not believe that I filed an opposition to the petition for certiorari.

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. *Montgomery Ward & Co. v. Anderson*, 334 Ark. 561, 976 S.W.2d 382 (1998), appeal from Stone County Circuit Court; Honorable John Dan Kemp presiding.

On November 14, 1994, appellee Anderson was injured in a fall while shopping in appellant's Montgomery Ward store in Little Rock. Montgomery Ward personnel sent her to the hospital at the University of Arkansas for Medical Sciences ("UAMS") to be treated. Anderson had surgical and other medical-services expenses at UAMS totaling $24,512.45. Montgomery Ward moved in limine to prohibit Anderson from presenting the total amount billed by UAMS as proof of her medical expenses and asked that her evidence be limited to the actual amount for which she would be responsible to pay. Anderson argued that she had reached an agreement with UAMS that UAMS would discount the bill by 50%. Anderson asserted that the collateral-source rule would prohibit Montgomery Ward from introducing evidence of the discount. I argued that UAMS essentially

changed the price of the medical services and that Anderson should not be able to recover the undiscounted cost of the services. I was the lead attorney of record for the defendant at trial and I was responsible the appellate brief. The jury found for the plaintiff, and the appellate court affirmed.

Counsel for Anderson:

Wesley "Butch" Ketz
(Contact information unavailable)

2. *Johnny C. Goodnoh v. Kelly-Springfield Tire Company*, Eastern District of Arkansas Case No. 4-91-CV-609-SWW; Honorable Susan Webber Wright presiding.

This was a products liability case resulting from a tire failure in a tractor trailer tire repair shop. The plaintiff was trying to inflate a repaired tire by spraying ether into the inside of the tire and lighting it on fire to seat the beads of the tire. After the beads of the tire were seated, air was introduced into the tire and reignited the ether which caused pressure to build up into the tire. When the plaintiff attempted to lift the tire it exploded, propelling him into the rafters of the shop and badly injuring his hands and back. He sued Kelly-Springfield for producing an unreasonably dangerous product. I was co-counsel representing the defendant at trial. The jury returned a verdict for the defendant after a two-week trial.

Co-Counsel for Goodyear:

Honorable James Moody
(Formerly with Wright, Lindsey & Jennings)
500 West Capitol Avenue
Little Rock, AR 72201
(501) 604-5351

Counsel for Goodnoh:

J.T. Skinner
1141 East Main Street, # 300
Batesville, AR 72501
(888) 902-5580

3. *Ziegler v. T & S Sawmill,* Pulaski County Circuit Court No. CV-04-11958; Honorable David Bogard presiding.

This case arose out of an industrial accident within a warehouse at T & S Sawmill. Ziegler was a trucker working near some stacks of lumber when he was pinned between his truck trailer and a large fork lift that was being driven in

reverse. Ziegler later died from his injuries. The theory of liability was negligent hiring and training of the employee driving the fork lift. I was sole counsel on this case for the defendant. The case was tried to a jury, which returned a verdict for plaintiff.

Counsel for Ziegler:

Greg Kitterman
1101 Garland Street
Little Rock, AR 72201
(501) 374-1145

4. *Kenneth Graham v. Searcy Yamaha,* White County Circuit Court No. CV-96-323; Honorable Judge Bill Mills presiding.

This case arose out of an accident Graham had while operating a Yamaha four-wheeler. Graham had the four wheeler fitted with a windshield by Searcy Yamaha. It was alleged that the installation of the windshield restricted the flow of hydraulic fluid to the breaks causing a failure. I was sole counsel for the defense on this case. The case was tried to a jury, which rendered a verdict for the defense after a one-week trial.

Counsel for Graham:

J.T. Skinner
1141 East Main Street, # 300
Batesville, AR 72501
(888) 902-5580

5. *Thomas v. Lincare,* Jefferson County Circuit Court No. CV-99-284; Honorable Judge Berlin Jones presiding.

This lawsuit was brought against the manufacturer of a medical gas portable oxygen unit. A young boy of two was using the device when super cooled air and liquid oxygen flowed through his cannula onto his nose causing severe frost bite. I defended Lincare as sole counsel. The case was settled before trial.

Counsel for Thomas:

Gary Holt
708 West Second Street
Little Rock, AR 72201
(501) 372-0266

6. *Kimberly Rogers v. Vidiots, Inc. and MP Productions*, Pulaski County Circuit Court No. CV-91-7138; Honorable Jack Lessenberry presiding.

This case arose out of the construction of a bank of loud speakers at the Crosby Stills and Nash concert in Little Rock. The plaintiff was a spectator at the concert and was near the front of the stage when the wind blew the bank of speakers over onto to her. She received severe facial fractures that required extensive reconstructive surgery to her face. I was second chair defending MP Productions and participated in all aspects of the litigation. After extensive discovery, the case settled just prior to trial.

Co-Counsel for MP:

Honorable James M. Moody
(Formerly with Wright, Lindsey & Jennings)
500 West Capitol Avenue
Little Rock, AR 72201
(501) 604-5351

Counsel for Rogers:

Phillip Duncan
900 South Shackleford Road, Suite 725
Little Rock, AR 72211
(501) 228-7600

7. *Strom v. Willbanks d/b/a/ J&D Willbanks Bushhogging and Johnson,* Grant County Circuit Court CV-2001-70-1; Honorable John Cole presiding.

Strom was traveling on a highway when a private contractor working for the Highway Department pulled his tractor from the median into the path of Strom. The driver of the tractor claimed it was too muddy to turn around in the median. Strom's medical bills were in excess of $950,000. The case rapidly became a coverage-dispute case. The agent for the contractor sold the contractor $2,000,000 in coverage and collected premiums on that limit of coverage. The insurance company claimed the agent only had the authority to write $1,000,000 in coverage. A favorable settlement agreement was reached. I was lead counsel for the plaintiff.

Counsel for Willbanks:

Bruce Munson
400 West Capitol Avenue, Suite 1900
Little Rock, AR 72201
(501) 374-6535

Co-Counsel for Strom:

Steve Lancaster
200 West Capitol, Suite 2300
Little Rock, AR 72201
(501) 212-1238

8. *Baker v. Meadows,* USDC 95-CV-2084; Honorable Jimm Hendren presiding.

This was a motor vehicle accident involving two tractor trailers and a passenger vehicle. The case went to trial with the truck companies trying to place liability on one another. The jury found in favor of the plaintiff and assessed damages against the defendant. I was lead counsel for the defendant.

Counsel for Baker:

Greg Kitterman
1101 Garland Street
Little Rock, AR 72201
(501) 374-1145

Counsel for Proline Carriers:

Miriam Hopkins
400 West Capitol, Suite 2400
Little Rock, AR 72201
(501) 372-1887

9. *Privett v. K-Mart and Huffy*, Lonoke Circuit Court No. CV-1994-456; Honorable Lance Hanshaw presiding.

This was a products liability case that involved an adult male playing basketball on a Huffy Slam Jam Rim. The Slam Jam rim is a breakaway basketball goal sold and marketed to withstand dunking. This particular rim was not as advertised, and Privett received a serious laceration of his face. The primary defense centered on the fact that Previtt was hanging from the rim when it failed. Since there were no warnings not to hang from the rim that accompanied the product, the carrier ultimately decided to settle the case. This was one of the first product liability cases I defended without co-counsel.

Counsel for Privett:

Honorable Morgan Chip Welch
(Formerly with the Welch Law Firm)
401 West Markham Street, Suite 310

Little Rock Arkansas 72201
(501) 340-8542

10. *E-Ton Dynamics Industries Corp. v. Hall*, 83 Ark. App. 35, 115 S.W. 3d 816 (2003); Honorable David Burnett presiding.

This case involved a products liability claim against E-Ton for manufacturing a miniature ATV with an exposed chain guard. Hall, who was four years old, was riding in front of her father on the ATV bare footed when her toes were caught in the chain drive. All of the toes on her on her right foot were severed. During the trial, plaintiff's medical expert was allowed to testify as to speculative future damages. The jury found for plaintiff. The case was appealed on the issue of the doctor's testimony, and the court of appeals reversed and remanded the case for a new trial. I represented E-Ton as sole counsel at trial and on appeal. I joined the bench while the case was on remand, but I understand that it was settled by replacement counsel.

Counsel for Hall:

Troy Henry
630 South Main
Jonesboro, AR 72401
(870) 932-4522

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

My career prior to taking the bench primarily was devoted to litigating cases involving product liability claims as well as defending common carriers in personal injury litigation. On occasion I would represent individuals or companies in contract disputes. The cases were litigated in both state and federal court. While in private practice, most of the cases I handled as an attorney settled before they went to trial. Typically in those cases, I would engage in extensive discovery, including expert discovery, to evaluate my client's case and reach a satisfactory settlement agreement. For example, one significant case involved the installation of sod for a golf course being built in Collierville, Tennessee. The supplier of the sod had sued the course owner for failing to pay for the work performed and materials provided. After extensive discovery the case was finally resolved by mediation. Many other cases were won on motions to dismiss or on motions for summary judgment.

I have also benefited greatly from my involvement in the Pulaski County Bar

Association. As I member of the board of directors, I have had many panel discussions with other attorneys on how to improve civility and professionalism among lawyers while associated with this organization.

I have never engaged in lobbying activities or registered as a lobbyist.

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

    I have taught twice as an adjunct professor at the University of Arkansas Bowen School of Law. Each time I taught a workshop on trial advocacy and courtroom procedure. There was no syllabus for the workshop. Each week the students would attempt to perform the various segments of a trial they had discussed in class such as voir dire, opening statements, direct examinations, cross examinations, and closing arguments. The final consisted of a complete mock trial.

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 already vested in the Arkansas Judicial Retirement System and expect to receive benefits under that plan at age 65.

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

    If confirmed, the only plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the courts would be to teach and manage Moody Manor, LLC, a family limited liability company that holds property in El Dorado, Arkansas, consistent with the restrictions imposed on the federal judiciary.

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 my father, James Maxwell Moody, returns to the practice of law, I would recuse. Should any other potential conflicts arise, I will adhere to the Code of Conduct for United States Judges and other applicable authority in resolving any conflicts of interest.

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

If confirmed I will be guided by 28 U.S.C. 455, Canon 3 of the Code of Conduct for United States Judges and other applicable authority in resolving any 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.

My role as judge prohibits me from actively engaging in other pro bono legal work. However, I have engaged in many community activities with my church as allowed under the judicial canons. These activities include mentoring confirmands, teaching Sunday school class and coaching the church basketball team.

26. **Selection Process**:

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

In January 2013, I spoke by telephone with Senator Mark Pryor about my desire to serve as a judge in the Eastern District of Arkansas. In late January, I met with an aide for Senator John Boozman in Little Rock, Arkansas. On March 6, 2013, Senator Pryor informed me that I was among the candidates he had recommended to the White House, and on April 11, 2013, he notified me that I had been selected to move forward. Since April 12, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 21, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 25, 2013, 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. 1/2013

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
Moody, Jr., James M.	U. S. District Court, Eastern District of Arkansas	07/25/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. District Judge-nomination	**5a. Report Type (check appropriate type)** ☑ Nomination Date 07/25/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2012 to 06/30/2013
7. Chambers or Office Address 401 West Markham Room 240 Little Rock, Arkansas 72201		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Trustee	Trust #1
2.	Trustee	Trust #2
3.	Trustee	Trust #3
4.	Managing Member	Moody Manor LLC
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	01/01/2011	State of Arkansas Judicial Retirement System. Vested in retirement benefits to begins at age 65.
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting Moody, Jr., James M.	Date of Report 07/25/2013

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2011	State of Arkansas Judicial salary	$134,000.00
2.	2012	State of Arkansas Judicial salary	$134,000.00
3.	2013	State of Arkansas Judicial salary	$79,482.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Moody, Jr., James M.	Date of Report 07/25/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 9

Name of Person Reporting	Date of Report
Moody, Jr., James M.	07/25/2013

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. Banco Santander, S. A. Common Stock	A	Dividend	J	T	Exempt				
2. Alcoa Inc Common Stock	A	Dividend	K	T					
3. Chimera Investment Corp Common Stock	A	Dividend	J	T					
4. Duke Entergy Corp Common Stock	A	Dividend	K	T					
5. Ford Motor Company Common Stock	A	Dividend	J	T					
6. General Electric Co. Common Stock	A	Dividend	J	T					
7. GSV Inc. Common Stock		None	J	T					
8. Huntsman Corp Common stock	A	Dividend	K	T					
9. Intel Corp Common Stock	A	Dividend	K	T					
10. iShares Silver Trust (ETF)		None	K	T					
11. Kinetics Paradigm Fund		None	J	T					
12. Medical Properties Trust Inc Common Stock		None	K	T					
13. Nucor Corp Common Stock	A	Dividend	K	T					
14. Micron Technology inc Common Stock		None	J	T					
15. Pfizer inc Common Stock	A	Dividend	K	T					
16. QR Entergy Common Stock	A	Dividend	K	T					
17. The Southern Company	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
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Name of Person Reporting	Date of Report
Moody, Jr., James M.	07/25/2013

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 Growth Index Fund	B	Distribution	M	T					
19. Vanguard Windsor II Fund	C	Distribution	M	T					
20. Trust 1									
21. -American Funds AMCAP Fund A	C	Distribution	N	T					
22. -American Funds Growth Fund	C	Distribution	M	T					
23. -American Funds New Prospective Fund	C	Distribution	M	T					
24. -American Funds New World Fund	C	Distribution	K	T					
25. -Federated Kaufman Fund R	C	Distribution	K	T					
26. Trust 2									
27. -American FundsAMCAP Fund A	C	Distribution	K	T					
28. -American Funds Growth Fund	C	Distribution	K	T					
29. -American Funds New Prospective Fund	C	Distribution	K	T					
30. -American Funds New World Fund	C	Distribution	K	T					
31. Trust 3									
32. -Arkansas State University Rev Housing System Bond	B	Interest	L	T					
33. -Arkadelphia AR PUB ED FACS REV Ouachita Baptist Bond	C	Interest	L	T					
34. -ARK ST RFDG Water Waste Disposal Bond	B	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
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Moody, Jr., James M.	Date of Report 07/25/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. -Arkansas State Higher Education Bond	B	Interest	K	T					
36. -Batesville AR School District Bond	B	Interest	L	T					
37. -Bryant AR School District 25 Construction Bond	C	Interest	L	T					
38. -Clinton AR School District 1 Construction Bond	B	Interest	L	T					
39. -Conway AR School District 1 Faulkner County Bond	B	Interest	K	T					
40. -Conway County School District 001 Bond	B	Interest	K	T					
41. -ElDorado AR School District 15 Bond	B	Interest	L	T					
42. -Little Rock AR RFDG Library Construction Bond	B	Interest	K	T					
43. -Norrth Little Rock Health Facilities Board Bond	B	Interest	K	T					
44. -North Little Rock AR School District 1 Bond	B	Interest	K	T					
45. -Paris AR School Disrict 7 Bond	C	Interest	L	T					
46. -Pulaski Technical CollegeAR Revenue Bond	C	Interest	L	T					
47. -Rogers AR Sewer Revenue Improvement Bond	C	Interest	L	T					
48. -Universiy of Arkansas Revenue Varsity Facilites Bond	C	Interest	L	T					
49. Summit Bank Acconts	A	Interest	M	T					
50. Telcoe Federal Credit Union Accounts	A	Interest	J	T					
51. Moody Manor LLC Union Co.	E	Distribution	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
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 7 of 9	Name of Person Reporting Moody, Jr., James M.	Date of Report 07/25/2013

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. Little Praire Land Co.	D	Distribution	M	T					
53.									
54.									
55.									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
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S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Moody, Jr., James M.	Date of Report 07/25/2013

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

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting	Date of Report
	Moody, Jr., James M.	07/25/2013

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/ James M. Moody, Jr.

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		106	751	Notes payable to banks-secured (auto)		25	864
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		564	866	Notes payable to relatives			
Unlisted securities – see schedule		736	000	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		274	562
Real estate owned – personal residence		540	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		300	426
				Net Worth	1	797	191
Total Assets	2	097	617	Total liabilities and net worth	2	097	617
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	
Banco Santander, S.A. stock	$ 10,283
Alcoa Inc. stock	15,760
Chimera Investment Corp. stock	5,760
Duke Energy Corp	26,200
Ford Motor Co. stock	14,610
General Electric Co. stock	13,836
GSV Inc. stock	2
Huntsman Corp. stock	16,120
Intel Corp. stock	23,938
iShares Silver Trust (ETF)	19,070
Kinetics Paradigm Fund	639
Medical Properties Trust, Inc.	16,040
Nucor Corp	17,172
Micron Technology Inc. stock	13,730
Pfizer Inc. stock	22,640
QR Entergy	16,210
The Southern Company stock	14,973
Vanguard Growth Index Fund	109,212
Vanguard Windsor II Fund	208,671
Total Listed Securities	$ 564,866

Unlisted Securities	
Moody Manor LLC	$ 550,000
Little Prairie Land Co.	186,000
Total Unlisted Securities	$ 736,000

AFFIDAVIT

I, James Maxwell Moody Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 25, 2013
(DATE)

(NAME)

(NOTARY)

KIRBY D. GRIGGS
NOTARY PUBLIC-STATE OF ARKANSAS
PULASKI COUNTY
My Commission Expires 02/13/2018
Commission # 12364698

Questions for the Record
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Senator Chuck Grassley
Questions for the Record

Carolyn B. McHugh
Nominee, United States Circuit Judge for the Tenth Circuit

1. In one public meeting you attended, you noted there was a decline in public confidence in the courts as shown in national public opinion surveys. In what ways have you worked or will you work to increase public confidence in the courts?

2. What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

3. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

4. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?

5. Do you believe that the death penalty is an acceptable form of punishment?

6. Do you believe there is a right to privacy in the U.S. Constitution?

    a. Where is it located?

    b. From what does it derive?

    c. What is your understanding, in general terms, of the contours of that right?

7. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

    a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

    b. Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?

8. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

9. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

    a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

    b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

10. What would be your definition of an "activist judge"?

11. What is the most important attribute of a judge, and do you possess it?

12. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

13. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

14. In general, Supreme Court precedents are binding on all lower federal courts. 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?

15. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

16. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

17. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

18. What weight should a judge give legislative intent in statutory analysis?

19. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

20. 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? Please explain.

21. 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?

22. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

23. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

24. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

25. Please describe with particularity the process by which these questions were answered.

26. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Pamela L. Reeves
Nominee, U.S. District Judge for the Eastern District of Tennessee

1. According to your questionnaire, it appears that the majority of your legal experience is limited to civil litigation. As a district judge, you will be asked to preside over both civil and criminal cases.

    a. What experience do you have with criminal law?
    b. What steps have you taken to familiarize yourself with the area of criminal law?
    c. What steps do you plan to take to get up to speed, should you be confirmed?

2. How will you use the Sentencing Guidelines to guide you in criminal cases?

3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

4. What is the most important attribute of a judge, and do you possess it?

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?

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?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

11. 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?

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? Please explain.

13. If confirmed, how do you intend to manage your caseload?

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?

15. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

17. Please describe with particularity the process by which these questions were answered.

18. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Vince Girdhari Chhabria
Nominee, U.S. District Judge for the Northern District of California

1. In an interview on National Public Radio you said that your "own personal view is that it would violate the equal protection clause of the U.S. Constitution to deny same-sex couples the right to marry" and that "history is on our side that eventually same-sex couples throughout the country will be permitted to marry."

   If the Supreme Court holds that state laws and amendments that ban same-sex marriage are constitutional, how will "history being on your side" impact your decisions on the bench regarding same-sex marriage bans?

2. In an article you co-authored, titled *Courts Wrongly Continue Bias Against Gays,* you wrote that "our constitutional jurisprudence is based on reason applied to current circumstances, not custom or belief, no matter how long or sincerely held."

   Does the meaning of the constitution change based on reason applied to current circumstances or does the original public meaning of the text remain the basis that constitutional decisions should be made no matter how long ago the text was written?

3. In San Francisco's brief for *Catholic League for Religious and Civil Rights v. City and County of San Francisco* you argued that the Board of Supervisor's resolution urging "Archbishop Niederauer and the Catholic Charities of the Archdiocese of San Francisco to defy all discriminatory directives of Cardinal Levada" and place children for adoption with same-sex couples did not have the primary purpose to inhibit Catholicism because it was aimed at denouncing discrimination and not Catholicism.

   a. Can you articulate any limiting principle for this argument?

   b. In your view, would a government entity's action denouncing Catholicism for not ordaining women as priests be permissible for the same reason? Namely, because it only denounced discrimination against women?

4. In a recent Supreme Court decision, Justice Kennedy wrote that DOMA "humiliates," "demeans," "disapproves," "seeks to injure," and that it is a "bare congressional desire to harm."

   a. In your view, when and under what circumstances should a judge make findings regarding Congressional intent of the laws it writes?

b. When is legislative intent relevant in determining the outcome of a case?

c. I expect all federal judges to follow the law and respect every citizen's first amendment religious liberty rights. What is your understanding of a church's right to define marriage how they see fit?

d. Is there a right for clergy to decline to officiate at the marriage of any particular couple?

5. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

6. How will you use the Sentencing Guidelines to guide you in criminal cases?

7. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

8. What is the most important attribute of a judge, and do you possess it?

9. Your questionnaire indicates you are a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution."

   a. What is your view of the role of the courts on improving the lives of everyday citizens?

   b. Can you please explain, in your view, the idea of what is a progressive perspective of the constitution?

   c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?

   d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered? Please explain.

e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"

10. 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?

11. 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?

12. 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?

13. 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?

14. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

15. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

16. 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?

17. 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? Please explain.

18. If confirmed, how do you intend to manage your caseload?

19. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

20. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

21. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

22. Please describe with particularity the process by which these questions were answered.

23. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

James Maxwell Moody, Jr.
Nominee, U.S. District Judge for the Eastern District of Arkansas

1. According to your questionnaire, it appears that the majority of your legal experience is limited to civil litigation. As a district judge, you will be asked to preside over both civil and criminal cases.

    a. What experience do you have with criminal law?
    b. What steps have you taken to familiarize yourself with the area of criminal law?
    c. What steps do you plan to take to get up to speed, should you be confirmed?

2. How will you use the Sentencing Guidelines to guide you in criminal cases?

3. How would you define the term judicial activism? What would indicate to you that a judge is an activist judge?

4. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

5. What is the most important attribute of a judge, and do you possess it?

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?

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?

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?

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?

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. 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?

13. 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? Please explain.

14. If confirmed, how do you intend to manage your caseload?

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

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?

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

18. Please describe with particularity the process by which these questions were answered.

19. Do these answers reflect your true and personal views?

Questions for Judicial Nominees
Senator Ted Cruz

Responses of Carolyn B. McHugh
Nominee, United States Circuit Court for the Tenth Circuit

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to exercise my judgment fairly and impartially in applying the law to the facts of the case or controversy before me, and to avoid imposing my will on the outcome by applying not what the law is, but what I want it to be. I believe that Justice John Marshall Harlan II implemented this philosophy during his tenure on the United States Supreme Court.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: When the text itself is not sufficient to resolve an issue of constitutional interpretation, the United States Supreme Court has examined the original public meaning of the provision. *See United States v. Jones*, 132 S.Ct. 945, 949-50 (2012) (examining original public meaning and determining that the Fourth Amendment to the United States Constitution protects against physical trespass by public officials); *District of Columbia v. Heller*, 554 U.S. 570, 581-92 (2008) (examining original public meaning and determining that the Second Amendment to the United States Constitution confers an individual right to bear arms); *Crawford v. Washington*, 541 U.S. 36, 42-57 (2004) (examining original public meaning and determining that the Sixth Amendment to the United States Constitution affords a criminal defendant the right to cross examine the government's testimonial witnesses). If confirmed, I will follow this precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, I will be bound by the decisions of the United States Supreme Court and of the Tenth Circuit. Decisions of a prior panel of the Tenth Circuit may be overruled only by the court sitting *en banc* or if the prior decision has been superseded by a decision of the United States Supreme Court. *En banc* consideration of matters is disfavored and should be permitted only in situations of exceptional importance in order "to secure or maintain uniformity of the court's decisions" or "to address a question of exceptional importance." *See* Fed. R. App. P. 35; U.S.Ct. of App. 10th Cir. R. 35.1. I will follow these rules if confirmed.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." Garcia v. San Antonio Metro Transit Auth., 469 U.S. 528, 552 (1985).

Response: If confirmed, I will be bound by the Supreme Court's decision in *Garcia* and any subsequent decisions clarifying or modifying its holding. The Tenth Amendment to the United States Constitution reserves to the states all rights that are not expressly granted to the federal government. The Constitution also provides a secondary safeguard by assigning the judicial branch the responsibility to invalidate federal laws if Congress exceeds the limits of its delegated powers and improperly encroaches on states' rights. *See Printz v. United States*, 521 U.S. 898 (1997) (invalidating Brady Handgun Violence Prevention Act's requirement that the "chief law enforcement officer" of each local jurisdiction conduct background checks on prospective handgun purchasers as infringing upon state sovereignty in violation of the Tenth Amendment); *New York v. United States*, 505 U.S. 144 (1992) (invalidating Low-Level Radioactive Waste Policy Act's "take title" provision, requiring states to accept ownership of interstate waste or regulate according to instructions of Congress, as infringing upon state sovereignty in violation of the Tenth Amendment).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United State Supreme Court has held that the Commerce Clause and Necessary and Proper Clause allow Congress to 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 having a substantial relation to" or that "substantially affect" interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (holding that Congress exceeded its Commerce Clause power by criminalizing the possession of firearms in a school zone because such conduct was not an economic activity substantially affecting interstate commerce). In *United States v. Morrison*, 529 U.S. 598 (2005), the Supreme Court emphasized the non-economic nature of the activity in holding that the Commerce Clause did not provide Congress with authority to enact the civil remedy provisions of the Violence Against Women Act. *See id.* at 609-19. If confirmed, I will follow these precedents.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Youngstown Sheet & Tube v. Sawyer*, 343 U.S. 579, 585-87 (1952), the United States Supreme Court explained that "The President's power, if any, to issue [an executive] order must stem either from an act of Congress or from the Constitution itself." Justice Jackson's concurring opinion in *Youngstown* sets forth a three-part analytical framework which remains the

touchstone for determining the constitutionality of executive action or executive orders. *See id.* at 635 (Jackson, J., concurring). *See also Medellin v. Texas*, 552 U.S. 491, 523-29 (2008) (applying "Justice Jackson's familiar tripartite scheme" from *Youngstown* and holding that President did not have authority to transform terms of non-self-executing treaty into domestic law); *Dames & Moore v. Regan*, 453 U.S. 654, 668-69, 678 (1981) (applying Justice Jackson's tripartite scheme from *Youngstown* and upholding executive action nullifying attachments, transferring Iranian assets, and suspending claims in American courts). If confirmed, I will follow these precedents.

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the United States Supreme Court held that the Due Process Clause protects substantive 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." *Glucksberg*, 521 U.S. at 720-21 (internal quotation marks omitted). The fundamental substantive rights protected by the Due Process Clause include the "right[] to marry," the right "to have children," the right "to direct the education and upbringing of one's children," the right "to marital privacy," the right "to use contraception," the right "to bodily integrity," and the right "to abortion." *Id.* at 720. The Supreme Court has "always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Id.* (internal quotation marks omitted). If confirmed, I will follow this precedent.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court has identified three levels of scrutiny for assessing the constitutionality of legislation challenged under the Equal Protection Clause: strict scrutiny; intermediate scrutiny; and the rational basis standard. *See City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439-41 (1985). "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Id.* at 440. However, classifications based on race or ethnic background must meet strict scrutiny. *See Fisher v. University of Texas*, 133 S.Ct. 2411, 2417 (2013) (remanding for reconsideration of constitutionality of university's consideration of race in admission decisions under strict scrutiny standard). Strict scrutiny is also appropriate when the legislation "impinge[s] on personal rights protected by the Constitution." *Cleburne*, 473 U.S. at 440. An intermediate level of heightened scrutiny is imposed for classifications based on gender or illegitimacy. *Id.* at 441. If confirmed, I will follow this precedent.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I do not have a personal opinion on this issue. If confirmed, I will follow the Supreme Court's precedent in *Grutter*, including its application of strict scrutiny analysis to all racial classifications imposed by government. *See Gutter v. Bollinger*, 539 U.S. 306, 326 (2003). *See also Fisher v. University of Texas*, 133 S.Ct. 2411, 2417 (2013) (remanding for reconsideration of challenge to university's use of racial classifications in admission decisions under strict scrutiny and instructing that, "The reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity.").

Senator Chuck Grassley
Questions for the Record

Responses of Carolyn B. McHugh
Nominee, United States Circuit Judge for the Tenth Circuit

1. **In one public meeting you attended, you noted there was a decline in public confidence in the courts as shown in national public opinion surveys. In what ways have you worked or will you work to increase public confidence in the courts?**

   Response: I serve as the Chairperson of the Utah State Courts Standing Committee on Judicial Outreach. In that capacity, I have organized and participated in educational efforts designed to improve the public image of the courts. These activities include hosting public forums where members of the community can address specific questions to the judiciary and court representatives, speaking in Utah's public schools on topics related to the structure of the United States Constitution and the role of the Judicial Branch, and creating written and visual information about the court system. I have also planned and implemented programs to celebrate the federal Constitution and this country's adherence to a system of laws. As a member of Utah's Constitutional Commission on Civic and Character Education, I have worked to encourage Utah's teachers to incorporate lesson plans designed to prepare Utah's citizens for informed and civil participation in government. If confirmed, I would continue my efforts to educate the public about our constitutional republic and the unique role of the courts in it.

2. **What is your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?**

   Response: My judicial philosophy in applying the Constitution to modern statutes and regulations is to exercise my judgment fairly and impartially, and to avoid imposing my will on the outcome. If confirmed, I will apply Constitutional provisions according to the text and any controlling precedent. In the event that the issue cannot be resolved by a careful reading of the text and controlling precedent, I will consider the original meaning of the Constitutional provision at issue. *See United States v. Jones*, 132 S.Ct. 945, 949-50 (2012) (examining original public meaning and determining that the Fourth Amendment to the United States Constitution protects against physical trespass by public officials); *District of Columbia v. Heller*, 554 U.S. 570, 581-92 (2008) (examining original public meaning and determining that the Second Amendment to the United States Constitution confers an individual right to bear arms); *Crawford v. Washington*, 541 U.S. 36, 42-57 (2004) (examining original public meaning and determining that the Sixth Amendment to the United

States Constitution affords a criminal defendant the right to cross examine all of the government's testimonial witnesses).

3. **What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?**

Response: A judge should not base a legal decision on her personal opinions. As an appellate judge for the State of Utah, I have not based a legal decision on my personal opinions and I would not do so if confirmed to the Tenth Circuit. However, I am bound and would continue to be bound if confirmed, by controlling precedent of the United States Supreme Court. In interpreting the prohibition against "cruel and unusual" punishment in the Eighth Amendment, the Supreme Court has stated that it holds "repugnant . . . punishments which are incompatible with the evolving standards of decency that mark the progress of a maturing society." *See Miller v. Alabama,* 132 S.Ct. 2455, 2463 (quoting *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)). To determine those "evolving standards," the Supreme Court has sometimes considered the number of states that have authorized the death penalty as punishment for the particular crime. *See Coker v. Georgia*, 433 U.S. 584, 595-96 (1977) (noting that Georgia was the only state that authorized the death penalty for rape of an adult woman and holding that the imposition of the death penalty under those circumstances is unconstitutional). I am not aware of any other circumstances in which the Supreme Court has looked to evolving standards of decency to interpret provisions of the Constitution. If confirmed, I will follow this precedent.

4. **What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?**

Response: The United States Supreme Court has explained that while the Establishment Clause and Free Exercise Clause "express complementary values, they often exert conflicting pressures." *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). Despite that tension, "there is room for play in the joints" between the Clauses which leaves "some space for legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause." *Id.* For example, in *Cutter* the Supreme Court held that the increased protection of prisoners' religious rights in the Religious Land Use and Institutionalized Persons Act "fit[] within the corridor between the Religion Clauses . . . as permissible accommodation of religion that is not barred by the Establishment Clause." *Id.*, at 720.

5. **Do you believe that the death penalty is an acceptable form of punishment?**

Response: The United States Supreme Court has held that capital punishment is constitutional in certain circumstances. *See generally Gregg v. Georgia*, 428 U.S. 153 (1976). If confirmed, I will follow this precedent.

6. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The United States Supreme Court has recognized constitutional privacy interests in various contexts. *See, Missouri v. McNeely*, 133 S.Ct. 1552, 1558 (2013) (internal quotation marks omitted) (holding that search involving "a compelled physical intrusion beneath [suspect's] skin and into his veins to obtain a sample of his blood for use as evidence" constitutes "an invasion of bodily integrity [which] implicates an individual's most personal and deep-rooted expectations of privacy"); *Kyllo v. United States*, 533 U.S. 27, 34-40 (2001) (holding that thermal imagining of the interior of a home violates the prototypical privacy interest protected by the Fourth Amendment); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (identifying the liberty interests in the Due Process Clause, including the right to privacy); *Katz v. United States*, 389 U.S. 347, 350 n.5 (1967) ("The Third Amendment's prohibition against the unconsented peacetime quartering of soldiers protects another aspect of privacy from governmental intrusion."); *Id.*, at 361 (Harlan, J., concurring) (reasoning that a Fourth Amendment search occurs when the government violates a subjective expectation of privacy); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (recognizing a right of marital privacy); *NAACP v. Alabama*, 357 U.S. 449, 462 (1958) ("This Court has recognized the vital relationship between freedom to associate and privacy in one's associations.").

a. Where is it located?

Response: The Supreme Court has held that the First, Third, Fourth, and Fifth Amendments to the United States Constitution protect privacy interests. *See* Answer to Question 6.

b. From what does it derive?

Response: The United States Supreme Court has held that privacy rights derive from the First, Third, Fourth, and Fifth Amendments. *Id.*

c. What is your understanding, in general terms, of the contours of that right?

Response: The First Amendment protects privacy in communications and associations. The Third and Fourth Amendments implicate a reasonable expectation of privacy in the home, and the Fourth Amendment further protects a privacy interest in one's person and things. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court held that the Due Process Clause found in the Fifth Amendment protects substantive 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." *Glucksberg*, 521 U.S. at 720-21 (internal quotation marks omitted). The privacy rights protected by the Due Process Clause of the Fifth Amendment include the "right[] to marry," the right "to have children," the right "to direct the education and upbringing of one's children," the right "to marital privacy," the right "to use contraception," the right "to bodily integrity," and the right "to abortion." *Id.*, at 720. However, the Supreme Court has "always been reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Id.* (internal quotation marks omitted). If confirmed, I will follow this precedent.

7. **In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.**

   a. **Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?**

   Response: If confirmed, I will decide cases based on the text of the Constitutional provision at issue and controlling precedent from the Supreme Court and the Tenth Circuit. I will also be bound by the holding of *Griswold v. Connecticut*, 381 U.S. 479 (1965), as refined by later decisions of the Supreme Court.

   b. **Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?**

   Response: A judge should begin any analysis of a constitutional provision by examining the text and controlling precedent. If further inquiry is required, she should consider the history, tradition, and purpose of the provision with due regard to the context of the document as a whole. *See generally District of Columbia v. Heller*, 554 U.S. 570 (2008) (considering original meaning of the Second Amendment).

8. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: The United States Supreme Court has not settled the question of the appropriate scrutiny to be applied in reviewing Second Amendment challenges to a State or Federal gun law. *See District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008) (holding that a ban of handguns in the home would fail constitutional muster under any standard of scrutiny). After

Heller was issued, the Tenth Circuit applied intermediate scrutiny to a Second Amendment challenge to federal legislation. *See United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010). If confirmed, I would be bound by the prior decisions of the Tenth Circuit in the absence of contrary precedent from the Supreme Court.

9. In *Brown v. Entertainment Merchants Association*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

Response: A judge must reach a decision in a case based on the evidence in the record. However, it is the responsibility of the judge to research the controlling law whether or not the parties have called it to the attention of the court.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: A judge should base her decision on psychological and sociological studies when those studies are part of the record and relevant to an issue in the case. For example, such information may be relevant to evaluating the admissibility of expert testimony. *See, e.g., Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

10. What would be your definition of an "activist judge"?

Response: I would define an "activist judge" as one who imposes his will on the outcome of the decision based on personal opinions or preferences or one who decides issues that are not properly before the court.

11. What is the most important attribute of a judge, and do you possess it?

Response: I believe the most important attribute of a judge is humility. A humble judge will naturally accept the limitations of her role in our system of government, apply what the law is rather than what she wants it to be, be respectful of other persons and ideas, and work diligently to understand the arguments of the parties and the controlling law. Every day I serve as an appellate judge for the State of Utah, I am humbled by the trust placed in me by the Governor and the Utah Senate.

12. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

Response: Yes, I believe that collegiality is an important element of the work of a Circuit Court. If confirmed, I will continue the practices I have employed working on panels of the Utah Court of Appeals. I will: (1) welcome the insights and contrary views offered by a colleague during discussions about a case; (2) review my own positions in light of my colleague's perspective; (3) make modifications that are consistent with my judgment to address my colleague's concerns; and (4) if still at odds with my colleague, write a decision that respectfully disagrees with my colleague's position.

13. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be impartial, diligent, and respectful. I have tried to exhibit these attributes in my interactions with the parties, counsel, court staff, and my colleagues during my eight years as a member of the Utah Court of Appeals.

14. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes.

15. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: During my service as an appellate judge for Utah, I have had many opportunities to address issues of first impression. In most instances those issues have involved the interpretation of a written document, including the state or federal constitutions, a statutory provision, a term of a contract, or a rule. My practice in resolving these issues is to read carefully the language used in the document, giving those words their ordinary and common meanings. I also consider the provision at issue in the context of the document as a whole and avoid any interpretation that will render other provisions of the document superfluous. In most instances, this approach is effective in resolving the issue. When it is not, I have looked to related provisions of the statutory code and decisions interpreting those provisions to determine whether the reasoning can be applied analogously to the issue of first impression before the court. I have also looked to decisions on the issue from jurisdictions that are not binding, and considered whether the rationale for any conclusion reached by those courts on the issue is persuasive.

16. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: If confirmed, I will be bound to follow controlling precedent of the United States Supreme Court and the Tenth Circuit irrespective of whether I agree with it.

17. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: The federal courts must uphold properly adopted legislation unless Congress acts beyond the scope of its enumerated powers or improperly encroaches upon powers reserved to the States or the rights retained by the People.

18. What weight should a judge give legislative intent in statutory analysis?

Response: A judge should determine the meaning of a statute based on its actual language and any controlling precedent interpreting it. Only when the text is subject to two or more plausible interpretations and there is no precedent on point should the judge attempt to discern the legislative intent.

19. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

Response: I do not believe that a legal decision reached by a judge should be influenced by her gender, ethnicity, or other demographic factors. I also believe that a judge should guard against such factors influencing her decision.

20. 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? Please explain.

Response: With the exception of English common law, no.

21. 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: The best assurance I can give the Committee and future litigants that I will put aside my personal views and be fair to all who appear before me is the body of written decisions I have authored during my eight-year tenure as a member of the Utah Court of Appeals. I believe those decisions reflect my fidelity to the law and my impartiality.

22. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: If confirmed, I will be bound by the prior decisions of the United States Supreme Court and of the Tenth Circuit. Decisions of a prior panel of the Tenth Circuit may be overruled only by the court sitting *en banc* or if the prior decision has been superseded by a decision of the United States Supreme Court. Rule 35 of the Federal Rules of Appellate Procedure provides that a majority of the active members of the circuit court may order *en banc* consideration of a matter "to secure or maintain uniformity of the court's decisions" or "to address a question of exceptional importance." Tenth Circuit rule 35.1 specifies that *en banc* consideration of matters is disfavored and should be permitted only in extraordinary circumstances. If confirmed, I will follow these standards.

23. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: As an appellate judge for the state of Utah, I first read the briefs filed by the parties, any appendices to those briefs, and the trial court decision that is the subject of the appeal. If the issue arises out of a written document, I carefully examine the language used in the document and the operation of the relevant provision in the context of the document as a whole. In addition, I familiarize myself with the relevant legal authorities and the record. Next, I listen to the arguments of counsel and in particular, to their responses to the questions from the panel. In conference, I am open to the insights of the other panel members and express my own opinions and concerns. During the drafting process, I refine my analysis and reexamine issues when warranted. Ultimately, I decide the case based on the application of the law to the facts.

24. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

25. Please describe with particularity the process by which these questions were answered.

Response: I received the questions from the Office of Legal Policy in the Department of Justice on Wednesday, October 2, 2013. I reviewed the questions and drafted responses. I submitted those answers to an attorney in the Office of Legal Policy for review. I then made some revisions and finalized my answers for submission to the Committee.

26. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Pamela L. Reeves
Nominee, U.S. District Judge for the Eastern District of Tennessee

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: Having not yet had the opportunity to serve as a judge, it is difficult for me to say with certainty what my judicial philosophy might be. Perhaps it would be more helpful for me to say that the qualities I admire most in judges include patience, respect for the litigants who appear in their court, and a willingness to keep an open mind until all parties have had an opportunity to fully and fairly present their cases. While I am not a student of judicial philosophy, I have always admired Justice Sandra Day O'Connor, in part because of the grace and humility with which she dealt with the pressure of being the first female on the United States Supreme Court. She also possessed two additional traits that I would hope to emulate if I am fortunate to be confirmed. First, she generally sought to keep her decisions narrow. Second, she was perceived as a justice who kept an open mind and made decisions based on the specifics of the case. I would seek to incorporate both of these traits into my judicial philosophy and practice, if confirmed.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The United States Supreme Court has employed originalism in interpreting the U.S. Constitution. For example, the Supreme Court looked to the original public meaning of the U.S. Constitution in its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a U.S. District Judge, I will apply applicable U.S. Supreme Court and Sixth Circuit precedent on issues involving the interpretation of the U.S. Constitution in the same manner that I would apply binding precedent to all other issues.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a U.S. District Judge, I will not have authority to overrule precedent from the Sixth Circuit Court of Appeals or from the U.S. Supreme Court.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) remains binding precedent. If I am confirmed, I will apply this and all binding precedent without regard to whether I agree or disagree with the precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The U.S. Supreme Court has articulated three categories of activity that Congress may regulate under the Commerce Clause of the U.S. Constitution: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *See United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000), and *Gonzales v. Reich*, 545 U.S. 1 (2005). If confirmed, I would adhere to the precedents set forth in those cases and any other binding precedent on the issue of Congress' Commerce Clause power from the U.S. Supreme Court or the Sixth Circuit.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Medellin v. Texas*, 552 U.S. 491, 524 (2008), the U.S. Supreme Court held that "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). Applying this precedent, and assuming the question is presented in a justiciable case or controversy, the judiciary may invalidate executive orders or actions when the act or order in question violates the Constitution or federal law.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: It has long been established that a fundamental right, for purposes of the substantive due process doctrine, is a right that is "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 [it] were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations and quotation marks omitted). If confirmed as a U.S. District Judge, I would apply this and other precedent established by the U.S. Supreme Court and the Sixth Circuit Court of Appeals in analyzing fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The U.S. Supreme Court has held that classifications based on race, alienage, national origin, and gender are subject to heightened scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). If confirmed as a U.S. District Judge, I would apply Supreme Court and Sixth Circuit precedent in determining whether a particular classification should be subjected to heightened scrutiny.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: *Grutter v. Bollinger* is binding Supreme Court precedent. If I am fortunate to be confirmed as a U.S. District Judge, I will apply Supreme Court and Sixth Circuit precedent without regard to my personal expectations.

Senator Chuck Grassley
Questions for the Record

Pamela L. Reeves
Nominee, U.S. District Judge for the Eastern District of Tennessee

1. **According to your questionnaire, it appears that the majority of your legal experience is limited to civil litigation. As a district judge, you will be asked to preside over both civil and criminal cases.**

   a. **What experience do you have with criminal law?**

      Response: I have served as co-counsel on one criminal case in federal court. Additionally, early in my legal practice, I represented many juveniles in juvenile court on minor criminal offenses. Finally, in the course of my work defending law enforcement agencies across the state of Tennessee, I became familiar with standards for probable cause searches and arrests.

   b. **What steps have you taken to familiarize yourself with the area of criminal law?**

      Response: Since receiving the nomination, I have begun familiarizing myself with the Sentencing Guidelines and the Federal Rules of Criminal Procedure by personally studying these resources and attending educational seminars. I have also attended two criminal jury trials in federal court and one detention hearing. Finally, I have spoken to a number of criminal defense lawyers to hear their thoughts and concerns, and I have met for several hours with the chief criminal attorney at the U.S. Attorney's office to learn about his office and procedures.

   c. **What steps do you plan to take to get up to speed, should you be confirmed?**

      Response: If confirmed, I would approach the challenge of becoming more familiar with federal criminal issues the way I have always approached any task that I undertake. I would devote whatever time is necessary to become familiar with federal criminal statutes, the Federal Rules of Criminal Procedure, applicable case law and the Sentencing Guidelines. I will also seek guidance from the other judges in the district.

2. **How will you use the Sentencing Guidelines to guide you in criminal cases?**

   Response: While the U.S. Supreme Court has held in *United States v. Booker*, 543 U.S. 220 (2005) that the Sentencing Guidelines are no longer mandatory, it is still important for criminal defendants and their attorneys to be able to assess their options realistically, and consistency in sentencing is helpful to that process. I will depart from the properly calculated sentences only when appropriate factors warrant a departure.

3. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it**

in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

Response: No. While I believe it is always important for judges to be respectful of all who appear before that judge, it is never the role of a judge to favor one party over another.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is the ability to be fair to the parties who appear in the court and to make decisions based on the facts of the particular situation and applicable law. Judges must necessarily make some parties unhappy with their rulings, but nothing that a judge says or does should make any person feel that the judge is unfair or partial to one side or the other. I possess the ability to be fair to all parties and the commitment to make decisions based on the facts and law of the particular situation.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: Judges must be patient and respectful to the parties, to the legal process and to the rule of law. Judges must be willing to work hard to ensure that the parties who appear before them feel that they have had a fair and impartial hearing. I have the ability to show lawyers and parties patience and respect, and I am willing to adhere to the rule of law.

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: Simply stated, personal beliefs have no place in the judicial system. I am committed to faithfully following the precedents of the United States Supreme Court and the Sixth Circuit Court of Appeals.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: The starting point for analyzing a case of first impression is to first determine if it is truly a case of first impression. If I am satisfied that it is a case of first impression, I will begin my analysis by reviewing the language of the applicable statute or constitutional provision to ascertain the plain meaning of the text and apply existing canons of statutory construction. If the text is ambiguous, I would review analogous case law that could be instructional or applicable to the situation from the U.S. Supreme Court, the Sixth Circuit Court of Appeals, other United States Circuit Courts, and other United States District Courts. Finally, I would attempt to resolve the situation with the narrowest possible holding based on the specific facts of the situation.

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: The concept of *stare decisis* is the bedrock upon which our legal system is based. I will follow binding precedent from the U.S. Supreme Court or the Sixth Circuit Court of Appeals without regard to my personal beliefs.

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A statute properly enacted by Congress should be presumed to be constitutional. *See United States v. Morrison*, 529 U.S. 598, 607 (2000). Accordingly, properly enacted statutes should be invalidated only in situations where it is clear that the statute exceeds the authority of the Constitution or where it directly contradicts a provision of the Constitution.

10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: As I have stated above in response to questions 6 and 8, personal views, whether they are based on political ideology or other motivation, have no place on the bench. The responsibility of the judge is to follow binding precedent and applicable Constitutional and statutory provisions, not to attempt to use the bench to legislate.

11. 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: My reputation in the legal community reflects that the lawyers I have worked with, the judges before whom I have appeared, and the many parties I have mediated with have found me to be fair and impartial and someone who treats all persons involved in the legal system with professionalism and respect. If confirmed, I will continue to maintain those traits on the bench.

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? Please explain.

Response: No.

13. If confirmed, how do you intend to manage your caseload?

Response: I would review the cases to which I have been assigned and work with counsel and the law clerks to set realistic schedules, taking into consideration the complexity of the issues and the need for expedited trial schedules on criminal matters. I will work with the magistrate judges to assist lawyers in promptly resolving discovery issues, and I will make prompt resolution of dispositive motions and other pretrial motions a priority.

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: My years as a private practitioner have taught me that most lawyers are motivated largely by deadlines. Lawyers need to know that the deadlines are going to be reasonably enforced by the presiding judge. For that reason, judges need to play a role in controlling the litigation process. As I stated in response to question 13, I would attempt to set realistic trial schedules, provide guidance and oversight as needed to keep cases on track and work hard to ensure that parties get timely rulings on matters that will allow attorneys to realistically evaluate their client's positions. My experience with alternative dispute resolution will help me assess whether certain cases may be appropriate for mediation.

15. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: While I have never served as a judge, I have had the opportunity on several occasions to sit as an arbitrator and special hearing officer. In those situations, I have been able to effectively manage the prehearing proceedings, preside over actual hearings, listen to the testimony of witnesses, rule on objections and evaluate the credibility of the witnesses. Based on the record before me, I have then applied the applicable law and issued findings of fact and conclusions of law. If confirmed, I would approach the judicial experience with the same processes I have used in these instances. I am hopeful that my previous experiences in these quasi-judicial settings will help me make the transition as seamless as possible. If I am confirmed as a U.S. District Judge, I anticipate that getting up to speed on the large number of files that I will be immediately assigned will be a challenge.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes,

please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

17. Please describe with particularity the process by which these questions were answered.

Response: I received my questions by email on October 2, 2013. I began working on my answers shortly thereafter and completed a draft of the answers which was submitted to representatives of the Department of Justice on October 17, 2013. I discussed the answers with a representative of the Justice Department and approved the submission of these answers to the Justice Department on October 25, 2013 for filing with the Senate Judiciary Committee.

18. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of Vince Girdhari Chhabria
Nominee, United States District Court for the Northern District of California
9/25/2013 Judicial Nominations Hearing

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed, my approach would be to decide cases impartially, applying the law to the facts as narrowly as possible, without deciding or addressing any issues unnecessary to the resolution of the case. I served as a law clerk at the United States Supreme Court during the October 2001 term. I developed a deep respect for all nine of the Justices who served during that term, and would seek to emulate qualities in all of them, but two Justices come immediately to mind, perhaps because I knew them best of the nine. First, with respect to my former boss, Justice Stephen Breyer, I would seek to emulate his open-mindedness, his tireless work ethic, and his passion for the law. Second, during my clerkship I came to know the late Chief Justice William Rehnquist as the ultimate straight shooter – someone who spoke and wrote clearly, decided cases impartially, issued short opinions that said no more than necessary, and got his work done very quickly. In these respects, the Chief possessed the most important attributes of a district judge, and above all I would seek to emulate those attributes if confirmed.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would follow binding Supreme Court and Ninth Circuit precedent with respect to interpretation of the Constitution. As the Supreme Court recently explained in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), public understanding of text around the time of enactment plays a critical role in constitutional interpretation, and I would follow that and all other binding precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district judge, I would never overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The Supreme Court made this statement in holding that the San Antonio Metropolitan Transit Authority was not immune from federal minimum wage and overtime requirements. In

other cases, the Supreme Court has struck down the imposition of federal requirements upon the states. *See, e.g., Printz v. United States*, 521 U.S. 898 (1997). If confirmed, I would faithfully apply *Garcia*, *Printz*, and any other Supreme Court or Ninth Circuit precedent regarding limitations on federal power in relation to the states.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: Under Supreme Court precedent, there are three areas in which Congress may regulate pursuant to its Commerce Clause power: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or people or things in interstate commerce; and (3) activity that has a substantial effect on interstate commerce. *See, e.g.*, *United States v. Morrison*, 529 U.S. 598 (2000), *United States v. Lopez*, 514 U.S. 549 (1995). Although *Morrison* and *Lopez* emphasized the non-economic nature of the conduct Congress attempted to regulate in those cases, they did not hold that Congress could never regulate non-economic conduct pursuant to its Commerce Clause authority. In his concurring opinion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia concluded that under the Court's Commerce Clause jurisprudence Congress may regulate non-economic activity if doing so was a necessary part of a more general regulation of interstate commerce. If confirmed, I would faithfully apply *Morrison*, *Lopez*, *Raich* and all other applicable Supreme Court and Ninth Circuit precedent to the facts of the case in adjudicating any Commerce Clause question.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's ability to issue executive orders or take executive action is subject to the limits on the exercise of federal power set forth in the constitution, including the Bill of Rights. The guidelines for determining whether the President has exceeded these limits are set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring), along with the opinions of the Court in subsequent cases such as *Medellin v. Texas*, 552 U.S. 491 (2008) and *Dames & Moore v. Regan*, 453 U.S. 654 (1981). In addition, executive branch regulatory actions are subject to limitations set forth in cases such as *Gonzales v. Oregon*, 546 U.S. 243 (2006) and *Chevron, U.S.A. Inc. v. Natural Resources Def. Council, Inc.*, 467 U.S. 837 (1984). If confirmed and called upon to adjudicate a case involving the limits of executive power, I would faithfully apply these and all other pertinent Supreme Court and Ninth Circuit precedent.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: Under Supreme Court precedent, a right is "fundamental" only if it is deeply rooted in our nation's history and tradition and "implicit in the concept of ordered liberty." *Chavez v. Martinez*, 538 U.S. 760, 775 (2003). *See also McDonald v. City of Chicago*, 130 S. Ct. 3020, 3034 (2010). If confirmed, I would follow this and all other applicable Supreme Court and Ninth Circuit precedent in adjudicating any question regarding fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied strict or intermediate scrutiny in only a narrow set of cases, such as those involving classifications based on race, gender and religion. With respect to strict scrutiny, the Court has stated that it only applies in cases where the characteristics of a class, such as race, "so seldom provide a relevant basis for disparate treatment." *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013) (quoting *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989)). The Court has stated that intermediate scrutiny applies to gender-based classifications because, even though there are sometimes legitimate reasons to classify based on gender, such classifications have historically been used "to create or perpetuate the legal, social, and economic inferiority of women." *United States v. Virginia*, 518 U.S. 515, 534 (1996). If confirmed, I would follow binding Supreme Court and Ninth Circuit precedent in adjudicating any question regarding heightened scrutiny.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: In *Grutter*, the Supreme Court held that the use of racial preferences in admission to the University of Michigan Law School lawfully served the school's interest in a diverse student body, but predicted that by 2028 the use of racial preferences "will no longer be necessary to further the interest approved today." 539 U.S. at 343. If confirmed, I would apply binding Supreme Court and Ninth Circuit precedent on the use of race in university admissions, including the Court's recent decision in *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013).

Senator Chuck Grassley
Questions for the Record

Vince Girdhari Chhabria
Nominee, U.S. District Judge for the Northern District of California

1. **In an interview on National Public Radio you said that your "own personal view is that it would violate the equal protection clause of the U.S. Constitution to deny same-sex couples the right to marry" and that "history is on our side that eventually same-sex couples throughout the country will be permitted to marry."**

   If the Supreme Court holds that state laws and amendments that ban same-sex marriage are constitutional, how will "history being on your side" impact your decisions on the bench regarding same-sex marriage bans?

   Response: If confirmed, I would faithfully apply such precedent without regard to any views I may hold, as I would all binding Supreme Court and Ninth Circuit precedent on any issue that came before me.

2. **In an article you co-authored, titled *Courts Wrongly Continue Bias Against Gays*, you wrote that "our constitutional jurisprudence is based on reason applied to current circumstances, not custom or belief, no matter how long or sincerely held."**

   Does the meaning of the constitution change based on reason applied to current circumstances or does the original public meaning of the text remain the basis that constitutional decisions should be made no matter how long ago the text was written?

   Response: I do not believe that the meaning of the Constitution changes, except when it is amended in accordance with Article V. The Constitution's words and principles are fixed, and those words and principles must be applied to current circumstances. As the Supreme Court has recently reiterated, in applying the words of the Constitution to current circumstances, the meaning of those words at the time they were written, and the public's understanding of the meaning of the constitutional text at the time it was adopted, plays a critical role in constitutional interpretation. *See District of Columbia v. Heller*, 554 U.S. 570, 605 (2008). If confirmed, I would apply this and all other applicable Supreme Court and Ninth Circuit precedent relating to constitutional interpretation.

3. **In San Francisco's brief for *Catholic League for Religious and Civil Rights v. City and County of San Francisco* you argued that the Board of Supervisor's resolution urging "Archbishop Niederauer and the Catholic Charities of the Archdiocese of San Francisco to defy all discriminatory directives of Cardinal Levada" and place children for adoption with same-sex couples did not have the primary purpose to inhibit Catholicism because it was aimed at denouncing discrimination and not Catholicism.**

   a. **Can you articulate any limiting principle for this argument?**

Response: This case was heard by an eleven-member en banc panel of the Ninth Circuit, and the judges of that panel appeared to disagree on whether there was a limiting principle for the argument identified above. Three members of the panel wrote that the resolution was constitutional under the Supreme Court's three-part test first set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), in part because "both San Francisco's history of promoting gay rights and the timing of the defendants' resolution, incendiary though it may be, is aimed at expressing the defendants' position on the secular issue of same-sex adoption." *Id.* at 1061 (Silverman, J., concurring). Three other members of the panel wrote that the resolution was unconstitutional because, among other things, it "entangle[d] itself in church governance" in violation of the *Lemon* test. *See Catholic League for Religious & Civil Rights v. City and County of San Francisco*, 624 F.3d 1043, 1057 (9th Cir. 2010) (en banc) (Kleinfeld, J., dissenting). Five other members of the panel concluded there was no federal jurisdiction in the case, but suggested that they, although in agreement on standing, had differing views about the merits of the plaintiffs' argument and the City's response to it. *Id.* at 1068 & n. 3 (Graber, J., concurring).

If confirmed and presented with an argument similar to the one advanced by the City in this case, my prior advocacy on behalf of my clients, as with any case or controversy before me, would play no role in my decisionmaking, which would be limited to a careful review of the facts and the parties' arguments, and a faithful application of Supreme Court and Ninth Circuit Establishment Clause precedent.

b. In your view, would a government entity's action denouncing Catholicism for not ordaining women as priests be permissible for the same reason? Namely, because it only denounced discrimination against women?

Response: As a prospective district judge, I would be reluctant to prejudge the validity of either a resolution similar to the one enacted by my client or a resolution similar to the one hypothesized in this question, but as with any case or controversy before me, my prior advocacy on behalf of my client would play no role in my decisionmaking.

4. In a recent Supreme Court decision, Justice Kennedy wrote that DOMA "humiliates," "demeans," "disapproves," "seeks to injure," and that it is a "bare congressional desire to harm."

a. In your view, when and under what circumstances should a judge make findings regarding Congressional intent of the laws it writes?

Response: The Supreme Court recently reiterated that "[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Milner v.*

Dep't of Navy, 131 S. Ct. 1259, 1264 (2011) (quoting *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985)). If confirmed, I would make findings regarding Congressional intent when called upon to do so by Supreme Court and Ninth Circuit precedent. As discussed below, most commonly courts make findings regarding Congressional intent after examining legislative history for the purpose of resolving an ambiguity in statutory language.

b. When is legislative intent relevant in determining the outcome of a case?

Response: Courts should begin by applying the text of the statute to the facts of the case, with the hope and expectation that the text will resolve the matter and constitute an unambiguous reflection of legislative intent. In the event the language of the statute is ambiguous, however, courts consider legislative history to help discern legislative intent. *See, e.g., Milner v. Dep't of Navy*, 131 S. Ct. 1259, 1267 (2011). Furthermore, as noted in the question, the Supreme Court has in some circumstances gone beyond the text of a statute or ordinance to help discern legislative intent in cases involving constitutional claims. *See, e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 535 (1993). However, if a statute is "otherwise constitutional," a court should not strike it down "on the basis of an alleged illicit legislative motive." *United States v. O'Brien*, 391 U.S. 367, 383 (1968). If confirmed and presented with a constitutional challenge to a statute or ordinance, I would faithfully apply Supreme Court and Ninth Circuit precedent on the relevance of legislative intent in the circumstances of that case.

c. I expect all federal judges to follow the law and respect every citizen's first amendment religious liberty rights. What is your understanding of a church's right to define marriage how they see fit?

Response: The Supreme Court recently explained that the Free Exercise Clause of the First Amendment "protects a religious group's right to shape its own faith and mission" and protects against "government interference with an internal church decision that affects the faith and mission of the church itself." *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 132 S. Ct. 694, 706-07 (2012). If confirmed, I would faithfully apply this and other applicable Supreme Court and Ninth Circuit precedent regarding the First Amendment right of a church to control its faith and mission.

d. Is there a right for clergy to decline to officiate at the marriage of any particular couple?

Response: Please see the response to Question 4(c) above. *See also Perry v. Schwarzenegger*, 704 F.Supp.2d 921, 976 (N.D. Cal. 2010) ("no religion will be required to change its religious policies or practices with regard to same-sex couples,

and no religious officiant will be required to solemnize a marriage in contravention of his or her religious beliefs") (quoting *In re Marriage Cases*, 183 P.3d 384, 451-52 (Cal. 2008)).

5. **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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: If confirmed, I would reach a decision in cases by first developing a firm grasp of the facts, and then applying the law narrowly to those facts, without deciding or addressing any issue that is unnecessary to the resolution of the case. In cases involving statutory interpretation, I would first look to the language of the statute, with the hope and expectation that the case can be resolved simply by applying that language to the facts of the case. I would also look to applicable Supreme Court and Ninth Circuit precedent. If the statute were ambiguous and if there is no applicable Supreme Court and Ninth Circuit precedent, I would look to other circuits and district courts for persuasive authority, and where appropriate I would examine the history of the applicable provision. In cases involving constitutional challenges to statutes, I would approach the matter as described in my response to Question 14 below.

If confirmed, I would not expect the transition from advocate to judge to be difficult for me, for two reasons. First, I believe I took well to the role of a law clerk during my three years clerking in the federal judiciary, during which time I was called upon to analyze cases neutrally rather than advocate for one side or another. Second, I believe my primary strengths as an advocate have been the ability to think objectively and treat opposing parties and their counsel fairly – traits that would carry over well to my new role if I were confirmed.

6. **How will you use the Sentencing Guidelines to guide you in criminal cases?**

Response: Although the Sentencing Guidelines are now advisory rather than mandatory, I believe uniformity in sentencing is critical to our criminal justice system, and that a person should not receive a different sentence depending upon whose court he or she appears in. Therefore, the Guidelines would serve as my starting point in sentencing decisions, and I would give them substantial deference.

7. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

   Response: I believe it is never appropriate for a judge to favor one party over another.

8. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is to be objective and to decide cases impartially, giving thorough consideration to both sides' arguments and applying the law to the facts as narrowly as possible. I believe I possess this attribute.

9. **Your questionnaire indicates you are a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution."**

   a. **What is your view of the role of the courts on improving the lives of everyday citizens?**

      Response: I am not familiar with the intended meaning of the above quotes. I believe the courts can improve the lives of everyday citizens by promoting the rule of law and ensuring all parties who appear before the court are treated fairly, impartially and respectfully. I also believe it is important for judges to ensure that all people who come into contact with the judicial system – parties, attorneys, witnesses, victims and jurors – are treated with respect and come away with a positive impression of the judicial system.

   b. **Can you please explain, in your view, the idea of what is a progressive perspective of the constitution?**

      Response: I am not familiar with the intended meaning of the statement quoted above. If confirmed as a district judge and called upon to adjudicate a constitutional question, I would apply the applicable text and binding precedent to the facts of the case without regard to labels such as "conservative" or "progressive."

c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?

Response: I am not familiar with the intended meaning of this statement, and as someone who has focused on advocating for his client I have not developed a view on what a "progressive perspective of the constitution" would mean for the country.

d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered? Please explain.

Response: I am not familiar with the intended meaning of this statement, and am not familiar with any distortions that need to be countered.

e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"

Response: I would not seek to do either. If confirmed, my role would be limited to impartially applying the law to the facts of the case before me.

10. 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 modest and respectful. Modesty in this context means that a judge should not be quick to assume he or she knows the right answer, and should not reach a final decision before allowing the parties to complete their presentations. Respect in this context means that a judge should treat all who appear in his or her courtroom well, be they attorneys, parties, witnesses or jurors. I believe these are the most important elements of judicial temperament, and that I possess these traits.

11. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: Yes. I am committed to following the precedents of higher courts faithfully and giving them full force and effect regardless of whether I agree or disagree with those precedents.

12. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If faced with a case of first impression, I would first look to the language of the applicable statutory or regulatory provision, with the hope and expectation that the case can be resolved simply by applying that language to the facts of the case. If the answer were not clear, I would seek guidance from analogous Supreme Court and Ninth Circuit precedent, from analogous precedent from other circuits and from district courts. Where appropriate, I would also examine the history of the applicable provision.

13. 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 or Ninth Circuit precedent regardless of whether I believed the court erred in its decision.

14. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Statutes enacted by Congress are presumed constitutional, and should only be struck down if they are in clear violation of a provision of the constitution. If presented with a constitutional challenge to a Congressional statute, I would first inquire whether the parties are properly before the court, that is, whether there is jurisdiction over the matter in the first place. If not, I would dismiss the case. If jurisdiction existed, I would inquire whether the doctrine of constitutional avoidance applies, and if so would decide the case without ruling on the constitutionality of the statute. If the doctrine of constitutional avoidance did not apply, I would proceed by applying the presumption in favor of the constitutionality of Congressional statutes. I would look first to the text of the constitutional provision at issue, along with the text of the statute being challenged. I would also look to binding Supreme Court and Ninth Circuit precedent. In the event the case could not be resolved by application of the plain language of the constitutional provision and binding precedent, I would look to persuasive precedent from other circuits and from the district courts, and would, when appropriate, look to the history of the constitutional provision and the statute being challenged. It bears noting, however, that the presumption in favor of the constitutionality of the statute becomes more important when the text of the constitutional provision and binding precedent do not provide clear answers.

15. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I have never allowed any personal views I may hold to interfere with my advocacy on behalf of my clients, or to interfere with the legal advice I have provided my

clients. Similarly, if confirmed, I would never allow any personal views I may hold to interfere with my application of the law to the facts of the case before me. Furthermore, I believe two of my primary strengths as an advocate have been: (i) my ability to think objectively and impartially; and (ii) my consistent respect for the other side's arguments and the people who make those arguments. I believe those who have worked with me, be they co-clerks, colleagues, clients or opposing counsel, would attest to this.

16. 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: Please see response to question 15 above.

17. 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? Please explain.

Response: If confirmed, I would not rely on foreign law or the views of the world community in determining the meaning of the Constitution unless the Supreme Court or Ninth Circuit issued a decision requiring me to do so.

18. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, my policy would be to familiarize myself with cases immediately after they are filed, promptly schedule case management conferences, work with counsel for the parties to develop an efficient case management schedule, and continue monitoring cases throughout the process to ensure that the rules of discovery are not abused and that the case is not unnecessarily delayed.

19. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe judges play an important role in controlling the pace and conduct of litigation. If confirmed, I would take the steps identified in my response to Question 18 to control my docket.

20. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: Please see my response to Question 5 above.

21. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

22. Please describe with particularity the process by which these questions were answered.

Response: I drafted these responses and presented them to Justice Department officials. After receiving comments from them, I edited the responses and authorized the Justice Department to submit them on my behalf.

23. Do these answers reflect your true and personal views?

Response: Yes.

Questions for Judicial Nominees
Senator Ted Cruz

James Maxwell Moody, Jr.
Nominee, U.S. District Judge for the Eastern District of Arkansas

Judicial Philosophy

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy as a state court judge for the past eleven years could best be characterized by fair and impartial treatment to all litigants that have come before me regardless of my personal views, if any. If confirmed, I will continue to follow the law and apply the law to the facts of each case before me. I do not think any single Justice's philosophy is analogous to mine but credit my judicial philosophy to my father, Judge James Moody.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has used "original intent" and "original public meaning" when interpreting the Constitution in certain cases. I would faithfully follow that precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: I would always follow controlling precedent.

Congressional Power

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: To the extent that *Garcia* is still controlling precedent, if confirmed, I would follow and apply controlling precedent on any issue before me.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has ruled that "Congress may regulate the use of the channels of interstate commerce . . . Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities . . . Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." *U.S. v. Lopez*, 514 U.S. 549,559 (1995). If confirmed as a district court judge and faced with a question regarding the scope of the Commerce Clause, I would follow this precedent.

Presidential Power

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Executive Branch of government is limited in power by the authority and powers vested to it by an act of Congress or the Constitution. If those powers and authority are exceeded, the judiciary must enforce those limitations. "The President's power, if any, to issue the order must stem from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

Individual Rights

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: "[T]he Court has regularly observed that the 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, 721 (1997). In addition, the Court has "required in substantive-due-process cases a 'careful description' of the asserted fundamental liberty interest." *Id.* at 721 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: A classification is subject to heightened scrutiny when it involves race, gender or other suspect classification or when the classification burdens fundamental rights such as the right to vote.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: The Supreme Court has recently applied *Grutter v. Bollinger* to allow continued use of affirmative action in public higher education admissions but further reinforced that such a practice was subject to strict scrutiny. The Court reiterated that such an inquiry required "a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications," and clarified that "[t]he reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity." *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2420 (2013). The Court also held "a university must make a showing that its plan is narrowly tailored to achieve the only interest that this Court has approved in this context: the benefits of a student body diversity that 'encompasses a ... broa[d] array of qualifications and characteristics of which racial or ethnic origin is but a single though important element.'" *Id.* at 2421 (citing *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978)).

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Senator Chuck Grassley
Questions for the Record

James Maxwell Moody, Jr.
Nominee, U.S. District Judge for the Eastern District of Arkansas

1. **According to your questionnaire, it appears that the majority of your legal experience is limited to civil litigation. As a district judge, you will be asked to preside over both civil and criminal cases.**

   a. **What experience do you have with criminal law?**

      Response: Although almost all of my experience as a judge has been with civil cases, I have tried criminal jury trials as a judge and presided over plea and arraignment days. Upon taking the state court bench I attended the National Judicial College where a large part of the curriculum was dedicated to criminal law and criminal procedure.

   b. **What steps have you taken to familiarize yourself with the area of criminal law?**

      Response: I have been studying the federal criminal code, the Federal Rules of Criminal Procedure, and the Federal Sentencing Guidelines.

   c. **What steps do you plan to take to get up to speed, should you be confirmed?**

      Response: I plan to enroll in educational programs on federal criminal law provided by the Administrative Office of the United States Courts. I will consult judicial colleagues and continue to work hard to master the area of criminal law.

2. **How will you use the Sentencing Guidelines to guide you in criminal cases?**

   Response: While the Sentencing Guidelines are no longer mandatory, if confirmed I will use them as a baseline and only deviate from them when appropriate. Sentencing Guidelines promote uniformity and consistency.

3. **How would you define the term judicial activism? What would indicate to you that a judge is an activist judge?**

   Response: Judicial activism occurs when a judge attempts to make policy from the bench. If confirmed, my job would be to follow and interpret the law, leaving the making of policy and laws to the legislative branch.

4. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

   Response: No.

5. **What is the most important attribute of a judge, and do you possess it?**

   Response: During the past eleven years as a state court trial judge I have discovered that the most important attributes of a judge are dedication to the rule of law, civility and respect toward the litigants and being prepared. I possess each of these attributes.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge's temperament sets the tone and decorum for all business before the court. A civil attitude and a patient demeanor toward every person appearing before the court are essential to the administration of justice. I have strived to maintain this temperament on the state court bench and if confirmed will continue to do so on the federal bench.

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: As a state court judge, when considering a case of first impression, I first look at the relevant statutes to determine the plain unambiguous meaning of the law. If the meaning of the statute is unclear or ambiguous, I then look to analogous precedent from the Arkansas Supreme Court. If confirmed, to be a federal district court judge, I would continue to look at the text of the statute first to determine if its meaning was unambiguous. If it was ambiguous, I would look to analogous Supreme Court and Eighth Circuit precedent, and then other United States Circuit Courts of Appeals for guidance.

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 follow any applicable precedent regardless of my opinions of the validity of the controlling decision.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

    Response: I would only declare a statute enacted by Congress unconstitutional in cases where Congress exceeded the authority given to it by the Constitution.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: As a state court trial judge, I have been assigned over 1,000 cases and in each of them my decisions were grounded in precedent and the text of the law without regard to any underlying political ideology or motivation. If confirmed, I will continue do the same.

12. 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: As a state court trial judge I have been fair and impartial to all litigants that have come before me regardless of my personal views, if any. If confirmed I will continue to set aside any personal views and follow the law and apply the facts of each case before me.

13. 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? Please explain.

Response: No.

14. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will promptly issue a scheduling order for each particular case when it is filed and follow the litigation with status hearings and pretrial conferences to insure that the case is moving along at an appropriate pace.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: When deciding a case, I first establish the applicable standard of review. I then review the briefs submitted in the case as well as the trial record and consider oral argument by counsel. I conduct my own research of the relevant case law and render a decision by applying the law to the particular facts of the case.

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: Yes. If confirmed, I will continue to use scheduling orders, pretrial hearings and status conferences to ensure that cases move forward efficiently.

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

18. Please describe with particularity the process by which these questions were answered.

Response: On October 2, 2013, I received a series of questions and personally drafted my responses on the same day. The week of October 21st, I reviewed the draft of my responses with an official in the Department of Justice before submitting these to the Committee.

19. Do these answers reflect your true and personal views?

Response: Yes.

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New Orleans, LA
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Tel: 703-280-4088
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AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

May 17, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Pamela L. Reeves
To the United States District Court for the Eastern District of TN

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Pamela L. Reeves who has been nominated for a position on the United States District Court for the Eastern District of Tennessee. As a result of our investigation, the Committee is of the opinion that for this position Ms. Reeves is Unanimously Well Qualified.

A copy of this letter has been provided to Ms. Reeves.

Sincerely,

Judy Perry Martinez
Chair

cc: Pamela L. Reeves, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on May 17, 2013.

CHAIR
Judy Perry Martinez
New Orleans, LA

CHAIR-ELECT
Thomas A. Fellows
Salt Lake City, UT

FIRST CIRCUIT
Lisa G. Arnsberger
Boston, MA

SECOND CIRCUIT
Henry M. Bloom
New York, NY

THIRD CIRCUIT
Robert D. Fleck
Philadelphia, PA

FOURTH CIRCUIT
Charlotte, NC

FIFTH CIRCUIT
New Orleans, LA

SIXTH CIRCUIT
Hardin County, KY

SEVENTH CIRCUIT
Chicago, IL

EIGHTH CIRCUIT
Des Moines, IA

NINTH CIRCUIT
Los Angeles, CA

TENTH CIRCUIT
Denver, CO

ELEVENTH CIRCUIT
Miami, FL

D.C. CIRCUIT
Washington, DC

FEDERAL CIRCUIT
Washington, DC

STATE CHAIR
Denise A. Cardman
Washington, DC

Please respond to:
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AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

July 26, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Vince Girdhari Chhabria 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 Vince Girdhari Chhabria 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 opinion that for this position Vince Girdhari Chhabria is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. Chhabria.

Sincerely,

Judy Perry Martinez
Chair

cc: Vince G. Chhabria, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 26, 2013.

EDWIN M. LEE
MAYOR

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO
THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603

GREGORY P. SUHR
CHIEF OF POLICE

September 9, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

As Chief of Police for the City and County of San Francisco, I write to express my strong endorsement of Deputy City Attorney Vince Chhabria's nomination to be a federal district judge. Since he joined the City Attorney's Office in 2005, Mr. Chhabria has ably represented the Police Department and its officers in cases with important public safety implications. He has defended officers accused of engaging in excessive force and unlawful arrest. Several years ago, he successfully defended a challenge to the Department's efforts to shut down a violence-plagued night club on New Year's Eve. Mr. Chhabria has handled numerous cases involving assertions of qualified immunity by police officers – an area of law that is critical to law enforcement's ability to protect the community. And he currently defends one of our homicide inspectors in a case alleging that the inspector wrongfully obtained a murder conviction in one of the most violent gangland shootings in San Francisco history.

In these cases, Mr. Chhabria has been a highly effective advocate for the Department and its officers, while at the same time handling cases objectively, fairly and with an open mind. He recognizes the difficult challenges law enforcement officers face in the field, while of course respecting the constitutional rights of the City's residents. His skill, experience and fair-minded approach in this area would make a tremendous contribution to the federal judiciary.

Sincerely,

GREGORY P. SUHR
Chief of Police

National Asian Pacific American Bar Association | NAPABA

September 25, 2013

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 Vince Chhabria, Nominee for the United States District Court for the Northern District of California

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 Vince Girdhari Chhabria to the United States District Court for the Northern District of California. Mr. Chhabria possesses the necessary qualities—intellectual capacity, integrity, experience, and judicial temperament—to be an excellent United States District Court Judge.

NAPABA is a national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. Now in its 25th year, NAPABA represents the interests of 66 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 significantly underrepresented. Of the approximately 875 active Article III judges, only 21 are Asian Pacific American. If the number of Asian Pacific American Article III judges reflected the number of Asian Pacific Americans in the United States, that number would be over 50.

Notably, over 1.8 million South Asian Americans reside in the United States. More South Asian Americans live in California than in any other state, and the Northern District of California is home to the most South Asian Americans outside of New York City. Nevertheless, California has never had a South Asian American Article III judge. Indeed, only three South Asian American Article III judges have served in the history of the United States.

Mr. Chhabria currently serves as a Deputy City Attorney for Government Litigation and as Chief of Appellate Litigation for the San Francisco City Attorney's office. In that capacity, he defends the City of San Francisco and the San Francisco Unified School District against challenges to city ordinances, regulations, and policies. He further leads the office's appellate efforts. Primarily a federal civil litigator, his work encompasses high profile litigation on cutting-edge areas of the law. He is lead counsel on issues dealing with the Employment Retirement Income Security Act, the Americans with Disabilities Act, and challenges to the constitutionality of various rules and ordinances under the United States and/or California constitutions.

Prior to joining the San Francisco City Attorney's office, Mr. Chhabria was employed at Covington & Burling and Keker & Van Nest as a litigation associate, where he worked on complex criminal defense and white collar defense matters, as well as pro bono matters with the Marin County Public Defender's office. Mr. Chhabria has been recognized as one of California's 16 "Lawyers of the Year" by the San Francisco Recorder (2009), a "Top 20 Lawyers Under 40" by the California Daily Journal (2008), a "Best Lawyer Under 40" by NAPABA (2009), and the "Young Public Lawyer of the Year" by the International Municipal Lawyers Association for 2008.

Mr. Chhabria graduated in the top five percent of his class at the University of California Berkeley School of Law. After law school, Mr. Chhabria served as a law clerk at every level of the federal judiciary: for the Honorable Stephen G. Breyer of the United States Supreme Court, the Honorable James R. Browning of the Ninth Circuit Court of Appeals, and the Honorable Charles R. Breyer of the Northern District of California.

Mr. Chhabria has demonstrated that he will be a fair and impartial arbiter of the law. Mr. Steven Engel, a Deputy Assistant Attorney General in the U.S. Department of Justice Office of Legal Counsel during the George W. Bush Administration – and a judicial law clerk for Justice Anthony Kennedy – has described Mr. Chhabria as "open-minded and intelligent, an attorney who was prepared to listen and consider both sides of an argument, [and] to do so without any rigid ideological predispositions." Similarly, the San Francisco Chamber of Commerce stated that "Mr. Chhabria has proven himself time and again to be a fair, measured and exceedingly responsible public servant who respects the limitations that the law imposes on him and his client."

In addition to his outstanding work experience, Mr. Chhabria has demonstrated a deep commitment to the community, with a history of dedication to pro bono work. While in private practice, Mr. Chhabria represented numerous indigent defendants on behalf of the Marin County Public Defender's office. He has volunteered as a tutor for the Raphael House Homeless Shelter. He is also a member of the South Asian Bar Association of Northern California, the North American South Asian Bar Association, the Asian American Bar Association of the Greater Bay Area, and NAPABA.

Based on his qualifications, intellect, integrity, and commitment to service, NAPABA proudly and enthusiastically supports Mr. Vince Chhabria to serve as a District Judge for the United States District Court for the Northern District of California.

Sincerely,

Wendy C. Shiba
President

Tina Matsuoka
Executive Director

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South Asian
Bar Association

P.O. Box 2733
San Francisco, CA 94111
www.southasianbar.org

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Akshay Verma

Vice President
Vidhya Prabhakaran

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Shamika Bains

September 20, 2013

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Vince Chhabria

Dear Chairman Leahy and Ranking Member Grassley:

We write on behalf of the South Asian Bar Association of Northern California (SABA-NC) to offer our strongest support for Vince Chhabria's nomination to the United States District Court, Northern District of California. Mr. Chhabria is an accomplished attorney who will make an excellent jurist.

As the voice of the South Asian legal community in Northern California, SABA-NC advocates for the South Asian community and communities of color, supports those who value diversity in the legal profession, and promotes programs that assist lawyers in their work. SABA-NC is particularly concerned with the lack of South Asian judges in the federal judiciary, especially on the West Coast. We are a large, diverse, and active community that has made tremendous contributions to California's economic and social fabric. We believe fair representation in the judiciary is long overdue.

Mr. Chhabria Is Exceptionally Qualified for the Bench

After graduating from Berkeley Law School near the top of his class in 1998, he served as a law clerk for some of the most esteemed jurists in the country at every level of the federal judiciary. From 1998-1999, Mr. Chhabria was a law clerk for the Honorable Charles Breyer of the Northern District of California. According to Judge Breyer, Mr. Chhabria distinguished himself as an "exceptional" lawyer who demonstrated "sound judgment" and a willingness to work tirelessly to achieve the right result under the law. Mr. Chhabria also served as a law clerk for the Honorable James Browning of the Ninth Circuit Court of Appeals and the Honorable Stephen Breyer of the United States Supreme Court.

Mr. Chhabria also spent several years in private practice at well-respected litigations firms in the Bay Area. During this time, Mr. Chhabria maintained an active *pro bono* docket, including trying several criminal cases of indigent clients as a public defender in Marin County.

Since 2005, Mr. Chhabria has worked at the San Francisco Attorney's Office, first as a Deputy City Attorney for Government Litigation and now as the Chief of Appellate Litigation. In his current role, he supervises all of the appellate litigation for the City of San Francisco and defends the city's ordinances, regulations, or policies at both the trial and appellate level.

The legal community has awarded many accolades to Mr. Chhabria for his exemplary work. The Recorder, one of California's most prominent legal publications, awarded Mr. Chhabria one of its 16 "California Lawyers of the Year" in 2009. The year prior, he was named "Young Public Lawyer of the Year" by the International Municipal Lawyer's Association and was also named as one of the "Top 20 Lawyers Under 40 in California" by the California Daily Journal. Mr. Chhabria has in addition received awards from his community, including being named as one of the National Asian Pacific American Bar Association's "Best 40 Under 40" in 2008.

Northern California Requires a Bench as Diverse as its People

The legal system as a whole benefits from a judiciary that is representative of the American people. Mr. Chhabria's nomination reflects the communities the judiciary serves. In Northern California, there are more than 130,000 South Asians, yet there are no South Asian Article III judges. This oversight must be remedied in order to ensure a bench that is as diverse as the people of California.

In sum, we enthusiastically endorse Mr. Chhabria. His combination of experience in both civil and criminal law as well as his work in the public and private sector demonstrates the breadth of his legal skills. His experience in every branch of the federal judiciary, as well as his local government experience, reflects his passion for and commitment to public service. His cases in many areas of the law, including constitutional litigation, civil class actions, intellectual property and criminal matters, indicate his breadth of knowledge and intellect. There is no doubt that he will be an excellent jurist and we strongly urge you to swiftly confirm Mr. Chhabria to the United States District Court, Northern District of California.

Sincerely,

Akshay Verma
Co-President
SABA-NC

Maulik Shah
Co-President
SABA-NC

Shalini Swaroop
Endorsements Chair
SABA-NC



Nadeem Bezar, President
president@nasaba.com
(215) 851-9711

RECEIVED SEP 2 3 2013

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9516

The Honorable Charles Grassley, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9102

Dear Chairman Leahy and Ranking Member Grassley,

On behalf of the North American South Asian Bar Association (NASABA), I write to express NASABA's support of Vince Chhabria for appointment to the United States District Court for the Northern District of California. We enthusiastically endorse Mr. Chhabria as a candidate for the bench.

NASABA serves as the umbrella organization for twenty-five regional South Asian bar associations throughout the United States and Canada—including the South Asian Bar Associations of Northern California, Southern California, Sacramento, and San Diego. The rapidly growing South Asian legal community in the United States, which includes over six thousand attorneys and law students, has made significant contributions in public service, private practice, and academia.

Mr. Chhabria is an established and respected leader in the national South Asian legal community. If appointed, he will be an asset to the bench and serve the Northern District of California with distinction.

Mr. Chhabria has developed an impressive record as a San Francisco Deputy City Attorney. He has served as lead counsel in significant, high-profile matters concerning the constitutionality or legality of San Francisco ordinances, regulations, and policies over the past eight years. Be it the City's universal health care program or defending police officers accused of civil rights violations, the City has relied upon Mr. Chhabria for advice and representation in many of its most important matters.

In addition to his public service, Mr. Chhabria has practiced complex civil litigation with a major national law firm, has represented indigent defendants in criminal defense matters, has mentored many younger members of the legal profession, and served in various volunteer positions. Mr. Chhabria has also gleaned unique insight into the federal judiciary by working within each of its three major levels: He has served as a law clerk in the U.S. District Court (Judge Charles Breyer), the Ninth Circuit Court of Appeals (Judge James Browning), and the

U.S. Supreme Court (Justice Stephen Breyer). Accordingly, Mr. Chhabria will bring a broad, mature, and experienced perspective to the federal Bench.

Mr. Chhabria has a quick legal mind and is a gifted writer and a tireless worker. These skills have distinguished him among his peers. In February 2010, the Recorder named Mr. Chhabria one of its "California Lawyers of the Year." In 2009, The Daily Journal named him one of the "Top 20 Lawyers in California Under the Age of 40." In 2008, the International Municipal Lawyers Association (IMLA) gave him similar honors for "excellence in the practice of law," "outstanding service to the public," and "an exemplary reputation in the legal community."

If confirmed, Mr. Chhabria would be one of only four Article III judges of South Asian descent nationwide and the first ever in California. This is a historic opportunity. Moreover, Mr. Chhabria has a keen legal intellect that will serve the Northern District of California for decades to come. As the son of immigrants, Mr. Chhabria's historic appointment to the federal bench reflects the American dream. The South Asian community would applaud Mr. Chhabria's appointment.

On behalf of NASABA, I am pleased to convey our strong endorsement of Vince Chhabria for appointment to the United States District Court for the Northern District of California.

Thank you for your attention.

Sincerely,

Nadeem Bezar, Esq.
President, North American South Asian Bar Association

CC: Senator Dianne Feinstein, California (f: 202.228.3954)
Senator Chuck Schumer, New York (f: 202.228.3027)
Senator Orrin G. Hatch, Utah (f: 202.224.6331)
Senator Dick Durbin, Illinois (f: 202.228.0400)
Senator Jeff Sessions, Alabama (f: 202.224.3149)
Senator Sheldon Whitehouse, Rhode Island (f: 202.228.6362)
Senator Lindsey Graham, South Carolina (f: 202.224.3808)
Senator Amy Klobuchar, Minnesota (f: 202.228.2186)
Senator John Cornyn, Texas (f: 202.228.2856)
Senator Al Franken, Minnesota (f: 202.224.0044)
Senator Michael S. Lee, Utah (f: 202.228.1168)
Senator Christopher A. Coons, Delaware (f: 202.228.3075)
Senator Ted Cruz, Texas (f: 202.228.0755)

Senator Richard Blumenthal, Connecticut (f: 202.224.9673)
Senator Jeff Flake, Arizona (f: 202.228.0515)
Senator Mazie Hirono, Hawaii (f: 202.224.2126)

September 24, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Vince G. Chhabria to the United States District Court for the Northern District of California

Dear Chairman Leahy and Ranking Member Grassley:

We write in strong support of Vince G. Chhabria's nomination to the U.S. District Court for the Northern District of California. Each of us had the privilege of serving as a law clerk to a member of the U.S. Supreme Court during the 2001-2002 Term, when Vince served as a law clerk to Associate Justice Stephen Breyer. And while we are members of different political parties and hold a wide range of policy views, we are in complete agreement that Vince would be an excellent jurist.

When we worked together at the Court, we saw firsthand the qualities that would make Vince an outstanding district court judge. Vince demonstrated a keen intellect and an ability to master the most complex material. Perhaps even more importantly, Vince approached issues with an open mind. Rather than looking at matters through an ideological lens, Vince focused on applicable precedent and the facts of each case. Vince also approached his work in a collaborative manner. In fact, he was eager to seek out clerks with differing viewpoints in order to discuss issues and subject his own analysis to rigorous scrutiny.

Based on our knowledge of Vince, we are also confident that he has the right temperament to serve on the bench. He treats all people with kindness and respect, and we have no doubt that as a judge he would treat both attorneys and their clients fairly. Vince also has an exceptional ability to bring people together. While we worked side by side, Vince played a key role in fostering a cohesive spirit among our class of clerks.

In the many years since his Supreme Court clerkship, Vince has had a stellar legal career. He is eminently qualified to serve as a federal district court judge, and there is no need to review here his list of achievements. We do think, however, that it is important to point out that Vince has continued to demonstrate the attributes of fairness, collegiality, and open-mindedness that we witnessed during our time working with him. For example, although Vince, while representing the City and County of San Francisco, has litigated against the San Francisco Chamber of

Commerce, the Chamber has endorsed Vince's nomination, saying that "he has proven himself time and time again to be a fair, measured, and extremely responsible public servant who respects the limitations that the law places upon himself and his client."

While it might strike some as unusual that a former courtroom adversary would support Vince's nomination, it comes as no surprise to those of us who know Vince. That's because he is someone of the highest ethical standards. He is someone who treats everyone fairly. He is someone who knows that it is possible to disagree without being disagreeable. And he is someone whose foremost loyalty is to the rule of law. For all of these reasons, we hope that Vince will soon be confirmed to serve as a judge on the U.S. District Court for the Northern District of California.

Sincerely,

Matthew B. Berry

Justice Clarence Thomas
October Term 2001

Shay Dvoretzky

Justice Antonin Scalia
October Term 2001

Heather Elliott

Justice Ruth Bader Ginsburg
October Term 2001

Steven A. Engel

Justice Anthony M. Kennedy
October Term 2001

Susan E. Engel

Justice Antonin Scalia
October Term 2001

Brian T. Fitzpatrick

Justice Antonin Scalia
October Term 2001

Professor of Law
Vanderbilt Law School

Carolyn Frantz

Justice Sandra Day O'Connor
October Term 2001

Risa Goluboff

Justice Stephen Breyer
October Term 2001

Benjamin Gruenstein

Justice David Souter
October Term 2001

Thomas H. Lee

Justice David Souter
October Term 2001

Michael Leiter

Justice Stephen Breyer
October Term 2001

Director, National Counterterrorism Center
2007-2011

Ann M. Lipton

Justice David Souter
October Term 2001

Brett McGurk

Chief Justice William Rehnquist
October Term 2001

Deputy Assistant Secretary of State
for Near Eastern Affairs

Troy A. McKenzie

Justice John Paul Stevens
October Term 2001-2002

Anup Malani

Justice Sandra Day O'Connor
October Term 2001

Lee and Brenna Freeman Professor of Law
University of Chicago Law School

Sigal P. Mandelker

Justice Clarence Thomas
October Term 2001

Ed Morrison

Justice Antonin Scalia
October Term 2001

Paul H. and Theo Leffmann
Professor of Commercial Law
University of Chicago Law School

David A. O'Neill

Justice Ruth Bader Ginsburg
October Term 2001

Joseph R. Palmore

Justice Ruth Bader Ginsburg
October Term 2001

Neomi Rao

Justice Clarence Thomas
October Term 2001

Nicholas Quinn Rosenkranz

Justice Anthony M. Kennedy
October Term 2001

Professor of Law
Georgetown University

Monica Washington Rothbaum

Justice David Souter
October Term 2001

Aaron Saiger

Justice Ruth Bader Ginsburg
October Term 2001

Professor of Law
Fordham University

Heidi Doerhoff Vollet

Chief Justice William H. Rehnquist
October Term 2001

Cook, Vetter, Doerhoff & Landwehr, P.C.
Jefferson City, MO

Alexander J. Willscher

Justice Anthony M. Kennedy
October Term 2001

SAN FRANCISCO
CHAMBER OF COMMERCE

August 19, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Grassley:

On behalf of the San Francisco Chamber of Commerce, representing over 1500 local businesses, we are pleased to endorse San Francisco Deputy City Attorney Vince Chhabria's nomination to become a federal judge.

Over the past six years, Mr. Chhabria has ably represented the City and County of San Francisco in significant, high-level politically sensitive litigation. In some instances, we at the San Francisco Chamber of Commerce have opposed the policy measures Mr. Chhabria has defended in court. More importantly however, Mr. Chhabria has proven himself time and again to be a fair, measured, and exceedingly responsible public servant who respects the limitations that the law imposes on him and his client. We know him, both personally and by wide reputation, to be courteous, accessible, and genuinely appreciative of legitimate concerns expressed by his opponents in litigation.

Although we are of course impressed with his stellar credentials and his track record of success in difficult cases, we believe the aforementioned qualities – his deep respect both for the boundaries of the law and for the parties on both sides of a dispute – would make him an outstanding federal judge.

Sincerely,

Bob Linscheid
President & CEO
San Francisco Chamber of Commerce

Jim Lazarus
Senior Vice President, Public Policy
San Francisco Chamber of Commerce

Defending Liberty
Pursuing Justice

CHAIR
Judy Perry Martinez
New Orleans, LA

Starting January:
2980 Fairview Park Drive
Falls Church, VA 22042

FIRST CIRCUIT
Lisa D. Arnold
Suite 1100 North
10 Post Office Square
Boston, MA 02109

SECOND CIRCUIT
Barbara B. Brown
11 Times Square
New York, NY 10036-8299

THIRD CIRCUIT
Robert C. Heim
Civil Centre
7979 Ninth Street
Philadelphia, PA 19103-2808

FOURTH CIRCUIT
E. Fitzgerald Parnell, III
Suite 2300
101 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
Wayne E. Lee
545 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 551
1101 College Street
Bowling Green, KY 42102-0551

SEVENTH CIRCUIT
Patricia Costello Slowik
Suite 5600
233 South Wacker Drive
Chicago, IL 60606-6357

EIGHTH CIRCUIT
Daniel E. Bower
8th Floor
U.S. Bank Building
520 Walnut Street
Des Moines, IA 50309-2319

NINTH CIRCUIT
Erich R. Marshall
Suite 1560
600 South Grand Avenue
Los Angeles, CA 90071

Stuart J. Stebner
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jon Groh
Suite 1650
1700 Lincoln Street
Denver, CO 80203-4554

ELEVENTH CIRCUIT
Norman A. Mordue
Suite 1108
9150 South Dadeland Boulevard
Miami, FL 33156-2719

D.C. CIRCUIT
Randolf A. Cox
10560 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
202.662.1761
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Please respond to:
Judy Perry Martinez, Esquire
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

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

July 26, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of James Maxwell Moody, Jr. to the United States District Court for the Eastern District of Arkansas

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of James Maxwell Moody, Jr. who has been nominated for a position on the United States District Court for the Eastern District of Arkansas. As a result of our investigation, the Committee is of the opinion that for this position Circuit Judge James M. Moody, Jr. is Unanimously Well Qualified.

A copy of this letter has been provided to Judge Moody, Jr.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable James M. Moody, Jr. (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 26, 2013.

LAMAR ALEXANDER
TENNESSEE

United States Senate

WASHINGTON, DC 20510

September 26, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Chairman Leahy and Ranking Member Grassley,

I write today to introduce the Judiciary Committee to Ms. Pamela Reeves, who has been nominated to fill a vacancy on U.S. District Court for the Eastern District of Tennessee.

Though she is a native Virginian, Ms. Reeves came to Tennessee long ago and we are fortunate she chose to make our great state her home. After graduating from the University of Tennessee with her bachelor's degree, she remained in Knoxville to study law. Three years later, she received a juris doctorate from the George C. Taylor College of Law at the University of Tennessee and launched her successful career.

As a fresh graduate, Ms. Reeves began her career as a sole proprietor and over the next two decades developed an expertise in civil litigation. As many young attorneys she had a diverse practice, representing individuals and businesses in bankruptcy, collections, employment discrimination, personal injury, domestic relations and juvenile court cases. As she gained experience and expertise, she began representing governmental entities, school boards and law enforcement agencies. Her practice evolved to include civil rights cases brought in federal courts and employment matters.

In 2002, Ms. Reeves shifted the focus of her practice from litigation to alternative dispute resolution. She is now a recognized expert mediator and spends approximately 60-70% of her time engaged in mediation and arbitration. Additionally, she assists other attorneys, businesses, and government clients in evaluating employment issues and to take corrective action before litigation results. Her work has gained her professional honors and awards, making the list of Best Lawyers of America from 2006-2012.

Ms. Reeves also deserves recognition for her dedication to improving the practice of law through service on professional boards and associations, including the Tennessee Bar Association, and the American College of Civil Trial Mediators. She has volunteered in her community for her church and numerous charitable organizations.

The committee will, no doubt, receive a full documentation of her achievements and qualifications, and I hope you consider them carefully as you deliberate on her nomination.

Sincerely,

Lamar Alexander

Lamar Alexander

NOMINATIONS OF JOHN B. OWENS, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT; MATTHEW FREDERICK LEITMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; JUDITH ELLEN LEVY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; HON. LAURIE J. MICHELSON, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; HON. LINDA VIVIENNE PARKER, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; PETER JOSEPH KADZIK, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

WEDNESDAY, OCTOBER 30, 2013

UNITED STATES 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. Dianne Feinstein, presiding.

Present: Senators Feinstein and Grassley.

Senator FEINSTEIN. This nominations hearing of the Judiciary Committee will come to order, and Senator Grassley, who is the Ranking Member of the full Committee, just said to me that he would be very happy to hear from Senator Levin right up front, and I would as well, if that helps you. I know you are very busy.

Senator Levin, for those of you who do not know, is Chairman of the Armed Services Committee, which is a very big Committee in this body, and he also has a number of Michigan nominees up. So, Senator Levin, would you like to go now before we make our opening comments?

Senator LEVIN. Madam Chair, that would be a really great gift.

Senator FEINSTEIN. We give gifts to you.

[Laughter.]

Senator LEVIN. I appreciate both of you doing that.

Senator FEINSTEIN. Thank you. Please proceed.

PRESENTATION OF MATTHEW FREDERICK LEITMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; JUDITH ELLEN LEVY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; HON. LAURIE J. MICHELSON, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN; AND HON. LINDA VIVIENNE PARKER, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, BY HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator LEVIN. I know how busy you are, too, so we are going to—even though I have four nominees that Senator Stabenow and I are introducing to the Committee, we are going to be very brief in this introduction, and there will be a longer statement that we would appreciate being part of the record, if you could.

Senator FEINSTEIN. Absolutely.

Senator LEVIN. Madam Chairman and Senator Grassley, first of all, thank you for holding this hearing to consider four nominations which are important not just to the people of Michigan but to the Nation.

There are four nominees to serve in the Eastern District of Michigan. My home town of Detroit is the location of that district. In alphabetical order they are: Matthew Leitman, Judith Ellen Levy, Laurie Michelson, and Linda Parker. Each of these nominees received a recommendation from a panel of legal experts that Senator Stabenow and I ask to advise us on judicial nominations. They are here today with family and friends, and that will be up to this Committee and to them when they are appearing in front of the Committee to introduce if the time makes that permissible. I know very much how proud they are of their families and friends and how proud their families and friends are of them, and I have had a chance to meet most of them. But I hope you have a chance, if not formally at least informally, to say a few words perhaps to them.

In alphabetical order again, the first nominee is Matthew Leitman. Mr. Leitman graduated from Harvard Law School magna cum laude. From 1993 to 1994 he was a clerk to a judge named Charles Levin, who happens to be my cousin. That was on the Michigan Supreme Court, and that was now 20 years ago where he was a clerk to my cousin.

He has also had extensive experience in private practice. He has focused on commercial litigation, appellate litigation. He has argued before State and Federal trial courts as well as appellate courts.

He has had an outstanding legal career. He has published numerous articles on complex constitutional and Federal law issues. His dedication to public service is well known in Detroit, and he has been recognized as a pro bono honoree for the last 5 years by the Eastern District Court in Detroit.

Judith Levy graduated cum laude from the University of Michigan Law School in 1996. She served as a law clerk to the United States District for the Eastern District of Michigan. She has taught

classes and seminars at the University of Michigan. Since 2000, she has served as an Assistant U.S. Attorney in the U.S. Attorney's Office in Detroit. She has received numerous awards for her dedication to community service, including the University of Michigan Council for Disability Concerns and the Department of Justice Director's Award.

Laurie Michelson received her law degree from Northwestern University School of Law in 1992. After law school, she served as law clerk to Cornelia Kennedy of the United States Court of Appeals for the Sixth Circuit, then for about 18 years worked in private practice focusing on intellectual property law. She was sworn in as a magistrate judge for the Eastern District of Michigan in February 2011. She has navigated some of the most complex areas of Federal law, including intellectual property issues, in both private practice and as a magistrate judge. She has been recognized in the legal community for her service. Among other things, she has served as president of the Federal Bar Association for the Eastern District of Michigan Chapter, and she has also been a member of the Advisory Board of Trustees for the Eton Academy, which is the only accredited school in Michigan devoted solely to children with learning disabilities.

Judge Linda Parker received her law degree from the National Law Center at George Washington University here in Washington, DC. She was a partner in the early 1990s in the very prestigious law firm of Dickinson Wright. She served then as an Executive Assistant U.S. Attorney for the Eastern District of Michigan under U.S. Attorney Saul Green for about 6 years in the late 1990s. She then served from 2003 to 2008 as the director of the Michigan Department of Civil Rights, and may I say I was their first general counsel to that department back in the early 1960s or mid-1960s.

In 2008, Judge Parker was appointed to be a circuit court judge for Wayne County in Michigan, and she has been recognized also for her community service as well as her legal service. She served as chair of New Steps, an organization committed to providing services for economically disadvantaged new mothers who are in substance recovery. She has received the Damon Keith Community Spirit Award for her exemplary commitment to community service, and she received one of the Women of Achievement Awards awarded by the Michigan Anti-Defamation League.

She has been very active in an organization called "Boys Hope, Girls Hope" in Detroit, which is a mini-boarding home for children who need a home, supported by the archdiocese in Detroit.

Senator Stabenow obviously would have wanted to be with me here today. She cannot be. She is tied up in the Agriculture Committee conference, and so she is very supportive of these nominees. Again, these are joint recommendations. They come from a list of joint recommendations which we made to the White House that, again, emanated from the group of distinguished citizens that we appoint to give us recommendations for these positions.

And so we recommend them very, very highly to this Committee, and we are again very appreciative of this Committee taking the time to reach these nominees very quickly. It has been a long time for them in their lives waiting for this moment, but from your perspective and mine as a Senator, this Committee has moved very,

very expeditiously on these nominees, and we are very grateful for that as well.

Senator FEINSTEIN. Thank you very much, Senator Levin. I have no questions of you.

Do you have questions of the Senator?

Senator GRASSLEY. No. Thank you very much.

Senator FEINSTEIN. And I thank you, Senator Levin. Thank you for coming. I think you do great justice to the nominees from the State of Michigan, and we look forward to their testimony in just a few minutes. So thank you.

Senator LEVIN. Thank you again, Madam Chair.

Senator FEINSTEIN. You are always welcome to come sit with us, but you may have better things to do.

Senator LEVIN. Thank you.

Senator FEINSTEIN. Thank you very much.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. We will now proceed with the opening, and I just want to welcome everyone to this hearing on behalf of both the distinguished Ranking Member and myself. Today we are going to hear testimony from nominees on two panels. The first will be John Owens, a distinguished nominee to the Ninth Circuit Court of Appeals. And the second panel will be the four judges that—or the four nominees that Senator Levin just spoke about as well as Peter Kadzik, who is nominated to serve as Assistant Attorney General for Legislative Affairs at the Justice Department. I want to congratulate all the nominees and, of course, welcome you.

I just want to say quickly what an important role Federal judges play in our system, and maybe that is one of the reasons why this is so important. It is a lifetime appointment, and once appointed, you cannot be removed. So how judges serve is really important.

We have four judges for the trial courts, four nominees to be judges for the trial courts, and we have one for one of the appellate courts, the nine circuits. This is for the Ninth Circuit. It is the biggest circuit by far. It happens to include California and a number of Western States.

I think the beauty of the trial court for judges is that they are up close and personal to the disputes that bring people into Federal courts. And you get to see the trial experience and the work of the justice system firsthand.

The circuit courts are much more appellate courts that handle appellate-related matters and often do not get the wonderful seasoning that a trial bench provides for any judge, I believe.

The Justice Department's Office of Legislative Affairs is also very important to this Committee. It has jurisdiction over most criminal laws and other law enforcement functions of the Department of Justice.

I will not say more at this time, but, Senator, would you like to make your opening statement now?

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

Senator GRASSLEY. Thank you.

Senator FEINSTEIN. Good.

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

Senator GRASSLEY. She gave details about each of the judges. I will simply say I welcome you as the nominees, and I know that you are proud of the advancement you have made in your profession, being nominated to these courts. And your families and friends are very proud of you.

Today's hearing is the 14th judicial nomination hearing this year during which we will have considered a total of 48 judicial nominees. This hearing record is especially remarkable when you compare this pace to the first year of President Bush's second term, because now we are in the second term of President Obama. At this stage in President Bush's second term, the Committee had held only four hearings with eight nominees compared to the 48 I just stated so far this year.

In fact, for the entire year of 2005, the Judiciary Committee held only 6 hearings for 15 judicial and circuit nominees—again, the 14 hearings that I have talked about.

Today we consider a nominee to the Ninth Circuit, and regarding this particular seat, a bit of history is in order. For nearly a decade, there has been some dispute over this seat. It became vacant on December 31, 2004, when Judge Stephen Trott took senior status. I would note that Judge Trott was from Virginia at the time of his nomination. He moved to Idaho upon confirmation where he maintained his chambers throughout his service on the Ninth Circuit.

When Judge Trott took senior status, President Bush nominated Randy Smith of Idaho to fill the vacancy. The Smith nomination was blocked by Senate Democrats because the California delegation asserted that the seat belonged to California. Mr. Smith had his hearing in March 2006 and was voted out of Committee that May. But Senate Democrats repeatedly refused to grant the request to hold the nominee in the Senate during a recess and demanded his nomination return to the President.

Of course, at the same time, Senate Democrats were filibustering another nominee to the Ninth Circuit, William Myers. After a failed cloture vote and repeatedly returning his nomination to the President during recess periods, Myers withdrew. Ultimately, after this dual-track obstruction in the Ninth Circuit, the President withdrew Mr. Smith's original nomination and nominated him to a seat to which Mr. Myers had been nominated. Judge Smith was confirmed to that position in February 2007, 94–0. Mr. Myers was never confirmed.

After the Smith nomination was blocked, the seat remained vacant with no nominee throughout the remainder of President Bush's second term and with no nominee through President Obama's first term.

Now, that is the recent history of this seat, and I am not suggesting that I know the right way to handle the situation here. But it is important to remember how the Democrats treated the last nominee to this seat, a seat I would like to remind my fellow Committee Members that does not really belong to any particular State. In fact, this seat has been filled by judges sitting in Idaho, California, Washington, and Oregon.

But in 2005, one senior Judiciary Committee Member accused the White House of attempting to "steal a seat" by nominating Mr. Smith. Another Member said that that Member would not "sit by and let this happen. If I have to filibuster this judge, I will do so." And that is essentially what happened as I have outlined.

In addition to the judicial nominees, we are considering the nomination of Peter Kadzik to be Assistant Attorney General to head the Office of Legislative Affairs. He is presently serving as Principal Deputy Assistant Attorney General and in that capacity heads the same office. I have concerns about the way Mr. Kadzik has been running the office since he came to the Department. I will not outline those here now but will put them in the record in a more complete statement. But let me emphasize that I have serious doubts about whether the nominee's record demonstrates an ability to restore trust and confidence to the Office of Legislative Affairs regardless of the qualifications of the nominee.

Mr. Kadzik has continued the erroneous and troubling pattern of using so-called Department policies that are not required by law to interfere with oversight work of Senators, and I speak specifically of some trouble I have had with my oversight work. The Department needs to stop misinterpreting the Privacy Act and other statutes as an excuse to thwart congressional oversight. After all, Congress not only passes laws; we have a constitutional responsibility to see that those laws are faithfully executed. And part of that process of seeing that they are faithfully executed by the executive branch of Government as part of our constitutional checks and balances is getting information from the executive branch.

Now, my concerns about Mr. Kadzik are also based on his own troubling personal record with regard to congressional oversight. In 2001, when the House Committee on Governmental Affairs learned that Mr. Kadzik had worked on a questionable pardon of billionaire tax fugitive Marc Rich, Mr. Kadzik was called to testify at a hearing on that matter. I will not go into all the details here, but the record is there for all to examine. I would note that the House Committee report concluded that Mr. Kadzik's "attempts to avoid compulsory process were unseemly." And that is a direct quote.

The Committee report says he attempted "to avoid compulsory process." Mr. Kadzik sent a rebuttal to the Committee regarding the circumstances on his testimony before the Committee. The final report called the claim "utterly false." So this is a troubling nomination, and I will have questions for Mr. Kadzik at that time.

I welcome the nominees and their families to the hearing. Thank you.

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

Senator FEINSTEIN. Thank you very much, Senator Grassley.

I would like to ask the nominee John Owens to come forward, please, and take your seat, and we will begin with you.

Prior to the time I introduce you and say a few words about you, I would just like to give my review of the Trott seat, Senator, since you mentioned that history. I have a very different history——

Senator GRASSLEY. And if I was wrong, I will be glad to listen to that.

Senator FEINSTEIN. Okay. If you would listen, that would be great.

Senator GRASSLEY. Yes.

Senator FEINSTEIN. Okay. Let us go back to 1965. Throughout his career, Judge Trott was licensed to practice law in one State. That was California. Beginning in 1965, he served as a county prosecutor in Los Angeles. In 1975, according to the Los Angeles Times article, Trott sought the position of DA from the L.A. County Board of Supervisors, after then-District Attorney Charles Bush passed away.

When John Van de Kamp was named district attorney, Trott was chosen as his chief deputy, the second in command in the district attorney's office in Los Angeles.

In 1981, he was appointed United States Attorney for the Central District of California by President Reagan. He was recommended for this position by Senator Hayakawa of our State. In 1982, while serving as United States Attorney, Trott again submitted an application to the L.A. Board of Supervisors to become DA after DA John Van de Kamp was elected to be the State's Attorney General.

He was nominated by President Reagan in 1983 to serve as Assistant Attorney General for the Criminal Division at the Department of Justice. At his confirmation hearing for that position, Senator Pete Wilson, a friend of both of ours, of California, introduced him. In 1986, he was nominated by President Reagan to be Associate Attorney General, the third ranking position in the Justice Department. Once again Senator Wilson of California introduced him at his confirmation hearing.

Now, the way that is somewhat dispositive is a nominee is always introduced by the Senator from his or her State.

In 1987, President Reagan nominated Trott to the Ninth Circuit. This Committee sent its blue slips to Senators Wilson and Cranston of California. Trott stated in his questionnaire that his "two clients have been the people of the State of California and the Government of the United States." He was confirmed in 1988 to a seat previously held by Judge Joseph Sneed, a California nominee. Judge Sneed's connection to the Ninth Circuit prior to his appointment was his 9-year tenure as professor at Stanford Law School. He established his chambers in San Francisco.

Now, these are the facts of Judge Trott's legal life, all of which was legally spent in California. Now, he may have moved to your State, but his legal life—or not to your State but to——

Senator GRASSLEY. Not my State. Idaho. Everybody gets us mixed up.

Senator FEINSTEIN. Right.

[Laughter.]

Senator FEINSTEIN. Once confirmed, he established his chambers in Idaho. That is the rub. So his whole history had been California. This personal choice of residence, essentially an arbitrary occurrence, should not result and cannot result in a State losing a judgeship to another State.

As we all know, the overwhelming practice of administrations and Senates of both parties has been to retain each State's representation on its respective circuit. If you look at the makeup of

the circuits represented by Members of this Committee, both Iowans on the Eighth Circuit occupy Iowa seats. Three Alabamans on the Eleventh Circuit occupy Alabama seats. All three Arizonans on the Ninth Circuit were preceded by Arizonans. And that is not by accident. There is a reason for it. So it is fundamental to how administrations of both parties get the advice and consent of the Senate on judicial appointments. Simply put, any President has to know which Senators to seek advice from on these appointments.

So I am not going to go on from there. I mean, it goes on and on. But I think you get the drift. The great bulk of his professional life was conducted in California and for California.

Now, if I can, I would like to introduce this nominee, whom I actually think you are going to like very much.

[Laughter.]

Senator FEINSTEIN. He has been nominated——

Senator GRASSLEY. Did I indicate I might not like him?

Senator FEINSTEIN. No. Not yet.

[Laughter.]

Senator FEINSTEIN. He has been nominated to serve on the Court of Appeals for the Ninth Circuit. His wife, Marjorie, is sitting in the front row, and his beautiful daughters, Jaclyn and Audrey, are here. Would you stand? We would like to give you a round of applause? That is wonderful.

[Applause.]

Senator FEINSTEIN. Though born in Washington, DC, John Owens was raised in California, living in Silicon Valley during the school year, but he spent summers and many weekends on a farm in Modesto. He earned his bachelor's with high distinction from UC-Berkeley in 1993 and was inducted into Phi Beta Kappa. He graduated first in his class at Stanford Law School in 1996 where he was inducted into the Order of the Coif and served as executive editor of the Stanford Law Review.

From 1996 to 1997, he served as a law clerk to Judge J. Clifford Wallace, a noted conservative jurist appointed by President Nixon on the Ninth Circuit. From 1997 to 1998, he served as a law clerk to Justice Ruth Bader Ginsburg on the Supreme Court of the United States. So he has served both a conservative jurist and a liberal jurist.

[Laughter.]

Senator FEINSTEIN. From 1998 to 1999, he served——

Senator GRASSLEY. Well, you might say he is well educated.

Senator FEINSTEIN. Yes. Not confused.

From 1998 to 1999, he served as a trial lawyer, a trial attorney in the Office of Consumer Litigation at the Department of Justice, where he handled white-collar criminal investigations and affirmative civil litigation under statutes like the Food, Drug, and Cosmetic Act.

He then joined the Washington office of the law firm O'Melveny and Myers, where he co-tried two jury trials. In 2001, he joined the United States Attorney's Office in Los Angeles where he served as a Federal prosecutor. He began in the general crimes section prosecuting a wide variety of violent crimes, drug crimes, and white-collar crimes. He also served in the public corruption and government fraud section.

In addition, during his time in the L.A. United States Attorney's Office, Mr. Owens served as counsel of record in more than 20 cases before the Ninth Circuit. From 2004 to 2012, he served as an Assistant U.S. Attorney in San Diego. His primary focus was investigating and prosecuting complex white-collar crime, including fraud, health care, money laundering, public corruption, and national security cases. In 2008, he rose to become deputy chief of the major fraud section in San Diego, and in 2010, he was named chief of the criminal division.

In multiple cases, he prosecuted individuals for conspiracy and wire fraud in financial fraud cases where victims lost millions of dollars. These were highly complex cases, often involving dozens of witnesses at trial. The defendants were convicted and sentenced, and those judgments were affirmed by the Ninth Circuit.

One of the cases, *U.S. v. Treadwell*, received national press attention on the CNBC show "American Greed." This case, in the words of the Ninth Circuit, involved "a massive 4-year Ponzi scheme in which more than 1,700 investors across the United States lost over $40 million."

As chief of the criminal division, he was responsible for supervising more than 100 attorneys and 5,000 prosecutions, and he reviewed each appellate brief filed by his office.

The role of chief of the criminal division is especially important in San Diego because the Federal court's criminal docket is huge. In fact, in recent statistics the San Diego Federal court ranked second nationally in terms of the number of criminal felony filings per judgeship.

John Owens served as chief of this division in this busy district with great distinction, receiving the Director's Award from the Justice Department for his superior performance in that role.

He also earned numerous other awards for his prosecutorial service, including the Secret Service Honor Award, another Director's Award from the Justice Department, a Special Achievement Award from Justice, and an Award for Excellence from the Federal Bureau of Investigation.

In 2012, he joined Munger, Tolles and Olson as a partner in the firm's L.A. office. During his time at Munger, Mr. Owens represented individuals and corporations in a wide variety of cases, including civil, criminal, and administrative cases, as well as internal investigations. And he has devoted part of his time to pro bono cases, including amicus briefs in the U.S. Supreme Court filed on behalf of the National Association of Criminal Defense Lawyers, the National Association of Federal Defenders, and California Attorneys for Criminal Justice.

Now, the record I have just described is one of great distinction. It is a record of excellence at every level, and it is a record of balance and good judgment that will serve Mr. Owens and the people of all States in the Ninth Circuit very well. In fact, he has a broad base of support across the ideological spectrum. I want to convince you, Senator.

For example, several corporate general counsels and other corporate officials wrote to the Committee to support this nomination. They stressed that the Ninth Circuit's extraordinary caseload produces significant delays in resolving appeals and how the backlog

of cases in the Ninth Circuit undermines the need for certainty and resolution.

A group of 27 individuals who clerked on the Supreme Court the same year Mr. Owens clerked for Justice Ginsburg also wrote to support his nomination. These individuals clerked for every Justice who served that year, including Chief Justice Rehnquist, Justice Scalia, and Justice Thomas. Here is what they wrote:

"During that year we developed a deep appreciation for John's sharp legal mind, incredible good humor, openness to all points of view, and adherence to the highest possible standard of personal and professional ethics."

Four individuals who served as U.S. Attorneys in California under President George W. Bush also wrote in praise. They wrote this: "While his impeccable academic credentials are impressive, that is not all John brings to this nomination. He is both smart and thoughtful, and he performs his job with the combination of judgment, skill, fairness, and appropriate restraint that is so important in the world of criminal prosecution."

They concluded by stating: "In a time of rising caseloads and shrinking judicial resources, this is truly an appointment of which both parties and the President can be proud."

In fact, one of those U.S. Attorneys told my judicial selection committee that Mr. Owens was "simply the best legal mind in the U.S. Attorney's Office."

Paul Charlton, who served as a U.S. Attorney for the District of Arizona under President Bush in 2001 to 2007 also wrote in support. He said: "What distinguishes good prosecutors from the great ones is the ability to do what is right, to make sure that neither the innocent suffer nor the guilty escape. By continually doing what is right, by proving himself a person of integrity, Mr. Owens earned the reputation of a great prosecutor."

When my judicial selection committee considered candidates, John Owens truly stood out from the pack. I did not know him, but when I reviewed his record, what emerged for me was an individual who will truly be an outstanding Ninth Circuit judge, and it is really as simple as that. And I hope you are convinced.

Now I would like to—since that introduction is over, Mr. Owens, would you like to say your piece and then we will——

Senator GRASSLEY. Before he goes——

Senator FEINSTEIN. Oh, you have got more to say. Okay, sure.

Senator GRASSLEY. Not really, but your long statement I listened to, and I do not know anything controversial about this gentleman. Now, maybe there is something coming up here that you are preparing for, but I do not know him to be controversial.

Senator FEINSTEIN. Oh, it is just the conflict over the seat.

Senator GRASSLEY. Yes. That is about it, but I am not involved in that conflict.

Senator FEINSTEIN. Good. Okay. I did not know when you started, you see. So I just thought I——

Senator GRASSLEY. Well, let me make clear then about the history, just so long as we are historians here.

Senator FEINSTEIN. Here we go.

Senator GRASSLEY. Again, I am not going to arbitrate this issue. There are other Senators who are going to arbitrate that issue.

Prior to Judge Trott, the following judges served in this seat: Judge Sneed, California, 1973 through 1987; Judge Hamley, Washington, 1953–71; Judge Bone of Washington State, 1944–56; Judge Bone was preceded by Judge Haney of Oregon, appointed in 1935 to a newly authorized seat. So that is kind of the whole history of it.

But, again, I would get involved in these arguments if it were the Eighth Circuit.

Senator FEINSTEIN. Okay.

Senator GRASSLEY. Not the Ninth Circuit.

Senator FEINSTEIN. Thank you very much, Senator.

I would ask to put my whole statement on the Trott seat in the record. There is more that I did not want to go into and take the time.

If you would please stand and be sworn? Do you affirm that the testimony you are about to give to this Committee is the truth, the whole truth, and nothing but the truth?

Mr. OWENS. I do, Senator. Thank you.

Senator FEINSTEIN. Thank you very much.

Okay. Would you like to make an opening statement?

STATEMENT OF JOHN B. OWENS, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. OWENS. Your Honor—I am sorry. That is from my court experience. Madam Chairwoman, thank you very much for that introduction. I do want to thank the Committee as well for having this hearing today. I would like to thank the President for the nomination. And I also want to thank my home State Senators for their support.

And in light of the fact you introduced my family, I am ready to answer any questions.

[The biographical information of Mr. Owens appears as a submission for the record.]

Senator FEINSTEIN. Well, that is short. All right.

He is a man of few words.

[Laughter.]

Senator FEINSTEIN. All right. You know the Ninth Circuit. You know it is a busy circuit. You know it has the most pending appeals per panel of any circuit, and the appeals take longer to resolve in the Ninth Circuit than in other circuits.

Tell us a little bit about how you view this fact, what you might be able to do to speed things up, and discuss the kind of Ninth Circuit judge you would like to be.

Mr. OWENS. Sure. If I were lucky enough to be confirmed, the first thing I would do, Senator, is work very, very hard. I understand from judges on the Ninth Circuit how busy they are, and I would do everything I could to help them eliminate the backlog of cases.

Having been a litigant in the Ninth Circuit, I have seen the backlog of cases and the time between conviction and sentencing before the appeal is actually argued can be a very long amount of time.

In terms of the judge I would like to be, I would like to reflect on the two mentors I had. I was very fortunate to have clerked for Judge Wallace and Justice Ginsburg, and together they taught me

a few lessons, and the first is you have to be fair and impartial at all times. You are not rooting for one side. You have to just decide cases on the law. And as an appellate court judge, you have a very limited role. Your job is to review that case, not some other case, based solely on the record and under the appropriate standard of review.

One of the other main things they taught me was you have to work hard in the job, very hard. There is no substitute for hard work. You have got to be prepared. And both Judge Wallace and Justice Ginsburg taught that to me. If you are going to write a decision, you have got to do it in a way that makes sense. The public and the parties have to be able to understand the decision you have written, so write it in plain English.

Senator FEINSTEIN. Yay.

Mr. OWENS. And then, finally, at all times you need to remember how lucky you are if you are a Federal judge. This shows tremendous faith by the people of this country, by the Senate, and by the President of the United States. And you need to repay that luck by being collegial to the parties, to the court staff, and to your fellow judges. And that in a nutshell, Senator, is what I believe.

Senator FEINSTEIN. Thank you.

Senator Grassley.

Senator GRASSLEY. I only have two questions. The Ninth Circuit has a high rate of cases being overturned by the Supreme Court. Why do you think that this is the case? And knowing that, what will be your strategy in approaching cases, if confirmed, to combat the trend? Because I assume it does not speak—I mean, I am not a lawyer, but I assume it does not speak well of a court if you get now I think about 39 out of 41 cases overturned by the Supreme Court.

Mr. OWENS. Well, as a law clerk to the Ninth Circuit and the Supreme Court and a prosecutor in the Ninth Circuit, I am very well aware that the Ninth Circuit has not always received the warmest welcome in the Supreme Court. I do not know exactly why that is, why the court's decisions have such a high reversal rate, but I can tell you this, Senator: If I were lucky enough to be confirmed, I would work extremely hard to make sure that the decisions in which I were involved with were consistent with Supreme Court precedent.

Senator GRASSLEY. A followup to that, not my second question, but wouldn't solving that problem the extent to which Supreme Court precedent has to be followed by the Ninth Circuit?

Mr. OWENS. Yes, it does. That is correct, Senator. Every circuit is supposed to follow the precedent of the Supreme Court.

Senator GRASSLEY. You gave an interview regarding a case in which the Ninth Circuit overturned a conviction in a case alleging threats to President Obama. The Department of Justice gave up on the case, leaving in place a legal precedent, and you remarked, "This opinion remaining on the books unchecked makes the Secret Service's job more difficult."

Now, I do not want to get into the specific facts of that case, but could you more generally explain a judge's role in declaring what the law is or should be when a particular law or precedent appears to be poorly written or unjust? What should a judge do?

Mr. OWENS. If I understand your question, Senator, it is that if a judge disagrees with a law, for example?

Senator GRASSLEY. Well, how a judge would go about clarifying a law, what the law is or what the law is intended to be, and when you have that being the case, where it might be poorly written or unjust, what should a judge do about it?

Mr. OWENS. Well, a judge's primary job is to determine congressional intent, and the way a judge does that is by reviewing the language of the law. It may be the judge does not personally like the outcome of that decision, but that is not the judge's province. The judge is there to determine what Congress decided in passing the statute, and the judge has got to stick with that.

The decision you are referring to, I believe, was a 2–1 decision, and there was a dissent in the case. I was the criminal chief of the office when that case was tried. I was no longer in the office when the appeal came down. But I was familiar with the case, and as chief of the criminal division, I felt strongly about it.

Senator GRASSLEY. What if a decision leaves a poor precedent in place?

Mr. OWENS. Well, as the circuit court judge, in a sense, you have to follow that decision. The only way you can overturn it is through the en banc process, which is a very limited process, or if the Supreme Court overturns the process. But if there is a decision by the Ninth Circuit, if I am lucky enough to be confirmed, as a panel you have got to follow that decision.

Senator GRASSLEY. Thank you, sir.

Thank you.

Senator FEINSTEIN. Go back into that case that the Senator referred to. I am not familiar with it. Just tell us a little bit about the case and your view.

Mr. OWENS. Sure. So in that case, if I remember it, Senator—it has been a few years—an individual made some threats to the President, and he used some racially very offensive language in describing the President and talked about a 50-caliber rifle being used in terms of the President. My office tried the case—one of our most experienced prosecutors tried the case before Judge Marilyn Huff in a bench trial. And Judge Huff returned a guilty verdict, and on appeal the defense argued, well, what he said was protected speech in a sense, it did not fall within the scope of the statute, if I remember the decision correctly. That was the decision. The department, after I left the department, decided not to appeal it.

So that happens sometimes as a prosecutor. The Ninth Circuit made its ruling, and the department decides if we appeal it or not, and I was no longer in the department. But that is one of those cases you remember, and, you know, that happens sometimes as a prosecutor. You do not always prevail.

Senator FEINSTEIN. Let us say you are on the Ninth Circuit, and let us say 15 years from this point you look back. How would you like to see yourself as having performed as a Ninth Circuit Court judge?

Mr. OWENS. Well, I would hope that people would say that he was thoughtful, fair, reasonable, and collegial and he always worked hard. I would never want someone to say, "Oh, I remember Judge Owens. He was the one who fell asleep." Or, "I remember

Judge Owens. He was playing with his iPhone during a hearing." I want to be known as the guy who took his job very, very seriously in all facets.

Senator FEINSTEIN. Thank you.

Do you have any other questions?

Senator GRASSLEY. No. Thank you very much.

Senator FEINSTEIN. Thank you very much.

Mr. OWENS. Thank you, Senator.

Senator FEINSTEIN. I do not want to keep your daughters, so we will be mercifully brief.

Mr. OWENS. Thank you. Thank you, Senator Grassley.

Senator FEINSTEIN. Thank you very much, Mr. Owens.

Senator FEINSTEIN. All right. Now we will bring up the other five people for the Michigan court spots and the fifth for the Justice Department. And I believe we will do the court seats first.

All right. We have Mr. Kadzik on the right, and we have the four nominees here. I would like to begin with Mr. Leitman, and if you would like to make a brief statement, and then we will just go right down the row to Judge Parker, and then we will ask questions of the four of you. And then we will do Mr. Kadzik.

STATEMENT OF MATTHEW FREDERICK LEITMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Mr. LEITMAN. Thank you, Senator. I would like to begin by thanking you, Senator Feinstein and Senator Grassley, for holding this hearing. I would like to thank the President for the great honor of this nomination and Senators Levin and Stabenow for supporting me in this nomination.

And the only other thing I would like to do is just introduce the folks that I brought with me: my wife, Kelly; my son, Joshua——

Senator FEINSTEIN. Could you all please stand?

Mr. LEITMAN [continuing]. My son, Joshua; my daughter, Natalie; my mother, Susan; my sister, Rebecca; my legal assistant, Alisha. And at home, my dad could not make it here, but he is watching on the Internet, and so are some folks at my law firm, Miller Canfield.

Thank you very much for having me.

[The biographical information of Mr. Leitman appears as a submission for the record.]

Senator FEINSTEIN. Thank you. Thank you all for being here.

Ms. Levy.

STATEMENT OF JUDITH ELLEN LEVY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Ms. LEVY. Thank you. Thank you, Madam Chairwoman and Ranking Member Grassley, for convening this hearing. I, too, would like to thank the President for the honor of this nomination, and I would like to thank Senator Levin and Senator Stabenow for recommending me for this position, and Senator Levin for his kind introduction.

I would also like to thank Susan Plachinsky, who is back in Detroit at the U.S. Attorney's Office watching this hearing, for help-

ing me prepare the materials that you have reviewed in anticipation of the hearing.

Today with me—I would love to introduce my family—is my spouse, Janet Johnson; my twin daughters Kayla and Micah Johnson-Levy, who are sophomores at Pioneer High School.

Senator FEINSTEIN. Would they please stand?

Ms. LEVY. And I would like to send a special thank you to their teachers for excusing their absence today.

[Laughter.]

Ms. LEVY. My daughter Rihanna Johnson-Levy is a freshman at Yale College, and we all agreed it would be a good idea for her to focus on her studies in New Haven. So she is there tuning in on an electronic device no doubt watching the hearing.

My mother, Steen Levy, was unable to be here due to a recent illness, and my brother and sister, Paul and Claire Levy, are both lawyers, and they are tuning in from across the country.

I would like to acknowledge one person who is not here today, and that is my father, Leon Levy, who would be so proud to know that I am in this room with all of you. He passed away 3 years ago, and if he knew that I was here, he would be so proud.

I am joined today in this room by a good number of colleagues from the Department of Justice who took time away from their demanding schedules, and specifically with my family is Sam Hall, a DOJ Honors hire, a former student of mine at the University of Michigan Law School; Chloe Holtzman, also working at the Department of Justice and a former student; and Thomas Bohnett, who is clerking for Judge Allegra on the Federal Circuit.

I am also joined by Webcast by colleagues at the U.S. Attorney's Office who threatened to listen to this, and I would like to send a special thanks to Elizabeth Laren for her friendship and support, and to our U.S. Attorney, Barbara McQuaid, for her leadership, friendship, and confidence in me.

Thank you.

[The biographical information of Ms. Levy appears as a submission for the record.]

Senator FEINSTEIN. Thank you.

Ms. Michelson.

STATEMENT OF HON. LAURIE J. MICHELSON, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Judge MICHELSON. Thank you, Senator Feinstein. It is a privilege and a thrill to be here today, especially with my fellow nominees from Michigan. I thank you, Ranking Senator Grassley, and all of the Members of the Committee for the opportunity to appear before you.

I also would like to thank Senators Levin and Stabenow for their kind words and for their trust in recommending me, and, of course, President Obama for the honor of this nomination.

I would also like to thank my colleagues on the bench: my mentor, David DuMouchel; my staff, and especially my law clerk, Eric Lee, who is here this afternoon; and my friends for——

Senator FEINSTEIN. Everybody stand up so we can see you. Thank you.

Judge MICHELSON. And my friends for all of their support and assistance throughout this process. And last, but certainly not least, I have to thank my wonderful family for making this all possible. Here with me today are my role model parents, Jim and Bonnie Michelson; my brother and sister-in-law, Jamie and Beth Michelson; and their two daughters, my nieces Brook and Rebecca, who took the train in today from the University of Pennsylvania where they both attend college. And while this is primarily an all M Go Blue panel, I am very proud of them.

As always, my twin sister, Pam Renusch, is here with me. I will confess we are identical, so she is prepared to jump in and take my place should I get a really difficult question.

[Laughter.]

Judge MICHELSON. Her 11-year-old, almost 12-year-old son, my terrific nephew, Connor Renusch is also here. And he sends a shout-out to all of the seventh graders at Bloomfield Hills Middle School.

[Laughter.]

Judge MICHELSON. His 5-year-old sister, my niece Peyton, is home with her father. She had kindergarten today. And also here is my sister Debbie Fuger, and her husband is also home with their 3-year-old twins, my niece and nephew, Michael and Avery, who are either listening in to this Webcast or destroying the house.

[Laughter.]

Judge MICHELSON. I am blessed to be part of their family.

Thank you.

[The biographical information of Judge Michelson appears as a submission for the record.]

Senator FEINSTEIN. Thank you. I should have introduced you as "Judge," so forgive me for that.

Judge MICHELSON. That is quite all right.

Senator FEINSTEIN. Judge Parker.

STATEMENT OF HON. LINDA VIVIENNE PARKER, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN

Judge PARKER. Good afternoon. Thank you, Madam Chairperson. It is indeed a thrill for me to be here sitting in this room amongst you and amongst the Ranking Member, Senator Grassley. Thank you very much for having me.

I have to begin—I would like to extend my further thanks, I should say, to President Barack Obama. This is beyond a thrill, an honor, and a privilege, and I am so very thankful and grateful for the nomination.

I would also like to, of course, thank Senator Levin. He is just an icon to all of us, to many of us in Michigan, I think. And I would like to thank Senator Stabenow for the remarks that she also extended through Senator Levin.

I have with me today family members, and I would like to introduce them. I have my mother, Sheila Parker, and she is here representing my brother, James, who is a lawyer in Detroit, and my sister, Amy, who is a dentist in Detroit, neither of whom could be with me.

I have two great nephews who I believe are watching this on the Webcast—they better be doing that—Ian and Logan.

[Laughter.]

Judge PARKER. Come on now. All right. And then I have with me a very, very dear friend, a lifetime friend, Patti Grace Smith, who is here in Washington, who is here with me today. To her left is Nicole Lamb-Hale, who is a very, very dear friend. We go back 20 years plus. And then seated next to my mother is my dear friend Arthur McCullar. Please stand.

Thank you very much for giving me an opportunity to introduce them.

[The biographical information of Judge Parker appears as a submission for the record.]

Senator FEINSTEIN. Thank you very much.

All right. We will begin now with the questions of the four nominees. I think everyone here understands that our Federal courts have a special responsibility to make sure that every person is treated fairly under the law and that our disputes are resolved according to law and that rights are protected.

Could each nominee—and we will go right down the line—describe his or her view of the role of the court, the Federal court, in our system of Government and how you will strive to provide fair and impartial treatment to litigants who will come before you as a district judge if you are confirmed by the Senate? Mr. Leitman?

Mr. LEITMAN. Senator, thank you for that question. I would say in my view the Federal courts play an essential but a limited role in our Federal system. The essential role is providing justice, deciding cases fairly, as you indicated, treating all litigants the same, and applying settled law to the facts of every case and playing it right down the middle. And I think that is really the essential role that the courts play, and that is what I would strive to do if I were fortunate enough to be confirmed.

Senator FEINSTEIN. Excuse me. My staff sent me a note. The notes says, "They are not yet sworn in." If you would stand?

[Laughter.]

Senator FEINSTEIN. Affirm the oath and complete its statement. Do you solemnly swear that you will tell the truth and nothing but the truth, so help you God?

Mr. LEITMAN. I do.

Ms. LEVY. I do.

Judge MICHELSON. I do.

Judge PARKER. I do.

Senator FEINSTEIN. Consider yourselves sworn. Shall we have Mr. Leitman——

Mr. LEITMAN. I would adopt what I just said, Madam Chair.

[Laughter.]

Senator FEINSTEIN. Got it. Thank you.

Ms. LEVY. Thank you, Senator Feinstein. I agree entirely with what Mr. Leitman said in terms of the role of the court. I would just add to that that, in addition to having a limited role, they are the face of the Government to many people. To jurors, it is the first time that they come in contact with some part of the Federal Government in a very direct way. I believe that the courts and judges

need to be respectful of all litigants, need to be open-minded on all cases, and we owe it to our Government and to the people in our district to reach decisions that are very well reasoned and carefully articulated so that they are understood.

Senator FEINSTEIN. Thank you.

Judge Michelson.

Judge MICHELSON. Thank you, Senator. I have learned in my nearly 3 years as a magistrate judge that I cannot make all of the litigants and the lawyers feel good about the outcomes or the results necessarily, but I can make them feel good about the process and make them feel that they did indeed receive a fair shot. And I believe that every lawyer and litigant is entitled to a judge who will work hard, who will study and learn the facts, who will study and learn the law, and who will decide only the cases before her based on those facts and law fairly and impartially, as expeditiously as possible, and in a way that both litigants can understand the ruling. And I have found that that is the way you can have people feel that they received fair justice.

Thank you.

Senator FEINSTEIN. Thank you.

Judge Parker.

Judge PARKER. Yes, thank you, Senator, for the question. I will continue to do what I have been doing for the last 5 years, which is to have a faithful application of the precedent that applies in any particular given case. I have been serving as a State court judge for the last 5 years, and it has indeed been a privilege for me to serve in a manner which is designed to assure those who come before me that I am respectful that this is their time in court.

As I look at the role of the district court, I agree certainly with all that has been said by my colleagues, but I would like to also add that for many of those who will appear before the Federal court, that may be the last opportunity for them to receive justice because the case might not go forward. And so while there is indeed a limitation on that role for many, that may be the moment at which justice will be rendered for them.

Thank you.

Senator FEINSTEIN. Thank you very much, all four of you.

Senator.

Senator GRASSLEY. Yes, I will have questions of each of you, but I will ask them separately.

I am going to start with you, Mr. Leitman. You have defended companies in qui tam cases. You probably know of my authorship of some of that legislation. And you gave presentations advising companies on how to prevent these whistleblower cases from arising.

In 2010, you warned these companies that I, Senator Grassley, have been "pushing for reforms for several years to enhance the Government's fraud enhancement capabilities relating to Federal health care funds."

What do you think is the role of a Federal judge with respect to whistleblower claims?

Mr. LEITMAN. Thank you, Senator Grassley. I think the role of a Federal judge with respect to a whistleblower claim is the same with respect to any sort of claim: when the claim comes before the

court, to look at the applicable statute, to look at the governing precedent from the Supreme Court of the United States and the Sixth Circuit, and to faithfully apply that precedent to the facts before the court.

Senator GRASSLEY. Okay. Your questionnaire indicates that you are a member of the American Constitution Society for Law and Policy. There is nothing wrong with memberships in groups like that, or any group, for that matter—well, I should not say "any group" because I would not say that for a hate group, as an example. But I do have questions about how the goals of that organization might affect your judgment if confirmed. Peter Edelman, as Chair of the Board of Directors of the American Constitution Society, stated, "What we want to do is to promote conversation, the idea of what a progressive perspective of the Constitution is, and what it means to the country."

Also, some of the stated goals and missions of the organization are "countering right-wing distortions of our Constitution" and, further, "debunking conservative buzz words such as 'originalism' and 'strict construction' that use neutral-sounding language but all too often lead to conservative policy outcomes."

So could you please explain in your view the idea of what is a progressive perspective of the Constitution?

Mr. LEITMAN. Senator, thank you for the opportunity to clarify and explain my involvement in the ACS. I am not familiar with the context of the quote from Mr. Edelman, but what I would like to stress to you is that my involvement in the ACS has been exclusively at the local level in the State of Michigan, and our chapter is really focused on three goals:

Promoting education generally about legal issues, and we hold seminars such as this is the experience of arguing before the U.S. Supreme Court, and we educate people about that. We educate people on reforms in indigent defense law.

We also promote civility in the practice of law. One of our really primary goals each year is to give an award that recognizes civility in public service.

And the other thing that we do is we encourage debate on hot topics and legal issues, and when I say debate, I mean debate on both sides of issues. One of our signature programs involved speakers from both the Michigan Chamber of Commerce and the Michigan Democratic Party.

Those are the goals that I have been working toward in the ACS, and what I would like to close with is absolutely assuring you that my membership and participation in the ACS, just like my membership and participation in other groups, will have absolutely no impact on the way I approach cases, which will be to faithfully apply precedent to the facts before me.

Senator GRASSLEY. Well, I accept that as a good-faith effort. It would give me an opportunity, though, whether it is with that organization or any other organization that might have certain precepts, could you identify right-wing distortions of the Constitution that this organization says they want to dispute or feel a need to be countered and why concepts such as originalism or strict construction need to be debunked?

Now, that is a question that could be separate from any sort of association you have with this organization. I think it is legitimate to ask questions about your concept of originalism and strict construction and why that needs to be debunked.

Mr. LEITMAN. Senator, let me be as clear as I can. I have absolutely no interest in using my spot as a Federal judge, if I am able and fortunate enough to achieve that spot, to debunk anything. I would simply be deciding cases.

Senator GRASSLEY. Let us stop there then.

Mr. LEITMAN. Okay. Thank you.

Senator GRASSLEY. For Ms. Levy, in 2009, at the Hot Topics in Fair Housing event, you said, "The issue of racial integration is the most pressing issue facing fair housing enforcers."

First question: What role do you believe Government should play in the issue of racial integration?

Ms. LEVY. Senator, are you asking me what role should the Federal courts play on that issue or Government in general?

Senator GRASSLEY. The courts.

Ms. LEVY. The courts, okay.

Senator GRASSLEY. Well, then, let me ask a followup question. If confirmed as a judge, what would be your priority and approach in this area?

Ms. LEVY. Okay. Thank you. My approach to fair housing cases would be exactly the same as my approach to every case that would come before me if I am confirmed for this position, and that would be to work very hard, to listen carefully to all of this, both sides, to have an open mind on both sides, and to apply whatever facts are developed in those cases by the lawyers and the parties to the established law. I would do that whether it is a fair housing case, which is an area that I have some experience in, but if it was that kind of case or any other kind of case, that is the approach I would take, and that is what I think is appropriate for all district court judges to do.

Senator GRASSLEY. My last question will be a little bit more related to just exactly what your philosophy might be. You were a moderator for an event entitled "Race and the Justice System: The New Jim Crow." Do you believe that the justice system has been crafted to replace Jim Crow laws and oppress blacks because of their race?

Ms. LEVY. No, I do not.

Senator GRASSLEY. Thank you.

For Judge Michelson, you taught a media law course at Oakland University that included the friction between free press and fair trial. What has been your experience with cameras in the courtroom? And if confirmed, would you allow cameras in the courtroom? And let me followup with the second part of that. Do you think cameras in the Federal courtrooms implicate an individual's right to a fair trial?

Judge MICHELSON. Thank you, Senator. I do not have personal experience with that. In terms of the teaching of the course, we taught that—it was for undergraduates. We taught that primarily as a law school course, so we did it through the use of case law and primarily Supreme Court case law. And when I practiced media law, most of it was in the State courts where cameras were

allowed. I practice in a district where cameras are not allowed, and as a judge, I follow the rules of the court. And as my colleagues have indicated, as a judge I would also follow and abide by any of the precedent of the Supreme Court or the Sixth Circuit, and so whatever they ultimately decide on that issue is certainly what I will follow.

Senator GRASSLEY. My last question. You have stated that the law has produced its share of oxymorons, and in a list of examples, you included the term "criminal justice." Could you explain why "criminal justice" is an oxymoron?

Judge MICHELSON. Senator, I do not recall the context that I think I had written an article where I was trying to indicate that civil litigation could be much more civil, that as somebody who had practiced in criminal law and civil practice, I saw much more civility on the criminal side than I saw on the civility side. And I think I found an article that had given some examples of legal—what they considered legal oxymorons. I certainly believe in justice on both the civil side and on the criminal side, especially as someone who has practiced in both areas.

Senator GRASSLEY. I will accept your answer. If there is some followup I need, I will submit it in writing.

Judge MICHELSON. Thank you.

Senator GRASSLEY. Now to Judge Parker.

Judge PARKER. Yes, sir.

Senator GRASSLEY. Thank you. In a 2010 interview, you said, "I very rarely see people who have evil in their hearts. It is just people making really bad decisions because they did not have any other option." So I have some interest in an explanation from you on that.

Judge PARKER. Yes, sir.

Senator GRASSLEY. As a judge, what role does empathy play in your decisionmaking process regarding criminal defendants?

Judge PARKER. Thank you, Senator, for that question and giving me an opportunity also to clarify. I do not believe that empathy has any role, and it has not for the last 5 years that I have been on the State court, in making any decisions. I look at each case, and I apply the applicable appellate precedent from Michigan, from our Michigan courts. So empathy has not proven to be a factor for me in sentencing or in reaching a decision of any nature.

As relates, Senator, to the remark that I made, I have to say that I regret having made the remark in the sense that I was very new to the bench, and I think I was very, very naive when I made the statement. And at the end of the day, I realize now after the 5 years that my role is not to judge what is in anyone's heart. That is absolutely not my role. And the role for a State court judge and, again, as well, Senator, for a Federal court judge is to look at the facts and apply the applicable law to those facts.

Senator GRASSLEY. I think you just answered the second part of that question, so I will go on to my last question to you. In 2004, you stated that, "Fair housing must be recognized as a human right." Could you please explain what you meant by this statement and any legal arguments you believe that back up that assertion?

Judge PARKER. Well, Senator, at the time that I made that statement—it was in 2004, as you noted. I do not actually recall making

it, but I will not distance myself at all from having made it, because I, at the time that I made the statement, was the director of the Michigan Department of Civil Rights, and as an advocate there for the Michigan Civil Rights Commission, we did quite a bit of work in the area of fair housing, and it was understood at that time that where you decide that you live, where you choose to live, has a very significant impact on where you learn and other things that are critical to our just basic everyday life. That is the explanation, Senator, and I thank you for the opportunity to offer it.

Senator GRASSLEY. Is there any indication in that statement that, if confirmed, you would—how you would approach that issue, would you seek to find any new constitutional right?

Judge PARKER. Absolutely not, Senator.

Senator GRASSLEY. Thank you all very much for answering my questions.

Senator FEINSTEIN. Well, let me add to Senator Grassley in saying thank you. I have no further questions, and the four of you, if you would like to leave the speaker table and take your place in the audience, and we will move Mr. Kadzik over to where you are, Judge Michelson, and let me thank you very much. Your inquisition is over.

[Laughter.]

Mr. LEITMAN. Thank you.

Ms. LEVY. Thank you.

Judge MICHELSON. Thank you, Senator.

Judge PARKER. Thank you.

Senator FEINSTEIN. Actually for us it was not much of an inquisition. It was rather nice.

Senator FEINSTEIN. Mr. Kadzik, if you would like to make an opening statement, we would be very pleased to hear it.

STATEMENT OF PETER JOSEPH KADZIK, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. KADZIK. Thank you, Madam Chairman.

Madam Chairman, Ranking Member Grassley, it is an honor and a privilege to appear before you today as the President's nominee to be the Assistant Attorney General for the Office of Legislative Affairs at the Department of Justice. In my time at the Department, I have sought to improve the Department's responsiveness to inquiries from congressional committees and Members of Congress, and if confirmed, I will continue to improve our performance.

In many respects I consider myself to be the beneficiary of the American dream. All four of my grandparents were immigrants from Poland. They worked hard so that my parents could graduate from high school. My parents also worked hard. My father worked in a factory in Buffalo, New York, for more than 30 years so that their children could attend college and graduate school. I began working part-time when I was a junior in high school to help finance my education, and I continued to work through college and law school.

I had the good fortune to attend the Georgetown University Law Center and then to clerk for Judge Flannery on the U.S. District Court here in the District of Columbia. Judge Flannery had pre-

viously served as the United States Attorney for the District of Columbia, and he steered me into that office and remained my mentor throughout my career.

As I have often said, there has been no greater honor in my career than to stand in a courtroom as an Assistant United States Attorney and state, "I represent the people of the United States of America."

Returning to the Department of Justice has long been my dream, and I look forward to continuing to work for the people of the United States. If confirmed, I also look forward to working with you to assist the Committee in performing its legislative and oversight functions.

If I might take a moment, I would like to introduce my family here with me today: my daughter Melissa, a former Peace Corps volunteer, who works for the Centers for Disease Control in Atlanta; my daughter Mary-Pat, who works for the University of Chicago Endowment, and her husband, David Barron; my son P.J., who works for the Malala Fund, a nonprofit organization in New York City; also my daughter Allison, who is also a Georgetown Law graduate, who practices in San Francisco, could not be here today because she is more than 8 months pregnant with our first grandchild, so she remained in San Francisco with her husband, Chris Gathwright; and my step-son Jack, who attends the Field School here in Washington, could not be here because he is participating in the cross-country championships.

And, finally, also with me here today is my most trusted adviser, my wife, Amy Weiss.

I look forward to answering any questions you may have.

[The biographical information and the prepared statement of Mr. Kadzik appear as submissions for the record.]

Senator FEINSTEIN. Well, thank you very much.

Both Senator Schumer and Senator Gillibrand told me they really regretted not being able to be here. I was going to make a brief comment on your behalf, and I would just like to say, so that everybody knows, that before joining the Justice Department's Office of Legislative Affairs in March 2013, Mr. Kadzik had a long career in the law, including over 30 years in private practice and more than 2 years as an Assistant United States Attorney. He has diverse experience in several areas of the law and I believe will serve the Nation well. So we look forward to your testimony and answering the questions.

I am delighted to hear that your daughter Allison and son-in-law Chris are constituents of mine in San Francisco, and I trust they love living there.

Mr. KADZIK. That is right. Thank you, Madam Chair.

Senator FEINSTEIN. They may not like the high prices, but I think——

Mr. KADZIK. That is true.

Senator FEINSTEIN [continuing]. They probably—I mean, it is a wonderful city.

Mr. KADZIK. Yes, indeed.

Senator FEINSTEIN. If you would stand, I do not want to forget the oath again. I was just reminded. Do you affirm that the testi-

mony you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KADZIK. I do.

Senator FEINSTEIN. Thank you very much.

Okay. Let me find my questions here. Let me start off with something very important to me. I chair the Senate Select Committee on Intelligence, and recently we received a set of answers to official questions for the record well over a year late. As I understand it, part of the delay is that DOJ has to review whatever the FBI sends over to the Intelligence Committee, including intelligence products that are sent over on a daily basis by other intelligence agencies. So, I mean, I must tell you I find that untenable that the FBI cannot just send us things straight on, that it has got to go through some review process at Justice. And what I would like to ask is, Will you commit to looking into how to accelerate the pace with which information gets from the FBI to the Senate Intelligence Committee and the Judiciary Committee as well?

Mr. KADZIK. Yes, Senator, I certainly will. Part of the disappointment that I have had at the office is looking at our track record on responding to questions for the record and congressional correspondence. And one of my missions at the Department is to improve that record and to expedite the providing of information to this Committee and all Members of Congress.

Senator FEINSTEIN. Let me just say that nothing does more to turn off a committee or an individual Senator than you do not get back the answers, and a year is really outside the pale of propriety.

Mr. KADZIK. I agree, Senator, and I look forward to improving our track record in that regard.

Senator FEINSTEIN. Good. I will count on it.

Mr. KADZIK. Thank you.

Senator FEINSTEIN. Let me raise the question of the issue of domestic drones. I just did an interview on the subject. The IG recently released a report calling for privacy policies specific to drones. The report specifically noted, and I quote, "The capability of small UAS, or drones, to maneuver effectively yet covertly in the area near one's home and stress the technological advancements allow flights of several hours or even days at a time, increasing the need for privacy protections."

I am working on legislation to provide privacy protections from drones. I am very concerned about this. We have drones used publicly now. We have the Defense Department signing off on the use of drones to aid in surveillance of the Big Rim Fire in California, which I have to think is appropriate because this can save firefighters' lives, it can chart the advance of a big wildfire, of which this was huge, and really be a significant asset.

On the other hand, you have surveillance of individuals. You have sheriff's offices using it. You have the FBI using it. Should a warrant be required?

On the third point, you have the very real privacy concerns of people. In this television show, I used just a small example. I had a demonstration outside my home, so I went to the window to peek out and see who it was, and there was a drone right outside my window.

Well, I gather the person piloting the drone turned it away and the drone crashed, which I thought was good justice on the spot, but it raises the question of people in their homes with drones looking through, people being looked at in private gardens, backyards, whatever, people being followed innocently or stalked on the street. We just saw in Texas where someone with a drone saw a creek running with blood from a slaughterhouse—it was pig's blood going into a river—turned it into the police department, and Texas took the action to protect the property, not to sue the polluter.

So, you know, there is a great mix of problems here. I would be very interested in what you think we can do and hopefully to work with me on legislation to protect individual privacy.

Mr. KADZIK. Madam Chairman, I know that the Department shares your interest in protecting the personal privacy of all American citizens. And I know that the FBI is revising its drone policies and procedures, and the Department would look forward to working with you on any legislation that would be proposed in order to make sure that those safeguards and protections are put into place.

Senator FEINSTEIN. What can you tell us about this revision of FBI policies?

Mr. KADZIK. Well, my understanding is that it began after Director Mueller's testimony, and that as a consequence of that testimony and the subsequent disclosures, the FBI undertook to review and revise its policies, and we would look forward to working with you on legislation that would assist in those revisions, much like we have done revisions in the area——

Senator FEINSTEIN. Has that undertaking been completed?

Mr. KADZIK. I do not know if it has been completed yet, but I can find out.

Senator FEINSTEIN. Well, if you would find out. This is, I think, of real concern to our whole Committee, and I cannot speak on behalf of the Judiciary Committee, but we have the Ranking Member here, and I would think as a Member it is very important that the Judiciary Committee see any revision of the drone policies of the FBI as soon as we possibly can.

Mr. KADZIK. I will look into that, Madam Chairman, and get back to you.

Senator FEINSTEIN. Okay. The third question. For nearly a decade, I have worked with Senator Hatch on a gang bill. In 2007, it passed the Senate by unanimous consent but got held up when we tried to work out differences with the House.

Since then, gang activity has continued to devastate many of our communities. According to a 2011 National Gang Threat Assessment, gang membership increased 40 percent between 2009 and 2011 to 1.4 million gang members in the United States. And these gangs are responsible for an average of 48 percent of violent crime in most jurisdictions.

The talk in California in certain cities are now random shootings by gangs, which go through walls, hit children, hit infants, hit grandmothers. And this kind of thing has just got to stop.

Senator Hatch and I were trying to pass a bill which has asset seizures and forfeitures, RICO statute applied, really a tough bill on joining a gang. I do not know what we are going to do to stop

this because in the 10 years we have been working, it has only gotten worse.

Do you have any thoughts?

Mr. KADZIK. Well, Madam Chairman, I know that it is a priority for the Justice Department with respect to its prosecutorial responsibilities, and preventing and prosecuting gang violence and gang activity is high on our list. We also work with our Office of Justice Programs to provide assistance to local law enforcement and community groups in order to assist them in preventing gang membership and gang violence, and I hope that we are able to increase those resources in order to better combat gang violence.

Senator FEINSTEIN. Well, I think we have to do this because I am embarrassed to say, but in a way, you know, California has been sort of the gang capital and exporting gangs. When the Crips and Bloods began, they began in Los Angeles. They are now in more than 100 cities in America, and there is really no good that comes out of this activity. And it only gets worse and worse.

So what I would like to do is really encourage a partnership between DOJ and us in trying to see what we can do to toughen Federal law and also to bring—you know, Federal law is very good. The trial is fast. You do not bail out, you get convicted, and you go to prison. And that is where a lot of these gang members, candidly, belong.

Mr. KADZIK. Well, we would look forward to working with you, Madam Chairman, in making that a priority in our prosecutorial functions.

Senator FEINSTEIN. Okay. I will take you at your word.

Mr. KADZIK. Thank you.

Senator FEINSTEIN. Senator Grassley.

Senator GRASSLEY. Thank you very much.

There is so much she said that I would normally preface my questions with that all I can say is I heard almost everything she said, I agree with it, particularly that part that deals with answers to letters and fulfilling our oversight responsibilities and your helping us do that—not just you. You could be Homeland Security sitting here. You could be the Department of Defense. It is not just the Justice Department. You happen to be working for them.

The delay is one thing. You are kind of in a situation where I think there is institutional problems that, regardless of how faithful you are in trying to accomplish what you want to do, it seems to me it is an almost impossible thing to do. I hope you do everything you say you are going to do. But we have problems not only in this administration. We have problems if you have a Republican administration and you have a Republican majority in the U.S. Senate. There is something about bureaucracy that they thumb their nose at the Congress on this oversight too often.

And the only thing that I would say would be different with this President than other Presidents is this: It is a benchmark he set for himself on January 21, 2009, of being the most transparent administration in the history of the country, or words to that effect, but that is what it meant. By his own benchmark and the cooperation we are getting, I could say without question the most stonewalling of any President.

Now, it is only because he set that benchmark. If he had not said that, I could not say that he is different than other Presidents. But I would think that that would put all of his Presidential appointments, including you, in a position of not doing anything to embarrass the President. So all this request for information would be forthcoming based upon his wanting to be the most transparent President or administration in the history of the country. And you would want him to do that, because he does not know what Mr. Kadzik is doing from day to day, and he does not know what anybody else in the Department is doing every day. He has just got to trust that you folks are going to carry out what he said on January 21, 2009, unless he has changed that, and I hear him on television still saying that he is the most transparent of any administration this country has ever seen. And those are recent statements, not things that you see on MSNBC or Fox News that says something was said in July 2008 or something like that.

Now let me get to my questions. In 2002, a House Committee report called your conduct in attempting to avoid a subpoena to testify before that House Committee "unseemly." The Committee wanted to hear about your work for Marc Rich, who obtained a controversial pardon from President Clinton. In response to the Committee's report, you wrote a letter claiming that neither you—and I want to emphasize—nor anyone at your firm knew about the subpoena until after you had already boarded a plane to California. The final report called your claim "utterly false."

So, question: Why were you so sure that the Committee staff had not informed anybody at your firm of the subpoena?

Mr. KADZIK. Well, Senator, two things. One is when I got on that plane and went to California, no one had advised me that my appearance would be mandatory. As soon as I arrived in California and I was advised that that was the case, I turned around, came back. I testified before the Committee. Chairman Burton excused me from the Committee before the hearing was over so that I could return to California, and he thanked me for my testimony.

Moreover, at the time of my testimony, which was contemporaneous with the events that occurred, I laid out the chronology that occurred, and I did not receive a single question about my testimony at that time.

Senator GRASSLEY. Okay. Now, is it your testimony today that the Committee staff did not inform the following attorneys with your firm of a subpoena: Richard Conway, Andy Zausner, and Henry Cashen?

Mr. KADZIK. I am not aware of the Committee staff advising my attorneys of that. All I know is when I arrived in California, I got greeted by a U.S. Marshal. I turned around, I came back, and I testified. But before I got on that plane, no one had advised me that my attendance was going to be mandatory.

Senator GRASSLEY. Through consultation with the House Committee, I was able to obtain the handwritten notes of the staff who spoke with these attorneys at your firm. According to those notes, there were about 24 contacts with these attorneys leading up to the subpoena. One entry in the notes indicates that on February 27, 2001, Committee staff left messages for each of those three attorneys at your firm. Another entry indicates that at 8:29 a.m. on Feb-

ruary 28th, two of those attorneys refused to accept service of the subpoena on behalf—by fax. That was 2½ hours before your plane was scheduled to leave.

Question: How do you square your claim that no one told you or your attorneys about the subpoena when these notes suggest otherwise?

Mr. KADZIK. Senator, I have not seen those notes before. I am not aware of what notes were made by the Committee staff at that time. All I can say is that at the time I got on the plane, no one had advised me that my attendance would be mandatory. When I was advised that it would be, I returned, I testified, and I was thanked for my testimony.

Senator GRASSLEY. Let me make a little statement now, and then I will go on to some other questions.

In Operation Fast and Furious, one problem the Inspector General documented was that the Office of Legislative Affairs was making a claim without doing the independent fact finding to know whether or not it was true. The most charitable reading of your letter to the Government Reform Committee would be that you did exactly the same thing. Whether in Fast and Furious or in Mr. Kadzik's case, shooting letters willy nilly to Congress without checking on their accuracy is simply unacceptable. A person in your position or where you are going to be confirmed for needs to ensure that Congress receives accurate and prompt information from the Department.

Let me go to the next question. Last week, your office instructed ATF not to brief my staff on a matter related to a book by whistleblower John Dodson. The briefing was scheduled by Chairman Issa, who invited my staff to attend. After consulting with your office, ATF walked out of the briefing, citing Privacy Act concerns even though my staff had a Privacy Act waiver from the whistleblower and even though the Act allows disclosures to Congress. So I think that such behavior, whether you were personally involved or people underneath you were involved, is extremely disturbing.

To get to the bottom of how this happened, I sent you a letter asking you four specific questions. I also requested copies of all records and communications related to the briefing. Your response failed to answer my questions or provide the documents I requested. Nothing in your response indicates that you intend to answer my questions or provide documents.

So, several questions: Will you answer the questions in my letter and provide the documents I requested? And if not, why not?

Mr. KADZIK. Senator, I believe that my letter answered your questions. I set forth the misunderstanding that occurred on behalf of the ATF representatives. In fact, my office did not instruct them not to go forward with the briefing. They wanted to get guidance on the Privacy Act. They returned, got that guidance; they came back to the Senate that very afternoon to conduct the briefing, and at your staff's request it was postponed until this Monday, and it just occurred on Monday.

Senator GRASSLEY. What about the documents I requested?

Mr. KADZIK. With respect to the documents, I interpreted your letter to mean documents with respect to the Privacy Act advice, and to the best of my knowledge, there are no documents. When

they got back, I understand they showed the waiver, consulted, realized that the waiver was valid, and they went back and attempted to conduct the briefing, but it was postponed.

Senator GRASSLEY. Would you agree to review whether the Department's so-called policy against Ranking Members receiving Privacy Act information is required by the law?

Mr. KADZIK. Absolutely, Senator. In fact, I sent your letter to other departments within the Department to ask them to look at the authorities in the precedent that you cite.

Senator GRASSLEY. Did we cite that district court case?

Pay attention to that district court case. It was kind of irritating. One hundred Senators, not just those 55 in the majority. If they are in the minority sometimes, it is going to be just as irritating to them. But a district judge says that any Senator has a right to information from whatever administration it is. And somehow, you know, again, it is not just this administration, and it is not just you. This is an institutional problem that is keeping the constitutional function of checks and balances from working, and that is for us not only to pass laws but to see that those laws are faithfully executed.

If you find that a legal precedent supports—well, I asked that. Mr. Kadzik, in your statement, you say that during your time at the Department you have sought to improve the Department's responsiveness to inquiries from congressional committees and Members of Congress, and if confirmed, I will continue to improve that performance. And I heard you tell Chairwoman Feinstein the same thing.

Now, your office has a history of—now, when I say "your office," you know, before you get there, as far as I am concerned, and maybe several people before you. Your office has a history of interfering with agencies at the Department of Justice to prevent them from meeting with me and my staff. In addition to the incident last week, your office instructed the DEA Administrator not to meet with me and the Government Accountability Office regarding a bipartisan request I have with Senator Whitehouse. He happens to be a Democrat. He is a Member of the majority where there is no question about whether the Privacy Act or any other policy interferes with his getting information.

The DEA said it could not take the meeting because of your office's so-called third-party meeting policy. This policy supposedly prohibits agencies from meeting with Members of Congress or any third party at any time.

Question: Why should I support your confirmation if your office is consistently working behind the scenes to block me and my office from attending routine briefings and meetings?

Mr. KADZIK. Senator, we are not seeking to block any meetings, and, in fact, I know that the DEA would be pleased to meet with you. The policy concerns third parties and having others participate in the meetings, and our concern is we want to avoid any inference or implication that there has been any political influence on our litigation or law enforcement priorities. And so in order to protect ourselves and to protect the Members of Congress, we are happy to meet with Members of Congress, we are happy to meet with third parties; but we believe that the three-way meetings

present a political risk both for the Members and for the Department.

Senator GRASSLEY. You know, the Government Accountability Office is part of the U.S. Government, and you call that a third party. You know, it is not like it is Joe Blow from Podunk Center, Missouri. It is a part of the Government. That is a third party?

Mr. KADZIK. I understand, Senator, and one of the things that we are working on now is to resolve the dispute between DEA and GAO with respect to the data that they seek. I know that we have reached agreement on one of the data bases. We are close to agreement on the second data base. And I think there are active discussions with respect to the third. So we are working hard to accomplish what GAO needs.

Senator GRASSLEY. You know, the letter was first sent about a year, maybe more than a year ago, and I do not know how many times we have heard even from DEA sitting in that chair here before our Committee, our caucus about a month ago, said, "We are getting close to it." Well, you have got to be getting closer than 2 months passing by until there is a decision to be made.

Mr. KADZIK. Senator, I know that the ARCOS data base has been made available to GAO. With respect to the Registrant Information data base, there is a proposed agreement that has gone back and forth between DEA and GAO. And with respect to the YIRS data base, there is ongoing negotiations with respect to a proposal to provide that information as well.

Senator GRASSLEY. Before this incident, I or my staff had never heard of the so-called third-party meeting policy. Is it a written policy? And if it is a written policy, would you provide a copy of it? And if it is not written, how does it develop?

Mr. KADZIK. Senator, I do not know if it is a written policy. I would be happy to go back to the Department and find out if it is. But that is the guidance that I received from the Department, and I would be happy to provide you with further information concerning it.

Senator GRASSLEY. And I think we have already discussed my last question, because I told you that the GAO is part of the legislative branch that governs part of the U.S. Government. How does it get to be a third party? And how—well, I guess I could ask this: How can you justify preventing an agency of the Government from meeting with Senators and the GAO?

Mr. KADZIK. Again, with respect to both our litigation and our law enforcement priorities, we again want to avoid any appearance that there has been any political influence on what we do. And, again, we, DEA, and the Department would be happy to meet with you, and we have ongoing negotiations and decisions with GAO. It is the three-way meeting that we believe leads to a potential inference, and we want to avoid that.

Senator GRASSLEY. I do not know that the Government Accountability Office is a political organization. I think it is very non-political.

Mr. KADZIK. I am not saying that the GAO is a political entity, but certainly with respect to a Member of Congress, if we were to meet with respect to ongoing prosecutions or litigation, that could lead to the inference or the implication that our decisions have

been influenced by political leaders, and that is something we would like to avoid.

Senator GRASSLEY. I think you have got to realize that there is plenty of precedent right up here among us—not just us two, I mean among the Senate as a whole. Some Senators have gotten in trouble for trying to make those political interferences, so it is going to be a violation of Senate ethics as well as probably, you know, some Federal law. So you ought to know that Senators are going to be cautious, and the ones that are not cautious probably are not around here anymore.

Mr. KADZIK. I agree with you, Senator, and we work hard to get you the necessary information and to get GAO the necessary information as well.

Senator GRASSLEY. And then when you talk about you want to be cautious about not influencing some prosecution, there is not any prosecution here we are talking about. It is all about a GAO request to get a study of something.

Mr. KADZIK. Well, there are both Privacy Act and confidential proprietary interests involved in the data that is being sought by GAO, and we want to avoid any implication that there has been political influence on providing that business proprietary information to GAO.

Senator GRASSLEY. Thank you. Thank you.

Senator FEINSTEIN. Thank you. You have done your homework, Senator.

Senator GRASSLEY. Thank you.

Senator FEINSTEIN. You are welcome. But I think I understand why they would not want to meet with a Senator and a third party. So if I understand you correctly, Mr. Kadzik, you are saying absolutely we will meet with you directly, but it is the third party that has a point of issue that you do not want to include in that meeting.

Mr. KADZIK. That is absolutely correct, Madam Chair.

Senator GRASSLEY. And that third party is part of the U.S. Government. We are all supposed to be working for the same people—the people of the United States of America. There is not such a thing as an institution of Government that is separate from the interests of the American people.

Senator FEINSTEIN. Well, you do not want me to debate that with you.

Senator GRASSLEY. No, because I would lose.

[Laughter.]

Senator FEINSTEIN. In any event, I think that completes our questions. We will hold the record open for 1 week. I would like to enter into the record six letters of support for Mr. Owens from a number of people. So ordered.

[The letters appear as submissions for the record.]

Senator FEINSTEIN. And let me thank you, Mr. Kadzik, and ladies and gentlemen and judges and judges to be, thank you.

Senator GRASSLEY. I will have some things to enter into the record.

Senator FEINSTEIN. Certainly.

Senator GRASSLEY. Okay.

Senator FEINSTEIN. Okay.

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

Senator FEINSTEIN. So thank you, everybody, and the hearing is adjourned.

Mr. KADZIK. Thank you, Madam Chairman. Thank you, Mr. Grassley.

[Whereupon, at 4:10 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Nominations"

Wednesday, October 30, 2013
Dirksen Senate Office Building, Room 226
2:30 p.m.

Panel I

John B. Owens, to be United States Circuit Judge for the Ninth Circuit

Panel II

Matthew Frederick Leitman, to be United States District Judge for the Eastern District of Michigan

Judith Ellen Levy, to be United States District Judge for the Eastern District of Michigan

Laurie J. Michelson, to be United States District Judge for the Eastern District of Michigan

Linda Vivienne Parker, to be United States District Judge for the Eastern District of Michigan

Peter Joseph Kadzik, to be an Assistant Attorney General

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   John Byron Owens

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

   United States Circuit Judge for the Ninth Circuit

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

   Office: Munger, Tolles & Olson LLP
   355 South Grand Avenue, 35th Floor
   Los Angeles, California 90071

   Residence: San Diego, California

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

   1971; Washington, District of Columbia

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.

   1993 – 1996, Stanford Law School; J.D. (with distinction), 1996

   1989 – 1993, University of California, Berkeley; B.A. (with high distinction), 1993

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.

   2012 – present
   Munger, Tolles & Olson LLP
   355 South Grand Avenue, 35th Floor

Los Angeles, CA 90071
Partner

2004 – 2012
U.S. Attorney's Office
Southern District of California
880 Front Street
San Diego, CA 92101
Chief, Criminal Division (2010 – 2011)
Deputy Chief, Major Frauds Section (2008 – 2010)
Assistant U.S. Attorney (2004 – 2008)

2001 – 2004
U.S. Attorney's Office
Central District of California
312 North Spring Street
Los Angeles, CA 90012
Assistant U.S. Attorney

2000 – 2001
O'Melveny & Myers LLP
1625 Eye Street, N.W.
Washington, DC 20006
Litigation Associate

1998 – 1999
U.S. Department of Justice
Office of Consumer Litigation
(now Consumer Protection Branch)
1331 Pennsylvania Avenue, N.W.
Washington, DC 20530
Trial Attorney

1997 – 1998
Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543
Law Clerk to Associate Justice Ruth Bader Ginsburg

1996 – 1997
Ninth Circuit Court of Appeals
940 Front Street
San Diego, CA 92101
Law Clerk to Judge J. Clifford Wallace

Summer 1995
McCutchen, Doyle, Brown & Enersen
(now Bingham McCutchen)
Three Embarcadero Center
San Francisco, CA 94111
Summer Associate

Summer 1993
Golden State Warriors
101 Broadway
Oakland, CA 94607
Marketing Assistant

Other affiliations (uncompensated)

2013 – present
Harker School
500 Saratoga Avenue
San Jose, CA 95128
Board of Fellows

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

I have not served in the U.S. Military. I timely 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.

Director's Award, U.S. Department of Justice (Superior Performance in a Managerial or Supervisory Role as Chief of the Criminal Division) (2011)

Secret Service Honor Award from the Director of the U.S. Secret Service (as lead counsel in *United States v. Cao*) (2011)

United States Postal Service Office of Inspector General (Award for Prosecutorial Efforts) (2010)

Internal Revenue Service, Criminal Investigation Division (Recognition Award) (2010)

Director's Award, U.S. Department of Justice (Superior Performance as an Assistant United States Attorney in the *U.S. v. Treadwell* trial) (2009)

Harker School Distinguished Alumni Award (2007)

Poway Boxing Club Member of the Year (2007)

United States Department of Justice (Special Achievement) (2005)

United States Postal Inspection Service (Award for Efficient Prosecution) (2003)

Federal Bureau of Investigation (Award for Excellence) (2001)

Nathan Abbott Scholar (highest cumulative grade point average for Class of 1996)

Second-Year Honor (highest cumulative grade point average for second-year student) (1996)

Order of the Coif (1996)

Steven M. Block Award (1996)

Stanford Law Review Board of Editors Award (1996)

Phi Beta Kappa Honors Society (1993)

Phi Alpha Theta Honors Society (1993)

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

American Bar Association

Association of Business Trial Lawyers (San Diego and Los Angeles Chapters)

Los Angeles County Bar Association

Los Angeles Criminal Justice American Inn of Court

San Diego County Bar Association

10. **Bar and Court Admission**:

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

    California, 1996

District of Columbia, 2000 (inactive)

There have been no lapses in membership although my status in the District of Columbia remains inactive.

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 (2001)
United States Court of Appeals for the Seventh Circuit (2000)
United States Court of Appeals for the Ninth Circuit (2002)
United States District Court for the Central District of California (2001)
United States District Court for the Southern District of California (2004)

To the best of my knowledge, 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.

Chantemar Homeowners' Association (2010 – present)
Facilities Committee

Stanford Law School 2011 Reunion Committee for Class of 1996 (2011)

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

To the best of my knowledge, the organization listed in response to 11a above does not currently discriminate nor did it formerly discriminate on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

The following list reflects my best efforts to identify any titles, publishers, or dates of books, articles, reports, letters to the editor, editorial pieces, or other published material I have written or edited, including material published only on the Internet. To compile this list, I searched my own records and Internet sources.

The Clerk, The Thief, His Life as a Baker: Ashton Embry and the Supreme Court Leak Scandal, 27 J. SUP. CT. HIST. 14 (2002). Copy supplied.

Grisham's Legal Tales: A Moral Compass For The Young Lawyer, 48 UCLA L. Rev. 1431 (2001). Copy supplied.

"Just My Blonde Luck," *Legal Times*, July 30, 2001. Copy supplied.

The Clerk, The Thief, His Life as a Baker: Ashton Embry and the Supreme Court Leak Scandal of 1919, 95 NW L. REV. 271 (2000). Copy supplied.

"Tell All Clerkarazzi," *Daily Journal*, Apr. 27, 2000. Copy supplied.

Have We No Shame?: Thoughts on Shaming, White Collar Criminals, and the Sentencing Guidelines, 50 AMER. U. L. REV. 1047 (2000). Copy supplied.

The Simple Truth *about* 9 Scorpions *and* The Tenth Justice: *Supreme Court Law Clerks in Legal Suspense Novels*, 87 CAL. L. REV. 233 (2000). Copy supplied.

Westec Story: Gated Communities and the Fourth Amendment, 34 AM. CRIM. L. REV. 1127 (1997). Copy supplied.

Judge Baer and the Politics of the Fourth Amendment: An Alternative to Bad Man Jurisprudence, 8 STAN. L. & POL'Y REV. 189 (1997). Copy supplied.

"In Life, Nothing Is Automatic," *Stanford Law Journal*, Dec. 1995. Copy supplied.

"Worth The Nosebleed: In Defense of the 'Cheap Seats,'" *Warriors Playbook* (undated, approximately 1992 or 1993). Copy supplied.

"A Game Called Horse," *Warriors Playbook* (March 1992). Copy supplied.

"My Game With Manute," *Warriors Playbook* (Jan. 1992). Copy supplied.

"A Man Called Shane," *Warriors Playbook* (undated, approximately 1991 or 1992). Copy supplied.

From 1993 through approximately 1998, I occasionally wrote short articles for a series named "You Make The Call" that appeared in various professional basketball team magazines, including *Warriors Playbook*. The articles examined certain obscure rules of the National Basketball Association. The articles do not have individual titles, and many are undated. Copies supplied.

I also recall writing similar articles for *Warriors Playbook* about the NBA Draft and a Warriors preseason game, but I could not locate copies of these articles.

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

I have not prepared or contributed to the preparation of any such reports, memoranda or policy statements.

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

The following list reflects my best efforts to identify any communications to public bodies or public officials on matters of public policy or legal interpretation that I issued or provided or that others presented on my behalf. To compile this list, I searched my own records and Internet sources.

Joint letter to Senate Judiciary Committee supporting nomination of Rachel Barkow to join the United States Sentencing Commission (May 2, 2013). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Sri Srinivasan to become a judge on the United States Court of Appeals for the District of Columbia Circuit (April 4, 2013). Copy supplied.

Joint letter to Senate Judiciary Committee supporting nomination of Caitlin Halligan to become a judge on the United States Court of Appeals for the District of Columbia Circuit (February 28, 2011). 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 following list reflects my best efforts to identify any speeches or talks that I have given. To compile this list, I searched my own records and Internet sources.

April 9, 2013: I met with students at Stanford Law School, Stanford, California, to discuss Ashton Embry. I also answered questions about serving as a federal prosecutor. PowerPoint supplied.

October 9, 2012: Remarks at the U.S. Department of Justice's Investor Fraud Summit held at Rossmoor, California. Video supplied.

November 2011: I served as a moot court judge for the National Criminal Procedure Tournament, held at the University of San Diego, San Diego, California. I have no notes, transcript, or recording. The address of University of San Diego Law School is 5998 Alcalá Park, San Diego, CA 92110.

February 23, 2001: Remarks at the *UCLA Law Review*'s Symposium on Law and Popular Culture, which was held at UCLA Law School, Los Angeles, California. My talk focused on my article, "Grisham's Legal Tales," which appeared in the *UCLA Law Review*. Copy of article on which discussion was based supplied in response to Question 12a.

1998 or 1999: I spoke at Stanford Law School with students about federal clerkships, Stanford, California. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305.

Approximately 1998 and 1999: I spoke about the legal system with high school students visiting Washington D.C. I do not recall the sponsorship organization for this talk. I have no notes, transcript, or recording, and I do not recall the address of where the talks occurred.

1997 or 1998: I spoke on campus with University of California, Berkeley undergraduate students about law school on approximately two occasions. I have no notes, recording, or transcript of my talks. The address of the University of California, Berkeley is 101 Sproul Hall, Berkeley, CA 94704.

Over the years, I have spoken with clients, law students, summer interns, and colleagues about my article, *The Clerk, The Thief, His Life as a Baker: Ashton Embry and the Supreme Court Leak Scandal of 1919*, 95 NW L. Rev. 271 (2000). I used the same PowerPoint supplied for the April 9, 2013 entry.

Also over the years, I have guest lectured at law schools in San Diego about appellate and white collar criminal matters. I do not have a complete record from every one of these appearances, but I have supplied copies of outlines from lectures that I gave on March 26, 2010, May 27, 2012, and November 13, 2012, as well as PowerPoints that I used during these lectures, which I was able to locate in my records.

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

The following list reflects my best efforts to identify the interviews I have given to newspapers, magazines, or other publications, or radio or television stations. To compile this list, I searched my own records and Internet sources. Some of these stories were reprinted in other media sources. As an Assistant U.S. Attorney, I occasionally granted brief interviews to local radio stations about convictions and sentencing hearings. I do not recall the dates of these interviews or the stations that conducted them, and I have been unable to obtain copies or transcripts of these radio interviews or records of the relevant dates.

Hugh B. Kaplan, *Sixth Amendment Jury-Trial Right Applies To Facts That Trigger Mandatory Minimum*, Bloomberg BNA Criminal Law Reporter, June 19, 2013. Copy supplied.

Henry Meier, *Rare Ralph Lauren Non-Prosecution Agreement Fuels Debate Over Disclosure to SEC*, Daily Journal, Apr. 24, 2013. Copy supplied.

Henry Meier, *Defense Tactics in KPMG Insider Trading Case Raise Legal Eyebrows*, Law360, Apr. 15, 2013. Copy supplied.

Sandra Dibble & Lily Leung, *Suspicious Home Purchase Went Unnoticed*, UTSanDiego.com, Mar. 23, 2013. Copy supplied.

Henry Meier, *San Diego Lawyers Face SEC Stock Manipulation Charges*, Daily Journal, Mar. 18, 2013. Copy supplied.

American Greed, "Wealth Builders Club," originally aired on CNBC on Feb. 28, 2013. Video supplied.

Henry Meier, *In Unusual Ruling, Judge Allows FCPA Bribery Suit*, Daily Journal, Feb. 12, 2013. Copy supplied.

KNSD 7 San Diego News, remarks on ICE law enforcement policy, Dec. 5, 2012. I have been unable to obtain a copy.

Hadley Robinson, *Government's New FCPA Guidelines Leave Prosecutors Plenty of Flexibility, Defense Lawyers Say*, Daily Journal, Nov. 27, 2012. Copy supplied.

American Greed: "The Fugitives, Raiders of the Lost Retirement," originally aired on CNBC on Aug. 22, 2012. Video supplied.

Tony Mauro, *Secretive U.S. Supreme Court Has Seen Its Leaks*, Law.com, July 11, 2012. Copy supplied.

Josh Gerstein, *Justice Department Dropped Case Charging Threats to Barack Obama*, Politico.com, Mar. 30, 2012. Copy supplied.

Chief of Criminal Division for U.S. Attorney's Office Set to Join Munger, Tolles & Olson, JD Journal, Dec. 5, 2011. Copy supplied.

Ginny LaRoe, *Munger, Tolles Snags San Diego Federal Prosecutor*, The Recorder, Nov. 29, 2011. Copy supplied.

Camille DeMere, *Munger Tolles Adds Calif. Prosecutor To Litigation Team*, Law360, Nov. 29, 2011. Copy supplied.

Sara Randazzo, *The Churn: Lateral Moves and Promotions in the Am Law 200*, The American Lawyer, Nov. 29, 2011. Copy supplied.

Kristina Houck, *Sentencing Rescheduled for Former Navy Man Guilty of Cyberstalking*, City News Service, Oct. 17, 2011. Copy supplied.

John B. Owens, JD '96 Advises Students Aspiring to Federal Prosecution, Summer of 2011 Issue of Create Change – Stanford Law School. Copy supplied.

Greg Moran & Ryan Gabrielson, *Tax Convictions Comparatively Low In San Diego*, San Diego Union Tribune, Mar. 28, 2011. Copy supplied.

Solana Beach money trader sentenced in currency scam, Del Mar Times, May 26, 2010. Copy supplied.

Mike Allen, *Fallbrook Man Owes $862,000 in Restitution*, San Diego Business Journal, Mar. 1, 2010. Copy supplied.

Press Release, Office of the United States Attorney – Southern District of California, Regarding Technology Employee Sentenced for Mail Fraud and Filing False Tax Return, Mar. 1, 2010. Copy supplied.

Press Release, Office of the United States Attorney – Southern District of California, Regarding Former Employee of San Diego Financial Institution Sentenced for Bank Fraud, Sep. 21, 2009. Copy supplied.

Kelly Thornton, *Pension Cases Slow Going, Even By Court's Standards*, voiceofsandiego.org, May 19, 2009. Copy supplied.

Press Release, Office of the United States Attorney – Southern District of California, Regarding Sentencing of Former President of Investment Company, Apr. 15, 2009. Copy supplied.

Press Release, Office of the United States Attorney – Southern District of California, Regarding President of 'Brixon Group' Ponzi Scheme Pleading Guilty, Jan. 16, 2009. Copy supplied.

Neal Putnam, *$45K Fine in Tax Evasion Case*, La Jolla Village News, Oct. 9, 2008. Copy supplied.

Untitled Story on Marjan Pousti Prosecution, City News Service, Oct. 3, 2008. Copy supplied.

Untitled Story on Marjan Pousti Prosecution, City News Service, July 17, 2008. Copy supplied.

Press Release, Office of the United States Attorney – Southern District of California, Regarding Two Sentenced to Serve 78 Months in Prison for Alien Smuggling, Apr. 7, 2008. Copy supplied.

Press Release, Office of the United States Attorney – Southern District of California, Regarding Former Attorney Sentenced to Federal Prison and Ordered to Pay $4.5 Million in Restitution to Victims, Apr. 4, 2008. Copy supplied.

Press Release, Office of the United States Attorney – Southern District of California, Regarding Fugitive Apprehended in Nicaragua Arraigned on Fraud Charges, Feb. 28, 2008. Copy supplied.

Emily Grant, *Learning from the Best: Judge Wallace and His Clerks*, San Diego Lawyer, Sept./Oct. 2007. Copy supplied.

Attorney Pleads Guilty to Scam, Faces 10 Years, SDNews.com, Approximately 2007. Copy supplied.

Neil Putnam, *Point Loma Couple Sentenced for Fraud*, SDNews.com, Nov. 1, 2006. Copy supplied.

Untitled Story on Brunning Prosecution, City News Service, Oct. 23, 2006. Copy supplied.

Kelly Thornton, *Report's Effect on Criminal Cases Likely to Be Small*, San Diego Union Tribune, Aug. 9, 2006. Copy supplied.

Kelly Thornton, *Pension Case Legal Aid OK'd, but Records Remain Sealed*, San Diego Union Tribune, May 25, 2006. Copy supplied.

Las Vegas Father and Son Sentenced in Sports Memorabilia Fraud Case, North County Times, Mar. 22, 2006. Copy supplied.

Press Release, Federal Bureau of Investigation – San Diego Field Office, Regarding Sentencing of Scheinmans in Sports Memorabilia Fraud Case, Mar. 22, 2006. Copy supplied.

Jan. 6, 2006: I participated in a press conference regarding *U.S. v. Saathoff et al.* I have no notes, transcript, or recording, but press coverage is supplied.

SD Sports Memorabilia, Aug. 12, 2005. Copy supplied.

John Ryan, *Feds Agree Not to Use Interviews in Spy Case*, Daily Journal, Mar. 17, 2004. Copy supplied.

Counterfeit Viagra, City News Service, Jan. 26, 2004. Copy supplied.

Man Faces Federal Trafficking Charges for Faux Sex Drugs, Daily News of Los Angeles, Jan. 10, 2004. Copy supplied.

Counterfeit Viagra, City News Service, Jan. 9, 2004. Copy supplied.

Air Rage, City News Service, Jan. 6, 2003. Copy supplied.

Matt Krasnowski, *El Cajon man sentenced to probation in air rage after 202 days in custody*, Copley News Service, Jan. 6, 2003. Copy supplied.

Allison Lomas, *Palestinian Sentenced to Prison for Making False Threats to Crash Plane*, Metropolitan – News Service, Nov. 15, 2002. Copy supplied.

Jennifer English, *Flight Interference*, City News Service, Nov. 14, 2002. Copy supplied.

Matt Krasnowski, *Palestinian Sentenced to 8 Months in Prison*, Copley News Service, Nov. 14, 2002. Copy supplied.

Flight Interference, City News Service, Oct. 29, 2002. Copy supplied.

Laura Loh, *Man Admits Making Threats on Plane*, Los Angeles Times, July 9, 2002. Copy supplied.

Matt Krasnowski, *Palestinian Man Pleads Guilty in Airplane Threat*, Copley News Service, July 8, 2002. Copy supplied.

Joan Osterwalder, *Flight Interference*, City News Service, July 8, 2002. Copy supplied.

Matt Krasnowski, *El Cajon Man Convicted in Air Rage Case*, Copley News Service, May 23, 2002. Copy supplied.

Tony Mauro, *High Court's Look at Death Penalty Apt to Shift in Wake of Recent State Decision*, Legal Times, Aug. 13, 2001. Copy supplied.

Hoyt Sze, *Cal Candids – If David Duke is elected governor of Louisiana, should UC Berkeley go to the Sugar Bowl?*, Daily Californian, Nov. 12, 1991. Copy supplied.

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

I have not held any judicial office.

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

i. Of these, approximately what percent were:

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

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

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

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

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

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

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

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

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

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

I have not 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 any offices in nor rendered any services for any political party, election committee, or political campaign.

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

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

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

From 1996 to 1997, I was a law clerk for the Honorable J. Clifford Wallace, Circuit Judge of the Ninth Circuit Court of Appeals.

From 1997 to 1998, I was a law clerk for the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States.

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

I have never practiced law alone.

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

1998 – 1999
U.S. Department of Justice
Office of Consumer Litigation
(now Consumer Protection Branch)
1331 Pennsylvania Avenue, NW
Washington, DC 20530
Trial Attorney

2000 – 2001
O'Melveny & Myers LLP
1625 Eye Street, N.W.
Washington, DC 20006
Litigation Associate

2001 – 2004
U.S. Attorney's Office
Central District of California
312 North Spring Street
Los Angeles, CA 90012
Assistant U.S. Attorney

2004 – 2012
U.S. Attorney's Office
Southern District of California
880 Front Street
San Diego, CA 92101
Chief, Criminal Division (2010 – 2011)
Deputy Chief, Major Frauds (2008 – 2010)
Assistant U.S. Attorney (2004 – 2008)

2012 – present
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, CA 90071
Partner

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

I have not served as a mediator or arbitrator.

b. Describe:

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

From 1998 until 1999, I worked as a trial attorney for the Office of Consumer Litigation at the Department of Justice, handling white collar criminal investigations and affirmative civil litigation around the country. I investigated violations of the Federal Food, Drug and Cosmetic Act and other criminal consumer protection laws.

From 2000 until 2001, I worked as an associate at O'Melveny & Myers LLP in Washington, DC. I worked primarily on appellate and trial matters, including several Supreme Court cases and white collar jury trials.

From 2001 until 2004, I worked as an Assistant United States Attorney in the Central District of California. I began in the General Crimes Section, prosecuting a wide variety of violent crimes, narcotics crimes, white collar crimes, and other crimes. I transferred to the Complaints Section in 2002, and then into the Public Corruption and Government Fraud Section in approximately 2003. In addition to my line duties, which included drafting and arguing appeals for my own cases, I also volunteered to handle additional appeals before the Ninth Circuit. As a prosecutor in the Central and Southern Districts, I was counsel of record in more than 20 cases before the Ninth Circuit, and regularly participated in moot courts to prepare other attorneys for argument.

From 2004 until 2012, I worked as an Assistant United States Attorney in the Southern District of California. My primary focus was investigating and prosecuting complex white collar crimes, including fraud, health care, money laundering, public corruption, tax, intellectual property, and national security cases, as well as alien smuggling and narcotics offenses. I also drafted appellate briefs and argued cases before the Ninth Circuit. In 2008, I became the Deputy Chief of the Major Frauds Section, and received a Director's Award in 2009 for my work on *United States v. Treadwell*. In 2010, I became the Chief of the Criminal Division. As the Chief of the Criminal Division, I supervised more than 100 attorneys and was responsible for overseeing more than 5,000 prosecutions each year in one of the busiest offices in the United States. As Criminal Chief, I regularly interacted with district court judges, federal magistrates, and top law enforcement officials in the Southern District of California. I also would review each Ninth Circuit brief written by my office. I received the 2011 Director's Award for my service as Criminal Chief.

Since January 2012, I have worked as a partner at Munger, Tolles & Olson LLP. At Munger, I have represented various individuals and corporations in a wide variety of civil, criminal, and administrative matters. I also have filed pro bono briefs with the Supreme Court of the United States in

criminal matters. I regularly participate in moot courts for appeals filed in state and federal courts around the country.

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

At the Office of Consumer Litigation, I investigated and prosecuted a variety of federal white collar crimes, including the manufacture and sale of GHB and odometer fraud. At O'Melveny & Myers LLP, I represented individuals in civil and criminal litigation in the trial court, and corporations in the trial and appellate courts, including the Supreme Court of the United States. At the U.S. Attorney's Offices in the Central and Southern Districts, I worked with numerous local, state, and federal law enforcement agencies. At Munger, Tolles & Olson LLP, I have focused on civil litigation, administrative matters, white collar criminal defense, appellate litigation, and internal investigations on behalf of corporate and individual clients. I also have handled appellate matters for pro bono clients.

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. As a federal prosecutor, I appeared in federal court on a daily or weekly basis. In private practice, my court appearances have been more limited.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 2.5%
   3. other courts: 0%
   4. administrative agencies: 2.5%

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

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

I have tried 14 cases to verdict or final decision. Four were as sole counsel, eight were as lead or co-counsel, and two were as associate counsel. I also have tried two cases that settled after extensive proceedings before a jury. I also have tried

between 10 and 20 petty offense trials to verdict before federal magistrate judges. I served as sole counsel in these trials.

i. What percentage of these trials were:
   1. jury: 85%
   2. non-jury: 15%

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

As an associate at O'Melveny & Myers, I participated in the drafting of certiorari petitions in the following cases:

United Airlines, Inc. v. Frank, No. 00-0948 (2000) (petition for writ of certiorari, 2000 WL 34000446) (cert. denied).

Advanced Stretchforming International, Inc. v. NLRB, No. 00-1829 (2001) (petition for writ of certiorari, copy supplied) (cert. denied).

Memorial Hospitals Association v. Humphrey, No. 00-1860 (2001) (petition for writ of certiorari, 2001 WL 34125239) (cert. denied).

As a partner at Munger, Tolles & Olson LLP, I have served as counsel of record for three amicus briefs:

Alleyne v. United States, 11-9335 (amicus brief for National Association of Criminal Defense Lawyers in support of petitioner, 2012 WL 5884896).

United States v. Davila, 12-16 (amicus brief for National Association of Criminal Defense Lawyers in support of respondent, 2013 WL 1491548).

Kaley v. United States, 12-464 (amicus brief for California Attorneys for Criminal Justice in support of petitioner, 2013 WL 3362081).

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

a. the date of representation;

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

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

I have listed these matters in reverse chronological order.

1. *United States v. Cao*, 2013 WL 2367782 (9th Cir. 2013) (Trial in December 2010).

Cao was charged with conspiracy and wire fraud in a complex investment fraud scheme, in which Cao defrauded his victims of millions of dollars. After a week-long trial in which more than 20 witnesses from around the country testified, Cao was convicted of multiple counts. Judge Larry A. Burns of the Southern District of California sentenced Cao to 360 months, one of the longest white collar sentences in the history of the Southern District of California. The Ninth Circuit affirmed the conviction and sentence. I represented the United States in this case at trial.

Co-Counsel

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2. *United States v. Hauze*, 2012 WL 6758068 (9th Cir. 2012) (Trial in January 2010).

Hauze was charged with mail fraud, wire fraud, and filing false tax returns arising from a complex currency trading investment scheme. Hauze defrauded his victims out of millions of dollars, and attempted to cover up his fraud and tax issues with false records. After a two-week trial featuring more than 25 witnesses from around the country, Hauze was convicted of all counts. Judge Thomas J. Whelan of the Southern District of California sentenced Hauze to 108 months, and the Ninth Circuit affirmed the conviction and sentence. I represented the United States in this case at trial and wrote the appellate brief.

Co-Counsel

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3. *United States v. Treadwell*, 593 F.3d 990 (9th Cir. 2010) (Trial in May 2008).

Treadwell, Sluder, and Saturday were charged with conspiracy and wire fraud for their roles in a complex investment scheme, in which investors nationwide lost over $40 million. More than 40 witnesses from around the country testified at trial, and all defendants were convicted of conspiracy and wire fraud counts. Judge Thomas J. Whelan of the Southern District of California sentenced the defendants to 300, 188, and 63 months. The Ninth Circuit affirmed the convictions and sentences. I represented the United States in this case at trial and assisted with the appeal. Co-counsel and I received a Director's Award in 2009 for our work on this case, and it was featured on the CNBC program "American Greed."

Co-Counsel

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4. *United States v. Hanes et al.*, 2009 WL 2016634 (Trial in March 2008).

The defendants were charged with conspiracy and income tax evasion for diverting profits from a chiropractic business into so called "pure trusts." After a two-week trial involving numerous exhibits and witnesses from around the country, the jury convicted both defendants, and Judge Thomas J. Whelan of the Southern District of California sentenced K. Hanes to 18 months imprisonment, and M. Hanes to 5 months imprisonment. On appeal, defendant M. Hanes challenged the search warrant and related

seizures of evidence, evidentiary rulings, and loss calculations at sentencing. The Ninth Circuit affirmed the conviction and sentence of one defendant, and the other defendant eventually did not pursue her appeal. I represented the United States in this case at trial and in the briefing and argument on appeal.

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5. *United States v. Campbell et al.*, 06CR1021-BTM (2006-09).

This was an investment fraud case involving a prominent local attorney and executives of the Brixon Investment Group. The defendants defrauded their victims out of millions of dollars through a complex Ponzi scheme. After extensive investigation and trial preparation, defendant Campbell and co-defendant Manning eventually pled guilty in 2008 and 2009. Co-defendant McCool remains a fugitive. The case involved a successful operation to locate and retrieve co-defendant Manning from Nicaragua. Judge Barry Ted Moskowitz of the Southern District of California sentenced both defendants to 63 months. Defendant Manning filed a notice of appeal with the Ninth Circuit, but later

withdrew his appeal. I represented the United States in this case before the district court and the Ninth Circuit.

Co-Counsel

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6. *United States v. Hernandez-Orellana et al.*, 539 F.3d 994 (9th Cir. 2008).

The defendants were charged with operating an extensive alien smuggling network. After a week-long trial, the jury convicted the defendants of conspiracy and alien smuggling counts. The case featured extensive smuggling records and threats to the material witnesses during the proceedings. Judge Napoleon Jones of the Southern District of California (now deceased) sentenced each defendant to 60 months. On appeal, issues included whether severance was required, the standard for establishing the "bringing for financial gain" element of the alien smuggling statute, and the sufficiency of the evidence. The Ninth Circuit affirmed in part and reversed in part based on an intervening change in law, and the defendants were later resentenced. I represented the United States in this case at trial and wrote the appellate brief.

Co-Counsel

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7. *United States v. Scheinman et al.*, 04CR2865-BTM (2004-06). The defendants (father and son) were charged in the Southern District of California with conspiracy, mail fraud, and wire fraud arising from their sale of memorabilia bearing forged celebrity signatures. The prosecution arose out of a wiretap and search warrant. After the government prevailed in extensive litigation over the validity of the search warrant and other issues, the defendants pleaded guilty before Judge Barry Ted Moskowitz and were sentenced to probation and six months imprisonment, respectively. I represented the United States in this case.

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8. *United States v. Messano*, 2004 WL 2473877 (9th Cir. 2004), vacated and remanded in light of *United States v. Booker*, 540 U.S. 1030 (2005).

I argued this appeal before the Ninth Circuit on behalf of the United States, which involved a defendant convicted of attempting to induce a minor to engage in criminal sexual activity. The appeal included numerous evidentiary issues, including whether the trial court properly excluded certain evidence that the defendant wished to admit, and whether the admission of certain evidence was reversible error. The Ninth Circuit (Canby, Rawlinson, and Hansen (by designation)) affirmed the conviction and sentence.

Opposing Counsel

Michael Tanaka
Federal Public Defender
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213-894-4140

9. *United States v. Rearden*, 349 F.3d 608 (9th Cir. 2003).

I argued this appeal on behalf of the United States, which involved several precedential child pornography issues, before the Ninth Circuit. These issues included whether the Government had offered sufficient evidence that the images were of actual, rather than virtual, children and whether the conditions of supervised release, including proximity to children and restrictions on Internet usage, were reasonable. The Ninth Circuit (Wallace, Rymer, and Tallman) affirmed the conviction and sentence on all grounds, including important supervised release restrictions for defendants who have violated child pornography laws.

Opposing Counsel

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10. *United States v. Kim*, 01CR1239-MMM (Trial in 2002).

The defendant was charged with interfering with a flight crew by threatening to blow up an airplane over the Pacific Ocean. After a week-long trial before Judge Margaret Morrow of the Central District of California involving witnesses from Korea, the jury returned a guilty verdict, and the defendant declined to file an appeal. The defendant received a time-served sentence. I represented the United States in this case.

Opposing Counsel

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

The overwhelming focus of my practice has involved litigation or preparation for litigation.

In terms of significant litigation that did not reach trial, I was the lead prosecutor assigned to *United States v. Saathoff et al.* in the Southern District of California The indictment alleged traditional and honest services mail and wire fraud charges against several board members and employees of the San Diego City Employees' Retirement System. After years of litigation, Judge Benitez dismissed the charges as impermissibly vague. After the Supreme Court's decision in *Skilling v. United States*, the government declined to appeal the dismissal.

As the Chief of the Criminal Division, I oversaw numerous changes to policies and procedures in the U.S. Attorney's Office, including changes to our model plea agreement, the indictment review process, and AUSA movement within the Office.

In private practice, I currently represent clients in civil, administrative and criminal matters. I also counsel clients on legal strategy and conduct privileged internal investigations into alleged corporate misconduct and violations of state and federal law. I regularly meet with corporate general counsel, other in-house counsel, and outside counsel for various audit committees.

I have not performed lobbying activity on behalf of any client or organization, and I am not and have never been a registered lobbyist.

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

    I have 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.

    Munger, Tolles & Olson LLP does not provide pension or retirement benefits. Upon withdrawal from the partnership, a partner is entitled to receive a "fair share" of firm net income for the current year, reflecting the partner's contributions to date, less amounts previously drawn. In addition, a partner withdrawing from the partnership is entitled to a return of the partner's capital contributions. The current value of my capital contributions to the firm is reflected in the attached Net Worth Statement.

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

    I have no such plans, commitments, or agreements if 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).

    Please 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).

    Please see attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and

financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse myself from any case in which I had previously participated as an attorney. I am unaware of any individuals, whether relatives or otherwise, who would be likely to present a conflict of interest. I would review, on a case-by-case basis, the existence of a potential conflict of interest arising from any personal or former client relationships or financial interests, and would apply generally applicable principles and rules concerning ethics and conflicts of interest in conducting such an inquiry and assessing whether a recusal is warranted.

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

I would consult applicable rules, canons, and decisions addressing conflicts of interest, including 28 U.S.C. § 455 and the Code of Conduct for United States Judges, and any resources on addressing conflicts of interest and appearances of conflicts of interest, with an eye towards developing a general framework to be applied in any case. I would also make case-specific supplemental inquiries where warranted.

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

From 1998 to 1999 and from 2001 to 2011, I served the public as a federal prosecutor. As a federal prosecutor, opportunities to provide traditional pro bono legal activities are more limited than for attorneys in private practice. In light of these limitations, I focused my volunteer efforts on working with high school students so they could learn about different aspects of the legal system. For example, I participated in question and answer sessions with high school students about the legal system and legal careers, and I played the role of a prosecutor in a high school mock trial. I also worked with representatives of the San Diego Unified School District to design a legal training course for high school students. I also volunteered (and continue to volunteer) at my daughters' schools.

In private practice, I have provided more traditional pro bono services. As an associate at O'Melveny & Myers, I provided pro bono service by reviewing and editing pro bono briefs written by other attorneys. Since joining Munger, Tolles & Olson as a partner in January 2012, I have focused my pro bono efforts on amicus Supreme Court litigation. I have served as counsel of record in three pro bono matters since October 2012 on behalf of the National Association of Criminal Defense Lawyers and the California Attorneys for Criminal Justice.

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 late February 2013, I discussed the openings on the Ninth Circuit with a member of Senator Feinstein's Ninth Circuit Committee. On February 23, 2013, I submitted my resume to the Chair of the Committee. On March 5, 2013, I met with the Committee in San Diego, California. On May 7, 2013, I received an email from an official from the White House Counsel's Office asking about my interest in serving on the Ninth Circuit, and I spoke with him on May 10, 2013. Since May 10, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On June 12, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On August 1, 2013, 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. 1/2013

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
Owens, John B.	Ninth Circuit	8/01/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination Date 8/1/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2012 to 7/29/2013
7. Chambers or Office Address		
Munger, Tolles & Olson LLP 355 South Grand Avenue, 35th Floor Los Angeles, CA 90071		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Munger, Tolles & Olson 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 Owens, John B.	Date of Report 8/01/2013

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.	2013	Munger, Tolles & Olson Partnership Draw	$310,000.00
2.	2012	Munger, Tolles & Olson Partnership Draw	$840,854.00
3.	2011	No reportable income	
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 Owens, John B.	Date of Report 8/01/2013

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
Owens, John B.	8/01/2013

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. Ford common stock	A	Dividend	J	T	Exempt				
2. Home Depot common stock	A	Dividend	J	T					
3. McDonalds common stock	A	Dividend	J	T					
4. Microsoft common stock	A	Dividend	J	T					
5. Walmart common stock	A	Dividend	J	T					
6. Qualcomm common stock	A	Dividend	J	T					
7. IBM common stock	A	Dividend	J	T					
8. American Funds EuroPacific Growth	A	Dividend	K	T					
9. American Funds Growth Fund of America	A	Dividend	K	T					
10. American Funds New World Fund	A	Dividend	J	T					
11. American Funds SMALLCAP World Fund	B	Dividend	J	T					
12. Artisan Mid Cap Value Fund		None	J	T					
13. FFI Government Fund	A	Int./Div.	K	T					
14. Fidelity Equity Income Fund	A	Int./Div.	J	T					
15. JPMorgan Large Cap Growth Fund		None	K	T					
16. MFS Value Fund Class	A	Dividend	K	T					
17. Nuveen High Yield Municipal Bond Fund		None	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
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 8	Name of Person Reporting Owens, John B.	Date of Report 8/01/2013

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. Oppenheimer Developing Markets Fund	A	Dividend	K	T					
19. Oppenheimer International Bond Fund	A	Dividend	J	T					
20. PIMCO Commodity Real Return Strategy Fund	A	Dividend	J	T					
21. Pioneer Strategic Income Fund	A	Dividend	K	T					
22. Royce Dividend Value Fund	A	Dividend	J	T					
23. TCW Emerging Markets Income Fund	A	Dividend	J	T					
24. Thornburg International Value Fund	A	Dividend	J	T					
25. Vanguard Target Retirement Fund	A	Dividend	K	T					
26. Virtus Multi-Sector Short Term Bond Fund	A	Dividend	K	T					
27. UBS IRA (cash)		None	J	T					
28. American Funds Fundamental Investors Fund Class A	A	Dividend	K	T					
29. American Funds Investment Company of America Class A	A	Dividend	J	T					
30. American Funds Euro Pacific Growth Fund Class A	A	Dividend	K	T					
31. American Funds Growth Fund of America Class A	A	Dividend	K	T					
32. American Funds New World Fund Class A	A	Dividend	J	T					
33. American Funds Smallcap World Fund Class A	A	Dividend	K	T					
34. American Funds Bond Fund of America Class A	A	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
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

3. Value Method Codes (See Column C2)
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
Page 6 of 8

Name of Person Reporting	Date of Report
Owens, John B.	8/01/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. American Funds Capital World Bond Fund Class A	A	Dividend	K	T					
36. Scholarshare 529 Passive Age Based Portfolio 0-4	D	Int./Div.	K	T					
37. Scholarshare 529 Passive Age Based Portfolio 5-8	D	Int./Div.	L	T					
38. UBS (Cash Accounts)	A	Interest	M	T					
39. Bank of America (Checking Account)	A	Interest	J	T					
40. Series I Savings Bonds	C	Interest	M	T					
41. Munger, Tolles & Olson LLP Capital Account	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
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Owens, John B.	Date of Report 8/01/2013

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Owens, John B.	Date of Report 8/01/2013

IX. CERTIFICATION.

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

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

Signature: **s/ John B. Owens**

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		234	894	Notes payable to banks-secured			
U.S. Government securities – Series I bonds		199	544	Notes payable to banks-unsecured			
Listed securities – see schedule		787	640	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		826	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		351	672				
Munger, Tolles & Olson Capital Account		34	516				
IRA (cash)		3	201	Total liabilities			0
				Net Worth	2	487	467
Total Assets	2	487	467	Total liabilities and net worth	2	487	467
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	
Ford stock	$ 8,385
Home Depot stock	8,055
IBM stock	19,700
McDonalds stock	2,003
Microsoft stock	9,781
Qualcomm stock	6,467
Walmart stock	2,317
American Funds Bond Fund of America	52,379
American Funds Capital World Bond Fund	23,500
American Funds EuroPacific Growth Fund	57,691
American Funds Fundamental Investors Fund	31,763
American Funds Growth Fund of America	82,802
American Funds Investment Company of America	50,517
American Funds New World Fund	15,421
American Funds SMALLCAP World Fund	36,149
Artisan Mid Cap Value Fund	10,778
FFI Government Fund	32,241
Fidelity Equity Income Fund	12,757
JPMorgan Large Cap Growth Fund	15,892
MFS Value Fund Class	16,369
Nuveen High Yield Municipal Bond Fund	21,703
Oppenheimer Developing Markets Fund	18,456
Oppenheimer International Bond Fund	11,067
PIMCO Commodity Real Return Strategy Fund	7,751
Pioneer Strategic Income Fund	34,251
Royce Dividend Value Fund	10,568
ScholarShare 529 Passive Age Based Portfolio 0-4	38,253
ScholarShare 529 Passive Age Based Portfolio 5-8	79,465
TCW Emerging Markets Income Fund	10,927
Thornburg International Value Fund	7,608
Vanguard Target Retirement 2035	18,181
Virtus Multi-Sector Short Term Bond Fund	34,443
Total Listed Securities	$ 787,640

AFFIDAVIT

I, John B. Owens, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

6/6/13
(DATE)

(NAME)

(NOTARY)

CYNTHIA S. SODEN
Commission # 1906539
Notary Public - California
Los Angeles County
My Comm. Expires Oct 2, 2014

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Matthew Frederick Leitman

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.

   Miller, Canfield, Paddock and Stone, P.L.C.
   840 West Long Lake Road, Suite 200
   Troy, Michigan 48098

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

   1968; 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.

   1990 – 1993, Harvard Law School; J.D. (*magna cum laude*), 1993

   1986 – 1990, University of Michigan; B.A. (with highest distinction), 1990

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

   2004 – present
   Miller, Canfield, Paddock and Stone, P.L.C.
   840 West Long Lake Road, Suite 200
   Troy, Michigan 48098
   Senior Principal (2005 – present)
   Senior Counsel (2004 – 2005)

1994 – 2004
Miro Weiner & Kramer, P.C.
38500 Woodward Avenue, Suite 100
Bloomfield Hills, Michigan 48304
Partner (2000 – 2004)
Associate (1994 – 1999)

1993 – 1994
Michigan Supreme Court
925 West Ottawa Street
Lansing, Michigan 48915
Judicial Law Clerk for Justice Charles L. Levin

Summer 1992
Arnold & Porter
Thurman Arnold Building
555 Twelfth Street, NW
Washington, DC 20004
Summer Associate

Summer 1991
Dykema Gossett, P.L.L.C.
39577 Woodward Avenue, Suite 300
Bloomfield Hills, Michigan 48304
Summer Associate

1990 – 1991
Harvard Law School
1563 Massachusetts Avenue
Cambridge, Massachusetts 02138
Research Assistant for Professor James Vorenberg (deceased)

Summer 1990
Roeper Summer Day Camp
41190 Woodward Avenue
Bloomfield Hills, Michigan 48304
Camp Counselor

Other Affiliations (uncompensated)

2012 – present
Federal Bar Association, Eastern District of Michigan Chapter
P.O. Box 20759
Ferndale, Michigan 48220
Executive Board Member

2011 – present
Birmingham Seaholm High School Baseball Boosters
Birmingham Seaholm High School
2436 West Lincoln Street
Birmingham, Michigan 48009
Board Member

2010 – present
American Constitution Society for Law and Policy, Michigan Lawyer Chapter
1333 H Street, NW, 11th Floor
Washington, DC 20005
President (Fall 2012 – present)
President-Elect (Fall 2011 – Fall 2012)
Executive Board Member (Fall 2010 – present)

2010 – present
Harvard Law School Association
Harvard Law School Alumni Center
125 Mount Auburn Street
Cambridge, Massachusetts 02138
Member of Council
President of the Michigan Chapter

2008 – present
Harvard Law School Alumni Association of Michigan
Harvard Law School Alumni Center
125 Mount Auburn Street
Cambridge, Massachusetts 02138
President

Approximately 2000 – 2001
Thornwood Homeowners Association
Thornwood Subdivision
Troy, Michigan
President

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

   I have not served in the United States Military. I timely 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.

Michigan Super Lawyers, Criminal Defense: White Collar, General Litigation, Criminal Defense (2007 – 2013)

The Best Lawyers in America, Non-White Collar Criminal Defense and White Collar Criminal Defense sections (2007 – 2013)

Chambers USA, America's Leading Lawyers for Business: White-Collar Crime and Government Investigations (2012 – 2013)

DBusiness Magazine, Top Lawyer in White-Collar Criminal Defense and Appellate Law (2012)

The Best Lawyers in America, Appellate Litigation (2012)

The United States District Court for the Eastern District of Michigan, Certificate of Appreciation for Pro-Bono Service (2008 – 2012)

DBusiness Magazine, Top Lawyer in Non-White Collar and White Collar Criminal Defense (2011)

The University of Michigan, Phi Beta Kappa (1989)

The University of Michigan, Mortar Board Honor Society (1989)

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

American Bar Association (1995 – present)

Federal Bar Association, Eastern District of Michigan Chapter (1996 – present)
Newsletter Committee Member (1996 – 2000)
Criminal Law and Practice Committee Co-Chair (2008 – present)
Executive Board Member (2012 – present)

National Association of Criminal Defense Lawyers (1995 – present)

Oakland County Bar Association (1994 – present)
Steering Committee, Education Outreach Program (2013 – present)

State Bar of Michigan (1993 – present)

The Fellows of the Michigan State Bar Foundation (2007 – present)

United States District Court for the Eastern District of Michigan Local Rules Advisory Committee (2007 – present)

United States District Court for the Eastern District of Michigan Merit Selection Panel (2009, 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.

Michigan (1993)

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.

Saginaw Chippewa Tribal Court (2011)
United States District Court for the Western District of Michigan (2006)
United States Court of Appeals for the Sixth Circuit (1997)
United States District Court for the Eastern District of Michigan (1994)
Michigan State Courts (1993)

There have been no lapses in my admission to practice before these courts.

11. **Memberships**:

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

American Constitution Society for Law and Policy – Michigan Lawyers Chapter (2010 – present)
President (2012 – present)
President-Elect (2011 – 2012)
Program Chair (2011 – 2012)
Executive Board Member (2010 – present)

Beachwood Recreation Association (2003 – present)

Birmingham Seaholm High School Baseball Boosters
Board Member (2011 – present)

Harvard Law School Alumni Association of Michigan
President (2008 – present)

Harvard Law School Association Council (2010 – present)

Thornwood Homeowners Association
President (approximately 2000 – 2001)

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

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

Federal Government Steps Up Criminal Enforcement of Immigration Laws Against Employers, MICHIGAN LAWYERS WEEKLY, December 21, 2012 (with Paul D. Hudson). Copy supplied.

Defending Employers When ICE Puts the Heat On, THE CHAMPION, January/February 2012 (with Paul D. Hudson). Copy supplied.

Hot Spot, Michigan One of a Handful of Areas Targeted for HEAT Health Care Fraud Team, MICHIGAN MEDICAL LAW REPORT, Winter 2010 (with Pamela C. Enslen). Copy supplied.

Supplier Discounts Offered to Healthcare Providers is Risky Business, MILLER CANFIELD E-ALERT, June 7, 2010. Copy supplied.

Health Care Fraud Enforcement, THE FEDERAL LAWYER, June 2010 (with Pamela C. Enslen). Copy supplied.

Putting Together a Harvard Law School Association Summer Associates Event (approximately 2008). Copy supplied.

A Cautionary Tale for Physicians Who Prescribe Controlled Substances to Treat Pain, SOUTHWEST MICHIGAN MEDICAL JOURNAL, Spring 2006. Copy supplied.

Just What the Doctor Ordered? When Criminal Law Invades the Examining Room, Everyone Can Suffer, MILLER CANFIELD HOT POINTS ARTICLE (approximately Winter 2005). Copy supplied.

When Criminal Law Intrudes Upon the Examining Room, Everyone Can Suffer, MICHIGAN MEDICAL LAW REPORT, Winter 2005. Copy supplied.

Developments in Federal Criminal Law Will Impact Your Company and Your Employees, MILLER CANFIELD HOT POINTS ARTICLE (Spring 2005). Copy supplied.

Don't Get Burned: How to Handle the Media in a High-profile Case, MILLER CANFIELD HOT POINTS ARTICLE (Spring 2005). Copy supplied.

How the Federal Courts Have Distorted the Double Damages Provision of Michigan's Sales Representative Act, 2000 L. REV. M.S.U.-D.C.L. 287 (2000). Copy supplied.

A Clarification of Michigan Law Concerning the Suppression of Evidence Seized in Violation of a State Statute: Exposing the Court of Appeals' Blatant Disregard for Controlling Supreme Court Precedent, 1998 L. REV. M.S.U.-D.C.L. 225 (1998). Copy supplied.

A Proposed Standard of Equal Protection Review for Classifications Within the Criminal Justice System That Have a Racially Disparate Impact: a Case Study of the Federal Sentencing Guidelines' Classification Between Crack and Powder Cocaine, 25 U. TOL. L. REV. 215 (1994). Copy supplied.

Letter to the Editor, *Commencement Cattle Call a Let Down*, HARVARD LAW RECORD, April 16, 1993 (with Wendy R. Davis). 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 2007, I have served on the United States District Court for the Eastern District of Michigan Local Rules Advisory Committee. From time to time, the Local Rules Advisory Committee has issued memoranda on proposed amendments to the rules, which I have listed here:

Comments and Recommendations on the Court's Proposed Amendment to LR 5.1(a)(3), Type Size, February 4, 2013.

Comments on Proposed Amendments to LR 83.20 and LR 83.30 and New LR 83.25, March 21, 2012.

Comments on Proposed Amendment to LR 83.31, February 19, 2008.

Proposed Amendment to LR 5.1(a), February 19, 2008.

Recommendations for Conforming Local Rules to the 2007 Amendments to the Federal Rules of Civil Procedure, January 25, 2008.

Between 1996 and 2000, I was a member of the Newsletter Committee of the Federal Bar Association for the Eastern District of Michigan. I do not recall being an active member of this Committee and do not have any specific recollection of drafting or reviewing any of the newsletters published during that time frame. However, in an abundance of caution, I have supplied copies of the newsletters published during my time on the Committee that I could locate:

Federal Bar Association, Newsletter (Fall 2000)
Federal Bar Association, Newsletter (Summer 2000)
Federal Bar Association, Newsletter (Spring 2000)
Federal Bar Association, Newsletter (Winter 2000)
Federal Bar Association, Newsleteer (Fall 1999)
Federal Bar Association, Newsletter (Summer 1999)
Federal Bar Association, Newsletter (Spring 1999)
Federal Bar Association, Newsletter (Winter 1999)
Federal Bar Association, Newsletter (Summer 1998)
Federal Bar Association, Newsletter (Spring 1998)
Federal Bar Association, Newsletter (Winter 1998)
Federal Bar Association, Newsletter (Fall 1997)
Federal Bar Association, Newsletter (Summer 1997)
Federal Bar Association, Newsletter (Spring 1997)
Federal Bar Association, Newsletter (Winter 1997)
Federal Bar Association, Newsletter (Winter 1996 – 1997)

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 given any such testimony, official statement, or other communication.

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 9, 2013: Speaker, "Using Friend of the Court Briefs to Protect Your Organization," Miller, Canfield, Paddock and Stone, P.L.C., Bloomfield Hills, Michigan. Presentation outline supplied.

December 4, 2012: Panelist, Federal Bar Association New Lawyers Seminar, United States Courthouse, Detroit, Michigan. I offered a broad overview of federal criminal practice to new lawyers. I have no notes, transcripts, or recordings. The address of the Federal Bar Association Eastern District of Michigan Chapter is P.O. Box 20759, Ferndale, Michigan 48220.

November 29, 2012: Master of Ceremonies, Annual Dinner Meeting of the Michigan Chapter of the American Constitution Society for Law and Policy, Detroit, Michigan. I welcomed the audience members, provided biographical information on the keynote speaker, and thanked the audience for attending. I have no notes, transcripts, or recordings. The address of the Michigan Chapter is in care of the national office: 1333 H Street, NW, 11th Floor, Washington, DC 20005.

October 26, 2011: Speaker, Society of Automotive Analysts program, Southfield, Michigan. I discussed recent investigations by the United States Department of Justice Antitrust Division into automotive suppliers. Presentation outline and press coverage supplied.

September 27, 2011: Panelist, Annual Training Program for Criminal Justice Act Panel Members, Office of the Federal Defender for the Eastern District of Michigan at the United States Courthouse, Detroit, Michigan. I discussed how criminal defense attorneys can utilize social media to enhance pre-trial factual investigations. I have no notes, transcripts, or recordings. The address of the Office of the Federal Defender is 613 Abbott, Fifth Floor, Detroit, Michigan 48226.

February 18, 2011: Moderator, "Death Penalty Litigation in Michigan," Federal Bar Association Eastern District of Michigan Chapter at the United States Courthouse, Detroit, Michigan. As moderator, I welcomed the audience and introduced the panelists. I have no notes, transcripts, or recordings. The address of the Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

November 8, 2010: Speaker, "What Every Corporate Counsel Should Know About Federal Corporate Criminal Liability," co-hosted by the Michigan Chapter of the Association of Corporate Counsel and by Miller, Canfield, Paddock and Stone, P.L.C., Bloomfield Hills, Birmingham, Michigan. I discussed corporate criminal liability issues. I have no notes, transcripts, or recordings. The Michigan Chapter of the Association of Corporate Counsel may be contacted in care of its Executive Director, Mitzy Sharp Futro, Detroit Metropolitan Bar Association, 645 Griswold Street, Detroit, Michigan 48226.

November 3, 2010: Speaker, Michigan Association of Certified Public Accountants' 2010 Financial Planning & Advanced Federal Tax Conference, Livonia, Michigan. Outline supplied.

January 30, 2010: Speaker, "The Latest in Aggressive Healthcare Fraud Investigation and Law Enforcement," Detroit Medical Center, Detroit, Michigan. PowerPoint supplied.

November 12, 2009: Panelist, Illinois Certified Public Accountants Society's Fraud Awareness Symposium, Chicago, Illinois. The panel generally addressed how to detect and prevent fraud. I have no notes, transcripts, or recordings. The address of the Education Center of the Illinois Certified Public Accountants Society is 550 West Jackson Street, Suite 900, Chicago, Illinois 60661.

November 3, 2009: Speaker, "The Latest in Aggressive Healthcare Fraud Investigation and Law Enforcement," Miller, Canfield, Paddock and Stone, P.L.C., Kalamazoo, Michigan. PowerPoint supplied.

November 3, 2009: Speaker, "The Latest in Aggressive Healthcare Fraud Investigation and Law Enforcement," Miller, Canfield, Paddock and Stone, P.L.C., Grand Rapids, Michigan. I used the same PowerPoint and included the same press coverage supplied for the November 3, 2009 event listed above.

August 5, 2009: Speaker, "The Latest in Aggressive Healthcare Fraud Investigation and Law Enforcement," Miller, Canfield, Paddock and Stone, P.L.C., Bloomfield Hills, Michigan. PowerPoint supplied.

July 9, 2009: Speaker, "Hot Topics in White Collar Criminal Prosecutions," Miller, Canfield, Paddock and Stone, P.L.C., Bloomfield Hills, Michigan. PowerPoint and outline supplied.

May 13, 2009: Speaker, "Hot Topics in White Collar Criminal Prosecutions," Michigan Association of Certified Public Accountants' Anti-Fraud Issues Conference, Livonia, Michigan. PowerPoint supplied.

March 19, 2009: Speaker, "Brokers Breakfast Before the Bell," Miller, Canfield, Paddock and Stone, P.L.C., Birmingham, Michigan. I discussed legal issues related to Ponzi schemes. I have no notes, transcripts, or recordings. The address of Miller, Canfield, Paddock and Stone, P.L.C. is 840 West Long Lake Road, Suite 200, Troy, Michigan 48098.

Winter 2009: Moderator, "Improving Sentencing Advocacy" Panel, Federal Bar Association Eastern District of Michigan Chapter, Detroit, Michigan. As the moderator, I introduced the panel members and asked discussion questions. I have no notes, transcripts, or recordings, but press coverage is supplied. The address of the Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

November 11, 2008: Speaker, "Protect Your Company from Federal Criminal Liability," Miller, Canfield, Paddock and Stone, P.L.C., Birmingham, Michigan. Outline supplied.

June 2008: Speaker, "Expert Witness Evidence Essentials, Hot Topics, and New Developments," Federal Bar Association Eastern District of Michigan Chapter, Detroit, Michigan. I have no notes, transcripts, or recordings. The address of the Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

April 30, 2008: Speaker, "Daubert: The Challenge in 2008 and Beyond," American Bar Association Criminal Justice Section, White Collar Crime Committee, Criminal Practice Subcommittee, Detroit, Michigan. I addressed expert witness "hot topics." I have no notes, transcripts, or recordings, but press coverage is supplied. The address of the ABA Criminal Justice Section is 1050 Connecticut Avenue, NW, Suite 400, Washington, DC 20036.

March 4, 2008: Speaker, "Criminal Law Essentials for the Business Lawyer," Miller, Canfield, Paddock and Stone, P.L.C., Birmingham, Michigan. Outline and press coverage supplied.

October 9, 2006: Speaker, Iosco-Arenac County Medical Society meeting, East Tawas, Michigan. I discussed the criminal investigation and prosecution of physicians for writing controlled substances prescriptions. Outline supplied.

Spring 2006: Speaker, Federal Bar Association Pro Bono Seminar, Detroit, Michigan. I addressed pro bono litigation issues. I have no notes, transcripts, or recordings, but press coverage is supplied. The address of the Federal Bar Association, Eastern District of Michigan is P.O. Box 20759, Ferndale, Michigan 48220.

November 16, 2005: Panelist, Pro Bono Training Seminar sponsored by the United States District Court for the Eastern District of Michigan and the Federal Bar Association Eastern District of Michigan Chapter at the United States Courthouse, Detroit, Michigan. I discussed the handling of pro bono cases. I have no notes, transcripts, or recordings. The address of the Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

July 14, 2005: Speaker, "Brokers Breakfast Before the Bell," Miller, Canfield, Paddock and Stone, P.L.C., Birmingham, Michigan. Outline supplied.

April 19, 2005: Speaker, "Protect Your Company: An Executive Update on Recent Changes in Corporate Criminal Law," Miller, Canfield, Paddock and Stone, P.L.C., Birmingham, Michigan. I have no notes, transcripts, or recordings. The address of Miller, Canfield, Paddock and Stone, P.L.C. is 840 West Long Lake Road, Suite 200, Troy, Michigan 48098.

October 1997: Speaker, "Defending Against Claims Under the Michigan Religious Freedom Restoration Act," Fall Institute of the Michigan Association of Municipal Attorneys, Frankenmuth, Michigan. I discussed litigation under the Religious Freedom Restoration Act. I have no notes, transcripts, or recordings. The address of the Michigan Association of Municipal Attorneys is 1675 Green Road, Ann Arbor, Michigan 48105.

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.

After carefully reviewing my records and searching the Internet, I have identified the following interviews:

Aaron Aupperlee, *Baltimore Man to Be Arraigned in Fatal Crash,* JACKSON CITIZEN PATRIOT, October 5, 2012. Copy supplied.

Joe Swickard, *Jasubhai Desai Will Be Freed on Bond, Again, While Fighting Charges in 1983 Killing*, DETROIT FREE PRESS, August 30, 2012. Copy supplied. (Reprinted in multiple outlets).

Joe Swickard, *Federal Judge Overturns Doctor's Conviction in 1983 Murder of Business Partner*, DETROIT FREE PRESS, August 2, 2012. Copy supplied.

Sheila Pursglove, *Back and Forth, Attorney Goes the Distance in Long-running County Case*, DETROIT LEGAL NEWS, May 9, 2012. Copy supplied.

Nate Reens, *David Duyst Will 'Keep Fighting Fight' to Prove Innocence of*

Murder Conviction, Lawyer Says, MLIVE.COM, February 8, 2011. Copy supplied.

John P. Kamin, *Judge Dismisses Cassens RICO Case, Parties Watch Sister Case,* LEX AND VERUM, November 2010. Copy Supplied.

Elaine Meyer, *Health Cases to Watch in 2010*, LAW360, January 2, 2010. Copy supplied.

Former UConn Manager Not Talking to NCAA, CHARLESTON DAILY MAIL, December 17, 2009. Copy supplied.

Daniel Duggan and Gabe Nelson, *Fund's Failure a Family Affair; Many BBC Equities Agents Invested, Recruited Relatives,* CRAIN'S DETROIT BUSINESS, August 24, 2009. Copy supplied.

Editorial: *Donor Blitz Better Art Than Science,* CRAIN'S DETROIT BUSINESS, August 23, 2009. Copy supplied.

Carol Lundberg, *Frauds, Friends and Families*, MICHIGAN LAWYERS WEEKLY, July 27, 2009. Copy supplied.

Douglas J. Levy, *Maximum Defense, No. 1 Ranked Largest Law Firm Touts Criminal Defense As One of Its Strengths*, MICHIGAN LAWYERS WEEKLY, May 26, 2008. Copy supplied.

Andrew Green and Jordan Kristopik, *While Most Parents Keep Grad Parties Dry, a Noticeable Few Are Ignoring the Law and Serving Teens*, SEAHOLM HIGHLANDER, May 22, 2008. Copy supplied.

Joe LaPoint, *They Are Lions, Hear Them Roar*, DESERET MORNING NEWS, November 11, 2007. Copy supplied.

Local News, *Pair Suspected in Ponzi Scam*, THE OAKLAND PRESS, November 8, 2007. Copy supplied.

Scott Baranik, *Fallout from Flimflam*, ST. PETERSBURG TIMES, October 25, 2007. Copy supplied.

Bruce Kelly, *Top-producing B-D Under Scrutiny by Michigan Regulator Broker Allegedly Placed Clients in Partnerships That Stopped Paying Dividends*, INVESTMENT NEWS, October 15, 2007. Copy supplied.

Michigan Lawyers Weekly Staff, *Detroit Terror Trial Prosecutor Indicted,* MICHIGAN LAWYERS WEEKLY, April 3, 2006. Copy supplied.

Dan Eggen, *Prosecutor, Agent Indicted in Detroit Misconduct Alleged in Detroit*

Terror Trial, THE WASHINGTON POST, March 30, 2006. Copy supplied. (Reprinted in multiple outlets).

Greta Guest, *Barden to Get Part of Payout, Casino Owner Is Owed $33 Million*, DETROIT FREE PRESS, October 7, 2005. Copy supplied.

Miller Canfield In The News, *Safeguard Your Company: Understand the Recent Changes in Corporate Criminal Law*. April 7, 2005. Copy Supplied.

Robert Ankeny, *Judges Get More Sentencing Leeway; May Mean Leniency For White-Collar Defendants*, CRAIN'S DETROIT BUSINESS, March 28, 2005. Copy supplied.

C. Jesse Green, *Question Loom Over Terms in Sales Comm'n Act*, MICHIGAN LAWYERS WEEKLY, October 29, 2001. Copy supplied.

Rene Wisely, *Taubman Sues Puck Over Broken Leases*, THE DETROIT NEWS, October 8, 1999. Copy supplied.

Liz Cobbs, *Prosecutors Drop Alcohol Charges,* THE ANN ARBOR NEWS, October 2, 1999. Copy Supplied.

Lynn Patrick Ingram, Esq., *Cross-Exam Right Applies to Suppression Hearings*, MICHIGAN LAWYERS WEEKLY, August 24, 1998. Copy supplied.

Marcia M. McBrien, *Police Must Tell Suspects Attorneys*, MICHIGAN LAWYERS WEEKLY, July 29, 1996. 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 have not held any public office, either elected or appointed, nor have I ever been an unsuccessful candidate or nominee.

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

I have been a volunteer for the following campaigns: Bill Clinton for President (1992), Debbie Stabenow for Congress (1996), James Blanchard for Governor (2002), Rudy Hobbs for State Representative (2010), and Organizing for America (2012). I was also a fundraiser co-host for Debbie Stabenow for Senate in 2012.

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

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

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

From 1993 to 1994, I was a law clerk for Justice Charles L. Levin, Michigan Supreme Court.

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.

1994 – 2004
Miro Weiner & Kramer, P.C.
38500 Woodward Avenue, Suite 100
Bloomfield Hills, Michigan 48304
Associate (1994 – 1999)
Partner (2000 – 2004)

2004 – present
Miller, Canfield, Paddock and Stone, P.L.C.
840 West Long Lake Road, Suite 200
Troy, Michigan 48098
Senior Counsel (2004 – 2005)
Senior Principal (2005 – present)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

Since I entered practice in 1994, my trial and appellate practice has focused on two areas: criminal defense litigation and complex commercial litigation. Roughly 75 percent of my current practice is in the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Sixth Circuit. The remaining 25 percent is in the trial and appellate courts for the State of Michigan.

My criminal defense practice has involved a wide variety of matters at different stages in the process and in varying jurisdictions. By way of example, I have done a substantial amount of federal white collar criminal defense work, which has included representing witnesses testifying before federal grand juries; counseling corporations that have received federal grand jury subpoenas; representing corporations and individuals suspected of violating criminal antitrust and health care fraud statutes; negotiating pleas for defendants charged with fraud offenses and immigration violations; and representing a former State Department employee in a weeks-long trial on perjury and conspiracy charges. My federal practice has also included substantial habeas corpus cases at both the district court

and circuit court level. In the state courts, my criminal defense practice has involved primarily non-white collar matters and has included criminal trials and significant criminal appeals in the Michigan Court of Appeals and Michigan Supreme Court.

My civil practice has been primarily in federal court and has involved a wide array of cases and clients. My federal civil cases have included representing companies in contract actions and business tort disputes; defending claims under the False Claims Act; defending securities fraud actions; representing plaintiffs in civil rights actions and in an appeal of the denial of ERISA benefits; defending civil RICO actions; representing a shopping center developer in a hostile takeover action; and representing an auto manufacturer in a multi-million dollar dispute with United States Customs. I have handled several federal civil trials and have briefed and argued many civil appeals in the United States Court of Appeals for the Sixth Circuit.

While the types of cases I have handled has remained largely the same since I first began practicing, my role on those cases changed as I advanced from associate to partner. As an associate from 1994 to 1999, I often performed supporting roles on litigation teams, including conducting legal research, writing legal memoranda, and assisting with discovery responses. As a partner, I assumed increased and often ultimate responsibility for litigation matters. I have been the primary representative of the client in court appearances, arguments, hearings, and at trials.

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

Many of my clients have been individuals and corporations accused of violating federal and state criminal laws. I have also represented numerous individuals and businesses in complex commercial disputes. Finally, I have been appointed to represent several prisoners pursuing civil rights claims against State officials. The types of clients I have represented have remained essentially the same throughout my career. I have specialized in criminal defense, complex commercial litigation, and appellate litigation.

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

My practice has always been 100% litigation. I have appeared in court frequently throughout the time that I have been practicing.

i. Indicate the percentage of your practice in:
   1. federal courts: 75%
   2. state courts of record: 23%
   3. other courts: 1%
   4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

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

I have tried 11 cases to verdict. In six of these trials, I was chief counsel. In the remainder of the cases, I was co-counsel.

i. What percentage of these trials were:
   1. jury: 82%
   2. non-jury: 18%

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.

The cases are listed in alphabetical order.

1. *Care Continuum, Inc. v. The Grand Court of Farmington Hills, Brookdale Living Communities-GC, LLC, and Brookdale Living Communities of Michigan, Inc.*, 2009 WL 4730459 (E.D. Mich. 2009)

I represented Care Continuum, Inc., a locally-owned in-home personal services company, in a civil action against a large retirement community operator from 2008 to 2009. The community owner was attempting to evict Care Continuum from certain office space within the community and to prevent Care Continuum from providing services to its senior citizen clients who lived in the community. At the commencement of the action, I filed a motion for preliminary injunction to prevent the eviction pending trial. Thereafter, the parties reached an agreement allowing Care Continuum to remain in its office space pending trial. The action was tried to United States District Judge Steeh. I was lead trial counsel for Care Continuum. Judge Steeh ruled in favor of the owner on some counts, in favor of Care Continuum on one count, and allowed the owner to evict Care Continuum. Judge Steeh reserved ruling on whether Care Continuum had a continuing right to enter the community to provide services to its clients following eviction. Thereafter, the parties reached an agreement that allowed Care Continuum to continue to serve its clients in the community.

Court and Judge:

United States District Court for the Eastern District of Michigan
The Honorable George Caram Steeh

Opposing Counsel:
Henry L. Gordon
2000 Town Center, Suite 700
Southfield, MI 48075
(248) 945-3827

2. *Duyst v. Rapelje*, 2011 WL 528768 (E.D. Mich. 2011); *Duyst v. Rapelje,* 483 Fed. Appx. 36 (6th Cir. 2012).

I represented Mr. Duyst in this habeas corpus case from 2008 to 2012. In 2001, Mr. Duyst was convicted of first-degree murder. I was retained as co-counsel for Mr. Duyst after he exhausted his direct appeals. I assisted in the drafting of a petition for a writ of habeas corpus and a supporting brief. The petition argued that trial counsel failed to adequately investigate the prosecution's key expert witness, failed to obtain available contrary expert testimony, and failed to object to unfairly prejudicial evidence. Upon review of the petition and brief, United States District Judge Victoria Roberts decided to hold an evidentiary hearing on the ineffective assistance claim.

Judge Roberts conducted the two-day hearing as the functional equivalent of a bench trial. I gave the opening statement, cross-examined lay and expert

witnesses, conducted the direct examination of a ballistics expert, and gave one-half of the closing argument. Following the hearing, I took the lead in drafting a comprehensive supplemental brief in support of the petition. Judge Roberts ultimately denied the petition, but she granted a Certificate of Appealability. I drafted the appeal brief and argued the appeal to a panel of the Sixth Circuit. That court affirmed the conviction.

Courts and Judges:

United States District Court for the Eastern District of Michigan
The Honorable Victoria Roberts

United States Court of Appeals for the Sixth Circuit
The Honorable David McKeague
The Honorable Boyce Martin
The Honorable Sarah Caldwell

Co-Counsel:
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Opposing Counsel:
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Chief Criminal Appellate Division
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Lansing, MI 48909
(517) 373-4875

3. *E-Z Color Corporation, et al. v. Rhe-Tech and Thermocolor, LLC, et al.*, Civil Action No. 3:00-cv-07442 (N.D. Ohio).

I represented Rhe-Tech and Thermocolor, LLC as co-counsel in this federal civil action from 1999 to 2001. The action involved a dispute arising out of an asset purchase agreement. My clients purchased the assets of E-Z Color Corporation. Following the purchase, Rhe-Tech and Thermocolor determined that the nature and value of the assets had been misrepresented, and they withheld payments still owing under the terms of the agreement. E-Z Color sued for the additional payments, and Rhe-Tech and Thermocolor counter-claimed for payments already made.

The case was tried before a jury for approximately two weeks in the United States District Court for the Northern District of Ohio. Prior to trial, I conducted much of the discovery. At trial, I conducted the direct examination of the defense

damages expert, cross-examined the plaintiffs' damages expert, and argued the trial motions and jury instruction issues. The case was tried to a verdict, but the jury's answers to interrogatories were inconsistent. The parties settled before entry of a judgment.

Court and Judge:

United States District Court for the Northern District of Ohio (Toledo)
The Honorable David Katz

Co-Counsel:
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(513) 723-4000

Opposing Counsel:
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Kerger & Hartman
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Toledo, OH 43604
(419) 255-5990

4. *Glancy v. Taubman Centers, Inc.*, 373 F.3d 656 (6th Cir.2004).

I represented Taubman Centers, Inc. and its directors as co-counsel before the United States Court of Appeals for the Sixth Circuit from 2003 to 2004. This action arose out of an attempted hostile takeover of Taubman Centers, Inc. ("TCI") by the Simon Property Group ("SPG"). After the directors of TCI rejected a tender offer by SPG, Mr. Glancy, a TCI shareholder, filed suit against TCI and the directors. He filed in federal court and asserted that the court had diversity jurisdiction over the action. Mr. Glancy alleged, among other things, that the directors breached their fiduciary duties in declining the offer. He also sought a declaration that a certain class of TCI stock did not have any voting rights and could not be voted by its owners. He did not name all of the owners of that stock as defendants in the action. Had he named all of the relevant shareholders, there would not have been complete diversity, and the federal court would have lacked jurisdiction. The district court dismissed the action based upon lack of subject matter jurisdiction. Glancy challenged that ruling on appeal.

The appeal presented a significant and complex legal issue: are the holders of a class of shares indispensable parties in action seeking to strip the shares of voting rights? I was the primary drafter of TCI's appeal brief, and I argued the case to

the United States Court of Appeals for the Sixth Circuit. The court agreed with my arguments that the absent shareholders were necessary parties, that the absent shareholders could not be joined in the action, and that the named TCI board members did not adequately represent the interests of the absent shareholders. These rulings provided important guidance for future federal actions seeking to enjoin stock voting rights. The court ultimately remanded for further factual development on the issue of whether a particular non-party could be added to the action as a defendant and, if so, whether he would adequately protect the interests of the absent shareholders. The matter was resolved prior to any proceedings on remand.

Courts and Judges:

United States District Court for the Eastern District of Michigan
The Honorable Victoria Roberts

United States Court of Appeals for the Sixth Circuit
The Honorable Karen Nelson Moore
The Honorable John Rogers
The Honorable James Ryan

Co-Counsel:
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Opposing Counsel:
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One Pennsylvania Plaza, 49th Floor
New York, NY 10119
(212) 594-5300
(Last Known Address)

5. *Jackson v. Sedgwick Claims Management Services, Inc., et. al.*, 2010 WL 931864 (E.D. Mich. 2010); *Jackson v. Sedgwick Claims Management Services, Inc., et. al.*, 699 F.3d 466 (6th Cir. 2012).

I have represented Coca-Cola Enterprises, Inc. ("CCE") in this case since 2009. The case began when two CCE employees brought a RICO claim arising out of the denial of their claim for workers' compensation disability benefits. The

employees asserted their claim against CCE, Sedgwick Claims Management Services, Inc. (the claims adjuster for CCE), and Dr. Drouillard (a physician who examined the employees). I drafted and argued a motion to dismiss on the ground that RICO did not provide a cause of action for an alleged violation of Michigan's workers' compensation laws. United States District Judge Nancy Edmunds agreed and dismissed the action.

Plaintiffs then appealed to the United States Court of Appeals for the Sixth Circuit. I drafted CCE's appeal brief and argued the appeal on behalf of CCE. The Sixth Circuit reversed in a split decision, with two of the judges on the panel indicating that they would have affirmed if not bound by a prior published decision. I drafted and filed a petition for rehearing en banc. By order dated January 18, 2013, the Sixth Circuit granted rehearing en banc and vacated its adverse ruling against CCE. I presented argument to the en banc Sixth Circuit in June of this year.

Courts and Judges:

United States District Court for the Eastern District of Michigan
The Honorable Nancy G. Edmunds
United States Court of Appeals for the Sixth Circuit
The Honorable Alice Batchelder
The Honorable Jeffrey Sutton
The Honorable Ralph Guy

Opposing Counsel:
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Counsel for Co-Defendant Dr. Drouillard
Michael Smith
The Smith Appellate Law Firm
1747 Pennsylvania Avenue, NW, Suite 300
Washington, DC 20006
(202) 454-2860

6. *People v. Bender*, 452 Mich. 594, 551 N.W.2d 71 (1996).

I represented Mr. Bender before the Michigan Supreme Court from 1995 to 1996. The issue before that court was whether under Michigan law the police must notify a suspect that an attorney has asked to speak with him even if the suspect has not requested counsel. The Court agreed with my argument that the police should be required to so notify a suspect. The Court held that such a rule was necessary in order to protect the right counsel and the right against self-incrimination as guaranteed by the Michigan Constitution.

Court and Judges:

Michigan Supreme Court
The Honorable Michael Cavanagh
The Honorable Charles Levin
The Honorable James Brickley
The Honorable Conrad Mallett
The Honorable Patricia Boyle
The Honorable Dorothy Riley
The Honorable Elizabeth Weaver

Opposing Counsel:
Kathryn G. Barnes
Oakland County Prosecuting Attorney's Office
1200 North Telegraph Road
Pontiac, MI 48341
(248) 858-0656

7. *People v. Desai*, 2003 WL 22515292 (Mich. App. 2003), *leave to appeal denied* 471 Mich. 872, 685 N.W.2d 669 (Mich. 2004); *Desai v. Booker*, 2007 WL 1343718 (E.D. Mich. 2007), *rev'd* 538 F.3d 424 (6th Cir. 2008); *People v. Desai*,

2012 WL 3385988 (Mich. App. 2012), *leave to appeal denied* 490 Mich. 872, 803 N.W.2d 323 (2012); *Desai v. Booker*, 882 F.Supp.2d 926 (E.D. Mich. 2012).

I have worked on the various iterations of this case from 2002 to the present. In 2001, a jury convicted Dr. Desai of first-degree murder. I was retained to handle the appeal. In the state appellate courts, I argued that the admission of a co-defendant's alleged confession violated Dr. Desai's rights under the Confrontation Clause. The state appellate courts denied relief.

I then filed a petition for a writ of habeas corpus and presented oral argument in support of the petition in the United States District Court for the Eastern District of Michigan. I argued that the state courts had unreasonably rejected the Confrontation Clause claim. The district court agreed and granted the writ. The United States Court of Appeals for the Sixth Circuit later reversed on the ground that the Confrontation Clause no longer applies to non-testimonial statements like the alleged confession. The Sixth Circuit remanded to allow Dr. Desai to exhaust in state court a claim that the admission of the confession violated the Due Process Clause.

I then returned to the state trial court and argued that the admission of the confession violated Dr. Desai's rights under the Due Process Clause. The state trial court agreed and vacated Dr. Desai's conviction. The Michigan Court of Appeals then reversed and reinstated the conviction, and the Michigan Supreme Court denied leave to appeal.

Thereafter, I returned to federal court and asserted the due process claim in an amended petition for a writ of habeas corpus. I argued that the state appellate court unreasonably rejected the due process claim. The district court agreed and again granted habeas relief. The case is now once again on appeal to the United States Court of Appeals for the Sixth Circuit.

Courts and Judges:

United States District Court for the Eastern District of Michigan
The Honorable Marianne Battani

United States Court of Appeals for the Sixth Circuit
The Honorable Jeffrey Sutton
The Honorable Deborah Cook
The Honorable Thomas Rose

Wayne County Circuit Court
The Honorable David Allen

Michigan Court of Appeals (first appeal)
The Honorable Henry Saad

The Honorable Marc Cavanagh
The Honorable Kurtis Wilder

Michigan Court of Appeals (second appeal)
The Honorable Henry Saad
The Honorable Marc Cavanagh
The Honorable Jane Markey

Michigan Supreme Court (first appeal)
The Honorable Maura Corrigan
The Honorable Michael Cavanagh
The Honorable Marilyn Kelly
The Honorable Clifford Taylor
The Honorable Robert Young
The Honorable Stephen Markman
The Honorable Elizabeth Weaver

Michigan Supreme Court (second appeal)
The Honorable Robert Young
The Honorable Michael Cavanagh
The Honorable Marilyn Kelly
The Honorable Diane Hathaway
The Honorable Stephen Markman
The Honorable Brian Zahra
The Honorable Mary Beth Kelly

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Opposing Counsel (state court):
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(313) 224-5777

8. *Smith v. Burt, et al.,* Case No. 95-CV-70717 (E.D. Mich.).

From 1997 to 1998, I represented Plaintiff Smith in this prisoner civil rights action. I deposed several of the defendants and briefed post-discovery dispositive motions. I was then lead counsel for Mr. Smith at a jury trial. I conducted the jury voir dire, gave the opening statement and closing argument, conducted the direct examination of Mr. Smith, and conducted the cross-examination of all of the defense witnesses. The jury returned a verdict in favor of the defendants.

Court and Judge:

United States District Court for the Eastern District of Michigan
The Honorable Avern Cohn

Opposing Counsel:
Barbara A. Schmidt
Michigan Department of Attorney General
Environment, Natural Resources, and Agriculture Division
P.O. Box 30755
Lansing, MI 48909-8255
(517) 373-7540

Co-Counsel:
Thomas W. Cranmer
Miller, Canfield, Paddock and Stone, P.L.C.
840 West Long Lake Road, Suite 200
Troy, MI 48098
(248) 267-3381

9. *United States v. Convertino and Smith*, Case No. 06-cr-20173 (E.D. Mich.).

I represented Mr. Smith as co-counsel in this criminal case from 2006 to 2007. The charges against Mr. Smith grew out of a 2003 federal prosecution of several foreign nationals on charges of conspiring to commit terrorism. Mr. Convertino was the lead prosecutor. Mr. Smith, a State Department employee, was a government witness. The defendants were convicted. After the trial, the government conducted an investigation and determined that, in its opinion, Mr. Convertino had failed to provide exculpatory information to the defendants and that Mr. Convertino and Mr. Smith conspired to present false testimony by Mr. Smith. In 2006, a grand jury indicted Mr. Convertino and Mr. Smith on charges of conspiracy and obstruction of justice. The case was tried over several weeks in October 2007. Along with my partner, Thomas Cranmer, I developed the defense strategy and directed the pre-trial investigation into the facts and the law. I handled essentially all pre-trial motions, conducted two pre-trial evidentiary

hearings, examined a key witness at trial, argued the motion for judgment of acquittal, and argued the jury instruction issues. The jury acquitted on all charges.

Court and Judge:

United States District Court for the Eastern District of Michigan
The Honorable Arthur J. Tarnow

Co-Counsel:
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Eileen Gleason
(formerly U.S. Department of Justice, Public Integrity Section)
United States Attorney's Office, Eastern District of Louisiana
650 Poydras Street, Suite 1600
New Orleans, LA 70130
(504) 680-3154

10. *United States v. Ford Motor Company*, 422 F.Supp.2d 429 (E.D. Mich. 2006).

I represented Ford Motor Company as co-counsel in this case from 2004 to 2008. The federal government sought from Ford Motor Company a penalty of roughly $13 million for Ford's alleged violation of a customs statute. The case involved difficult issues of statutory construction related to the Automotive Products Trade Act of 1965. I argued Ford's motion for summary judgment to United States District Judge Patrick Duggan. I contended that Ford did not violate the statute in question and, even if Ford had violated the statute, imposition of the penalty would have violated the Excessive Fines Clause of the Eighth Amendment. Judge Duggan agreed on both points and granted summary judgment in favor of Ford.

The government appealed to the United States Court of Appeals for the Sixth Circuit. I drafted Ford's appeal brief and argued the appeal on Ford's behalf. Prior to a decision by the Sixth Circuit, the case settled on favorable terms for Ford.

Courts and Judges:

United States District Court for the Eastern District of Michigan
The Honorable Patrick Duggan

United States Court of Appeals for the Sixth Circuit
The Honorable Richard Suhrheinrich
The Honorable Ralph Guy
The Honorable Julia Smith Gibbons

Co-Counsel:
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Robert B. Silverman
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Civil Division, Appellate Section
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Washington, DC 20530-00001
(202) 514-5735

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List

any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to representing clients in state and federal courts, I have also represented clients in arbitration. For example, I currently serve as lead counsel for Respondent Elk Automotive Components, L.L.C. in the *In Re E-Merging Market Technologies, L.L.C. v. Elk Automotive Components, L.L.C* arbitration proceeding (American Arbitration Association Case Number 50 150 T 00221 10). The claimant is seeking millions of dollars in allegedly-unpaid sales commissions. As lead counsel, I coordinated all discovery, deposed the primary witnesses for the claimant, gave the opening statement at the arbitration hearing, and cross-examined the claimant's primary witnesses. I will soon be giving the closing argument. A decision is expected later this year.

I have also served the legal community through my committee work. For example, I have been appointed by the United States District Court for the Eastern District of Michigan to serve two terms on its Local Rules Advisory Committee. The committee has advised the Court on proposed amendments to the Local Rules.

The United States District Court for the Eastern District of Michigan has also appointed me to two Merit Selection Committees that have advised the Court concerning the selection of magistrate judges. The first committee evaluated the performance of a sitting magistrate judge and recommended his re-appointment. The second committee reviewed more than 50 applications for an open position, interviewed roughly 15 candidates and recommended that the Court consider five applicants for the open position. The Court ultimately selected one of the candidates recommended by the committee.

Finally, for several years, I have served as the Co-Chair of the Criminal Practice Committee of the Federal Bar Association, Eastern District of Michigan Chapter. In that capacity, I have assisted in organizing and presenting several legal education programs intended to assist both federal prosecutors and criminal defense attorneys in their practices.

I have not performed any lobbying activities nor registered as a lobbyist.

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

    I have 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 other future benefits. If I am confirmed, upon resignation from my law firm, I will receive a refund of my capital contribution to the firm and may be eligible for a final distribution of firm profits.

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 agreement to pursue any outside employment during my service with the court 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).

    Please see Financial Disclosure Report.

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

    Please see Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If confirmed, I would recuse from any case in which I participated as an attorney. For a period of time, I also anticipate recusing in all cases that involve my current firm or major clients if they were to appear as parties to a case. With respect to any actual or potential conflicts issues that may arise, if confirmed I would act in conformity with the Code of Conduct for United States Judges and any other relevant, statutes, ethical canons, and rules.

    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 act in conformity with 28 U.S.C. section 455, Canon 3 of

the Code of Conduct for United States Judges and any other relevant, statutes, ethical canons, and rules. In addition, upon becoming aware of any circumstances that may reasonably be perceived as an actual or potential conflict of interest, I would advise the parties and counsel and seek their views. I would also seek advice and guidance from other judges on conflicts issues.

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.

Over the years, my pro-bono activities have fallen into three primary categories: representing Michigan prisoners who are suing the Department of Corrections for civil rights violations; representing criminal defendants who cannot afford representation; and advising pro-se litigants. Details on my pro-bono activities are set forth below.

I have been involved in five pro-bono prisoner civil rights cases in the United States District Court for the Eastern District of Michigan. These cases have involved hundreds of hours of work. Three have gone all the way through jury trial. The case of *Stafford v. Pickford,* 95-cv-75354 (E.D. Mich.), is one example of these cases. In that case, my client alleged that a prison guard had violated his constitutional rights. I conducted all of the discovery and handled all aspects of the jury trial before United States District Judge Patrick Duggan.

I have handled a number of criminal defense matters on a pro bono basis. The habeas corpus appeal in *Neal v. Booker*, United States Court of Appeals for the Sixth Circuit Case No. 10-1021, is one such matter. I was originally retained to file a supplemental brief in support of a petition for a writ of habeas corpus that was pending in federal district court. The client and his family ran out of money before completion of the district court proceedings. I completed the district court proceedings on a pro-bono basis and then handled the appeal to the Sixth Circuit – including all briefing and argument – on a pro-bono basis.

For at least the past five years, I also have volunteered at the Federal Bar Association's annual Law Day program. In this capacity, I have counseled pro-se litigants concerning basic procedural rules and strategies for reaching a positive resolution of their disputes.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or

communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In December 2012, Senators Carl Levin and Debbie Stabenow announced the formation of a Judicial Advisory Committee to consider applicants for possible nomination to the United States District Court for the Eastern District of Michigan. In January 2013, I submitted my application to the committee. On March 21, 2013, I interviewed with the committee in Detroit, Michigan. By letter dated March 29, 2013, Senators Levin and Stabenow informed me that in accordance with the recommendation of the committee, they would be forwarding my name to the White House for further consideration. Since April 8, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 10, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 25, 2013, 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. 1/2013

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
Leitman, Matthew F.	U.S. District Court, Eastern District of Michigan	07/30/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
United States District Judge	☑ Nomination Date 7/25/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☑ Amended Report	01/01/2012 to 07/12/2013
7. Chambers or Office Address		
Miller, Canfield, Paddock and Stone, P.L.C. 840 West Long Lake Road, Suite 200 Troy, MI 48098		

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.***

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Senior Principal	Miller, Canfield, Paddock and Stone, P.L.C.
2. President and Director	American Constitution Society, MI Lawyers Chapter
3. Director	Seaholm High School Baseball Boosters
4. Executive Board Member	Federal Bar Association, Eastern District of Michigan Chapter
5. President	Harvard Law School Association of Michigan

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 Leitman, Matthew F.	Date of Report 07/30/2013

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	Compensation from Law Firm for Professional Services	$333,312.00
2.	2012	Compensation from Law Firm for Professional Services	$404,977.00
3.	2013	Compensation from Law Firm for Professional Services	$96,589.00
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.	2012	Simply Pearls, LLC - Wages
2.	2013	Simply Pearls, LLC - 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 8	Name of Person Reporting Leitman, Matthew F.	Date of Report 07/30/2013

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.	Wells Fargo Bank	Unsecured Personal Home Improvement Loan	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 8

Name of Person Reporting	Date of Report
Leitman, Matthew F.	07/30/2013

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. 401-K Account No. 1 (H)									
2. -Dodge & Cox Income Fund	A	Dividend	K	T					
3. -Dodge & Cox Stock Fund	A	Dividend	K	T					
4. -Fidelity Contrafund Fund	A	Dividend	K	T					
5. -Oppenheimer Developing Markets Fund Class Y	A	Dividend	K	T					
6. -Vanguard Inflation-Protected Securities Fund Investor Share	A	Dividend	K	T					
7. -Vanguard International Growth Fund Investor Shares	A	Dividend	K	T					
8. -Vanguard International Value Fund	A	Dividend	K	T					
9. -Vanguard Mid-Cap Index Fund Investor Shares	A	Dividend	K	T					
10. -Vanguard Small-Cap Index Fund Investor Shares	A	Dividend	K	T					
11. -Vanguard Target Retirement 2035 Fund	A	Dividend	J	T					
12. -Vanguard Total Bond Market Index Fund Investor Shares	B	Dividend	K	T					
13. IRA Account No. 1 (H)									
14. -American Funds Capital World Growth & Income Fund	A	Dividend	K	T					
15. -Eagle Mid Cap Stock Fund	B	Dividend	J	T					
16. -Eaton Vance Global Macro Absolute Return Fund	A	Dividend	J	T					
17. -John Hancock U.S. Global Leaders Growth Fund	B	Dividend	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
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Leitman, Matthew F.	07/30/2013

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. -IVA Worldwide Fund	A	Dividend	K	T					
19. -Ivy Global Natural Resources Fund Class C	A	Dividend	J	T					
20. -Loomis Sayles Investment Grade Bond Fund	A	Dividend	K	T					
21. -PIMCO Total Return Fund	B	Dividend	K	T					
22. -PIMCO All Asset Fund	A	Dividend	K	T					
23. -Thornburg International Value Fund	A	Dividend	K	T					
24. -Mutual Hedge Frontier Legends Fund Class C	A	Dividend	J	T					
25. Raymond James Deposit Account	A	Interest	J	T					
26. Chase Bank Cash Deposit Accounts	A	Interest	K	T					
27. New York Whole Life Insurance Policy	A	Dividend	K	T					
28. IRA Account No. 2 (H)									
29. -Eagle Mid Cap Stock Fund	B	Dividend	J	T					
30. -John Hancock U.S. Global Leaders Growth Fund	A	Dividend	J	T					
31. -PIMCO Total Return Fund	B	Dividend	K	T					
32. -PIMCO All Asset Fund	A	Dividend	J	T					
33. -Thornburg Value Fund	A	Dividend	J	T					
34. Brokerage Account No. 1 (H)									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
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FINANCIAL DISCLOSURE REPORT Page 6 of 8	Name of Person Reporting Leitman, Matthew F.	Date of Report 07/30/2013

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. -DWS Managed Municipal Bond Fund	A	Dividend	J	T					
36. -Davis New York Venture Fund	A	Dividend	K	T					
37. -American Funds Growth Fund of America	A	Dividend	J	T					
38. -Ivy Asset Strategy Fund	A	Dividend	K	T					
39. -PIMCO Diversified Income Fund	A	Dividend	J	T					
40. MI Education Savings Program, Moderate Aged-Based Option		None	M	T					
41. Ally Demand Note Account	A	Interest	J	T					
42. Miller Canfield Capital Account		None	L	T					
43.									

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)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market

3. Value Method Codes (See Column C2)
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Leitman, Matthew F.	Date of Report 07/30/2013

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Leitman, Matthew F.	Date of Report 07/30/2013

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/ **Matthew F. Leitman**

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		54	343	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured		28	096
Listed securities – see schedule		857	707	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		336	598
Real estate owned – personal residence		375	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		200	000				
Cash value-life insurance		16	222				
Other assets itemize:							
Capital account		62	000				
				Total liabilities		364	694
				Net Worth	1	200	578
Total Assets	1	565	272	Total liabilities and net worth	1	565	272
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds Capital World Growth & Income Fund	$ 15,139
American Funds Growth Fund of America	8,195
Davis New York Venture Fund	16,886
Dodge & Cox Income Fund	25,161
Dodge & Cox Stock Fund	31,152
DWS Managed Municipal Bond Fund	3,243
Eagle Mid Cap Stock Fund	16,335
Eaton Vance Global Macro Absolute Return Fund	10,321
Fidelity Contrafund	44,513
IVA Worldwide Fund	30,062
Ivy Asset Strategy Fund	17,439
Ivy Global Natural Resources Fund	11,569
John Hancock U.S. Global Leaders Growth Fund	52,490
Loomis Sayles Investment Grade Bond Fund	17,899
Michigan Educ. Savings Prog. Moderate Age-Based Option	240,415
MutualHedge Frontier Legends Fund	14,170
Oppenheimer Developing Markets Fund	15,359
PIMCO All Asset Fund	28,813
PIMCO Diversified Income Fund	9,063
PIMCO Total Return Fund	74,187
Thornburg International Value Fund	15,489
Thornburg Value Fund	7,805
Vanguard Inflation-Protected Securities Fund	15,990
Vanguard International Growth Fund	19,716
Vanguard International Value Fund	17,597
Vanguard Mid-Cap Index Fund	29,371
Vanguard Small-Cap Index Fund	20,180
Vanguard Target Retirement 2035 Fund	1
Vanguard Total Bond Market Fund	49,147
Total Listed Securities	$ 857,707

AFFIDAVIT

I, Matthew Frederick Leitman, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 25, 2013
(DATE)

(NAME)

(NOTARY)

ALISHA C KASZUBSKI
NOTARY PUBLIC-STATE OF MICHIGAN
COUNTY OF OAKLAND
My Commission Expires November 2, 2017

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Judith Ellen Levy

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.

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

   Residence: Ann Arbor, Michigan

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

   1958; Bloomington, 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.

   1993 – 1996, University of Michigan Law School; J.D. (*cum laude*), 1996

   1978 – 1981, University of Michigan; B.S., 1981

   1976 – 1978, Oberlin College; no degree

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

2000 – present
United States Attorney's Office
Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Chief, Civil Rights Unit (2010 – present)
Assistant United States Attorney (2000 – present)

2002 – present
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109
Director of the Public Interest Public Service Faculty Fellows (2006 – present)
Adjunct Professor of Law (2005 – present)
Teaching Assistant to Adjunct Professor of Law Saul A. Green (2002 – 2005)

1999 – 2000
United States Equal Employment Opportunity Commission
Patrick V. McNamara Building
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
Trial Attorney

1996 – 1999
United States District Court for the Eastern District of Michigan
Theodore Levin United States Courthouse
231 West Lafayette Boulevard, Room 101
Detroit, Michigan 48226
Law Clerk to the Honorable Bernard A. Friedman

Summer 1995
Goodman, Eden, Millender and Bedrosian
(Firm is no longer in existence)
3000 Cadillac Tower
Detroit, Michigan 48226
Student Law Clerk

1994 – 1995
University of Michigan
Women's Studies Program
Lane Hall, Room 1122
204 South State Street
Ann Arbor, Michigan 48109
Graduate Student Teaching Assistant

Summer 1994
Lambda Legal Defense and Education Fund
Midwest Regional Office
11 East Adams Street, Suite 1008
Chicago, Illinois 60606
Student Law Clerk

1987 – 1993
American Federation of State, County and Municipal Employees (AFSCME)
Local 1583
301 West Michigan Avenue
Ypsilanti, Michigan 48197
Bargaining Chairperson

1981 – 1987
University of Michigan Hospital
1500 East Medical Center Drive
Ann Arbor, Michigan 48109
Food Service Worker/Custodian

June 1982 – July 1982
Veteran's Administration Medical Center
General Medical Research
2215 Fuller Road, F224C
Ann Arbor, Michigan 48105
Medical Technician

Other Affiliations (uncompensated):

2011 – present
DOJ Pride
950 Pennsylvania Avenue, NW
Room 7145
Washington, D.C. 20530
Member of the Board of Directors

Approximately 2003 – 2005
Eberwhite Elementary School Parent Teacher Organization
800 Soule Boulevard
Ann Arbor, Michigan 48103
Recording Secretary

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

I have never served in the military. I am not required to register for selective service.

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

Fair Housing Center of Metropolitan Detroit Attorney Appreciation Award (2011)
United States Department of Justice Civil Rights Division Certificates of Commendation (2003, 2004, 2006, 2007, 2008, 2009, 2011)
Michigan Lawyers Weekly, Leaders in the Law Award (2009)
United States Department of Justice Special Achievement Award in Appreciation of Meritorious Acts of Service (2008)
University of Michigan Council for Disability Concerns, Certificate of Appreciation (2006)
United States Department of Justice Director's Award for Superior Performance as an Assistant United States Attorney (2004)
Parents and Friends of Lesbian, Gay and Bi-Sexual Students, Jim Toy Scholarship (1995)
University of Michigan Law School, William J. Brattain Scholarship (1994)

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

Federal Bar Association, Detroit Chapter (February 2010 – February 2012, November 2012 – present)

National Association of Assistant United States Attorneys (2000 – approximately 2007)

State Bar of Michigan (1996 – present)

10. **Bar and Court Admission**:

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

Michigan, 1996

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Sixth Circuit (1996 – present)
United States District Court for the Eastern District of Michigan (1996 – present)

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.

Advocates and Leaders for Police and Community Trust (ALPACT)
(2001 – present)
Member in my official capacity as an Assistant United States Attorney

Building Respect in Diverse Groups to Enhance Sensitivity (BRIDGES)
(2002 – present)
Member in my official capacity as an Assistant United States Attorney

DOJ Pride (2009 – present)
Member of the Board of Directors (2011 – present)

Eberwhite Elementary School Parent Teacher Organization
(approximately 2001 – 2006)
Secretary (approximately 2003 – 2005)

Human Rights Campaign (2001 – present)

The Michigan Alliance Against Hate Crimes (MIAAHC) (2002 – present)
Member in my official capacity as an Assistant United States Attorney

University of Michigan Alumni Association (2001 – present)

There may be other groups that I have worked with from time to time in my official capacity as an Assistant United States Attorney that consider me to be a member or participant, but the list above represents those groups or organizations that I recall after reviewing my records and the Internet.

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.

Handling Civil Rights Cases: An Assistant United States Attorney's Perspective, 41 URB. LAW. 303 (2009). Copy supplied.

Handling Civil Rights Cases: An Assistant U.S. Attorney's Perspective, U.S. ATT'YS BULL., Sept. 2008. Copy supplied.

Editorial, *University Harasses Workers*, THE MICHIGAN DAILY, Apr. 8, 1988. 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.

During the time period when I was the Bargaining Chairperson of AFSCME, Local 1583, from 1987 to 1993, I attended the International Conventions for AFSCME. I do not recall drafting or approving Resolution No. 59 at the 29th International Convention in 1990. However, during the course of this nomination process, I found it on the internet and I am supplying it here in an abundance of caution because I appear as a signatory. 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 have been a member of the DOJ Pride Board of Directors since November 2011. On March 13, 2013, the Board sent a letter to the Attorney General of the United States, Eric H. Holder, Jr. I reviewed the letter during the drafting process in my capacity as a Board member. Copy supplied.

While I was the Bargaining Chairperson of AFSCME, Local 1583, I addressed the University of Michigan Board of Regents on the following occasions in order to report on concerns of the membership: July 1987, March 1988, July 1988, January 1989, July 1989, January 1990, July 1992. I do not have any notes, transcripts or recordings of these remarks. I provided similar remarks to the University of Michigan Senate Advisory Committee on University Affairs on June 8, 1992. I do not have any notes, transcript or recording of these remarks.

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

I have not kept a comprehensive list of all speeches, talks and presentations I have given. Below is my best effort to recreate my history of speaking engagements, drawing from my available calendars, files, and the Internet. It is possible that I have omitted presentations for which I did not retain records.

March 12, 2013: Speaker, "Careers and Opportunities for Women in the Law," University of Michigan Women Lawyers Association, Ann Arbor, Michigan. I have no notes, transcripts, or recording. The address of the University of Michigan Women Lawyers Association is The University of Michigan Law School, 625 South State Street, Ann Arbor, Michigan 48109.

March 6, 2013: Panelist, Wayne State University Law School Outlaws, Detroit, Michigan. I participated in a panel discussion of openly LGBT lawyers about our experiences in the legal profession. I have no notes, transcripts, or recording. The address of the Wayne State University Law School Outlaws is Wayne State University, 471 West Palmer Avenue, Detroit, Michigan 48202.

February 19, 2013: Introductory Remarks for Keynote Speaker, United States Attorney's Office for the Eastern District of Michigan, Black History Month program, Detroit, Michigan. Prepared remarks supplied.

February 5, 2013: Speaker, Anderson Middle School, Berkley, Michigan. I discussed bullying and harassment in public schools. I have no notes, transcripts, or recording but press coverage is supplied. The address of Anderson Middle School is 3205 Catalpa Street, Berkley, Michigan 48072.

February 5, 2013: Speaker at the Berkley Rotary Club, United States Attorney's Office for the Eastern District of Michigan, Detroit, Michigan. I discussed bullying and harassment in public schools. I have no notes, transcripts, or recording, but press coverage is supplied. The address of the United States Attorney's Office for the Eastern District of Michigan is 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

January 4, 2013: Moderator, "Race to Equality," Michigan Roundtable for Diversity and Inclusion, Detroit, Michigan. The discussion related to the role of race in the criminal justice system. I have no notes, transcripts, or recording. The address of the Michigan Roundtable for Diversity and Inclusion is 525 New Center One, 3031 West Grand Boulevard, Detroit, Michigan 48202.

November 8, 2012: Speaker, Board of the University of Michigan Women's Law Student Alliance, Ann Arbor, Michigan. I summarized the information discussed at the October 26, 2012 University of Michigan Sexual Assault Conference. I have no notes, transcripts, or recording. The address of the University of Michigan Women Lawyers Association is the University of Michigan Law School, 625 South State Street, Ann Arbor, Michigan 48109.

November 8, 2012: Speaker, coffee hour, University of Michigan, Ann Arbor, Michigan. I spoke with law students at the University of Michigan about pursuing summer jobs in government and public service. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

November 4, 2012: Speaker, Michigan National Guard, Selfridge Air National Guard Base, Harrison Township, Michigan. I spoke regarding the Service Members Civil Relief Act and the Uniformed Service Members Employment and Re-Employment Act. Prepared remarks supplied.

October 26, 2012: Speaker, University of Michigan Sexual Assault Conference, Ann Arbor, Michigan. I discussed the requirements of Title 4 of the Civil Rights Act of 1964 and Title 9 of the Education Amendments in the college and university setting. I have no notes, transcripts, or recordings. The address of the University of Michigan is 2074 Fleming Administration Building, 503 Thompson Street, Ann Arbor, Michigan 48109.

September 25, 2012: Panelist, Public Interest Public Service Faculty Fellows, University of Michigan Law School, Ann Arbor, Michigan. I spoke about careers in public service. I have no notes, transcripts, or recording. The address of the

University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

August 25, 2012: Panelist, Criminal Law Class Demonstration, University of Michigan Law School Pre-Orientation, Ann Arbor, Michigan. Although I have been unable to locate a complete video, portions of the session were recorded and are available at:
http://students.law.umich.edu/avlaw/Relay/MAP%20mock%20class.

August 24, 2012: Speaker, University of Michigan Law School Pre-Orientation, Ann Arbor, Michigan. I spoke about my work as an Assistant United States Attorney. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

August 22, 2012: Speaker, Detroit Hispanic Development Corporation, Detroit, Michigan. I spoke about educational requirements for students who are English language learners. I have no notes, transcripts, or recording. The address of the Detroit Hispanic Development Corporation is 1211 Trumbull Street, Detroit, Michigan 48216.

August 13, 2012: Panelist, Criminal Law Class Demonstration, University of Michigan Law School Pre-Orientation, Ann Arbor, Michigan. I spoke about how to prepare for law school classes and how to express opinions on controversial cases. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

July 31, 2012: Speaker, "Community Conversation on Bullying and Harassment," U.S. Department of Justice Community Relations Service, Detroit, Michigan. PowerPoint supplied.

July 16, 2012: Speaker, Statewide Conference on HIV and AIDS organized by the Michigan Coalition of AIDS Activists, Brighton, Michigan. I discussed the Americans with Disabilities Act. I have no notes, transcripts, or recording. I have been unable to locate an address for the Michigan Coalition of AIDS Activists.

June 7, 2012: Speaker, brown bag lunch, ACLU of Michigan, Detroit, Michigan. I spoke at a brown bag lunch for law students interested in pursuing careers in the government. I have no notes, transcripts, or recording. The address of the ACLU of Michigan is 2966 Woodward Avenue, Detroit, Michigan 48201.

June 6, 2012: Panelist, Crestwood Public School District, Dearborn Heights, Michigan. I spoke to parents and teachers regarding language interpreters for students and parents in the District as part of an investigation. I have no notes, transcripts, or recordings of the event. The address for the United States

Attorney's Office for the Eastern District of Michigan is 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

May 24, 2012: Panelist, HIV-AIDS Resource Center, Ypsilanti, Michigan. I discussed the applicability of the Americans with Disabilities Act and the Fair Housing Amendments Act to individuals with HIV or AIDS. I have no notes, transcripts, or recording. The address of the HIV-AIDS Resource Center is 3075 Clark Road, Suite 203, Ypsilanti, Michigan 48197.

April 11 – 13, 2012: Panelist, Civil Rights Seminar, United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 20 – 23, 2012: Panelist, HUD Fair Housing Seminar, United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina, 29201.

March 9, 2012: Panelist, White House Conference on Homelessness in LGBT Communities," at Wayne State University. I spoke about fair housing issues affecting LGBT youth and adults. I have no notes, transcripts, or recordings of the event. The address for Wayne State University is 42 West Warren Avenue, Detroit, Michigan 48202.

December 1, 2011: Speaker, Annual Dinner of the Fair Housing Center of Southeastern Michigan, Ann Arbor, Michigan. I spoke about fair housing enforcement at the United States Attorney's Office. Prepared remarks supplied.

November 21, 2011: Introduction of Jon M. Seward, Deputy Chief of the Housing and Civil Enforcement Section of the Civil Rights Division, "Inspiring Paths," University of Michigan Law School, Ann Arbor, Michigan. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

November 9, 2011: Contributor to video entitled "Hiding in Plain Sight: The Walls That Divide Us." Video available at: http://www.youtube.com/watch?v=Qh42TGld1HY.

October 29, 2011: Speaker, Civil Rights Conference of the American Federation of Teachers, Detroit, Michigan. I spoke about issues of bullying, harassment and hate crimes. Prepared remarks supplied.

October 17, 2011: Panelist, Wayne State University Law School Outlaws, Detroit, Michigan. I spoke on a career panel of openly LGBT lawyers about our experiences in the legal profession. I have no notes, transcripts, or recording. The address of the Wayne State University Law School Outlaws is Wayne State University Law School, 471 West Palmer Avenue, Detroit, Michigan 48202.

October 5, 2011: Speaker, University of Michigan's School of Social Work, Ann Arbor, Michigan. I discussed the applicability of the Americans with Disabilities Act to students' future work. I have no notes, transcripts, or recording. The address of the School of Social Work is 1080 South University Avenue, Ann Arbor, Michigan 48109.

September 23, 2011: Speaker, Statewide Immigration Conference on Title 6 of the Civil Rights Act of 1964, Lansing, Michigan. Notes and PowerPoint supplied.

September 23, 2011: Speaker, Legal Service Fair Housing Training Session, Lansing, Michigan. PowerPoint supplied.

September 17, 2011: Panelist, Michigan State Conference of the NAACP #3165, Detroit, Michigan. I spoke on a panel addressing civil rights enforcement. I have no notes, transcripts, or recording. The address of the Michigan State Conference of the NAACP #3165 is 15400 Grand River Avenue, Floor M, Detroit, Michigan 48227.

June 6, 2011: Panelist, "Complex Issues in Fair Housing Enforcement," sponsored by the National Fair Housing Alliance. I spoke about conducting a jury trial in a fair housing sex discrimination case. I have no notes, transcripts, or recording. The address of the National Fair Housing Alliance is 1101 Vermont Avenue, Washington, D.C. 20005.

April 14, 2011: Moderator, "A Community Forum on Harassment and Bullying in our Schools," United States Attorney's Office for the Eastern District of Michigan, Huntington Woods, Michigan. I have no notes, transcripts, or recording. The address of the United States Attorney's Office for the Eastern District of Michigan is 211 West Fort Street, Suite 2001, Detroit, Michigan 48226.

April 6, 2011: Remarks, Fair Housing Center of Metropolitan Detroit, Detroit, Michigan. Prepared remarks supplied.

April 1, 2011: Panelist, University of Michigan Law School, Ann Arbor, Michigan. I spoke to a group of students admitted to the University of Michigan Law School about careers in public interest and public service. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

March 25, 2011: Introductory Remarks, Wayne State University Law School symposium on the School to Prison Pipeline, Detroit, Michigan. Prepared remarks supplied.

March 16, 2011: Speaker, Michigan Immigrant Rights Center, Kalamazoo, Michigan. I spoke regarding Title 6 of the Civil Rights Act of 1964. I have no notes, transcripts, or recording. The address of the Michigan Immigrant Rights Center is 3030 South Ninth Street, #1A, Kalamazoo, Michigan 48009.

March 10, 2011: Speaker, "Committee of Inquiry into the DPD Consent Judgment," Wayne State University's Keith Center for Civil Rights, Detroit, Michigan. I have no notes, transcripts, or recording. The address of Wayne State University is 471 West Palmer Avenue, Detroit, Michigan 48202.

January 25, 2011: Panelist, Wayne State University Law School, Detroit, Michigan. I participated in a panel discussion regarding legal careers in government and public service. I have no notes, transcripts, or recording. The address of Wayne State University Law School is 471 West Palmer Avenue, Detroit, Michigan 48202.

January 22, 2011: Panelist, "Meet the Enforcers," State Bar of Michigan Labor and Employment Section, Detroit, Michigan. I have no notes, transcripts, or recordings of the event. The address of the State Bar of Michigan is The Michael Franck Building, 306 Townsend Street, Lansing, Michigan 48933.

November 11, 2010: Speaker, University of Michigan Women Law Student Association's Jenny Runkles Scholarship Banquet, Ann Arbor, Michigan. I discussed enforcing civil rights laws at the United States Attorney's Office for the Eastern District of Michigan. I have no notes, transcripts, or recording. The address of the University of Michigan Women Law Student Association is The University of Michigan Law School, 625 South State Street, Ann Arbor, Michigan 48109.

October 29, 2010: Panelist, "From Redlining to White Flight, the History of Housing Segregation and the Importance of Regionalism," Michigan Roundtable for Diversity and Inclusion and Thomas M. Cooley Law School at Oakland University, Auburn Hills, Michigan. I participated in a discussion regarding fair housing enforcement in the Detroit Metropolitan area. I have no notes, transcripts, or recordings of the event but press coverage is supplied. The address of the Michigan Roundtable for Diversity and Inclusion is 525 New Center One, 3031 West Grand Boulevard, Detroit, Michigan 48202.

October 27, 2010: Panelist, Cooley Law School, Lansing, Michigan. The panel addressed legal updates related to discrimination against lesbians and gay men. Prepared remarks supplied.

October 13, 2010: Speaker, Anti-Defamation League, Michigan Regional Office, Southfield, Michigan. Prepared remarks supplied.

June 30, 2010: Speaker, United States Attorney's Office for the Eastern District of Michigan's first annual LGBT Pride Month celebration, Detroit, Michigan. Prepared remarks supplied.

June 3, 2010: Speaker, State Bar of Michigan and Apartment Association of Michigan's annual meeting on fair housing accessibility requirements, Lansing, Michigan. I have no notes, transcripts, or recordings of the event. The address of the State Bar of Michigan is The Michael Franck Building, 306 Townsend Street, Lansing, Michigan 48933-2012.

May 24 – 27, 2010: Panelist, "Enforcing the Fair Housing Act in a United States Attorney's Office," Justice Television Network at the United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

May 11, 2010: Speaker, ACLU of Michigan, Detroit, Michigan. I discussed the legal issues related to the LGBT community. Prepared remarks supplied.

November 18, 2009: Speaker, Property class, University of Detroit Mercy School of Law, Detroit, Michigan. I discussed the Fair Housing Amendments Act. I have no notes, transcripts, or recordings of the event. The address of the University of Detroit Mercy School of Law is 651 East Jefferson Avenue, Detroit, Michigan 48226.

November 12, 2009: Contributor, pre-recorded remarks aired when Saul A. Green received the 62nd Humanitarian Tribute from the Michigan Roundtable for Diversity and Inclusion, Detroit, Michigan. Video supplied.

November 5, 2009: Speaker, "Current Topics in Fair Housing Enforcement," Macomb County Legal Aid and Defenders Fair Housing Program, Warren, Michigan. Prepared remarks supplied.

September 29, 2009: Speaker, "Hot Topics in Fair Housing," Detroit, Michigan. Prepared remarks supplied.

May 19 – 21, 2009: Panelist, "Hot Topics for Affirmative Civil Enforcement Attorneys Seminar," United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 25 – 27, 2009: Panelist, Civil Rights Seminar, United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 24 – 25, 2009: Panelist, "Developing an Effective Civil Rights Practice: Hotels and Restaurants," Justice Television Network at the United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 10, 2009: Introduction, Panel for the United States Attorney's Office Black History Month program, Detroit, Michigan. Prepared remarks supplied.

December 7, 2008: Panelist, following a performance of the play "Geoffrey and Jeffrey," The Performance Network, Ann Arbor, Michigan. I spoke about being a lesbian mother. I have no notes, transcripts or recording. The address of the Performance Network is 120 East Huron Street, Ann Arbor, Michigan 48104.

November 8, 2008: Speaker, brown bag lunch, University of Michigan Law School, Ann Arbor, Michigan. I spoke about establishing a career in public service. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

October 27, 2008: Introduction of Jon M. Seward, Deputy Chief of the Housing and Civil Enforcement Section of the Civil Rights Division, University of Michigan Law School, Ann Arbor, Michigan. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

July 5 – 12, 2008: Speaker, "The Faculty Forum" University of Michigan Alumni Family Camp – Camp Michigania, Boyne City, Michigan. I delivered two presentations, one regarding the Americans with Disabilities Act and one titled "What is a United States Attorney?" PowerPoints supplied.

April 24, 2008: Introduction, Saul A. Green, recipient of the Inaugural Fair Housing Attorney Appreciation Award, Miller Canfield law firm, Detroit, Michigan. Prepared remarks supplied.

April 3, 2008: Panelist, "Seminar on Testing and Celebration of the 40th Anniversary of the Fair Housing Act," sponsored by the Fair Housing Center of Metropolitan Detroit and Wayne State University Law School. I spoke about the role of testing in litigating a fair housing case. I have no notes, transcripts, or

recording. The address for Wayne State University Law School is 471 West Palmer Street, Detroit, Michigan 48202.

March 30 – April 1, 2008: Panelist, "Developing an Effective Civil Rights Practice: Enforcing the Architectural Non-Discrimination Provisions of the Americans with Disabilities Act," Justice Television Network at the United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

March 12, 2008: Panelist, University of Michigan Women Lawyers Association, University of Michigan Law School, Ann Arbor, Michigan. I spoke about women and oral advocacy. I have no notes, transcripts, or recording. The address of the University of Michigan Law School Women's Lawyers Association is the University of Michigan Law School, 625 South State Street, Ann Arbor, Michigan 48109.

January 28, 2008: Panelist, Careers in Disability and Elder Law, University of Michigan Law School. I participated in a panel on legal careers in disability and elder law. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

January 15, 2008: Speaker, Legal Services of Eastern Michigan, Flint Office, Flint, Michigan. I spoke about enforcement of the Fair Housing Amendments Act. I have no notes, transcripts, or recording. The address of Legal Services of Eastern Michigan, Flint Office is 436 South Saginaw Street, Flint, Michigan 48502.

September 6, 2007: Panelist, Michigan Alliance Against Hate Crimes, "Law Enforcement, Emergency Responders and Victim Advocates," East Lansing, Michigan. I have no notes, transcripts, or recording. The address of the Michigan Alliance Against Hate Crimes is MDCR-Community Relations Division, 110 West Michigan Avenue, Capital Tower Building, Suite 900, Lansing, Michigan 48933

June 16 – 20, 2007: Speaker, "The Faculty Forum," University of Michigan Alumni Family Camp – Camp Michigania, Boyne City, Michigan. I delivered two presentations, one regarding the Americans with Disabilities Act and one regarding marriage equality. I have no notes, transcripts or recordings of the presentation on marriage, but the presentation would have been substantially similar to the one on July 5 – 12, 2008, for which PowerPoints have been provided. The address of Camp Michigania is Boyne City, Michigan 49712.

May 1, 2007: Panelist, "Developing an Effective Civil Rights Practice: Enforcing the Americans with Disabilities Act," Justice Television Network at the United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

January 3 – 5, 2007: Panelist, Civil Rights Seminar, United States Department of Justice National Advocacy Center (NAC), Columbia, South Carolina. Because the materials used at this training are law enforcement sensitive, they are not supplied. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 11, 2006: Speaker, brown bag lunch, University of Michigan Law School, Ann Arbor, Michigan. I spoke to law students interested in careers in public service. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

September 21, 2006: Speaker, Michigan Poverty Law Program's conference on enforcement of fair housing laws, Ann Arbor, Michigan. I have no notes, transcripts, or recording. The address of the Michigan Poverty Law Program is The University of Michigan Law School, 625 South State Street, Ann Arbor, Michigan 48109.

September 12, 2006: Panelist, Public Service – Public Interest Reception, University of Michigan Law School. I participated in a panel on legal careers in public service. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

March 9, 2006: Panelist, University of Michigan Women Lawyers Association, Ann Arbor, Michigan. I participated in a panel discussion on women and oral advocacy. I have no notes, transcripts, or recording. The address of the University of Michigan Women Lawyers Association is The University of Michigan Law School, 625 South State Street, Ann Arbor, Michigan 48109.

October 18, 2005: Panelist, Public Service – Public Interest Reception, University of Michigan Law School. I participated in a panel on legal careers in public service. I have no notes, transcripts, or recording. The address of the University of Michigan Law School is 625 South State Street, Ann Arbor, Michigan 48109.

May 24, 2005: Speaker, Career Day, Antoine Cadillac School, Detroit, Michigan. I have no notes, transcripts, or recording. The address of the Antoine Cadillac School is 15125 Schoolcraft Road, Detroit, Michigan 48227.

March 16, 2005: Panelist, "Multiple Layers of Identity: Being a Minority, Gay, or Transgender Woman in the Workplace," sponsored by the University of Michigan Women Lawyers Association, University of Michigan Law School, Ann Arbor, Michigan. I spoke about my experience as a lesbian and a lawyer. I have no notes, transcripts, or recording. The address of the University of Michigan Women Lawyers Association is University of Michigan Law School, 625 South State Street, Ann Arbor, Michigan 48109.

November 4, 2004: Panelist, "Can Women Really Have It All?" sponsored by the State Bar of Michigan Young Lawyer's Section. I spoke on the subject of work-life balance as a mother of three children. I have no notes, transcripts, or recording. The address of the State Bar of Michigan is 306 Townsend Street, Lansing, Michigan 48933.

I served as a guest lecturer for Richard Bernstein's "Law and Social Change" course at the University of Michigan College of Literature, Science, and the Arts, Department of Political Science, from January 2005 to January 2010. I lectured for one to two hours in approximately five class sessions during the semesters when Mr. Bernstein taught this course. I have no notes, transcripts, or recordings of this class, and I do not recall the precise dates of my appearances. The address of the University of Michigan College of Literature, Science, and the Arts is 505 South State Street, Ann Arbor, Michigan 48109.

I also recall that I spoke publicly on several occasions between 1980 and 1990 about lesbian and gay rights, generally during "Gay Pride Month" in June, in public events held at the federal building in Ann Arbor, Michigan. I have no notes, transcripts, or recordings of any of these presentations, and I do not recall the groups that sponsored each of these events.

I also recall speaking from time to time about labor issues at the University of Michigan, where I served as an elected union official. I have no notes, transcripts, or recordings of any of these presentations. The address of AFSCME, Local 1583 is 301 West Michigan Avenue, Ypsilanti, Michigan 48197.

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.

Jeremy Selweski, *Community Briefs*, WOODWARD TALK, Jan. 30, 2013. Copy supplied.

Curt Guyette, *Crime and Injustice; Crime in Detroit Made Big Headlines (Again) Last Week,* METRO TIMES, Jan. 9, 2013. Copy supplied.

Natasha Dado, *DOJ Visits Dearborn Heights, Hears Concerns about Crestwood School District,* THE ARAB AMERICAN NEWS, June 2, 2012. Copy supplied.

Isaac Shore, *A Modern Day Freedom Fighter,* THE COMMUNICATOR ONLINE, June 1, 2012. Copy supplied.

ADC Helps Challenge Discrimination within Michigan School District, TARGETED NEWS SERVICE, May 31, 2012. Copy supplied.

Megha Satyanarayana, *U.S. Officials Enact Rule to Put a Stop to LGBT Housing Discrimination,* DETROIT FREE PRESS, Mar. 10, 2012. Copy supplied.

Laura Maggi, *Revamping of NOPD Expected to Spawn Extra Costs for City; But it Needs the Will to Make Changes,* THE TIMES-PICAYUNE, Feb. 2, 2012. Copy supplied.

US Reviewing Anti-Muslim School Bias Complaint, THE ASSOCIATED PRESS STATE & LOCAL WIRE, Dec. 27, 2011. Copy supplied.

David Ashenfelter, *Police Make Headway on Reforms,* DETROIT FREE PRESS, July 13, 2011. Copy supplied.

Interview by Tom Bayer with Judith Levy, *Disability Concerns*, Community Television Network, in Ann Arbor, Michigan (May 26, 2011). Video supplied.

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Jamie Dickson, *Fair Housing Center of Southeastern Michigan Looking for Testers to Help Investigate Housing Discrimination Complaints,* ANNAROBR.COM, Feb. 13, 2011. Copy supplied.

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Jessica Carreras, *District Attorneys 'Open a Dialogue' with LGBT Community,* BETWEEN THE LINES, May 27, 2010. Copy supplied.

Jameson Cook, *Feds Say Richmond Township Denied Rights of Sacred Heart Treatment Center Patients,* THE VOICE, SERVING MACOMB AND ST. CLAIR COUNTIES, January 21, 2010. Copy supplied.

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Dave Gershman, *Hotel Agrees to Changes to Meet with ADA,* ANN ARBOR NEWS, Mar. 5, 2009. Copy supplied.

Doug Guthrie, *Roseville Apartment Owners Settle Federal Fair Housing Case,* THE DETROIT NEWS, Nov. 14, 2008. Copy supplied.

David Ashenfelter, *Faith and Determination: Popular Judge Returns from Cancer Treatment; Bernard Friedman Optimistic After Beating Rare Form of Lymphoma,* DETROIT FREE PRESS, July 26, 2008. Copy supplied.

Paul Egan, *Feds: Civil Rights Violated; A Roseville Apartment Complex Turned Away Blacks, Complaint Alleges,* THE DETROIT NEWS, Jan. 19, 2008. Copy supplied.

David Ashenfelter & Joe Swickard, *Detroit Cops Struggle to Meet Goals for Reform; Only 54 of 177 Changes Made Since '03 Agreements,* DETROIT FREE PRESS, Oct. 21, 2007. Copy supplied.

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Christine Ferretti, *Housing Bias Case Settled for $725K,* THE DETROIT NEWS, Aug. 30, 2007. Copy supplied.

David Ashenfelter & Zachary Gorchow, *City Asked to File Decree Paperwork,* DETROIT FREE PRESS, Aug. 1, 2007. Copy supplied.

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Interview by Anderson Cooper with Judith Levy in Detroit, Michigan (Dec. 31, 2006). I was interviewed for the "Keeping them Honest" award, which was given to Richard Bernstein for his work on a disability case with which I was involved. Although I was interviewed, I do not appear in the only link I have been able to locate on this issue. The video is available at: http://208.69.123.188/bernstein-media-center/richard-bernstein-videos/commitment-to-community/cnn-journalist-anderson-cooper-interviews-attorney-richard-bernstein.

Zlati Meyer, *Landlord Accused of Bias; U.S. Sues Livonia Firm, Exec, Alleging Blacks Were Discouraged from Renting*, DETROIT FREE PRESS, May 10, 2006. Copy supplied.

David Ashenfelter, *Disabled Man Sues Over Snub; Tenant Sought to Pay Rent at Different Time; U.S. Files Case Against Apartment,* DETROIT FREE PRESS, May 9, 2006. Copy supplied.

Paul Egan, *Feds Allege Bias at Rental Complex; Suit Names Apartment Site in Livonia, Head of Firm in Claim that Blacks Faced Discrimination,* THE DETROIT NEWS, May 2, 2006. Copy supplied.

Using Zoning to Prohibit Facilities for the Disabled Can Backfire, DISABILITY COMPLIANCE BULLETIN, Feb. 2, 2006. Copy supplied.

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Emilia Askari, *Shadow Hangs over Move: Clubhouse May be Closer to Getting In*, DETROIT FREE PRESS, Sept. 14, 2005. Copy supplied.

Natalie White, *Michigan District Court Rules Mentally Ill Woman Can have Dog in 'No-Pets' Apartment,* LAWYERS WEEKLY USA, Mar. 28, 2005. Copy supplied.

David Ashenfelter, *Disabled Woman's Dog Has Its Day; Metro Jury Says Mentally Ill Have Right to No-Pet Waivers,* DETROIT FREE PRESS, Feb. 23, 2005. Copy supplied.

U.S. Fights Apartment Firm over Access; Officials Want the Company to Modify Apartments to Make them More Wheel-Chair-Accessible, GRAND RAPIDS PRESS, Apr. 14, 2003. Copy supplied.

Diane Bukowski, *Judge Orders Release of Police Documents to Feds,* MICHIGAN CITIZEN, Sept. 15, 2001. Copy supplied.

Mei-Ling Hopgood, *Complaint Cites Bias by a Temp Agency It Illegally Denied Jobs to Some, Employee Says,* DETROIT FREE PRESS, Apr. 5, 2000. Copy supplied.

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Julie Wiernik, *Union Firebrand Takes Aim at Legal Career,* THE ANN ARBOR NEWS, May 31, 1993. Copy supplied.

Kim Clarke, *Contract Gives U-M Union Small Raise,* THE ANN ARBOR NEWS, July 29, 1992. Copy supplied.

David Shepardson, *Provost's Letter Angers Union Members, May Have Broken Law,* THE MICHIGAN DAILY, July 29, 1992. Copy available at: http://tinyurl.com/jw9ejbg.

Laura DePompolo, *Union Stewards Protest for a Better Working Environment,* THE MICHIGAN DAILY, Apr. 5, 1991. Copy available at: http://tinyurl.com/luuhul3.

Diane Cook, *Worker Files Civil Rights Suit Against "U",* THE MICHIGAN DAILY, May 22, 1990. Copy available at http://tinyurl.com/ljeqhcb.

Barbara Misle, *U-M Maintenance Union Wants King Birthday Off,* THE ANN ARBOR NEWS, May 24, 1988. Copy supplied.

Kenneth Dintzer, *AFSCME Reinstates Bargaining Chair,* THE MICHIGAN DAILY, Sept. 22, 1987. Copy available at: http://tinyurl.com/m94q9hy.

Barbara Misle, *AFSCME Members Elect Levy to Bargaining Chair at U-M,* THE ANN ARBOR NEWS, May 21, 1987. Copy supplied.

Thomas Hrach, *Custodian Fired from Union, Now Fights Back,* THE MICHIGAN DAILY, June 1, 1985. Copy available at: http://tinyurl.com/lk7w4bp.

Thomas Brach, *Union Members Want to See Local's Audit,* THE MICHIGAN DAILY, May 21, 1985. Copy available at: http://tinyurl.com/luwy5gf.

Kim Clarke, *U-M Unions to Protest Lack of Raises this Year,* THE ANN ARBOR NEWS, date unknown. Copy supplied.

Kim Clarke, *Work Environment for Gays in Dorms Sparks Call for Probe,* THE ANN ARBOR NEWS, date unknown. Copy supplied.

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

I have not held judicial office.

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

   i. Of these, approximately what percent were:

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

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

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

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

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

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

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

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

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

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

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

I have not 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.

I have not held public 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 conducted volunteer door-to-door canvassing and phone calling for Senator John Kerry, Vice-President Al Gore and Senator and President Obama in their Presidential campaigns.

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

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

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

From 1996 to 1999, I served as a law clerk to the Honorable Bernard A. Friedman, United States District Court Judge for the Eastern District of Michigan.

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.

1999 – 2000
Equal Employment Opportunity Commission
Patrick V. McNamara Building
477 Michigan Avenue, Room 865
Detroit, Michigan 48226
Trial Attorney

2000 – present
United States Attorney's Office
Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, Michigan 48226
Assistant United States Attorney (2000 – present)
Chief, Civil Rights Unit (2010 – present)

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

I have never served as 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.

Upon completion of my clerkship, I was hired by the United States Equal Employment Opportunity Commission to serve as a trial attorney, where I began working in 1999. I advised a team of investigators and litigated employment discrimination cases.

In 2000, I was hired at the United States Attorney's Office for the Eastern District of Michigan as an Assistant United States Attorney. For the first two years, I focused on civil defensive litigation for the United States, including two employment discrimination jury trials on behalf of the United States Postal Service. I also handled a variety of immigration matters for what was then called the Immigration and Naturalization Service. My work then shifted to affirmative civil rights enforcement, including handling complaints related to disability discrimination, fair housing, fair lending, police misconduct, military service members' civil rights, educational opportunities, language access, and employment discrimination. In handling these cases, I was involved in the complaint intake and screening, making recommendations regarding which complaints to open for investigation, conducting the investigation, and litigating, trying or settling meritorious complaints. In 2010, I was promoted to serve as Chief of the Civil Rights Unit, where I train and supervise attorneys, support staff, and student law clerks.

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

I have represented the United States throughout my legal career, including a variety of federal agencies such as the United States Postal Service, the Internal Revenue Service, the Social Security Administration and the Veteran's Administration. I have specialized in investigating and litigating a wide variety of civil rights cases.

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

I would estimate that my practice is 90% litigation and that I appear in court regularly. I have either served as lead counsel or co-counsel in four jury trials, in addition to numerous cases that have settled before trial after lengthy and complex discovery. Although my work also involves conducting outreach meetings and supervision of employees, the vast majority of my time is spent evaluating complaints for litigation and handling them until judgment is entered.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

I have tried four cases to verdict and judgment. I was sole counsel in one, chief or lead counsel in two, and co-counsel in one.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

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

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

. **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.

The following cases are listed in reverse chronological order.

1. United States v. Peterson, Case No. 2:09-cv-10333 (E.D. Mich.).

I began work on this matter in 2008, and my representation will continue until the consent order terminates in 2014. This case was referred to the United States Attorney's Office by the Fair Housing Center of Southeastern Michigan. At the time of the referral, the Fair Housing Center had received a complaint that two women had been subjected to severe and pervasive sexual harassment at two rental properties in Ypsilanti, Michigan. I served as lead counsel for the United States in the investigation and subsequent litigation of this case. Our investigation revealed that six women had been subjected to severe sexual harassment by the owner's leasing agent. Both the owner and leasing agent were defendants in this case. The owner was ultimately held vicariously liable for the leasing agent's conduct. The case went to trial, which lasted approximately two weeks, and the jury found in favor of the United States and awarded $113,000 in compensatory and punitive damages. Subsequent to entry of the jury's verdict, the court granted the United States' motion for injunctive relief and a civil penalty. This case was litigated before the Honorable Julian Abele Cook, Jr.

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734-945-9583

Counsel for Defendant Peterson:
Donald W. Ferris, Jr.
Ferris & Salter, P.C.
4158 Washtenaw Avenue

Ann Arbor, MI 48108
734-677-2020

2. United States v. Palazzolo and Lombardo of Michigan, LLP, et al., Case No. 4:07-cv-12838 (E.D. Mich.).

I began representation in this matter in 2005, and it ended in 2009. In this case, defendants designed and constructed an apartment and condominium complex that consisted of 37 two-story apartment buildings, with a total of 54 ground floor units, and eight condominium buildings, with a total of 16 ground floor units, that were not built in compliance with the Fair Housing Amendment Act's requirements for accessibility for individuals with disabilities. I served as lead counsel during the investigation of the case and worked closely with the government's expert. I assisted in drafting the complaint and a proposed settlement. After significant settlement discussions, the case was resolved and the court entered a consent order requiring the defendants to retrofit the ground floor units so that they would be accessible and usable by individuals with disabilities. Defendants also agreed to pay $25,000 to aggrieved victims and $25,000 in a civil penalty. This case was litigated before the Honorable Paul V. Gadola.

Co-Counsel:
Allen W. Levy
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
1800 G Street, N.W.
Washington, D.C. 20530
202-514-2188

Counsel for Defendants:
Wayne Segal
Dawda, Mann, Mulcahy and Sadler, P.L.C.
39533 Woodward Avenue, Suite 200
Bloomfield Hills, MI 49304
248-642-6656

3. United States v. Royal Oak, Michigan, Case No. 5:05-cv-60010 (E.D. Mich.)

I began work on this matter in 2004, and continued representation until the termination of the consent order in 2008. This matter was referred to the United States Attorney's Office by counsel for Easter Seals. I served as lead counsel for the United States. The complaint alleged that the City of Royal Oak, Michigan violated the Americans with Disabilities Act when it required Easter Seals' Dreams Unlimited Clubhouse to apply for a Special Land Use Permit and later denied that permit based upon the disability status of the members of the clubhouse. Easter Seals filed the first complaint in this case, and the United

States filed a motion to intervene, which was granted by the court. Discovery took place, and the cases were settled for $200,000 in damages to Easter Seals and injunctive relief, including training for elected and appointed officials with the City of Royal Oak. I provided the training during the course of the three years of the consent order. This case was litigated before the Honorable Marianne O. Battani.

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Richard D. Rattner
Williams, Williams, Rattner & Plunkett, P.C.
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4. Barnett et al. and United States v. City of Detroit, Case No. 2:04-cv-73152 (E.D. Mich.)

This case was originally filed by five plaintiffs against the City of Detroit Department of Transportation alleging that the city's fixed route buses were not accessible to individuals with disabilities who use wheelchairs. After an independent investigation, the United States filed a motion to intervene, which was granted by the court. Beginning in 2004, I participated in the investigation and drafting of the motion to intervene. The defendant filed a motion to disqualify a lawyer with the United States Department of Transportation's Federal Transit Administration from participation in the case. I assisted in drafting the United States' response, and the motion was denied. Soon thereafter, the parties entered into complex settlement negotiations, which ultimately resulted in a global settlement in the form of a consent order that was entered by the court on November 3, 2005. The order was to last three years. After three years, however,

the city had not complied with the terms of the order, and I drafted a motion to extend the consent order, which was granted by the court. Throughout this case, I have worked with my co-counsel, opposing counsel, the court-appointed auditor, and representatives of the Detroit Department of Transportation to ensure that the city complies with the consent order. The case remains open today. This case was litigated before the Honorable Robert H. Cleland.

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Amanda Maisels (current co-counsel)
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Civil Rights Division
Disability Rights Section
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Counsel for Individual Plaintiffs:
Richard H. Bernstein
Marya V. Sieminski
Michael Blau
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Counsel for City of Detroit:
Andrew R. Jarvis
County of Wayne
500 Griswold Street, Ninth Floor
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313-224-8447

Jason T. McFarlane (current opposing counsel)
City of Detroit Law Department
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313-237-0548

5. United States v. General Properties, et al., Case No. 2:06-cv-11976 (E.D. Mich.).

I began representation on this matter in early 2003, and it ended in August 2012, when the consent order terminated. The complaint in this case alleged a pattern or practice of race discrimination in the leasing of apartments at a 273-unit apartment complex in Livonia, Michigan. The case was referred to the United States Attorney's Office by the Fair Housing Center of Metropolitan Detroit, and they also filed suit. I served as lead counsel for the United States in the investigation and subsequent litigation. The allegations were supported by evidence developed by fair housing testers, former property managers, and leasing agents. The case settled for $720,000 and the entry of a consent order that required the defendants to hire an independent management company and undergo fair housing training. The case was litigated before the Honorable Gerald E. Rosen.

Co-Counsel for Plaintiffs:
Joseph R. Gaeta
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
1800 G Street, N.W.
Washington, D.C. 20530
(Mr. Gaeta no longer works for the Department of Justice.)

Co-Counsel for the Fair Housing Center of Metropolitan Detroit:
Saul A. Green
P. Rivka Schochet
Miller Canfield
150 West Jefferson Avenue, Suite 2500
Detroit, MI 48226
313-496-7535 (Green)
(Ms. Schochet no longer works at the Miller Canfield firm.)

Counsel for Defendants:
Robert P. Geller
Hertz Schram, P.C.
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248-335-5000

6. United States v. Royalwood Cooperative Apartments, et al., Case No. 2:03-cv-73034 (E.D. Mich.)

I began representation on this case in 2003, and it ended after entry of the jury verdict and post-verdict motions were completed in 2005. This case was referred

to the United States Attorney's Office by the United States Department of Housing and Urban Development. I served as counsel for the United States. The complainant also intervened in the case. The complaint alleged that defendants discriminated against the complainant, an individual with a disability, in violation of the Fair Housing Act when they refused to provide her with a reasonable accommodation to Royalwood Apartments' no-pets policy, thereby requiring her to move from her home. After the completion of discovery and dispositive motion practice, the case went to a jury trial, which lasted approximately seven days. The trial included many fact witnesses and four expert witnesses for and against the complainant. The jury found in favor of the United States and the complainant and awarded her $314,209 in damages. Although the complainant had counsel present during the trial, I served as sole counsel for the United States and lead counsel at trial. This case was litigated before the Honorable Anna Diggs Taylor.

Counsel for Complainant:
Gabrielle Frampton
Michigan Protection and Advocacy Service
4095 Legacy Parkway, Suite 500
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Counsel for Defendants:
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Meyer Kirk
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248-647-5111

7. United States v. City of Detroit, Michigan, Case No. 2:03-cv-72258 (E.D. Mich.)

I began representation on this matter in November 2000, and I continue to work on this case through the present. This case was brought pursuant to 42 U.S.C. § 14141, which permits the United States Attorney General to open an investigation of a state or local police agency where there is reason to believe the agency is engaging in a pattern or practice of unconstitutional conduct or violation of federal law. After approximately two years of investigation, the United States brought suit in June 2003, alleging that the Detroit Police Department had engaged in a pattern or practice of excessive use of force, unconstitutional conditions of confinement, and unconstitutional arrest practices. A consent order was entered by the court, and an independent monitor was appointed to report on the city's compliance with the Court's order. I have served as lead counsel in Michigan and co-counsel with colleagues from the Civil Rights Division of the United States Department of Justice. This case was litigated before the Honorable Julian Abele Cook, Jr.

Co-Counsel:
Jeffrey Robert Murray
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
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Counsel for the Detroit Police Department:
Allan Charlton
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313-540-4650

8. United States v. Edward Rose and Sons, et al., Case No. 2:02-cv-73518 (E.D. Mich.), 246 F.Supp.2d 744 (E.D. Mich. 2003); and Case Nos. 03-1316, 03-1418 (6th Cir.), 384 F.3d 258 (6th Cir. 2004).

This case was brought under the Fair Housing Amendments Act, 42 U.S.C. § 3604(f)(3)(C), because the defendants failed to design and construct their multi-family dwellings in compliance with the design and construction requirements of the Act so that ground floor apartments in buildings with four or more units were accessible to individuals with disabilities. Beginning in 2001, I served as co-counsel with a team of lawyers from the Civil Rights Division. I took and defended many depositions and assisted in the drafting of the motion for a preliminary injunction that resulted in a published district court opinion that was affirmed by the Sixth Circuit Court of Appeals. I also assisted in drafting and arguing numerous discovery motions. I participated in complex settlement negotiations and, ultimately, this case settled pre-trial. The case resulted in nearly $1,000,000 in damages to individuals with disabilities and an agreement by the defendants to retrofit the inaccessible units. This case was litigated at the district court level before the Honorable Victoria A. Roberts.

Co-Counsel for the United States:
Steven H. Rosenbaum, Chief
Timothy J. Moran, Deputy Chief
Erin Meehan Richmond, Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
1800 G Street, N.W.
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202-514-4713

Counsel for Defendant Edward Rose and Sons:
Andrew L. Sandler
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1250 24th Street, N.W.
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Frederick M. Baker
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Counsel for Defendant Martin and Alexander Bogaerts and Associates, P.C.:
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Kalamazoo, MI 49007
616-383-3434

9. Wojtoviets v. Henderson, Postmaster General for the United States, Case No. 2:99-cv-75076 (E.D. Mich.)

The plaintiff in this case alleged employment discrimination based upon disability and retaliation for allegedly engaging in protected activity. I began representing the United States Postal Service upon my employment as an Assistant U.S. Attorney in 2000. I conducted the discovery and filed a motion for summary judgment. Following oral argument, the court denied the motion for summary judgment and the case was set for trial. I prepared the final pretrial order, proposed jury instructions and drafted four motions in limine regarding anticipated evidentiary issues. I served as lead counsel for the United States Postal Service at trial, which lasted approximately a week. The jury found for the defendant. The case was litigated before the Honorable Julian Abele Cook, Jr.

Co-Counsel for Defendant Postmaster General for the United States:
Vanessa Miree Mays
United States Attorney's Office
Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, MI 48226
313-226-9762

Counsel for Plaintiff Wojtoviets:
Paul A. Wright
66 Letts Road
Oakland, MI 48063
586-752-6269

10. Orange v. United States Postal Service, Case No. 2:99-cv-73969 (E.D. Mich.)

The plaintiff in this case alleged employment discrimination based upon race and disability, as well as retaliation for having filed numerous EEO complaints. Discovery was handled primarily by my colleague, Assistant United States Attorney William L. Woodard. In 2001, I joined Mr. Woodard as trial counsel. I drafted the Final Pretrial Order, Proposed Voir Dire, and Proposed Jury Instructions. The trial lasted approximately two weeks, and I handled several of the government's expert and fact witnesses at trial. The jury found in favor of the

United States on all counts. This case was litigated before the Honorable Gerald E. Rosen.

Co-Counsel for Defendant Postmaster General for the United States:
William L. Woodard
United States Attorney's Office
Eastern District of Michigan
211 West Fort Street, Suite 2001
Detroit, MI 48226
313-226-9786

Counsel for Plaintiff Orange:
Jeanne E. Mirer
Eisner Associates
113 University Place, Eighth Floor
New York, NY 10003
212-473-8700

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

In addition to the matters listed above, I served on the faculty of multiple training seminars at the United States Department of Justice's National Advocacy Center. These training courses included investigative techniques, drafting complaints, litigation strategies, communication with victims and witnesses, legal updates, and how to conduct community outreach events. I also served on panels for live and recorded sessions for the Justice Television Network, which are available as training tools for Department of Justice employees nationwide.

I have never performed lobbying or registered as a lobbyist.

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

In the Winter and Fall Term of 2006, 2007, 2009, 2010, 2011, as well as the Fall Term 2008, Winter Term of 2012, and Winter Term 2013, I taught "Fair Housing Law and Policy" as an Adjunct Professor of Law at the University of Michigan Law School. I taught this seminar with Adjunct Professor of Law, Saul A. Green. In the Fall Term of 2004, I served as a Teaching Assistant for Adjunct Professor of Law,

Saul A. Green, for this seminar. It covered a variety of topics related to enforcement of the Fair Housing Act. Winter 2006, Winter and Fall 2007, Fall 2008, Winter and Fall 2009, Winter and Fall 2010, Winter and Fall 2011, Winter 2012, and Winter 2013 syllabi supplied.

In the Fall Term of 2012 and the Fall Term of 2013, I taught "Policing and Public Safety" as an Adjunct Professor of Law at the University of Michigan Law School. I taught this seminar with Adjunct Professor of Law, Saul A. Green. It surveyed current methods of policing and legal topics related to achieving public safety in urban areas. Fall 2012 syllabus supplied.

In the Fall Term of 2006, Winter Term of 2007, and the Winter Term of 2008, I taught "Selected Problems in Policing" as an Adjunct Professor of Law at the University of Michigan Law School. I taught this seminar with Adjunct Professor of Law, Saul A. Green. In the Winter Term of 2003, the Winter Term of 2004, Winter Term of 2005, and the Fall Term of 2005, I served as a Teaching Assistant for Adjunct Professor of Law, Saul A. Green, for the same seminar. It surveyed a range of legal issues in policing, including the law of confessions, racial profiling, and community policing. Winter 2004, Winter 2005, Fall 2006, and Winter 2008 syllabi supplied.

In the Fall Term of 2004, I taught "Fair Housing and Diversity." It covered the same topics as the "Fair Housing Law and Policy" course. Fall 2004 syllabus supplied.

In the Winter Term of 2002 and the Winter Term of 2003, I served as a Teaching Assistant at the University of Michigan Law School for Adjunct Professor of Law, Saul A. Green, for a seminar entitled "Racial Profiling." This course looked at the issue of racial profiling as it relates to the criminal justice system. Winter 2002 and Winter 2003 syllabi supplied.

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

    I do not have any arrangements for deferred income or future benefits from previous business relationships.

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

    If confirmed, I would like to continue teaching a seminar at the University of Michigan Law School, time permitting. I have no other plans, commitments or

agreements to pursue outside employment.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

    If confirmed, I will recuse myself from all civil rights cases handled by the United States Attorney's Office for the Eastern District of Michigan, by another component of the United States Department of Justice, or by a United States department or agency with litigating authority independent of the United States Department of Justice, which were filed or opened for investigation before my appointment and in which I had either direct involvement, or supervisory or oversight responsibility. I do not anticipate any other parties, category of cases, or financial arrangements that are likely to present a conflict of interest. I would, however, evaluate any potential conflicts on an individual basis.

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

    I would carefully review, address and resolve any real or potential conflicts of interest by consulting 28 U.S.C. §§144 and 455, the Code of Conduct for United States Judges, and any other applicable laws, rules, and practices governing such circumstances.

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 employee of the United States Department of Justice, I am restricted in the outside practice of law. However, serving the disadvantaged is very important to me. Accordingly, I have engaged in other volunteer work to serve the community. I have volunteered with Alpha House, a shelter that serves homeless families with children in Ann Arbor, Michigan. I also spend many hours each year mentoring law students at the University of Michigan Law School who want to pursue a career in public service. I have volunteered with a program that U.S. District Judge Victoria A. Roberts sponsors called Just the Beginning, and as part of that program I have served as a mentor for a Detroit high school girl. I have also served as a volunteer coach and judge for my daughter's high school mock trial team.

26. **Selection Process**:

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

On January 30, 2013, I submitted an application to serve as a federal judge to Senators Carl Levin and Debbie Stabenow's Judicial Advisory Committee. I interviewed with the Committee on March 22, 2013, in Detroit, Michigan. On April 8, 2013, I learned that the Judicial Selection Commission had recommended my name to Senators Levin and Stabenow and that the Senators had forwarded my name to the White House for consideration. Since April 8, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 16, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 25, 2013, the President submitted my nomination to the Senate.

d. 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. 1/2013

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
LEVY, JUDITH E.	UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN	07/25/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
United States District Judge Nominee	☑ Nomination Date 07/25/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 07/19/2013
7. Chambers or Office Address		
211 West Forst Street, Suite 2001, Detroit, MI 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.*

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2013	Adjunct Professor of Law at the University of Michigan Law School through April 2014
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting LEVY, JUDITH E.	Date of Report 07/25/2013

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 Michigan Law School - teaching	$39,477.00
2.	2012	University of Michigan Law School - teaching	$40,135.00
3.	2013	University of Michigan Law School - teaching	$20,245.00
4.			

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting LEVY, JUDITH E.	Date of Report 07/25/2013

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 LEVY, JUDITH E.	Date of Report 07/25/2013

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. Pangea Partnership	B	Interest	M	T					
2. RiverSource Life Insurance Co. - Variable Universal Life Ins	A	Int./Div.	J	T					
3. -- Fixed Account									
4. -- Janus Aspen Overseas									
5. -- Pimco VIT All Asset									
6. Columbia Money Market Fund	A	Interest	J	T					
7. University of Michigan Credit Union - Cash Accounts	A	Interest	J	T					
8. CREF Bond Market Account		None	J	T					
9. CREF Global Equities Account		None	J	T					
10. CREF Inflation Linked Bond Account		None	J	T					
11. CREF Stock Account		None	L	T					
12. TIAA Traditional Annuity		None	K	T					
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting LEVY, JUDITH E.	Date of Report 07/25/2013

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting LEVY, JUDITH E.	Date of Report 07/25/2013

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/ JUDITH E. LEVY

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		11	821	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		87	808	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		125	120
Real estate owned – personal residence		193	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance		17	981				
Other assets itemize:							
Thrift Savings Plan		372	792				
Pangea Partners, L.P.		119	144				
				Total liabilities		125	120
				Net Worth		677	426
Total Assets		802	546	Total liabilities and net worth		802	546
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	
CREF Bond Market Account	$ 157
CREF Global Equities Account	121
CREF Inflation Linked Bond Account	120
CREF Stock Account	71,696
TIAA Traditional Annuity	15,714
Total Listed Securities	$ 87,808

AFFIDAVIT

I, JUDITH ELLEN LEVY, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 25, 2013
(DATE)

Judith Ellen Levy
(NAME)

Kathleen M. Robinson
(NOTARY)

KATHLEEN M. ROBINSON
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Oct 20, 2018
ACTING IN COUNTY OF

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Laurie Jill Michelson

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.

   Office: United States District Court for the Eastern District of Michigan
   Theodore Levin United States Courthouse
   231 West Lafayette Boulevard
   Room 648
   Detroit, Michigan 48226

   Residence: West Bloomfield, Michigan

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

   1967; 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.

   1989 – 1992, Northwestern University School of Law; J.D., 1992

   1985 – 1989, University of Michigan; A.B. (with honors), 1989

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
United States District Court for the Eastern District of Michigan
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Room 648
Detroit, Michigan 48226
United States Magistrate Judge

1993 – 2011, Summer 1991
Butzel Long
150 West Jefferson Avenue
Suite 100
Detroit, Michigan 48226
Shareholder (2000 – 2011)
Associate Attorney (1993 – 2000)
Summer Associate (Summer 1991)

Spring 2006, Spring 2005, Fall 2004, Fall 2003
Oakland University
2200 North Squirrel Road
Rochester Hills, Michigan 48309
Adjunct Professor

1992 – 1993
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart United States Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202
Law Clerk to the Honorable Cornelia G. Kennedy

Summer 1990
Maroko, Landau and Posner, P.C. (now Maroko & Landau)
31731 Northwestern Highway
Suite 155W
Farmington Hills, Michigan 48334
Law Clerk

Summer 1989
City of Bloomfield Hills
45 East Long Lake Road
Bloomfield Hills, Michigan 48303
Summer Camp Director

Other Affiliations (Uncompensated):

1999 – present
Eton Academy
1755 Melton Road
Birmingham, Michigan 48009
Advisory Board (2006 – present)
Board of Trustees (1999 – 2006)

2001 – 2012
Federal Bar Association, Eastern District of Michigan Chapter
P.O. Box 20759
Ferndale, Michigan 48220
Immediate Past President (2011 – 2012)
President (2010 – 2011)
President-Elect (2009 – 2010)
Secretary (2008 – 2009)
Treasurer (2007 – 2008)
Program Chair (2006 – 2007)
Board Member (2001 – 2006)

Late 1990s – 2000
Michigan Freedom of Information Act Committee
Address unknown
Board Member

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

I have not served in the military. I was not required to register for selective service.

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

Federal Bar Association – Eastern District of Michigan Chapter special recognition for outstanding leadership as the Chapter President (2011)

National Association of Criminal Defense Lawyers Amicus Curiae Committee, Certificate of Appreciation (for Butzel Long lawyers David F. DuMouchel, Laurie J. Michelson, and Mary Mullin) for work preparing an Amicus Brief to the Michigan Supreme Court for the funding of indigent criminal defense services (2011)

Chambers, USA – America's Leading Lawyers for Business (2010)

Michigan Super Lawyers (2010)

Best Lawyers in America (2009)

Living by Butzel's Value Award (2008)

Northwestern University School of Law Review, Associate Articles Editor (1991 – 1992)

University of Michigan, Phi Beta Kappa (1989)

University of Michigan, Golden Key National Honor Society (1989)

University of Michigan, Mortar Board (1989)

University of Michigan, Angell Scholar (1985 – 1989)

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

American Bar Association
- Communications Law Forum Governing Committee (2005 – 2007)
- Communications Law, Training and Development Committee
  - Immediate Past Chair (2008)
  - Chair (2006 – 2008)
  - Vice-Chair (2002 – 2006)

Detroit Bar Association (approximately 2006 – 2011)

Federal Bar Association – Eastern District of Michigan Chapter
- Immediate Past President (2011 – 2012)
- President (2010 – 2011)
- President-Elect (2009 – 2010)
- Secretary (2008 – 2009)
- Treasurer (2007 – 2008)
- Program Chair (2006 – 2007)
- Board Member (2001 – 2006)
- Co-Chair, Bench-Bar Conference (2010 – 2011)
- Co-Chair, Annual Dinner Committee (2001 – 2006)
- Cook-Friedman Civility Award, Selection Committee Member (2011, 2013)
- Barbara J. Rom Award for Bankruptcy Excellence, Selection Committee Member (2012)

Federal Magistrate Judges Association (2011 – present)

Media Law Resource Center, Entertainment Law Subcommittee (2007 – 2011)

Michigan Freedom of Information Act Committee
Board Member (late 1990s – 2000)

State Bar of Michigan, Sections: Arts, Communications, Entertainment and Sports; Intellectual Property (1992 – present)

10. Bar and Court Admission:

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

Michigan (1992)

There have been no lapses in membership.

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

United States Court of Appeals for the Sixth Circuit (1993)
United States District Court for the Eastern District of Michigan (1993)
United States District Court for the Western District of Michigan (2003)

There have been no lapses in membership for the above listed courts.

11. Memberships:

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

American Inn of Court/University of Detroit Chapter, Master of the Bench and Bar (2011 – present)

Eton Academy (1999 – present)
Advisory Board (2006 – present)
Board of Trustees (1999 – 2006)

Franklin Hills Country Club (2000 – present)
Greens Committee (2006 – present)

Northwestern University School of Law
Detroit Alumni Club (April 2013 – present)
Alumni Recruiter (1995 – 2010)

Old Newsboys' Goodfellow Fund of Detroit (1993 – present)

Women's District Golf Association of Detroit (2005 – present)

Women in Communications (1990s)

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

The Women's District Golf Association of Detroit's membership remains restricted to women. To my knowledge, none of the other 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. <u>Published Writings and Public Statements</u>:

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.

President's Column, *"Media and the Law": Lessons Learned from the Bench-Bar Conference*, FBA NEWSL. (Federal Bar Association – Eastern District of Michigan Chapter), Summer 2011. Copy supplied.

President's Column, *Preventing "Civil Litigation" from Becoming an Oxymoron*, FBA NEWSL. (Federal Bar Association – Eastern District of Michigan Chapter), Spring 2011. Copy supplied.

President's Column, *Membership Does Indeed Have Its Rewards*, FBA NEWSL. (Federal Bar Association – Eastern District of Michigan Chapter), Winter 2011. Copy supplied.

President's Column, *Say Yes To [The Eastern District of] Michigan*, FBA NEWSL. (Federal Bar Association – Eastern District of Michigan Chapter), Fall 2010. Copy supplied.

With Louis Petrich, *Copyright Infringement: The Standards in Your Circuit*, Media Law Resource Center Committee Report, Dec. 2007. Copy supplied.

With James E. Stewart, *Pure Opinion: Is* Ollman v. Evans *Making a Comeback?* 21 COMM. LAW 9 (2004). Copy supplied.

With J. Michael Huget, *Ideas Are Not So Free Anymore: Advice for Misappropriation Claims*, MICH. LAW. WKLY., Summer 2003. Copy supplied.

Talk Show Exonerated: Jenny Jones Show Not Liable for Guest's Murder, Libel Defense Resource Center MediaLawLetter, Nov. 2002. Copy supplied.

With James E. Stewart, *Don't Blame the Messenger*, 81 MICH. B.J. 46 (2002). Copy supplied.

J. Michael Huget & Laurie J. Michelson, *The Famous Face Obstacles to Their Rights of Publicity*, ABA Advertising Law Subcommittee (Summer 2000). I have been unable to locate a copy.

With Leonard M. Neihoff, *Leaving the Watchdog Outside*, 78 MICH. B.J. 996 (Sept. 1999). Copy supplied.

With James E. Stewart, *Reining in the Neutral Reportage Privilege*, 17 COMM. LAW 13 (Summer 1999). Copy supplied.

The Famous Fight to Control Their Rights, ABA Advertising Law Subcommittee (Summer 1998). I have been unable to locate a copy.

With James E. Stewart, *Cyberspace Defamation*, 75 MICH. B.J. 510 (June 1996). Copy supplied.

With James E. Stewart, *Cyberspace Defamation*, INFOTECHNOLOGY L. UPDATE, Apr. 1995. Copy supplied.

With James E. Stewart and Omar N. Chaudhary, *Survey of Michigan Employment Libel Law*, *in* LIBEL DEFENSE RESOURCE CENTER SURVEY (Media Law Resource Center & Oxford Press, 1996 – 2011). The survey consists of a template outline that is updated each year with new cases decided on various media law issues. Thus, each yearly edition of the survey is similar and is available in the Media Law Resource Center Publications. Copy of 2010 edition supplied.

With James E. Stewart and Omar N. Chaudhary, *Survey of Michigan Law of Privacy and Other Related Media Torts*, *in* LIBEL DEFENSE RESOURCE CENTER SURVEY (Media Law Resource Center & Oxford Press, 1994 – 2011). The survey consists of a template outline that is updated each year with new cases decided on various media law issues. Thus, each yearly edition of the survey is similar and is available in the Media Law Resource Center Publications. Copy of 2010 edition supplied.

With James E. Stewart, Omar N. Chaudhary, and Douglas R. Pierce, *Survey of Sixth Circuit Law of Privacy*, *in* LIBEL DEFENSE RESOURCE CENTER SURVEY (Media Law Resource Center & Oxford Press, 1993 – 2011). The survey consists of a template outline that is updated each year with new cases decided on various media law issues. Thus, each yearly edition of the survey is similar and is available in the Media Law Resource Center Publications. Copy of 2010 edition supplied.

With James E. Stewart, Omar N. Chaudhary, and Douglas R. Pierce, *Survey of Sixth Circuit Libel Law*, *in* LIBEL DEFENSE RESOURCE CENTER SURVEY (Media Law Resource Center & Oxford Press, 1994 – 2011). The survey consists of a template outline that is updated each year with new cases decided on various media law issues. Thus, each yearly edition of the survey is similar and is available in the Media Law Resource Center Publications. Copy of 2010 edition 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.

Every year our local Federal Bar Association prepares and submits to the National Federal Bar Association a "Chapter Activity Awards Application" that provides a "year in review." I assisted in the preparation of the 2010 – 2011 report. At our Chapter's Past President Luncheon, during which the slate of new officers is voted on, we also provide a summary of all of our Chapter's major events for the prior year. Copies of these reports are supplied.

To the best of my recollection, I have not prepared or contributed in the preparation of any other reports, memoranda, or policy statements on behalf of any bar association, committee, conference, or organization.

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 testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, nor has anyone presented any such testimony, official statements, or communications on my behalf.

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

Having searched my memory, records, and publicly available Internet sources, I have listed the speaking engagements that I have been able to recall, identify, or locate. While I have attempted to include each presentation, it is possible that there are a few others for which I have no record or recollection. In those instances where I used notes or an outline that I have retained, I have supplied a copy.

2011 – present: I have presided over numerous Naturalization Ceremonies at which I deliver opening remarks prior to administering the oath of citizenship. The ceremonies take place at the federal courthouse in Detroit, Michigan on Mondays and Thursdays and are presided over by the district judge or magistrate judge on duty that week. Additional ceremonies take place throughout the year at various venues in the Eastern District of Michigan (e.g., Comerica Park, Southfield Pavilion, Citizenship and Immigration Services Center). Sample remarks supplied.

June 18, 2013: Panelist with a number of other district court and magistrate judges from the Eastern District of Michigan in which we explained our education and career paths to a group of Detroit-area high school students as part of the Just the Beginning Foundation Summer Legal Institute in Detroit, Michigan. I have no notes, transcripts or recordings. The address of the Eastern District of Michigan Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

January 17, 2013: Panelist, "The Role of Social Media in Federal Litigation," Eastern District of Michigan Federal Bar Association and Cooley Law School Intellectual Property Committee, Auburn Hills, Michigan. I have no notes, transcripts, or recordings. The address of the Eastern District of Michigan Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

November 14, 2012: Panelist, "Best Practices for Pretrial Proceedings in a Complex Case," Complex Litigation Committee of the Eastern District of Michigan Federal Bar Association, Detroit, Michigan. I have no notes, transcripts or recordings. The address of the Eastern District of Michigan Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

October 18, 2012: Welcome remarks at the second "Judicial Family Reunion" sponsored by the Law Clerk Committee of the Eastern District of Michigan Federal Bar Association, Detroit, Michigan. Notes supplied.

July 10, 2012: Panelist with a number of other district court and magistrate judges from the Eastern District of Michigan in which we explained our education and career paths to a group of Detroit-area high school students as part of the Just the Beginning Foundation Summer Legal Institute in Detroit, Michigan. I have no notes, transcripts or recordings. The address of the Eastern District of Michigan Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

May 11, 2012: Panelist, "Meet the Magistrate Judges," Labor Law Committee of the Eastern District of Michigan Federal Bar Association, Detroit, Michigan. The panel discussion covered topics that included the handling of discovery, effective brief-writing, and settlement. I have no notes, transcripts or recordings. The address of the Eastern District of Michigan Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

April 30, 2012: Speaker, "Do's and Don'ts" of practicing in federal court, Butzel Long Litigation Group, Detroit, Michigan. Notes supplied.

March 8, 2012: Panelist for a presentation on issues facing female lawyers, sponsored by the Diversity Committee of the Eastern District of Michigan Federal Bar Association. The panel discussion was part of "A Special Day at the Courthouse" in Detroit, Michigan for minority law students from Cooley Law School, University of Detroit Mercy School of Law, and Wayne State University School of Law. I have no notes, transcripts or recordings. The address of the Eastern District of Michigan Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

February 13, 2012: Instructor for the Eastern District of Michigan Federal Bar Association Trial Practice Mentoring Program, Detroit, Michigan. This program is for newer lawyers to hone their trial skills by participating in a mock trial. I have no notes, transcripts or recordings. The address of the Eastern District of Michigan Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

October 19, 2011: Introductory remarks at the Intellectual Property Law Seminar for federal judges and law clerks sponsored by the Law Clerk and Intellectual Property Committees of the Eastern District of Michigan Federal Bar Association, Detroit, Michigan. Notes supplied.

July 20, 2011: Speaker, "Meet the Bench Brown Bag Lunch Series," United States District Court for the Eastern District of Michigan, Detroit, Michigan. As a new magistrate judge, I met with federal law clerks in the federal courthouse in Detroit, Michigan to introduce myself and explain my career as a lawyer and path to becoming a judge. I have no notes, transcripts or recordings. The address of the United States District Court for the Eastern District of Michigan is 231 West Lafayette Boulevard, Detroit Michigan 48226.

June 9, 2011: Introductory remarks at the Eastern District of Michigan Federal Bar Association's 31st Annual Dinner in Detroit, Michigan. Notes supplied.

April 28, 2011: Opening remarks for the Eastern District of Michigan Federal Bar Association Bench/Bar Conference on *Media and the Law*, Dearborn, Michigan. Notes supplied.

April 21, 2011: Introductory remarks at the Eastern District of Michigan Federal Bar Association Leonard R. Gilman Award Luncheon, Detroit, Michigan. Notes supplied.

March 31, 2011: I gave a speech during my Magistrate Judge Investiture Ceremony at the federal courthouse in Detroit, Michigan. Copy supplied.

March 2, 2011: Introductory remarks at the Cooley Law School Motion Day sponsored by the Eastern District of Michigan Federal Bar Association, Auburn Hills, Michigan. Notes supplied.

February 23, 2011: Introductory remarks at the Eastern District of Michigan Federal Bar Association Wade H. McCree Jr. Award Luncheon, Detroit, Michigan. Notes supplied.

November 18, 2010: Introductory remarks at the Eastern District of Michigan Federal Bar Association and Historical Society Luncheon, Detroit, Michigan. Notes supplied.

September 15, 2010: Introductory remarks at the Eastern District of Michigan Federal Bar Association State of the Court Lunch in Detroit, Michigan, during which the chapter recognized lawyers who provided pro bono representation during the year and received the state of the court report from the Chief Judge. I have no notes, transcripts, or recordings. The address of the Eastern District of Michigan Federal Bar Association is P.O. Box 20759, Ferndale, Michigan 48220.

July 1, 2010: Opening remarks at the Eastern District of Michigan Federal Bar Association Annual FBA Summer Associate/Law Clerk Program, Detroit, Michigan. Notes supplied.

June 24, 2010: Speaker at the Eastern District of Michigan Federal Bar Association's 30th Annual Dinner, Detroit, Michigan. Notes supplied.

Summer 2010: Panelist, "Tips for Interviewing," Eastern District of Michigan Federal Bar Association, Detroit, Michigan. The panel discussed the "do's and don'ts" of interviewing for law firm, government, and judicial clerkship positions. Notes supplied.

March 16, 2010: Welcome remarks at the inaugural "Judicial Family Reunion," Law Clerk Committee of the Eastern District of Michigan Federal Bar Association, Detroit Michigan. Notes supplied.

April 2009: Speaker, "Dealing With The Judicial Tenure Commission," Warren, Michigan. PowerPoint supplied.

March 23, 2007: Speaker, "Navigating a White Collar Case: Lessons Learned from the TAP Trial," Lex Mundi Client Summit, Pebble Beach, California. PowerPoint supplied.

February 10, 2007: Opening remarks about the format of the program and to welcome the faculty and participants at the American Bar Association Forum on Communication Law, Training and Advocacy Committee's Media Advocacy Workshop in Key Largo, Florida. I have no notes, transcripts, or recordings. Forum on Communications Law, American Bar Association, 321 North Clark Street, Chicago, Illinois 60654.

2007: Presenter, "Media Law Basics," *The Detroit News*, Detroit, Michigan. PowerPoint supplied.

Winter 2005: Presenter, "Civility, Ethics and Professionalism: Real World Dilemmas," University of Michigan Law School, Ann Arbor, Michigan. PowerPoint supplied.

Fall 2005: Presenter, "Individual Defendants are Different: Lessons Learned from the TAP Trial," State Bar of Michigan, Institute of Continuing Legal Education, Troy, Michigan. PowerPoint supplied.

Fall 2005: Presentation to first and second year law students at Wayne State University School of Law in Detroit, Michigan regarding interviewing for summer associate positions. I have no notes, transcripts, or recordings. Wayne State University Law School, 471 West Palmer Street, Detroit, Michigan 48202.

Winter 2004: Presenter, "TAP Case: Lessons Learned," University of Michigan Law School, Ann Arbor, Michigan. PowerPoint supplied.

November 10, 2004: Panelist, "Individual v. Corporate Criminal Liability: Lessons from the TAP Trial," Boston Chapter of the American Bar Association White Collar Crime Committee, Young Lawyers Subcommittee, Boston Massachusetts. I have no notes, transcript or recording, but the presentation would have been substantially similar to the ones in 2004 and Fall 2005 and on March 23, 2007, for which slides have been provided.

June 2003: Panelist, "The Year in Copyright Law," Advanced Copyright/Trademark Seminar, American Intellectual Property Law Association, San Diego, California. Slides supplied.

December 13, 1997: Presenter, "Whose Decision is it Anyway? Public Bodies Refuse to Make FOIA Decisions," Annual Meeting of the Michigan Freedom of Information Act Committee, Detroit, Michigan. 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.

Jo Mathis, *Perfect Fit: Detroit Attorney Well Suited for Federal Magistrate Bench*, DETROIT LEGAL NEWS, Aug. 22, 2011. Copy supplied.

John Minnis, *U-M's Coleman Recipient of McCree Award*, DETROIT LEGAL NEWS, Feb. 28, 2011. Copy supplied.

Taryn Hartman, *Profile in Brief: Laurie Michelson – Femme Federal*, DETROIT LEGAL NEWS, July 14, 2010. Copy supplied.

Joseph Deinlein, *Marine City Leader Will Not Release Suspension Data*, TIMES HERALD (Port Huron, Mich.), Jan. 19, 2005. Copy supplied.

Deborah Davis Locker, *Closed Sessions Rile Ex-Hartland Trustee; Vague Motions Made Later are Questioned to No Avail, He Says*, THE DETROIT NEWS, Oct. 4, 2002. Copy supplied.

Steve Pardo, *Anonymous Council Vote Disputed; Open Meetings Act Violated in Howell, Attorney Charges*, THE DETROIT NEWS, Aug. 22, 2002. Copy supplied.

Karen Bouffard, *Ex-Howell Mayor Named to City Council; Appointment Made with No Discussion by Secret 5-1 Vote*, THE DETROIT NEWS, Aug. 14, 2002. Copy supplied.

Brian Harmon, *Schools Deny Sitting on Data*, THE DETROIT NEWS, Nov. 22, 2000. Copy supplied.

No Title, THE ASSOCIATED PRESS STATE & LOCAL WIRE, July 19, 2000. Copy supplied.

Marsha Low, *Southfield Sued Over Secret Meetings*, DETROIT FREE PRESS, July 7, 1998. Copy supplied.

Southfield City Councilwoman Files Complaint Against The City of Southfield and the City Council, PR NEWSWIRE ASS'N, INC., July 2, 1998. 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 by the United States District Judges for the Eastern District of Michigan as a United States magistrate judge in February 2011 and continue to serve in that position.

Every case that is filed in the Eastern District of Michigan is randomly assigned to an Article III district judge, as well as a magistrate judge. The case, or portions of the case, are referred by a district judge to a magistrate judge to handle pursuant to 28 U.S.C. § 636. On the civil side, with the consent of the parties, magistrate judges may adjudicate cases in the same manner as a district judge, including presiding over jury or non-jury trials. Additionally, social security disability appeals, prisoner civil rights cases, and pro se matters are typically referred for all pre-trial proceedings. The district judges also refer dispositive and discovery motions in most other civil cases involving federal statutes and diversity of citizenship (e.g., employment discrimination, intellectual property, civil rights, ERISA, consumer protection, student loans).

On the criminal side, magistrate judges handle misdemeanor and petty offense cases (including pleas and sentencing), review arrest and search warrants for probable cause, and issue criminal complaints. The magistrate judges have "criminal duty" one week per month, when we also handle initial appearances, arraignments, preliminary examinations, removals, supervised release and probation violations, and detention hearings for all defendants arrested in this District on federal criminal charges. The magistrate judges also conduct pretrial conferences, settlement conferences and voir dire, and preside at Naturalization Ceremonies.

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

In my two years as a magistrate judge, I have presided over one criminal trial that went to verdict. I have also entered judgments, following sentencing, in five misdemeanor criminal cases. I have prepared reports and recommendations in well over 100 summary judgment and default judgment cases.

i. Of these, approximately what percent were:

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

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. *Digital Generation, Inc. v. Boring*, No. 12-15271, 2013 WL 4483497 (E.D. Mich. Mar. 28, 2013), *report and recommendation adopted*, 2013 WL 4483497 (E.D. Mich. Aug. 20, 2013).

Digital Generation and its ex-employee, Boring, arbitrated Boring's alleged breach of a non-compete, non-solicitation agreement. The arbitrator ruled in favor of Digital Generation and awarded the company over $3.5 million. Digital Generation then filed a petition to affirm the arbitral award in the Eastern District of Michigan. Boring, believing that had the arbitrator not manifestly disregarded Texas law governing damages her award would have been as low as $16,000, filed a motion to vacate the award. The district judge referred that motion to me. Mindful of the high threshold to establish a manifest disregard of the law, I reasoned that while Boring's reading of Texas law had support, the arbitrator did not ignore clearly established precedent in interpreting the Texas precedents differently. Boring filed objections, but the district judge overruled them and adopted my report and recommendation.

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Counsel for Boring:

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2. *Magna Donnelly Corp. v. 3M Co.*, No. 07-10688, 2012 WL 2952382 (E.D. Mich. June 15, 2012) (Michelson, M.J.) (claim construction), *report and recommendation clarified*, 2012 WL 3029582 (E.D. Mich. July 3, 2012) (Michelson, M.J.), *and report and recommendation adopted*, 2012 WL 2946129 (E.D. Mich. July 19, 2012) (Roberts, J.)

Magna Donnelly Corp. v. 3M Co., No. 07-10688, 2012 WL 882799 (E.D. Mich. Feb. 24, 2012) (Michelson, M.J.) (resolving motion for contempt), *report and recommendation adopted*, 2012 WL 858628 (E.D. Mich. Mar. 14, 2012) (Roberts, J.)

Magna Donnelly Corp. v. 3M Co., No. 07-10688 (E.D. Mich. Feb. 1, 2012). Copy supplied.

Magna Donnelly manufactures rearview mirrors for automobiles and holds a patent for a rearview mirror mounting system. Magna sued 3M for patent infringement based on 3M's manufacture and sale of adhesives used to mount rearview mirrors to windshields. I handled a number of significant pre-trial matters in this case. First, I issued an opinion and order resolving 3M's motion to compel Magna to further detail its infringement contentions. Later in the case, 3M filed an expedited motion for contempt and sanctions against Magna asserting that Magna had violated the terms of a scheduling order requiring the parties to provide their respective interpretations of disputed patent claim terms. I recommended that Magna not be held in contempt, and the district judge adopted my report and recommendation. Most significantly, I authored a report and recommendation, following extensive briefing and lengthy oral argument, providing my interpretations of three disputed patent claim terms. My interpretations were adopted by the district judge. The case is still ongoing, but, recently, I held a settlement conference and the parties are now working toward finalizing settlement terms.

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Deborah Pollack-Milgate
Barnes & Thornburg LLP
11 South Meridian Street
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3. *Third Degree Films v. Does 1-36*, No. 11-15200, 2012 WL 2522151 (E.D. Mich. May 29, 2012).

This was one of hundreds of cases filed in federal courts across the nation where an adult-film company alleged that defendants used the "BitTorrent" communication protocol to download an adult-film without paying for it. The federal courts are split as to whether the adult-film companies can join multiple individuals in a single copyright-infringement lawsuit on the basis that the individuals all participated in the same BitTorrent "swarm" to share the exact same digital copy of the film. After reviewing the case law at length, I found that joinder was proper under Federal Rule of Civil Procedure 20(a). Immediately after this ruling, plaintiff voluntarily dismissed the case. The judges in the Eastern District of Michigan remain split on the issue and no Circuit Court of Appeals has addressed it.

Counsel for Third Degree Films:

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Southfield, MI 48034
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Counsel for one of the John Does:

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Catherine A. Gofrank Assoc.
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4. *United States v. Gonikman*, No. 05-80187 (E.D. Mich. Aug. 1, 2011). Copy supplied.

In March 2006, Gonikman was indicted on a number of federal crimes related to his alleged participation in a conspiracy to force Eastern European women to work as exotic dancers in the United States from September 2001 to February 2005. Gonikman's wife, son, ex-wife, daughter-in-law and business partner had pled guilty for their participation in the scheme prior to Gonikman's indictment. In January 2005, after many years of back and forth travel, Gonikman did not return to the United States and began residing solely in Ukraine. In January 2011, he was extradited to the United States. Gonikman moved to dismiss the indictment against him on the ground that the nearly five-year delay between his March 2006 indictment and January 2011 arrest constituted a violation of his Sixth Amendment right to a speedy trial. I conducted a two-day evidentiary hearing and subsequently entered a report and recommendation to deny the motion. I found that the Government's evidence supported that Gonikman knew or should have known he had been charged criminally in the United States, that he intentionally remained in Ukraine to avoid arrest, and that the Government pursued him with reasonable diligence. Gonikman entered into a plea agreement before the district judge ruled on his objections to the report and recommendation.

Counsel for Gonikman:

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Counsel for the United States:

Mark Chutkow
U.S. Attorney's Office

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5. *Devon Industrial Group, LLC v. Demrex Industrial Services, Inc.*, No. 11-10313 (E.D. Mich. Dec. 6, 2012). Copy supplied.

Devon Industrial Group, LLC v. Demrex Industrial Services, Inc., No. 11-10313 (E.D. Mich. Nov. 22, 2011) (Michelson, M.J.), *report and recommendation adopted as modified*, No. 11-10313 (E.D. Mich. Dec. 21, 2011) (Cox, J.). Copies supplied.

Devon Industrial and Ford Motor Company believed that Demrex Industrial had not performed its contractual duties to prepare a Ford automotive plant for resale. Demrex filed breach-of-contract counterclaims. Over $10 million was at issue in the case. For about a year-and-a-half, I was responsible for resolving several discovery disputes and two motions by Devon and Ford for judgment in their favor as a sanction for Demrex's failure to comply with its discovery obligations. I ultimately recommended that Demrex's counterclaims against Devon and Ford, potentially worth millions, be dismissed as a sanction for Demrex's repeated failure to fully participate in discovery. Before the district judge ruled on the report and recommendation, the parties began significant settlement discussions. The district judge stayed the case so these discussions could continue, which eventually resulted in a settlement agreement.

Counsel for Devon:

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Keefe A. Brooks
Brooks Wilkins Sharkey & Turco, PLLC
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Counsel for Ford:

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Counsel for Demrex:

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6. *Get Back Up, Inc. v. City of Detroit*, 878 F. Supp. 2d 794 (E.D. Mich. 2012).

Get Back Up is a substance abuse rehabilitation facility located near a historic residential neighborhood in Detroit, Michigan. After failing to obtain the permit in state administrative and state court proceedings, Get Back Up filed a suit in the Eastern District of Michigan to enjoin the City of Detroit from enforcing certain provisions of its zoning ordinance. By stipulation of the parties and order of the district judge, I was granted full authority to decide Get Back Up's motion for preliminary injunction. The City opposed the preliminary injunction solely on the grounds that Get Back Up's suit was precluded by the prior state court decisions. After reviewing Michigan law on claim preclusion as it applies to administrative proceedings appealed to the state courts, I determined that claim preclusion did not apply in this case. Pursuant to the stipulation of the parties, I then awarded a preliminary injunction to Get Back Up that precluded the City from seeking to shut down the facility pending a final resolution of the case on the merits. Subsequently, the parties filed cross motions for summary judgment and the district judge ruled in favor of the City of Detroit. Get Back Up has filed a motion for reconsideration of the summary judgment decisions, which remains pending, and it has also filed an appeal to the Sixth Circuit.

Counsel for Get Back Up:

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Counsel for the City of Detroit:

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7. *United States v. Jenkins*, No. 1801097 (Michelson, M.J.), *appeal denied*, No. 2:12-mc-50376 (E.D. Mich. June 17, 2013) (Battani J.). Copy supplied.

Many years ago, defendant Jenkins was convicted on federal drug charges. Over the last several years, Jenkins has protested in various federal buildings in Detroit what he believes was improper behavior by the United States Attorney in a case against another suspect. In September 2011, Jenkins was arrested after visiting the building where the United States Attorney's Office is located in Detroit, Michigan because he failed to leave the premises when a Court Security Officer ("CSO") asked him to do so. He was charged with the misdemeanor offense of failing to conform with signs and directions of a federal security officer in violation of 41 C.F.R. § 102-74.385. I conducted a two-day bench trial and heard testimony from Jenkins, federal agents, CSOs, and court personnel. Defendant argued there was insufficient evidence that he knew (1) he was on federal property, (2) CSOs are authorized federal police authorities, and (3) what conduct was prohibited. I disagreed and found that the government established beyond a reasonable doubt that Jenkins violated 41 C.F.R. § 102-74.385. I ordered Jenkins to pay a $25 fine. No custodial sentence was imposed. On June 17, 2013, Jenkins' appeal was denied.

Counsel for the United States:

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Counsel for Jenkins:

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8. *In the Matter of the Extradition of S. Struga*, No. 2:11-mc-51540 (E.D. Mich. Dec. 19, 2011) (Michelson, M.J.), *aff'd*, No. 2:11-mc-51540 (E.D. Mich. Jan. 24, 2012) (Rosen, J.). Copies supplied.

On December 4, 2001, Struga was convicted *in absentia* in an Albanian court of intentional homicide arising out of a 1989 bar fight in Albania. Authorities in Albania issued a warrant for Struga's arrest on February 1, 2002. Ten years later, he was arrested in the Eastern District of Michigan. The Government of Albania, through the United States Attorney's Office, sought to extradite Struga. As the duty magistrate judge at the time of Struga's bond request, I conducted the proceedings on his motion for bond pending the extradition hearing. The standard for bond pending an extradition hearing is very high. Indeed, "there is a presumption against bail in extradition cases and only 'special circumstances' justify release on bail." *Wright v. Henkel,* 190 U.S. 40, 63 (1903). I found that Struga had not shown the requisite special circumstances and ordered Struga detained. This ruling was affirmed by the district judge. Subsequently, the extradition proceeding was assigned in due course to another judge. I understand that the proceeding is ongoing.

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Counsel for Struga:

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9. *Zanecki v. Health Alliance Plan of Detroit*, No. 12-13234, 2013 WL 2626717 (E.D. Mich. May 20, 2013), *report and recommendation adopted*, 2013 WL 2626717 (E.D. Mich. June 11, 2013).

Zanecki died days after a stent was placed in one of his cerebral arteries. Zanecki's estate has filed at least three suits arising out of his death. In the suit before me, the estate asserted, among other things, that the health maintenance organization that provided Zanecki Medicare benefits, Health Alliance Plan of

Detroit ("HAP"), was negligent in approving the stent procedure. The estate also sued the United States pursuant to the Federal Tort Claims Act ("FTCA"): it argued that as a Part C Medicare Advantage Organization, HAP was an agent or instrumentality of the United States within the meaning of the FTCA. It appears that no court has addressed this issue. Upon reviewing the Medicare Act and accompanying regulations, I rejected the estate's claim that HAP was an instrumentality or agent under the FTCA because it made Medicare benefit decisions in its role as a Medicare Advantage Organization. The district judge adopted my report and recommendation.

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Murphy:

Pro Se

10. *Barrette Outdoor Living, Inc. v. Mich. Resin Representative, LLC*, No. 11-13335, 2013 WL 3983230 (E.D. Mich. Apr. 26, 2013) (Michelson, M.J.), *report and recommendation adopted*, 2013 WL 3983230 (E.D. Mich. Aug. 1, 2013) (Cook, J.)

Barrette Outdoor alleges that while Lemanski was employed as a resin purchaser

for the company, he directed Michigan Resin Representatives ("MRR"), a company allegedly run by Lemanski's half-sister and her roommate, to purchase millions of pounds of resin. Then, allegedly at Lemanski's direction, Barrette purchased that resin from MRR for over $400,000 more than what MRR had paid. Barrette believes that some combination of Lemanski, his half-sister, and/or her roommate pocketed this money. As discovery progressed, Barrette believed it could show that Lemanski had deleted evidence of this alleged scheme from his work computer and personal laptop and discarded a cell phone he used in furtherance of the scheme. Accordingly, Barrette moved for spoliation sanctions against Lemanski. I held a multi-day evidentiary hearing, which included the submission of both documentary evidence and witness testimony. I then issued a report and recommendation finding that Lemanski had acted in bad faith when he erased files from his personal laptop and failed to preserve his cell phone. Accordingly, I recommended sanctioning Lemanski monetarily and with a mandatory adverse inference to be given at trial. The district judge adopted my report and recommendation.

Counsel for Barrette Outdoor:

Jordan S. Bolton
Clark Hill
500 Woodward Avenue
Suite 3500
Detroit, MI 48226
313-965-8300

Counsel for John Lemanski, Jr.:

Robert J. Morad
Miller Canfield
840 W. Long Lake Road
Suite 200
Troy, MI 48098
248-879-2000

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. *Smith v. Detroit Entm't, LLC*, 919 F. Supp. 2d 883 (E.D. Mich. Oct. 31, 2012) (Michelson, M.J.), *report and recommendation adopted*, 919 F. Supp. 2d 883 (E.D. Mich. Jan. 9, 2013) (Murphy, J.).

Counsel for State of Michigan, Department of Licensing and Regulatory Affairs, Wage and Hour Division:

Emily A. McDonough
Jason D. Hawkins
Michigan Department of Attorney General
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Counsel for Detroit Entertainment, LLC:

Thomas G. Kienbaum
Kienbaum, Opperwall, Hardy & Pelton, P.L.C.
280 North Old Woodward Avenue
Suite 400
Birmingham, MI 48009
(248) 645-0000

2. *Patrick Collins, Inc. v. John Does 1-33*, No. 12-13309, 2013 U.S. Dist. LEXIS 50674 (E.D. Mich. Feb. 27, 2013).

Counsel for Patrick Collins, Inc.:

Paul J. Nicoletti
Nicoletti & Associates, PLLC
36880 Woodward Avenue
Suite 100
Bloomfield Hills, MI 48304
(248) 203-7800

Counsel for John Doe 28:

Elizabeth A. Downey
Elizabeth A. Downey, P.C.
30300 Northwestern Highway
Suite 200
Farmington Hills, MI 48334
(248) 539-7404

Counsel for John Doe 8 and John Doe 27:

John T. Hermann
2684 West Eleven Mile Road
Suite 100
Berkley, MI 48072
(248) 591-9291

3. *Erard v. Johnson*, 905 F. Supp. 2d 782 (E.D. Mich. Sept. 20, 2012) (Michelson, M.J.), *report and recommendation adopted*, 905 F. Supp. 2d 782 (E.D. Mich. Oct. 29, 2012) (Murphy, J.).

Erard:

Pro Se

Counsel for Michigan Secretary of State:

Ann M. Sherman
Michigan Department of Attorney General
P.O. Box 30212
Lansing, MI 48909
(517) 241-8887

4. *Malaj v. Adduci*, No. 12-11495 (E.D. Mich. Aug. 6, 2012) (Michelson, J.), *report and recommendation denied as moot*, No. 12-11495 (E.D. Mich. Apr. 12, 2013) (Goldsmith, J.). Copies supplied.

Counsel for Malaj:

Marshal E. Hyman
Marshal Hyman Assoc.
3250 West Big Beaver Road
Suite 529
Troy, MI 48084
(248) 643-0642

Counsel for Adducci:

Derri T. Thomas
U.S. Attorney's Office
Eastern District of Michigan
211 West Fort Street
Suite 2001
Detroit, MI 48226
(313) 226-9153

5. *Clardy v. Mullens*, No. 12-11153, 2012 WL 5188012 (E.D. Mich. Aug. 29, 2012) (Michelson, M.J.), *report and recommendation adopted*, 2012 WL 5187852 (E.D. Mich. Oct. 19, 2012) (Friedman, J.).

Clardy:

Pro Se

Counsel for Defendants Mullens, Merry, and Smith:

Joshua D. Marcum
State of Michigan, Department of Attorney General
Corrections Division
525 West Ottawa Street
Fourth Floor
P.O. Box 30217
Lansing, MI 48909
(517) 335-7021

6. *M.G. v. Comm'r of Soc. Sec.*, 861 F. Supp. 2d 846 (E.D. Mich. Sept. 2, 2011), *report and recommendation adopted*, 861 F. Supp. 2d 846 (E.D. Mich. Mar. 21, 2012).

Counsel for M.G.:

Eva I. Guerra
8884 Akehurst Court
White Lake, MI 48386
(248) 698-1900

Counsel for the Commissioner of Social Security:

Russell Cohen
Assistant Regional Counsel
Office of the Regional Chief Counsel
Social Security Administration
200 West Adams Street
30th Floor
Chicago, Illinois 60606
(877) 800-7578 ext. 19114

7. *Oakland County v. Fed. Nat. Mortg. Ass'n*, 276 F.R.D. 491 (E.D. Mich. 2011).

Counsel for Federal Housing Finance Agency:

Howard Cane
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555 12th Street, NW
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Counsel for County of Oakland:

William H. Horton
Giarmarco, Mullins & Horton, P.C.
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Counsel for Federal National Mortgage Association:

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Detroit, MI 48226
(313) 234-7100

8. *Poole v. Woods*, No. 08-12955, 2011 WL 4502372 (E.D. Mich. Aug. 9, 2011) (Michelson, M.J.), *report and recommendation adopted*, 2011 WL 4502319 (E.D. Mich. Sept. 28, 2011) (Steeh, J.), *aff'd sub nom.*, *Poole v. Mackie*, No. 11-2336, slip order (6th Cir. Aug. 27, 2012) and slip order (6th Cir. May 28, 2013). Copies supplied.

Poole:

Pro Se

Counsel for the Warden:

Andrew L. Shirvell
Michigan Department of Attorney General
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P. O. Box 30217
Lansing, MI 48909
(517) 373-4875

9. *Lamb v. Comm'r of Soc. Sec.*, No. 10-14645, 2011 U.S. Dist. LEXIS 153641 (E.D. Mich. Dec. 1, 2011), *report and recommendation adopted*, 2012 U.S. Dist. LEXIS 25222 (E.D. Mich. Feb. 28, 2012).

Counsel for Lamb:

Norton J. Cohen
Miller Cohen

600 West Lafayette Boulevard
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(313) 964-4454

Counsel for the Commissioner of Social Security:

Jason Scoggins
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Office of the Regional Chief Counsel
Social Security Administration
200 West Adams Street
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Chicago, Illinois 60606
(877) 800-7578 ext. 19160

10. *Infection Prevention Technologies, LLC v. UVAS, LLC*, No. 10-12371, 2011 WL 4360007 (E.D. Mich. July 25, 2011) (Michelson, M.J.), *report and recommendation adopted as modified*, 2011 WL 4360091 (E.D. Mich. Sept. 19, 2011) (Roberts, J.).

Counsel for Infection Prevention Technologies, LLC:

Marc Lorelli
Brooks Kushman
1000 Town Center
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Southfield, MI 48075
(248) 358-4400

Counsel for Lumalier Corporation:

Eric E. Hudson
Butler, Snow, O'Mara, Stevens & Cannada PLLC
6075 Poplar Avenue
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Memphis, TN 38119
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Counsel for UVAS, LLC:

Carol G. Schley
Clark Hill PLC
500 Woodward Avenue
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Detroit, MI 48226
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e. Provide a list of all cases in which certiorari was requested or granted.

To the best of my knowledge, there are no cases that I have been involved with as a judge 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.

To the best of my knowledge, none of my final orders (of which there have been at least 100) have been reversed by the district judge or the Sixth Circuit Court of Appeals. According to Lexis, I have authored approximately 235 reports and recommendations. Of those, the following 11 were either adopted in part or rejected.

Sanders v. Detroit Police Dep't, No. 07-14206, 2013 U.S. Dist. LEXIS 58010 (E.D. Mich. Mar. 18, 2013), *report and recommendation adopted in part and rejected in part*, 2013 U.S. Dist. LEXIS 56858 (E.D. Mich. Apr. 22, 2013).

Despite multiple warnings from the court, the pro se plaintiff in this case continued to file more than 20 improper "motions for judgment." Accordingly, I recommended that, in addition to denying the motion for judgment, the district judge "consider" dismissing the plaintiff's complaint with prejudice as a sanction for his continued disregard of the court's rulings. The district judge noted that the plaintiff has "shown no respect for the court proceedings," but did not believe that dismissal was yet warranted. She warned the plaintiff, however, that further defiance "may result in dismissal of this case."

Fluker v. Comm'r of Soc. Sec., No. 12-10612, 2013 WL 1122876 (E.D. Mich. Feb. 11, 2013) (Michelson, M.J.), *report and recommendation adopted in part*, 2013 WL 1122447 (E.D. Mich. Mar. 18, 2013) (Tarnow, J.).

In this social security disability appeal, I recommended that the decision of the Social Security Commissioner be remanded for further proceedings, including an administrative hearing at which the claimant could more fully develop her testimony regarding how her physical and psychological limitations impacted her ability to work. Although the district judge accepted and adopted the report and recommendation to remand, he instead remanded for an award of benefits.

Zanecki v. Health Alliance Plan of Detroit—Institutional Review Bd., No. 12-13233, 2013 WL 992665 (E.D. Mich. Jan. 17, 2013), *report and recommendation*

adopted in part, rejected in part sub nom., Zanecki v. Institutional Review Bd.: Henry Ford Health Sys. IRB No. 1, 2013 WL 992635 (E.D. Mich. Mar. 13, 2013).

I found that the applicable statute of limitations barred the plaintiff's claims. But because only one of the two defendants moved to dismiss the case on statute-of-limitations grounds, which is an affirmative defense, I did not recommend dismissal of the other defendant. The district judge agreed that the plaintiff's claims were time barred, but concluded that this justified dismissal of both defendants.

Dyer v. Hardwick, No. 10-10130, 2012 WL 4762119 (E.D. Mich. Aug. 3, 2012) (Michelson, M.J.), *report and recommendation adopted in part, rejected in part*, 2012 WL 3695671 (E.D. Mich. Aug. 23, 2012) (Goldsmith, J.).

In this prisoner civil rights case, I issued a report and recommendation to dismiss constitutional claims brought against numerous defendants. As to one claim against one defendant, I acknowledged that the defendant "likely" was entitled to judicial immunity, but "in an act of prudence," I recommended that the defendant provide further evidence that she was the type of prison hearing officer entitled to such immunity. She objected and supplied the district judge with "the evidence that was previously missing." Accordingly, the district judge found the defendant entitled to judicial immunity.

Meehleder v. Comm'r of Soc. Sec., No. 11-12946, 2012 WL 3150808 (E.D. Mich. Apr. 10, 2012) (Michelson, M.J.), *report and recommendation adopted in part, rejected in part*, 2012 WL 3154968 (E.D. Mich. Aug. 2, 2012) (Steeh, J.).

I recommended that the decision of the Social Security Commissioner be remanded with directions to the Commissioner to award the plaintiff disability insurance benefits. Although the district judge accepted and adopted the report and recommendation to remand, he remanded the matter for further proceedings before the Administrative Law Judge instead of for an award of benefits.

Reeves v. Salisbury, No. 11-11830, 2012 WL 3206399 (E.D. Mich. Jan. 30, 2012) (Michelson, M.J.), *report and recommendation adopted in part, rejected in part*, 2012 WL 3151594 (E.D. Mich. Aug. 2, 2012) (Battani, J.).

In this prisoner civil rights case, I recommended granting the defendants' summary judgment motion as to the plaintiff's Eighth Amendment claim but denying the defendants' motion as to the plaintiff's other claims. The district judge adopted my recommendation as to the Eighth Amendment claim, but rejected my recommendation by dismissing all claims against one defendant and the due process claims against another defendant.

Speedshape, Inc. v. Meechan, No. 11-14670, 2011 WL 7821214 (E.D. Mich. Dec. 19, 2011) (Michelson, M.J.), *report and recommendation adopted in part,*

rejected in part, 2012 WL 1672979 (E.D. Mich. May 14, 2012) (Tarnow, J.).

In this action challenging venue, I issued a report and recommendation that first found venue was proper in the Eastern District of Michigan. After analyzing the relevant factors regarding transfer of venue, I recommended that defendant's motion to transfer the case to California be denied. The district judge rejected that portion of the report and found the transfer to be warranted.

Ashley v. Crane et al., No. 11-10603 (E.D. Mich. Sept. 21, 2011) (Dkt. No. 20, report and recommendation) (Michelson, M.J.) (copy supplied), *report and recommendation rejected and remanded*, No. 11-10603 (E.D. Mich. Nov. 21, 2011) (Dkt. No. 25, slip op.) (Rosen, J.) (copy supplied), 2011 WL 7090721 (E.D. Mich. Dec. 7, 2011) (report and recommendation after remand) (Michelson, M.J.), *report and recommendation adopted*, 2012 WL 204298 (E.D. Mich. Jan. 24, 2012) (Rosen, J.).

In this prisoner civil rights case, I believed that the plaintiff had not adequately pled a First Amendment retaliation claim because, under Sixth Circuit authority, a mere transfer to another prison does not, by itself, constitute an "adverse action." I recommended, however, that the defendants' motion to dismiss be denied because I understood the district judge's prior opinion in this case as concluding that the complaint adequately pled a retaliation claim. The district judge rejected the report and recommendation primarily because I did not address the defendants' alternate qualified immunity argument. Upon remand, I addressed that defense, and the district judge adopted that report and recommendation.

Infection Prevention Technologies, LLC v. UVAS, LLC, No. 10-12371, 2011 WL 4360007 (E.D. Mich. July 25, 2011) (Michelson, M.J.), *report and recommendation adopted as modified*, 2011 WL 4360091 (E.D. Mich. Sept. 19, 2011) (Roberts, J.).

The district judge adopted the report and recommendation with "slight modification." Because the district court adopted my primary recommendation as to the sufficiency of the damages pleading, it declined to also adopt my alternative recommendation. The district court also adopted my pleading-deficiency finding as to certain claims, but reversed my ruling that the plaintiff had to ask for leave before filing an amended complaint.

McClain v. Comm'r of Soc. Sec., No. 2:10-11141, 2011 WL 4599618 (E.D. Mich. June 8, 2011) (Michelson, M.J.) *report and recommendation adopted in part, rejected in part*, 2011 WL 4599611 (E.D. Mich. Sept. 30, 2011) (Rosen, J.).

The district judge disagreed with my remand recommendation based upon my finding that the Administrative Law Judge failed to sufficiently explore the possibility that the claimant's noncompliance with recommended courses of mental-health treatment might be attributable to her underlying mental condition.

While noting that "the question is a close one," the district court concluded that the Administrative Law Judge had sufficiently considered and rejected this possibility.

Lee v. Levino, No. 10-11501, 2011 WL 2457497 (E.D. Mich. May 12, 2011), *report and recommendation adopted in part*, 2011 WL 2412938 (E.D. Mich. June 14, 2011)

I recommended that the plaintiff's defamation claim be dismissed for two reasons: failure to adequately plead that his claims met the jurisdictional amount-in-controversy requirement and failure to state a claim upon which relief may be granted. The district judge agreed that the case should be dismissed for failure to state a claim but did not adopt my finding regarding the amount in controversy.

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 Eastern District of Michigan's Electronic Case Filing System (ECF). A large number of my decisions are on nondispositive matters, such as discovery motions, motions to extend deadlines, motions to amend pleadings, motions for protective order and other similar motions. It is virtually impossible to estimate the number of such decisions. While those decisions often are not published in reporters or in Westlaw or Lexis, they are accessible on the ECF system.

Among those opinions available on Westlaw, 9 out of 235 (about 4%) have been selected for publication in official reporters (i.e., F.R.D. or F. Supp. 2d).

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.

Fuller v. Schoolcraft Coll., 909 F. Supp. 2d 862 (E.D. Mich. Oct. 22, 2012), *report and recommendation adopted*, 909 F. Supp. 2d 862 (E.D. Mich. Nov. 13, 2012).

Erard v. Johnson, 905 F. Supp. 2d 782 (E.D. Mich. Sept. 20, 2012), *report and recommendation adopted*, 905 F. Supp. 2d 782 (E.D. Mich. Oct. 29, 2012).

Satkiewicz v. Michigan, No. 11-14370, 2012 WL 3778983 (E.D. Mich. May 29, 2012), *report and recommendation adopted*, 2012 WL 3779177 (E.D. Mich. Aug. 31, 2012).

McGhee v. Davis, No. 10-10737, 2012 WL 7659775 (E.D. Mich. Apr. 17, 2012), *report and recommendation adopted*, 2013 WL 856650 (E.D. Mich. Mar. 7, 2013).

Muhammad v. Michigan Dept. of Human Servs., No. 11-12370, 2012 WL 314002 (E.D. Mich. Jan. 6, 2012), *report and recommendation adopted*, 2012 WL 314079 (E.D. Mich. Jan. 31, 2012).

Poole v. Woods, No. 08-12955, 2011 WL 4502372 (E.D. Mich. Aug. 9, 2011), *report and recommendation adopted*, 2011 WL 4502319 (E.D. Mich. Sept. 28, 2011), *aff'd sub nom.*, *Poole v. Mackie*, No. 11-2336, slip order (6th Cir. Aug. 27, 2012) and slip order (6th Cir. May 28, 2013). Copies previously supplied in response to Q13d.

United States v. Gonikman, No. 05-80187 (E.D. Mich. Aug. 1, 2011). Copy supplied in response to Q13c.

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

The United States District Court for the Eastern District of Michigan has an automated conflict screening software program to identify conflicts of interest for each judge, which is referred to as the "Automatic Daily Summary Conflict

Checking Report." I have recused myself from cases involving any companies or individuals 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 regularly review and update the recusal list. I do not believe that I have been requested to recuse myself from a case by counsel or any party.

The following list includes those cases where the Eastern District of Michigan CM/ECF system indicates 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 was (or had been) affiliated with my former law firm:

Geologic Computer Systems, Inc. v. MacLean et al., 2:10-cv-13569 (E.D. Mich.)

Briggs v. University of Detroit-Mercy, et al., 2:13-cv-12583 (E.D. Mich.)

Malouf v. Detroit Medical Center, et al., 2:10-cv-14763 (E.D. Mich.)

Caruso v. Gale Force Sports & Entertainment LLC, 2:11-cv-12114 (E.D. Mich.)

Jungle Java, Inc. v. Playgrounds LLC, et al., 2:11-cv-12159 (E.D. Mich.)

The Private Bank v. Fidelity National Title Ins. Co., 2:11-cv-14183 (E.D. Mich.)

Reyes v. The University of Michigan, et al., 2:11-cv-15267 (E.D. Mich.)

Ryan v. MGM Grand Detroit II, LLC, 2:11-cv-15320 (E.D. Mich.)

MLS Group of Companies, Inc. v. Kempa, 2:11-cv-15417 (E.D. Mich.)

Town & Country Salida, Inc. v. Dealer Computer Services, Inc., 2:11-cv-15430 (E.D. Mich.)

Charter Warranty Services, Inc. v. Blue Bird Body Co., 2:12-cv-10107

Cottage Inn Carryout & Delivery, Inc. v. J.S.F. Hospitality, LLC et al., 2:12-cv-10782 (E.D. Mich.)

Mancuso-Haitz v. MGM Grand Detroit, LLC, 2:12-cv-12462 (E.D. Mich.)

University of Michigan v. St. Jude Medical, Inc., 2:12-cv-12908 (E.D. Mich.)

Mar Clotho Corporate Recovery LLC, Liquidation Trustee of the Double G Ranch LLC Liquidation Trust, 2:12-cv-13241 (E.D. Mich.)

Contech Castings, LLC v. GKN Driveline Newton, LLC, 2:12-cv-13336 (E.D. Mich.)

Ramada Worldwide Inc. v. Clinton Commercial Development, LLC, 2:12-mc-50531 (E.D. Mich.)

MKM Doe Gear, LLC v. Kaine et al, 2:13-cv-10196 (E.D. Mich.)

Forrest v. Insight Teleservices, Inc., 2:13-cv-10455 (E.D. Mich.)

Gong v. Board of Regents of the University of Michigan, et al, 2:13-cv-10469 (E.D. Mich.)

Wright v. MGM Detroit Grand Casino, et al, 4:11-cv-15105 (E.D. Mich.)

Powertrain Integration, LLC v. Whitebox Advisors, LLC et al, 4:12-cv-10206 (E.D. Mich.)

AF Holdings LLC v. Ciccone, 4:12-cv-14442 (E.D. Mich.)

Wallace v. County of Wayne, et al, 2:12-cv-12656 (E.D. Mich.)

Rathsburg Associates, Inc. v. Vanteon Corp., 2:12-cv-11061 (E.D. Mich.)

Willie McCormick and Associates, Inc. v. Lakeshore Engineering Services, Inc., et al., 2:12-cv-15460 (E.D. Mich.)

In each of the following cases, I recused myself, sua sponte, because I had represented one of the parties in the case, or worked on the case, when I was in private practice:

Venture Global Engineering, LLC , et al. v. Satyam Computer, 2:10-cv-15142 (E.D. Mich.)

McKeon Products, Inc. v. Jaco Enterprises, Inc., 2:11-cv-11977 (E.D. Mich.)

Petras v. Autoliv, Inc., 2:12-cv-13610 (E.D. Mich.)

In each of the following cases, I recused myself, sua sponte, because I had a financial investment with one of the parties:

Gojcaj, et al. v. Morgan Chase Bank, 2:11-cv-11237 (E.D. Mich.)

Cervi v. JP Morgan Chase Bank, 2:11-cv-11499 (E.D. Mich.)

Comerica Bank v. JP Morgan Chase Bank NA, et al., 2:11-cv-14252 (E.D. Mich.)

Timmis v. Boston Scientific Corp., et al., 2:12-cv-10232 (E.D. Mich.)

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, family friend, or colleague:

Hudson v. Tarnow, et al., 2:13-cv-12604 (E.D. Mich.)

RBS Citizens, N.A. v. Purther, et al., 2:13-cv-12266 (E.D. Mich.)

Allstate Ins. Co., et al v. Greater Lakes Ambulatory Surgical Center, LLC et al, 2:12-cv-13500 (E.D. Mich.)

Rock v. Taubman, et al., 2:12-cv-15244 (E.D. Mich.)

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;

From 1992 to 1993, I served as a law clerk to the Honorable Cornelia G.

Kennedy, Circuit Judge of the United States Court of Appeals for the Sixth Circuit.

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

I never practiced alone.

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

1993 – 2011
Butzel Long
150 West Jefferson Avenue
Suite 100
Detroit, Michigan 48226
Associate Attorney (1993 – 2000)
Shareholder (2000 –2011)

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

I did not serve as a mediator or arbitrator in alternative dispute resolution proceedings 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.

From 1993 to 2011, I specialized in media law and intellectual property litigation and counseling. I regularly represented and counseled local and national media entities in pre-publication review, defamation and related cases, and cases under the Michigan Freedom of Information Act and Open Meetings Act. The issues in these cases included access to public forums and reporters' privilege. I also litigated trademark and copyright infringement and false advertising cases, as well as general business matters.

Beginning in 2002 and continuing through 2011 when I joined the bench, my primary practice shifted to white-collar criminal defense. I defended individuals and entities in local and national health-care fraud, securities fraud, false claims act and anti-kickback statute matters, and assisted with internal investigations. Our white-collar practice group also handled grievance matters. Thus, from 2007 through February 2011, I defended

state judges and lawyers against charges brought by the Judicial Tenure Commission and Attorney Grievance Commission.

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

During the first ten years of my practice, I focused on media law, intellectual property, and general business litigation. My typical clients were media and entertainment entities, including newspapers, television stations, radio stations, movie studios, advertising agencies, pharmaceutical companies, and employees of the same. While I continued to handle media and intellectual property cases throughout my time in private practice, I transitioned to a focus on white collar criminal defense and grievance matters in 2002. My typical clients were pharmaceutical companies, health care entities, employees, and doctors accused of or being investigated for health care fraud; corporations and executives charged with or being investigated for securities and other types of fraud; and business entities conducting internal investigations. I also represented individual judges and attorneys in grievance 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.

While in private practice the entirety of my practice was in litigation, and I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 60%
   2. state courts of record: 35%
   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.

I estimate that I tried approximately ten cases to verdict, all of which were as associate counsel.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

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

I assisted in the drafting of the certiorari response in *Natron Corp. v. STMicroelectronics, Inc.*, 2003 WL 21698120 (Feb. 5, 2003).

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

a. the date of representation;

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

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

1. *U.S. v. MacKenzie et al.*, No. 1:01-cr-10350 (D. Mass. 2004) (Woodlock, J.).

The United States Attorney's Office in Boston, Massachusetts charged TAP Pharmaceutical, Inc., with conspiring to provide urologists with thousands of free samples of TAP's prostate cancer drug for which doctors billed Medicare and patients. After the company paid a then-record $885 million fine to settle with the government, 11 TAP employees and one urologist were indicted for conspiring to violate the anti-kickback statute – in essence, the defendants were accused of giving doctors items of value to induce them to buy TAP's product. My law partner and I represented one of the district manager defendants from approximately 2001 through 2004. He, along with all of the defendants that went to verdict, was acquitted following a three-month trial before the Honorable Douglas P. Woodlock, United States District Judge for the District of Massachusetts. I handled the majority of the document review, witness interviews, brief writing, and trial preparation. I argued one of the pre-trial motions, cross-examined several witnesses, argued the motion for acquittal at the close of the proofs, and assisted with jury instructions.

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2. *In re United American Healthcare Corp. Securities Litigation*, 2007 U.S. Dist. LEXIS 6362 (E.D. Mich. Jan. 30, 2007) (Zatkoff, J.), *aff'd, Zaluski v. United Am. Healthcare Corp.*, 527 F.3d 564 (6th Cir. 2008).

From 2006 to 2008, my law partner and I represented Defendant Howard, Senior Vice president of UAHC and CEO of OmniCare, a managed care organization in Tennessee that delivers healthcare services to individuals enrolled in Tennessee's Medicaid program. OmniCare contracts with the State to provide these services, and this contract accounted for a substantial portion of UAHC's revenue. UAHC retained Ford, a state senator from Tennessee, as a consultant to explore expansion of its business to other southern states. Concerned about the propriety of this relationship, the Department of Commerce placed OmniCare and UAHC under administrative supervision which caused UAHC's stock price to drop. Plaintiffs claimed that the defendants violated the federal securities laws by failing to disclose UAHC's alleged breach of the contract and its possible

consequences. The Honorable Lawrence P. Zatkoff, United States District Judge for the Eastern District of Michigan, found that the plaintiffs failed to adequately allege that defendants had a duty to disclose the alleged breach and failed to plead with particularity specific facts giving rise to a strong inference that defendants acted with scienter. He thus granted the defendants' motions to dismiss. The Sixth Circuit affirmed. I drafted the briefs in the district court, and I briefed and argued the case in the Sixth Circuit.

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3. *People v. Lohmeier*, Nos. 06-3318 & 06-3445 (54B District Court, Lansing, MI) (Jordan, J.).

The Michigan Attorney General's Office, in what it described as "the largest criminal Medicaid fraud case ever initiated in Michigan," brought a criminal Medicaid False Claims Act case and a related criminal enterprise count against our client, the President of Specialized Pharmacy Services, Inc. ("Specialized Pharmacy"), an OmniCare-owned company that sells and distributes pharmaceutical products to nursing homes and hospice facilities. The essence of the charges was that the President of Specialized Pharmacy was responsible for Specialized Pharmacy's alleged practices of billing for unnecessary medications, double-billing hospice, and billing for deceased individuals. In 2007, my law

partner and I tried a multi-week preliminary examination in front of the Honorable David Jordan of the 54B District Court in Lansing, Michigan. I cross-examined the majority of the 57 witnesses. I also argued the pre-examination motion to dismiss on the grounds of vicarious liability and preemption. The district court dismissed one set of counts but granted the Government's bind-over motion on two other sets of counts. Once a defendant is bound-over by a district court judge, the case is then transferred to the circuit court. I argued the motion to dismiss in Ingham County Circuit Court (Case No. 09-82-FH) before the Honorable Paula J.M. Manderfield (retired) in 2009. After the motion was denied, our client entered into a plea agreement.

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4. *SEC v. Battenberg, et al.*, No. 2:06-cv-14891 (E.D. Mich 2006) (Cohn, J.).

In 2006, following a multi-year investigation by the Department of Justice and Securities and Exchange Commission (the "Commission")—in which we were able to prevent a criminal indictment—the Commission filed financial fraud charges in the Eastern District of Michigan against Delphi Corporation. In its complaint, the Commission charged Delphi, as well as 13 individuals, with engaging in a pattern of fraudulent conduct between 2000 and 2004. The complaint alleged that between 2000 and 2004, Delphi and the defendants engaged in multiple schemes that resulted in Delphi materially misstating its financial condition and operating results in filings with the Commission, offering documents, press releases, and other documents and statements. I was co-counsel with my law partner in representing the former Director of Financial Accounting and Reporting. We represented her from the time of the DOJ/SEC investigation in 2004. After conducting extensive, nationwide discovery and mid-way through a trial before the Honorable Avern Cohn, United States District Judge for the Eastern District of Michigan, our client entered into a settlement agreement with

the Commission in November 2010. I handled most of the pre-trial discovery and brief writing and questioned some of the trial witnesses.

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5. *SEC v. Jorissen, et al*, No. 2:06-cv-10845 (E.D. Mich. 2006) (Feikens, J.).

On February 27, 2006, the Securities and Exchange Commission (the "Commission") filed an injunctive action in the United States District Court for the Eastern District of Michigan against the Chief Executive Officer, Chief Financial Officer and former Controller of Sun Communities, Inc. ("Sun"). The case was assigned to Senior District Judge John Feikens. My law partner and I represented the Controller from 2006 through 2008. She was alleged to have falsified Sun's records by improperly releasing funds from Sun's general reserve and recording expenses in improper periods. Although the Commission had threatened a 10(b)-5 action, following its investigation and Wells submissions, the Commission's complaint only alleged that our client violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder. The Commission sought a permanent injunction and civil penalty against our client. Following substantial discovery and our motion for summary judgment, the Commission voluntarily dismissed all claims against our client. I handled the discovery and wrote the summary judgment brief.

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6. *Murray Hill Publ'ns. v. Twentieth Century Fox Film, Corp.*, 361 F.3d 312 (6th Cir. Mich. 2004).

Murray Hill had the rights to a script called, "Could This Be Christmas," which generally involved a parent's effort to obtain a popular holiday toy for her son at Christmas. Murray Hill claimed that Fox's theatrical motion picture, "Jingle All The Way," starring Arnold Schwarzenegger and Sinbad as fathers fighting to find the "must-have" holiday toy on Christmas Eve, infringed its "Could This Be Christmas" script. Accordingly, in December 1997, Murray Hill brought a copyright infringement lawsuit in the Eastern District of Michigan against Fox. Along with a former Butzel Long partner, I represented Fox. Following several years of discovery and a multi-week trial before the Honorable Marianne O. Battani, United States District Judge for the Eastern District of Michigan, the jury returned a verdict in favor of Murray Hill. In March 2004, however, the United States Court of Appeals for the Sixth Circuit reversed the jury verdict and remanded for entry of judgment as a matter of law in favor of Fox. In one of the leading literary copyright infringement cases in this Circuit, the Appellate Court found that the two works were not substantially similar as a matter of law. I did a substantial amount of the discovery, trial and appellate brief writing, and examined several witnesses at the trial.

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7. *Ferndale Laboratories, Inc. v. Block Drug Co. & Schwarz Pharma*, 123 F. App'x. 641, 2005 U.S. App. LEXIS 784 (6th Cir. 2005).

Our client, Ferndale Labs, had entered into a supply agreement with Block Drug to supply Block with its requirements for a product that Block would then market and resell throughout the United States. Neither party could assign the supply agreement without the consent of the other. However, Block subsequently assigned the supply agreement to Schwarz without our client's consent. Accordingly, in 1999, Ferndale filed an action against both Block and Schwarz. After obtaining summary judgment on liability and litigating a bench trial that examined liability again as well as damages, on September 5, 2002, the Honorable Denise Page Hood, United States District Judge for the Eastern District of Michigan, awarded Ferndale damages in the amount of $8 million against Block and $2 million against Schwarz. In January 2005, the United States Court of Appeals for the Sixth Circuit affirmed the liability findings but vacated the $2 million judgment against Schwarz, and reduced the award against Block. I did a

significant portion of the briefing, trial preparation work, and was associate counsel during the trial. I also assisted in the drafting of the appeal briefs.

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8. *Tanzini v. Irvin Automotive Products, Inc. et al*, (Wayne County Circuit Court, 1998) (Kirwin, J.).

Irvin Automotive is a supplier of auto parts to Ford. An Irvin employee responsible for buying sun visors from Ford wrote a memo to his supervisor claiming that the plaintiff, a Ford employee, was sexually harassing him. The Ford employee sued the Irvin employee for defamation. My former law partner and I represented Irvin Automotive and Vic Macy from approximately 1998 through 2000. Following a trial before visiting Wayne County Circuit Court Judge John R. Kirwin, the jury awarded plaintiff $50,000 in emotional distress damages only and no economic damages. There were no appeals. I did a significant amount of the discovery, brief writing, and witness examinations at the trial.

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9. *American Council of Certified Podiatric Physicians and Surgeons v. American Board of Podiatric Surgery*, 185 F.3d 606 (6th Cir. 1999), *after remand*, 323 F.3d 366 (6th Cir. 2003).

We represented the American Board of Podiatric Surgery ("ABPS") – the leading certifier of podiatric surgeons. After sending several mass mailings to health care entities and insurance companies touting its position as the only certifying board recognized by the American Podiatric Medical Association ("APMA"), a competing certifier, the American Council of Certified Podiatric Physicians and Surgeons, filed a lawsuit in July 1993 in the United States District Court for the Eastern District of Michigan, alleging violations of the Lanham Act and Sherman Act. Plaintiff alleged that the mass mailings constituted false advertising and that the ABPS and APMA conspired to drive plaintiff out of the market. The Honorable Bernard A. Friedman, United States District Judge for the Eastern District of Michigan, dismissed the antitrust claims on summary judgment but the false advertising claims were tried before a jury, which found for the plaintiff. However Judge Friedman granted the ABPS motion for judgment as a matter of law and entered judgment for ABPS. The Sixth Circuit affirmed judgment for the ABPS on the Lanham Act claims, but reversed Judge Friedman's grant of summary judgment on the monopolization (section 2 of the Sherman Act) and tortious interference claims. Following additional briefing on remand, Judge Friedman again granted summary judgment and the Sixth Circuit affirmed. For approximately nine years I worked on this case with then Butzel Long Shareholders Philip J. Kessler and Gordon J. Walker. I handled a substantial portion of the discovery, trial work, and brief writing, including the appeal briefs.

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10. *Gooden v. E.F. Young Manufacturing Co.*, No. 2:94-cv-74614 (E.D. Mich. 1994) (Duggan, J.).

One of my former law partners represented a fashion model who filed a misappropriation case against an advertiser who used her photo in a magazine advertisement without her permission. Following a trial in October 1995 before the Honorable Patrick J. Duggan, United States District Judge for the Eastern District of Michigan, the jury found that the advertiser's use constituted an invasion of privacy and awarded plaintiff $7,500. I assisted with the trial preparation and trial.

Co-Counsel:

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

While in private practice, most of the media law cases that I worked on did not go to trial. Indeed, we prevailed in the vast majority of those cases on summary judgment and helped to shape and develop Michigan's defamation and invasion of privacy law. I drafted many of the summary judgment briefs and argued many of the motions in various state and federal courts. For example, I had significant responsibility in the case of *Nartron Corp. v. STMicroelectronics, Inc.*, 305 F.3d 397 (6th Cir. 2002), *cert denied*, 538 U.S. 907 (2003). This trademark infringement case involved the use of the mark "SMARTPOWER" in connection with semiconductor chips. I led a team that prepared an appendix in excess of 100 pages to demonstrate that the term "smart power" had become generic in the semi-conductor industry. I took the lead in drafting the summary judgment briefs, appeal briefs and opposition to the certiorari petition. The Sixth Circuit opinion affirming the District Court's grant of summary judgment is one of the leading cases on genericness in this Circuit. I also argued three media-related cases in the Michigan Court of Appeals.

I also represented a number of entities (pharmaceutical companies, automotive suppliers, contractors, and an Indian gaming venture) that received subpoenas from and/or were being investigated by the Department of Justice and United States Attorneys' Offices across the country; we were able to prevent or significantly reduce any resulting charges. From 2008 to 2009, I spent significant amounts of time assisting in the defense of several

Michigan state judges who were being investigated by the Judicial Tenure Commission ("JTC"). This involved drafting pleadings and conducting negotiations with the Executive Director and investigating agents of the JTC.

I spent the entirety of my private practice career at one law firm and was active in firm governance and on committees. More specifically, I was a Practice Group Leader for the Media/Intellectual Property Group (2007-2011) and co-chaired the Recruiting Committee (2002-2008). I participated on the Strategic Planning Committee (2007-2009) and Women's Initiative Committee (2007-2011). In these positions I helped to recruit, mentor, supervise, and retain a diverse group of lawyers, shape the future of the firm, and organize community events. For example, the Women's Initiative Committee worked with Habitat for Humanity to renovate a home for a single mother in Flint, Michigan.

I was also active in bar associations. After many years as a committee chair, executive board member, and officer, I became the president of the Eastern District of Michigan Chapter of the Federal Bar Association in 2010. Our Chapter is recognized nationally as one of the largest and most active in the country. We have over 30 committees that cover most substantive areas in federal law (e.g., criminal, IP, labor, bankruptcy, immigration), specialty committees (e.g., law clerk, pro bono, diversity), as well as committees devoted to new lawyers and law students. The Chapter sponsors education programs, social events, and community projects. During my year as president, I was one of the primary organizers of a Bench/Bar Conference focused on Media and the Law at which we featured a panel on navigating a high profile case that included the lawyers for Bernard Madoff, Martha Stewart, Oprah Winfrey, and Scooter Libbey.

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

I was an Adjunct Professor at Oakland University in Rochester Hills, Michigan. I co-taught a Media Law course offered through the Journalism Department entitled Law of the Press. The course included sections on defamation, invasion of privacy, the Freedom of Information Act, Michigan's Open Meetings Act, and access to courts. I taught the course during Fall 2003, Fall 2004, Winter 2005, and Winter 2006. A representative course syllabus is supplied.

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

If confirmed, I anticipate receiving from my prior law firm, Butzel Long, the remainder due on the redemption of my Butzel Long stock. The payments are being made in five

annual installments. I have two payments remaining that total approximately $12,000. The payments are typically made in mid to late-April.

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 present plans, commitments, or agreements to pursue outside employment if 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).

    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 continue to recuse myself from all Butzel Long matters and cases involving Butzel Long attorneys until I have fully redeemed my stock. I would also recuse myself from all cases involving Simons Michelson Zieve Advertising, which is owned and operated by my parents and siblings. In addition, I own stock in a few companies and would recuse myself from all cases in which those companies are parties.

    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 28 U.S.C. 455, Canon 3 of the Code of Conduct for United States Judges and its advisory opinions. In addition, I will also continue to utilize and rely on our Court's automated conflict system which provides immediate email notification of 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.

When I was in private practice, I worked on several pro bono matters. For example, I assisted a colleague in a prisoner civil rights action involving allegations of excessive force during his arrest. The case survived summary judgment and was settled. I also worked on a number of pro bono cases related to my work in copyright and First Amendment issues. For example, I represented a free-lance photographer trying to start his own minority business in a copyright infringement lawsuit after a major clothing manufacturer used his photographs in the company's advertisements without permission. I handled the discovery, briefing, court arguments, and efforts to collect on the default judgment we obtained. I also represented a city council member who believed she was being excluded from certain meetings in violation of Michigan's Open Meetings Act. After motion practice and several hearings, the case settled. I represented a woman sued for defamation by her ex-husband's girlfriend after a contentious divorce. Following discovery, the case settled.

As a board member of Eton Academy, the only accredited school in Michigan devoted solely to children with learning disabilities, I handled several pro bono projects for the school, such as reviewing contracts and general labor matters.

Our local Federal Bar Association Chapter is also active in programs that seek to assist the underrepresented and underprivileged. For example, during the summer of 2010, the Council on Legal Education Opportunity ("CLEO") hosted an academic program at Cooley Law for underrepresented college sophomores and juniors interested in pursuing law as a career. The Chapter sponsored a program by sending panelists and several other members, including myself, to discuss various aspects of federal practice. I also helped to organize programs in the summer of 2011 for the Just The Beginning Foundation's ("JTBF") Summer Legal Institute in Detroit. The main objectives of this program are to inspire and encourage underrepresented high school students to consider law as a career. Additionally, I participated in panel discussions, interview programs, and mentor programs for our Court's Wolverine Bar summer intern program.

In terms of other community involvement, I am an active member of the Old Newsboys' Goodfellows Fund of Detroit. This is a charitable organization that provides approximately 35,000 holiday gift packages to needy school-age children in the Detroit area. I sold special editions of *The Detroit News* on sales day for almost 20 years, coordinated several other law-firm sales of these newspapers, and worked with family members on Goodfellows' packages. Additionally, each year during the Christmas holiday, my chambers participates in the Focus Hope Adopt-a-Family for the Holidays program in which provide Detroit families in need with clothing, gifts, and food.

26. Selection Process:

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

In December 2012, United States Senators Carl Levin and Debbie Stabenow formed a Judicial Advisory Committee to consider candidates for four vacancies on the United States District Court for the Eastern District of Michigan. On January 25, 2013, I submitted my application to the Committee. I was interviewed by the Committee on March 21, 2013 in Detroit, Michigan. On April 8, 2013, I received a letter from Senators Levin and Stabenow advising that, in accordance with the recommendation of their Judicial Advisory Committee, they would be forwarding my name along with twelve others to President Obama for his consideration to fill one of the above-referenced vacancies. Since April 8, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice regarding the vetting process. On May 16, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 25, 2013, 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. 1/2013

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
Michelson, Laurie J.	United States District Court, Eastern District of Michigan	07/25/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination Date 07/25/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	01/01/2012 to 06/30/2013
7. Chambers or Office Address		
231 West Lafayette Blvd. Room 648 Detroit, MI 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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Custodian for the Beneficiary (while a minor)	Debra A. Berman Irrevocable Trust
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.	2011	Butzel Long PC -- annual principle of $6,229 per year, no interest
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Michelson, Laurie J.	Date of Report 07/25/2013

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	Butzel Long PC -- employment compensation	$58,232.00
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Michelson, Laurie J.	Date of Report 07/25/2013

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 Michelson, Laurie J.	Date of Report 07/25/2013

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. Bank of America (cash account)	A	Int./Div.	L	T	Exempt				
2. Bank of America -- IRA (cash)	A	Interest	J	T					
3. Oppenheimer Main Street Fund	A	Int./Div.	K	T					
4. Brokerage Account #1									
5. - Blackrock Tempfund Private Client Shares	A	Dividend	J	T					
6. - Diebold Inc	A	Dividend	J	T					
7. - Yahoo Inc	A	Dividend	J	T					
8. Brokerage Account #2									
9. - FIA Card Services NA RASP	A	Dividend	K	T					
10. - Boeing Company Stock	A	Dividend	J	T					
11. - Coca Cola Stock	A	Dividend	J	T					
12. - DJIA MITTS ISSUER BAC PART 137%	A	Dividend	L	T					
13. - Exxon Mobile Corp Stock	A	Dividend	K	T					
14. - Hewlett Packard Co Stock	A	Dividend							
15. - Intel Corp Stock	A	Dividend							
16. - Kinder Morgan Energy Partners LP Stock	A	Dividend							
17. - American Amcap Mutual Fund	A	Dividend	K	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
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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Michelson, Laurie J.	07/25/2013

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. - American Euro Pacific Growth Mutual Fund	A	Dividend							
19. - American Small Cap World Mutual Fund	A	Dividend							
20. - American Fundamental Investors Mutual Fund	A	Dividend	L	T					
21. - American Inc Fund of America Mutual Fund	B	Dividend	L	T					
22. - American Washington Mutual Investors Fund	B	Dividend	L	T					
23. - DWS Floating Rate Mutual Fund	D	Dividend	M	T					
24. - First Trust Large Cap Value Mutual Fund	A	Dividend	K	T					
25. - First Trust Large Cap Growth Mutual Fund	A	Dividend	K	T					
26. - First Trust Multi Cap Mutual Fund	A	Dividend							
27. - First Trust Small Cap Core Mutual Fund	A	Dividend							
28. - First Trust Energy Alphadex Mutual Fund	A	Dividend							
29. - First Trust Mid Cap Core Mutual Fund	A	Dividend	J	T					
30. - Gold MITTS Issuer BAC	A	Dividend	K	T					
31. - Blackrock Multi-Sector Income Fund	B	Dividend	K	T					
32. - Blackstone GSO Strategic CR Fund	C	Dividend	K	T					
33. - Salient Midstream & MLP Fund	A	Dividend	J	T					
34. IRA #1									

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 8	Name of Person Reporting Michelson, Laurie J.	Date of Report 07/25/2013

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. - FIA Card Services NA RASP	A	Dividend	J	T					
36. - Blackrock Equity Dividend Mutual Fund	A	Dividend	L	T					
37. - Goldman Sachs US Equity Mutual Fund	A	Dividend	K	T					
38. - iShares S&P Global 100 Index Mutual Fund	B	Dividend	K	T					
39. - iShares High Div Equity Fund	A	Dividend	L	T					
40. - Pimco Global Multi Asset Fund	C	Dividend	L	T					
41. - Powershares S&P 500 High Fund	A	Dividend	L	T					
42. - Vanguard Dividend Appreciation Fund	B	Dividend	L	T					
43. - Wisdomtree Emerging Market Equity Fund	A	Dividend	K	T					
44. Simons-Michelson-Zieve Inc Stock	A	Dividend	L	T					
45. The Northwestern Mutual Life Insurance Company (whole life)	C	Interest	L	T					
46. Massachusetts Mutual Life Ins Company (group universal)	B	Interest	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 7 of 8	Name of Person Reporting Michelson, Laurie J.	Date of Report 07/25/2013

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting	Date of Report
	Michelson, Laurie J.	07/25/2013

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/ Laurie J. Michelson

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		64	495	Notes payable to banks-secured (auto)		17	830
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	274	050	Notes payable to relatives			
Unlisted securities – see schedule		90	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		212	458	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		143	293
Real estate owned – personal residence		160	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance		79	254				
Other assets itemize:							
IRA (cash)		3	160				
				Total liabilities		161	123
				Net Worth	1	722	294
Total Assets	1	883	417	Total liabilities and net worth	1	883	417
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 AMCAP Fund	$ 24,434
American Funds Fundamental Investors Fund	72,977
American Funds Income Fund of America	60,075
American Funds Washington Mutual Investors Fund	61,283
BlackRock Equity Dividend Fund	50,499
BlackRock Multi-Sector Income Fund	17,560
Blackrock Tempfund Private Client Shares	518
Blackstone / GSO Strategic Credit Fund	47,150
Boeing Company stock	15,366
Coca Cola stock	12,032
Diebold stock	5,054
DWS Floating Rate Fund	232,941
Exxon Mobil Corp. stock	20,961
FIA Card Services	70,735
First Trust Large Cap Growth Opportunities AlphaDEX Fund	44,957
First Trust Large Cap Value Opportunities AlphaDEX Fund	48,162
First Trust Mid Cap Core AlphaDEX Fund	22,604
Goldman Sachs U.S. Equity Dividend & Premium Fund	37,511
iShares High Dividend Equity Fund	61,365
iShares S&P Global 100 Index Fund	45,265
Market Index Target Term Note Linked to the DJIA	59,850
Market Index Target Term Note Linked to the Price of Gold	25,400
Oppenheimer Main Street Fund	33,585
PIMCO Global Multi-Asset Fund	49,145
PowerShares S&P 500 High Quality Portfolio	50,901
Salient Midstream & MLP Fund	11,555
Vanguard Dividend Appreciation ETF	61,235
WisdomTree Emerging Market Equity Income Fund	18,365
Yahoo Inc. stock	12,565
Total Listed Securities	$1,274,050

Unlisted Securities	
Simons-Michelson-Zieve, Inc.	$ 90,000
Total Unlisted Securities	$ 90,000

AFFIDAVIT

I, Laurie Jill Michelson, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/25/13
(DATE)

Laurie Michelson
(NAME)

LaShawn R. Saulsberry
(NOTARY)

State of Michigan
County of Wayne
On this 25th day of July before me personally appeared Laurie Michelson to me known to be the person who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.
(Signed) LaShawn R. Saulsberry
Notary Public

LASHAWN R. SAULSBERRY
Notary Public, State of Michigan
County of Wayne
My Commission Expires Aug. 23, 2018
Acting in the County of Wayne

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Linda Vivienne Parker

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.

   Third Judicial Circuit of Michigan
   401 Frank Murphy Hall of Justice
   1441 Saint Antoine Street
   Detroit, Michigan 48226

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

   1958; 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.

   1980 – 1983, The George Washington Law School; J.D., 1983

   1976 – 1980, University of Michigan; B.A, 1980

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

   2009 – present
   Third Judicial Circuit of Michigan
   401 Frank Murphy Hall of Justice
   1441 Saint Antoine Street

Detroit, MI 48226
Circuit Court Judge

1991 – 2013
State Board of Law Examiners
925 West Ottawa Street
Lansing, MI 48913
Bar Exam Grader (2011 – 2013)
Board Member (2000 – 2010)
Bar Exam Grader (1991 – 1999)

2003 – 2008
Michigan Department of Civil Rights
Capital Tower Building
110 West Michigan Avenue, Suite 800
Lansing, MI 48933
Department Director

2000 – 2003
Detroit Institute of Arts
5200 Woodward Avenue
Detroit, MI 48202
Director of Development

1994 – 2000
United States Attorney's Office
211 West Fort Street
Detroit, MI 48226
Executive Assistant United States Attorney

1989 – 1994
Dickinson Wright
500 Woodward Avenue, Suite 4000
Detroit, MI 48226
Partner (1992 – 1994)
Associate Attorney (1989 – 1992)

1985 – 1989
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Staff Attorney

1983 – 1985
District of Columbia Superior Court
500 Indiana Avenue, N.W.

Washington, D.C. 20001
Law Clerk for Senior Judge William S. Thompson (deceased)

September 1982 – June 1983
Gaffney, Anspach, Schembler, Klimaski & Marks
Washington, D.C. (no longer in existence)
Legal Assistant

September 1982 – December 1982
United States Securities and Exchange Commission
Office of General Counsel
100 F Street, N.E.
Washington, D.C. 20549
Student Volunteer

September 1982 – February 1983
The George Washington Law School
2000 H Street, N.W.
Washington, D.C. 20000
Research Assistant for Professor Elyce Zenoff (deceased)

Summer 1982
Joint Center for Political Studies
805 Fifteenth Street, N.W.
Washington, D.C. 20005
Executive Secretary

January 1982 – December 1982
Congressional Black Caucus Legislative Internship
United States House of Representatives
House Education and Labor Committee
Rayburn House Office Building
45 Independence Avenue, S.W.
Washington, D.C. 20515
Congressional Legislative Intern

Summer 1981
United States Army Judge Advocate General Corps
Office of General Counsel
901 North Stuart Street
Arlington, VA 22203
Legal Intern

Summer 1980
City of Detroit Summer Youth Employment Program
60 Belmont

Detroit, MI 48202
Recreation Specialist

Other affiliations (uncompensated):

1989 – present
Wolverine Bar Association
645 Griswold Street
Detroit, Michigan 48226
President (1997 – 1998)
Vice President (1996 – 1997)
Secretary (1995 – 1996)

2003 – 2006, 2008 – present
American Civil Liberties Union of Michigan
2966 Woodward Avenue
Detroit, MI 48201
Advisory Board Member (2008 – present)
Active Board Member (2003 – 2006)

2004 – present
Michigan Roundtable for Diversity & Inclusion
3031 West Grand Boulevard
Suite 525
Detroit, MI 48202
Board Member

2005 – present
Boys Hope Girls Hope Detroit
19905 Roslyn Road
Detroit, MI 48221
Board Member (2005 – present)
Board Chair (2012 – present)

2009 – present
Marygrove College
8425 McNichols Road
Detroit, MI 48221
Trustee

February 2013 – present
Harbortown Development Condo Association
250 East Harbortown Drive
Detroit, MI 48207
Board Member

2010 – 2013
Welcoming Michigan
Advisory Board Member
3030 Ninth Street, Suite 1A
Kalamazoo, MI 49007

January 2013 – August 2013
Cesar Chavez Academy
4100 Martin Street
Detroit, MI 48210
Board Member

2011 – 2012
Detroit Chapter of Links, Inc.
Post Office Box 20665
Ferndale, MI 48220
Chapter President

2004 – 2007
Ceciliaville Athletic Board
10400 Stoepel
Detroit, MI 48204
Board Member

2004 – 2007
Saint Monica & Saint Augustine Church
4151 Seminole Street
Detroit, MI 48214
Stewardship Committee Member

2003 – 2005
Michigan First Credit Union
27000 Evergreen Road
Lathrup Village, MI 48076
Supervisory Committee Member

1990 – 1996
New Steps, Inc.
(no longer exists)
Board Member (1990 – 1996)
Board Chair (1994 – 1996)

1991 – 1994
American Diabetes Association
Michigan Affiliate
30300 Telegraph Road

Suite 117
Franklin, MI 48025
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 United States Military. I was not required to register for Selective Service.

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

   Oakland County NAACP Freedom Fighter Award (2009)
   National Association of Human Rights Workers (2008)
   Salute to Diversity Awards – Diversity Business Leader, CORP! Magazine (2008)
   Women of Courage Women of Change Award, Minerva Education Development Foundation/Delta Sigma Theta Sorority, Inc. (2008)
   Professional Woman of the Year, Detroit Club National Association of Negro Business and Professional Women's' Clubs (2007)
   Women of Achievement Award, Anti-Defamation League (2006)
   Most Interesting and Influential, New Citizens Press (2005)
   Damon J. Keith Community Spirit Award (2005)
   Spirit of Detroit Award, Detroit City Council (2005)
   Distinguished Service Award, Wolverine Bar Association (2002)
   Community Service Award, United States Department of Justice (1998)

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.

   Association of Black Judges of Michigan (2009 – present)
   Michigan State Bar Foundation (1996 – present)
   State Bar of Michigan (1989 – present)
      68th State Bar President's Dinner Committee, Member (2003)
      Law Practice Management Section Council, Member (2003 – 2005)
   Wolverine Bar Association (1989 – present)
      Secretary (1995 – 1996)
      Vice President (1996 – 1997)
      President (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.

District of Columbia, 1984
Michigan, 1989

Sometime after I returned to Detroit, Michigan, my membership in the Washington D.C. bar lapsed for non-payment. I have not practiced law in D.C. since returning to Detroit.

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.

District of Columbia Court of Appeals (1985)
Michigan Supreme Court (1989)
Michigan Court of Appeals (1989)
Michigan Circuit Courts (1989)

There have been no lapses in membership.

11. **Memberships**:

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

Advocates and Leaders for Police and Community Trust (ALPACT)
(1999 – 2009)
Co-Chair (2007 – 2008)

American Civil Liberties Union, Michigan (2003 – 2006, 2008 – present)
Advisory Board Member (2008 – present)
Active Board Member (2003 – 2006)

American Diabetes Association, Michigan Affiliate (1991 – 1994)
Board Member

Boys Hope Girls Hope Detroit (2005 – present)
Board Member (2005 – present)

Board Chair (2012 – present).

Cesar Chavez Academy (January 2013 – August 2013)
Board Member

Ceciliaville Athletic Center (2004 – 2007)
Board Member (2004 – 2007)

Detroit Chapter of Links, Inc. (2002 – present)
Member (2002 – present)
Chapter President (2011 – 2012)

Harbortown Development Condo Association (2013 – present)
Board Member (February 2013 – present)

International Association of Official Human Rights Agencies (2004 – 2008)

Leadership Detroit XVII (1994 – 1995)

Marygrove College (2009 – present)
Trustee

Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare (2004 – 2006)

Michigan Alliance Against Hate Crimes (2003– 2009)

Michigan Association of Drug Court Professionals (2010 – present)

Michigan Civil Rights Summit Planning Committee (2005 – 2006)

Michigan Environmental Advisory Council, Michigan Department of Environmental Quality (2006 – 2008)
Environmental Justice Workgroup

Michigan First Credit Union (2003 – 2006)
Supervisory Committee Member (2003 – 2006)
Chair (2005 – 2006)
Alternate Chair (2004)

Michigan Roundtable for Diversity & Inclusion (2004 – present)
Board Member (2004 – present)

National Association for the Advancement of Colored People (1994 – present)
Life Member

National Coalition of 100 Black Women of Washington, D.C., Inc. (1984 – 1989)
Chair, Women in Partnership with Teen Mothers (1986 – 1989)

New Steps, Inc. (1990 – 1996)
Board Member (1990 – 1996)
Board Chair (1994 – 1996)

Saint Augustine and Saint Catholic Church (1996 – present)
Stewardship Committee (2004 – 2007)

Welcoming Michigan Advisory Board (2010 – 2013)

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.

Membership in the Detroit Chapter of Links, Inc., and the National Coalition of 100 Black Women of D.C. Inc., is restricted to women. None of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex or religion either through formal membership 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.

Jury Selection, Michigan Civil Procedure chapter 19 (Kathleen A. Lang et al. eds., ICLE 2d ed. 2012). Copy supplied.

Know Your Voting Rights, The Flint Journal, Guest Columnist, October 13, 2008. Copy supplied.

Battle Bigotry; Don't Be An Enabler In The Spread Of Prejudice, Detroit Free Press, Letter to the Editor, December 6, 2007. Copy Supplied.

Ask The Director Questions And Answers On Civil Rights From Director Of The Michigan Department Of Civil Rights, The New Citizens Press, October 14, 2007. Copy supplied.

Response To Detroit News Editorial On March 8, 2007: "State Must Be Stopped From Subverting Prop 2," Detroit News, Letter to the Editor, March 2007. Copy supplied.

Statement On The Passing of Coretta Scott King, February 2006, MDCR-INFO@michigan.gov. Copy supplied.

50th Anniversary of Montgomery Bus Boycott, December 2005, MDCR-INFO@michigan.gov. Copy supplied.

Final Reflections on Rosa Parks, Michigan Chronicle (Detroit), December 7 – December 13, 2005. Copy supplied.

Break The Silence To Find A Solution, Detroit Free Press, Letter to the Editor, September 24, 2005. Copy supplied.

With Daniel Krichbaum, *Michigan Communities Must Do More To Combat Racial, Cultural Intolerance,* Detroit Free Press, Op-Ed, September 15, 2005. Copy supplied.

Public Input Is Needed On Foster-Care Divide, Lansing State Journal, Op-Ed July 24, 2005. Copy supplied.

Forty Years Ago 'Country Folk' Put Bigots On Notice, Lansing State Journal, Letter to the Editor, March 18, 2005. Copy supplied.

Break Down Color Barriers, Detroit Free Press, Letter to the Editor, January 17, 2005. Copy supplied.

We Will Do Our Part On Election Day; Be Sure To Do Yours, Ethnic NewsWatch, October 19, 2004. Copy supplied.

50th Anniversary of Brown v. Board Decision Deserves Praise, Michigan Chronicle (Detroit), May 5 – 11, 2004. Copy supplied.

Response to Prior Editorial, Letter to the Editor, Detroit Free Press, April 29, 2004. Copy supplied.

Citizens for Affirmative Action's Preservation Answer that Call, Ethnic NewsWatch, July 21, 1998. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the

name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

From December 2003 to December 2008, I was the Director of the Michigan Department of Civil Rights. In this capacity, I reviewed amicus briefs and reports issued by the Department. I have included those that I could identify after searching my files and the Internet:

Michigan Supreme Court, Amici Curiae Brief, Michigan Civil Rights Commission and Michigan Department of Civil Rights, Complainant's Right to File Complaint with Michigan Department of Civil Rights, June 5, 2008. Copy supplied.

Michigan Department of Civil Rights Biennial Report 2007 – 2008. Copy supplied.

Michigan Supreme Court, Amici Curiae Brief, Michigan Civil Rights Commission and Michigan Department of Civil Rights, Voter Identification, July 18, 2006. Copy supplied.

Michigan Supreme Court, Amici Curiae Brief, Michigan Civil Rights Commission and Michigan Department of Civil Rights, Request for Consideration of Report Regarding the Use of Fraud and Deception in the Collection of Signatures for the Michigan Civil Rights Initiative Ballot Petition, June 7, 2006. Copy supplied.

Michigan Department of Civil Rights Annual Report 2006. Copy supplied.

Michigan Supreme Court, Amici Curiae Brief, Michigan Civil Rights Commission and Michigan Department of Civil Rights, *Haynes v. Oakwood Healthcare, Inc., et al.*, Elliot Larsen Civil Rights Act Broad Enough to Protect Privilege to Practice, 2006. I have been unable to obtain a copy.

Michigan Supreme Court, Amici Curiae Brief, Michigan Civil Rights Commission and Michigan Department of Civil Rights, *Feyz v. Mercy Memorial Hospital*, Peer Review Doctrine Does Not Preclude Filing of Civil Rights Claim, April 26, 2005. I have been unable to obtain a copy.

Employment Rights: A Guide for Women, Michigan Department of Civil Rights and Michigan Women's Commission, January 2005. Copy supplied.

Michigan Department of Civil Rights Biennial Report 2004 – 2005. Copy supplied.

United States District Court, Eastern District of Michigan, Amici Curiae Brief of the Michigan Civil Rights Commission and the Michigan Department of Civil Rights In Support of Plaintiffs' Response to Motion to Dismiss or in the Alternative Motion for Summary Judgment, August 2, 2005. Copy supplied.

Michigan Supreme Court, Amici Curiae Brief, Michigan Civil Rights Commission and Michigan Department of Civil Rights, *Sharda Garg v. Macomb County Community Mental Health Services*, Michigan Supreme Court, No. 121361, 2004. I have been unable to obtain a copy.

Michigan Department of Civil Rights Annual Report 2003. Copy supplied.

As part of my responsibilities as the Director of the Michigan Department of Civil Rights, I also reviewed reports issued by the Michigan Civil Rights Commission. I have included those that I could identify after searching my files and the Internet:

One Michigan at the Crossroads: An Assessment of the Impact of Proposal 06-02, Michigan Civil Rights Commission March 7, 2007. Copy supplied.

Report Regarding the Use of Fraud and Deception in the Collection of Signatures for the Michigan Civil Rights Initiative Ballot Petition, Michigan Civil Rights Commission, June 2006. Copy supplied

Moving Toward Better Outcomes for All of Michigan's Children Report, Michigan Advisory Committee on the Overrepresentation of Children of Color in Child Welfare, March 21, 2006. Copy supplied.

State Bar of Michigan Law Practice Management Section's Annual Report 2004/2005. Copy supplied.

During my tenure as the Executive Assistant United States Attorney for the Eastern District of Michigan from 1994 to 2000, I drafted, in part, and fully reviewed annual reports issued in 1996 and 1997and the Millennium Report issued in 2001. I have included them below:

Millennium Report of the United States Attorney's Office for the Eastern District of Michigan, 2001. Copy supplied.

Annual Report of the United States Attorney's Office for the Eastern District of Michigan, 1997. Copy supplied.

Annual Report of the United States Attorney's Office for the Eastern District of Michigan, 1996. 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.

As part of my responsibilities as the Director of the Michigan Department of Civil Rights, I participated in the public meetings held by the Michigan Civil Rights Commission. The Michigan Civil Rights Commission held bi-monthly public meetings across the state, in which I spoke in my capacity as the Director of the Michigan Department of Civil Rights. Further, periodically, a public forum on a particular topic was held immediately following these meetings. I am providing minutes of all of the Michigan Civil Rights Commission meetings and where available, minutes from the public forums. I have also included a list of those public forums that I could identify for which I did not have any notes, transcript, or recording. Archival recordings of the bi-monthly minutes are available at the address of the Michigan Department of Civil Rights, 110 West Michigan Avenue, Suite 800, Lansing, Michigan 48933.

January 2006: Remarks, Public Hearing to Investigate Alleged Voter Fraud, Michigan Civil Rights Commission, Detroit, Michigan. I gave brief remarks explaining that the purpose of the public hearing was to give canvassers an opportunity to explain their petitioning gathering process and those who signed an opportunity to testify as to their experience. I have no notes, transcript, or recording.

August 2005: Remarks, Public Forum, "The Rights of Migrant and Seasonal Farmworkers," Michigan Civil Rights Commission, Kalamazoo, Michigan. I spoke about the challenges facing Michigan migrant and seasonal farmworkers. I have no notes, transcript, or recording.

August 23, 2004: Remarks, Public Forum, Michigan Civil Rights Commission, Clinton Township, Michigan. I listened as residents from Clinton Township spoke about the challenges they faced in their efforts to seek employment and to be treated fairly in the work place and spoke about Departmental strategies and resources. I have no notes, transcript, or recording.

As the Director of the Michigan Department of Civil Rights, I was asked to serve as a member of the Michigan Department of Environmental Quality's Environmental Justice Work Group. The minutes from the meetings of this group are set forth below:

November 10, 2008: Michigan Department of Environmental Quality, Environmental Justice Work Group meeting. Minutes supplied.

September 8, 2008: Michigan Department of Environmental Quality, Environmental Justice Work Group meeting. Minutes supplied.

July 1, 2008: Michigan Department of Environmental Quality, Environmental Justice Work Group meeting. Minutes supplied.

February 17, 2006: Recommendations for an Environmental Justice Policy for Michigan, Michigan Department of Environmental Quality's Environmental Advisory Council. Copy supplied.

During my tenure as the Director of the Michigan Department of Civil Rights, I appeared before various committees of the Michigan Legislature, participated in various public forums sponsored by the Department, and submitted correspondence in my official capacity. I have included those I could identify after searching my files and the Internet below:

April 30, 2008: Letter to the Michigan Attorney General regarding Michigan Department of Transportation's Disadvantaged Business Enterprise Program. Copy supplied.

July 2007: Remarks, Public Hearing, State Representative Andy Coulouris, Buena Vista, Michigan. In my capacity as Director of the Department, I attended a public hearing convened by Representative Coulouris to discuss the potential disparate impact of the closure of the Secretary of State office located in Buena Vista, Michigan, on people of color, the elderly and persons with disabilities. I have no notes, transcript, or recording.

March 2007: Testimony before the House Appropriations Higher Education Subcommittee of the Michigan Legislature, regarding the Michigan Civil Right Commission's One Michigan at the Crossroads Report. Although I have no transcript or recording, a copy of the report on which my testimony was based has been previously supplied in Question 12b.

June 16, 2006: Letter to Michigan Senators, concerning the Michigan Civil Rights Commission's Report Regarding the Use of Fraud and Deception in the Collection of Signatures for the Michigan Civil Rights Initiative Ballot Petition. Copy supplied.

January 24, 2006: Written testimony to the Michigan Legislature regarding the Michigan Department of Civil Rights. Copy supplied.

July 25, 2005: Opening Statement at public hearing held by the Michigan Civil Rights Commission, the Michigan Department of Human Services, and the Michigan Advisory Council on the Overrepresentation of Children of Color in Foster Care, related to foster care system. I have no transcript or minutes, but a copy of the report on which my statement was based has been previously supplied in Question 12b.

May 18, 2005: Letter to the House Committee on Government Operations, regarding Department website. Copy supplied.

May 24, 2004: Opening Remarks, Public Forum, "Fifty Years After *Brown v. Board of Education*: The Harms and Concerns of Continued Segregation in Michigan," Detroit, Michigan. I have no transcript or minutes.

October 2008: Michigan Commission on Law Enforcement Standards. Copy supplied.

January 2004: Testimony before the Michigan Supreme Court on behalf of the Michigan Board of Law Examiners, regarding a request that a specific rule pertaining to the standard of eligibility for applicants to the Michigan State Bar be stricken. 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 2013, May 2012, May 2011, May 2010: Presenter, Wayne County Circuit Adult Drug Treatment Court, Third Judicial Circuit of Michigan, Detroit, Michigan. As a judge with responsibility for managing a drug court docket, during the graduation ceremony each year, I have provided certificates to the individual participants assigned to my docket who successfully completed Drug Court. While presenting the certificates, I commented briefly on the success of each individual participant. I have no notes, transcript, or recording. The address of the Third Judicial Circuit of Michigan is 1441 Saint Antoine Street, Detroit, Michigan 48226.

April 11, 2013: Keynote Speaker, Metropolitan Organizing Strategy Enabling Strength (M.O.S.E.S.) 16th Annual Banquet, Detroit, Michigan. Notes supplied.

December 4, 2012: Remarks, Detroit Metropolitan Bar Association, Detroit, Michigan. Remarks and press coverage supplied.

November 4, 2011: Administered Oath, Race2Equity Conference, Michigan Roundtable for Diversity and Inclusion, Detroit, Michigan. I was asked to administer an oath to members of the Truth and Reconciliation Commission. The oath that I administered was drawn from a paper that set forth the guiding principles of the Truth and Reconciliation Commission. I have no notes, transcript, or recording. The address of the Michigan Roundtable for Diversity and Inclusion is 3031 West Grand Boulevard, Suite 525, Detroit, Michigan 48202.

May 2011: Speaker, Law Day, Third Judicial Circuit of Michigan, Detroit, Michigan. I received a group of female high school students in my courtroom and spoke to them about the availability of expungement of criminal records, and the various procedures involved within the practice of criminal law. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Third Judicial Circuit of Michigan is 1441 Saint Antoine, Detroit, Michigan 48226

September 23, 2010: Speaker, Boys Hope Girls Hope 25th Anniversary Dinner, Detroit, Michigan. As Chair of the 25th Anniversary Dinner, I provided brief remarks explaining the importance of the mission of Boys Hope Girls Hope and thanked the many individuals in attendance for their support. I have no notes, transcript, or recording. The address for Boys Hope Girls Hope Detroit is P.O. Box 21085, Detroit, Michigan 48221.

April 30, 2010: Speaker, *Public Defense Reform: The Impact on the School to Prison Pipeline,* Freedom Institute, Detroit, Michigan. My remarks focused on the high school drop-out rate and its connection to future criminal activity. I also touched on the need for enhanced funding for public defense. I have no notes, transcript or recording. The address of the Freedom Institute is 15800 West McNichols Road, Suite #224, Detroit, Michigan 48235.

November 12, 2009: Contributor, pre-recorded video aired when Saul A. Green received the 62nd Humanitarian Tribute from the Michigan Roundtable for Diversity and Inclusion, Detroit, Michigan. Video supplied.

April 21, 2009: Panel Moderator, Leading Economic Transformation with Diversity, Post Proposal 2, *Innovation Through Diversity* Conference, Detroit Regional Chamber, Michigan Roundtable for Diversity and Inclusion, Crain's Detroit Business, Detroit, Michigan. I have no notes, transcript, or recording. The address of the Michigan Roundtable for Diversity and Inclusion is 3031 West Grand Boulevard, Suite 525, Detroit, Michigan 48202.

March 2 – 4, 2009: Panelist, Symposium on Diversity and Inclusion in Philanthropy, Council of Michigan Foundations, Detroit Michigan. Notes supplied.

January 30, 2009: Speaker, *Opportunity for All: Inequity, Linked Fate and Social Justice in Michigan,* Detroit, Michigan. I have no notes, transcript, or recording. The address for the Michigan Roundtable for Diversity and Inclusion is 3031 West Grand Boulevard, Suite 525, Detroit, Michigan 48202.

January 15, 2009: Speaker, "Honoring the Work of Dr. Martin Luther King Jr.," Foundation for Mott Community College, Flint, Michigan. Remarks supplied.

November 13, 2008: Moderator, Voices for Action 2008, Poverty Summit, Detroit, Michigan. PowerPoint presentation supplied.

October 20, 2008: Speaker, Town Hall Meeting, Michigan Department of Environmental Quality, Sierra Club, Detroit, Michigan. I provided brief remarks regarding the importance of community input on matters pertaining to environmental contamination in their community. I have no notes, transcript, or recording. The address of the Michigan Department of Environmental Quality is 525 West Allegan Street, Lansing, Michigan 48909.

September 2008: Keynote Speaker, "Impact of Proposal 2," Michigan Minority Business Development Council, Lansing, Michigan. I have no notes, transcript, or recording. The address of the Michigan Minority Business Development Council is 124 West Michigan Avenue, Eighth Floor, City Hall, Lansing, Michigan 48933.

September 2008: Director of Local Host Agency, International Association of Official Human Rights Agencies and National Association of Human Rights Workers, Detroit, Michigan. I facilitated a workshop on affirmative action. I have no notes, transcript, or recording. The address of the International Association of Official Human Rights Agencies is 444 North Capitol Street, N.W., Suite 536, Washington, D.C. 20001.

June 25, 2008: Speaker, Impact of Proposal 2, State of Michigan Conference for Public Purchasing Professionals, Michigan Department of Technology, Management and Budget, Livonia, Michigan. Remarks supplied.

April 24, 2008: Panel Moderator, Closing Gaps In School Completion, Race Matters for Michigan's Children: Closing the Gap Toward A Successful Workforce of Tomorrow Conference, Voices for Michigan's Children, Lansing, Michigan. I served as the moderator of the panel examining ways in which school drop-out rates can be lowered. I have no notes, transcript, or recording, but press coverage is supplied. The address of Voices for Michigan's Children is 330 Marshall Street, Suite 211, Lansing, Michigan 48912.

May 27, 2008: Speaker, 2008 Asian Pacific American Heritage Day Celebration, Governor's Advisory Council on Asian and Pacific American Affairs, Lansing State Capitol, Lansing, Michigan. I spoke about the importance of diversity in the state of Michigan and the particular contributions and civil rights challenges of the Asian Pacific American community. I have no notes, transcript, or recording. The address of the Advisory Council is 110 West Michigan Avenue, Suite 800, Lansing, Michigan 48933.

May 2008: Keynote Speaker, "Celebrating the Grand Rapids Community Relations Commission," Grand Rapids Community Relations Commission, Grand Rapids, Michigan. I have no notes, transcript, or recording. The address of the Grand Rapids Community Relations Commission is 300 Monroe Avenue, N.W., Suite 840, Grand Rapids, Michigan 49503.

April 2008: Guest Speaker, "Contributions of Youth," Focus HOPE's Generation of Promise Youth Roundtable, Detroit, Michigan. I have no notes, transcript, or recording. My remarks focused upon the contributions that youth can make in the effort to respect diversity. The address of Focus Hope is 1355 Oakman Boulevard, Detroit, Michigan 48238.

March 25, 2008: Speaker, *Best Practices: Proceeding Toward Diversity and Inclusive Communities,* 2008 Diversity Summit, Lansing, Michigan. Remarks and press coverage supplied.

March 2008: Luncheon Speaker, Alpha Kappa Alpha Day at the Michigan Capitol 2008, Alpha Kappa Alpha Sorority, Inc., Lansing, Michigan. I provided remarks to the attendees regarding the importance of diversity in Michigan and the impact of Proposal 2 in Michigan. I have no notes, transcript, or recording. I have no recollection of the Michigan chapter of the sorority to which I provided remarks. The address of the Alpha Kappa Alpha Sorority, Incorporated, International Headquarters is 5656 South Stony Island Avenue, Chicago, Illinois 60637.

February 2008: Speaker, Michigan Legislative Black Caucus Meeting, Lansing, Michigan. I provided remarks concerning the potential legislative responses to hate crime. I have no notes, transcript, or recording. The address of the Michigan Legislative Black Caucus is 124 North Capitol, Anderson House Office Building, Lansing, Michigan.

January 2008: Moderator, Dr. Martin Luther King Jr. Day program, Henry Ford Museum, Dearborn, Michigan. I have no notes, transcript, or recording. The address of the Henry Ford Museum is 20900 Oakwood Boulevard, Dearborn, Michigan 48124.

January 2008: Moderator and Speaker, Second Annual Dr. Martin Luther King, Jr. Day "Youth Roundtable on Diversity and Michigan's Future," Schoolcraft College, Livonia, Michigan. I have no notes, transcript, or recording. The

address of the Schoolcraft College is 18600 Haggerty Road, Livonia, Michigan 48152.

October 2007: Panelist, "Losing the Battle, But Not the War: Diversity in the Legal Profession After Proposal 2." Wolverine Bar Association, Detroit, Michigan. I have no notes, transcript, or recording. The address of the Wolverine Bar Association is 645 Griswold Street, Suite 961, Detroit, Michigan 48226.

September 2007: Panelist, State of Michigan NAACP, Lansing, Michigan. The discussion topics for the panel included the decisions of the Michigan Supreme Court on voter identification requirements and the impact of Proposal 2. I have no notes, transcript, or recording. The address of NAACP Lansing Branch is 530 South Pine Street, Lansing, Michigan 48933.

September 2007: Opening Speaker, "Michigan's Response to Hate: Building United Communities," Michigan Department of Civil Rights and the Michigan Alliance Against Hate Crimes. My remarks focused upon the establishment of community based responses systems to hate crimes and bias incidents. I have no notes, transcript, or recording. The address of Michigan the Department of Civil Rights is 110 West Michigan Avenue, Suite 800, Lansing, Michigan 48933.

May 15, 2007: Speaker, Asian and Pacific American Heritage Month, 2007, Governor's Council on Asian and Pacific American Affairs Council, Lansing, Michigan. Remarks supplied.

May 2007: Speaker, NAACP Press Conference regarding "And Justice for All" Initiative, Detroit, Michigan. Notes supplied.

May 2007: Speaker, Leadership Macomb, Macomb County, Michigan. Remarks supplied.

April 27, 2007: Speaker, "Building Community Dialogue on Race Relations," Michigan Department of Civil Rights, Detroit, Michigan. Remarks supplied.

April 26, 2007: Speaker, Michigan State Planning Body for Legal Services, Lansing, Michigan. I provided remarks pertaining to the assessment of the impact of the passage of the constitutional ban on affirmative action in state programs. I have no notes, transcript, or recording. The address for the Michigan State Planning Body for Legal Services is c/o State Bar of Michigan, 306 Townsend Street, Lansing, Michigan 48933.

March 2007: Speaker, Disadvantaged Business Enterprise Program, Michigan Department of Transportation, Lansing, Michigan. Remarks supplied.

February 2007: Keynote Speaker, "Making Tomorrow a Better Today," United Auto Workers, Flint, Michigan. I spoke about the historical partnership between

the unions and the civil rights community. I have no notes, transcript, or recording. The address of the United Auto Workers Local 598 is G-3293 Van Slyke Road, Flint, Michigan 48507.

January 14, 2007: Speaker, "Honoring the Life of Dr. Martin Luther King, Jr.," Community Unity Celebration, Dearborn Heights, Michigan. The celebration of Dr. King was hosted by Andy Dillon, Speaker of the House. I have no notes, transcript, or recording. The address of the State Capitol is Capitol Building, P.O. Box 30014, Lansing, Michigan 48909.

January 2007: Co-Host, Governor's Youth Roundtable Discussion on Diversity. The Governor and I spoke with approximately 35 high school students from Macomb, Oakland and Wayne counties about their perspectives on diversity, inclusion and what youth enjoy about living in Michigan. I have no notes, transcript, or recording. The address of the Youth Roundtable is Michigan Roundtable and Diversity, 525 New Center One, 3031 West Grand Boulevard, Detroit, Michigan 48202.

January 2007: Keynote Speaker, "The Celebration of the Work and Life of Dr. Martin Luther King, Jr.," Jewish Community Council, Detroit, Michigan. I have no notes, transcript, or recording. The address of the Jewish Community Council is 6735 Telegraph, Suite 140, Bloomfield Hills, Michigan 48301.

October 26, 2006: Speaker, "Is Equal Opportunity a Reality in 2006?" Washtenaw County Bar Association, Ann Arbor, Michigan. My remarks focused upon the imperative of inclusion in educational and employment settings. I have no notes, transcript, or recording. The address of the Washtenaw County Bar Association is 101 East Huron, Ann Arbor, Michigan 48107.

October 21, 2006: Keynote Speaker, "Alignment Toward Reality," Albion NAACP Freedom Fund Dinner, Albion, Michigan. Remarks supplied.

October 17, 2006: Luncheon Speaker, 23rd Annual Metropolitan Detroit Teen Conference, Merrill-Palmer Institute, Detroit, Michigan. My remarks focused on the importance of youth advocacy and engagement. Remarks supplied.

October 2006: Panelist, Council of Michigan Foundations, Kalamazoo, Michigan. My remarks focused on civil and human rights in Michigan and across the country. PowerPoint presentation supplied.

October 2006: Keynote Speaker, "Reaffirming Affirmative Action in Michigan," Battle Creek NAACP Freedom Fund Dinner, Battle Creek, Michigan. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on October 21, 2006, for which remarks have been provided.

September 2006: Panelist, "Segregation and Civil Rights: Examining the History and Current Status of Segregation Patterns in Southeastern Michigan and Their Relationship to the National Affirmative Action Battle," Rainbow PUSH, Detroit, Michigan. I have no notes, transcript, or recording. The address of Rainbow PUSH is 660 Woodward, Suite 1433, Detroit, Michigan 48226.

August 7, 2006: Panelist, 81st Annual National Bar Association Conference, Detroit, Michigan. I participated in a panel discussion on affirmative action. I have no notes, transcript, or recording. The address of the National Bar Association is 1225 11th Street, N.W., Washington, D.C. 20001.

July 28, 2006: Speaker, "Katherine Dunham National Memorial Tribute," Fellowship Chapel, Detroit, Michigan. I have no notes, transcript, or recording. The address of Fellowship Chapel is 7707 West Outer Drive, Detroit, Michigan.

May 30, 2006: Interview, Anti-Defamation League, Metro Detroit, Michigan. I was the recipient of the Women of Achievement Award provided by the Anti-Defamation League. I have no notes, transcript or recording. The address of the Anti-Defamation League is 25800 Northwestern Highway, Suite 980, Southfield, Michigan 48075.

May 23, 2006: Keynote Speaker, Today's Civil Rights Movement, Detroit Historical Museum, Detroit, Michigan. I provided remarks on the civil rights challenges and opportunities facing Michigan. I have no notes, transcript, or recording. The address of the Detroit Historical Museum is 5401 Woodward Avenue, Detroit, Michigan 48202.

May 17, 2006: Speaker, Voter Informational Forum, Detroit, Michigan. Remarks supplied.

May 5, 2006: Speaker, "Impact of Proposal 2," University of Michigan Alumni Association, Ann Arbor, Michigan. Remarks supplied.

May 2006: Speaker, "Buy Michigan First," Michigan Department of Management and Budget. I provided remarks to contractors regarding diversity as a value within the procurement process in the State. I have no notes, transcript, or recording. The address of the Michigan Department of Technology, Management and Budget is 302 South Walnut Street, Lansing, Michigan 48902.

April 26, 2006: Speaker, Michigan Minority Publishers Association, Lansing, Michigan. Remarks supplied.

April 12, 2006: Panelist, "Intellectual Diversity," Nancy Cantor Distinguished Lecture Series, Ann Arbor, Michigan. I discussed the topic of affirmative action. I have no notes, transcript, or recording. The address of the Nancy Cantor Distinguished Lecture Series is National Center for Institutional Diversity, 3338

School of Education Building, University of Michigan, 610 East University Avenue, Ann Arbor, Michigan 48109.

March 27, 2006: Speaker, Civil Rights Summit, Wayne State University, Michigan Civil Rights Commission, Michigan Department of Civil Rights, Detroit, Michigan. I provided remarks concerning the necessity and goals of the Civil Rights Summit. I have no notes, transcript, or recording. The address of the Michigan Civil Rights Commission is 110 West Michigan Avenue, Suite 800, Lansing, Michigan 48933.

February 21, 2006: Panelist, Fourth Annual State of Black Americans in Michigan, Lansing, Michigan. My remarks addressed the needs of African American communities relative to housing and employment. I have no notes, transcript, or recording, and I do not recall the name of the sponsoring organization.

February 2006: Keynote Speaker, 11th Annual United Auto Workers Local 652 Black History Month Program, Lansing, Michigan. Remarks supplied.

January 2006: Speaker, "United Against Hate," Southern Christian Leadership Conference, Detroit, Michigan. I have no notes, transcript, or recording. The address of the Southern Christian Leadership Conference is 5050 Joy Road, Detroit, Michigan 48204.

December 2005: Remarks, Press Conference, Advocates for Leaders for Police and Community Trust (ALPACT), Detroit, Michigan. I was one of many individuals who offered remarks at a press conference convened by ALPACT regarding the rising number of reported hate crimes in Michigan. I have no notes, transcript, or recording. ALPACT is staffed by the Michigan Roundtable for Diversity and Inclusion. The address of the Michigan Roundtable for Diversity and Inclusion is 3031 West Grand Boulevard, Suite 535, Detroit, Michigan 48202

November 2005: Remarks, 50th Anniversary of Rosa Parks, Henry Ford Museum, Dearborn, Michigan. Remarks supplied.

October 27, 2005: Panelist, *Achieving a Diverse Democracy*, Michigan American Constitution Society for Law and Policy Lawyer Chapter, Wayne State University Law School, Detroit, Michigan. I have no notes, transcript, or recording. The address for the Michigan American Constitution Society for Law and Policy Lawyer Chapter at Wayne State University is 42 West Warren Avenue, Detroit, Michigan 48202.

October 2005: Speaker, "Workforce Diversity," Warner, Norcross & Judd law firm, Southfield, Michigan. Remarks supplied.

September 19, 2005: Speaker, Race Relations and Diversity Task Force, Birmingham, Michigan. My remarks focused on the importance of diversity

within the state of Michigan. I have no notes, transcript, or recording. The address of the Race Relations and Diversity Task Force is The Community House, 380 South Bates Street, Birmingham, Michigan 48009.

September 16, 2005: Keynote Speaker, "Striving in Difficult Times," Michigan Department of Corrections Minority Advisory Panel (MAP), Lansing, Michigan. Remarks supplied.

August 2005: Speaker, "Social Justice Advocacy," Metropolitan Organizing Strategies Enabling Strength (MOSES), Detroit, Michigan. Remarks supplied.

August 2005: Panelist, Second Annual Diversity Symposium, Macomb County Ministerial Alliance, Macomb County Branch NAACP, Clinton Township, Michigan. I provided remarks as a panelist regarding the state of civil rights in Michigan. I have no notes, transcript, or recording. The address of the Macomb County Branch NAACP is P.O. Box 1063, Mount Clemens, Michigan 48046.

June 2 – 4, 2005: Panelist, Affirmative Action in Michigan, 25th Annual Mackinac Policy Conference, Detroit Regional Chamber of Conference. I spoke on a panel that examined the potential impact of the elimination of affirmative action in the State of Michigan. I have no notes, transcript, or recording. The address of the Detroit Regional Chamber of Commerce is One Woodward Avenue, Suite 1900, Detroit, Michigan 48232.

May 19, 2005: Remarks, Ninth Annual Damon J. Keith, Community Spirit Award Luncheon, Wolverine Bar Association, Detroit, Michigan. I was given this award by the Wolverine Bar Association in recognition of my service and advocacy for the disenfranchised. My acceptance remarks focused upon the need for lawyers to give back to the community at large through advocacy and service. I have no notes, transcript, or recording. The address of the Wolverine Bar Association is 645 Griswold, Suite 961, Detroit, Michigan 48226.

May 16, 2005: Panelist, "A Community Dialogue on Race," Public Forum, New Detroit, Inc. and Michigan Department of Civil Rights, Detroit, Michigan. The forum was designed to discuss race relations in Michigan. I have no notes, transcript, or recording. The address for New Detroit, Inc. is 3011 West Grand Boulevard, Suite 1200, Detroit, Michigan 48202.

May 15, 2005: Keynote Speaker, NAACP Freedom Fund Dinner, Bay City, Michigan. I spoke about the civil rights challenges and opportunities facing Michigan. I have no notes, transcript, or recording. The address of the Bay City NAACP is Post Office Box 335, Bay City, Michigan 48707.

March 2005: Speaker, "Women's History Month," Southfield, Michigan. Remarks supplied.

January 2005: Speaker, "How Far We've Come," Delta College, Saginaw, Michigan. My remarks focused upon the progress that has been made relative to civil rights in the State of Michigan. I have no notes, transcript, or recording. The address of Delta College is 1961 Delta Road, Saginaw, Michigan 48710.

January 14, 2005: Panelist, Legacy of Dr. Martin Luther King, Jr., Wayne State University Law School, Detroit, Michigan. I have no notes, transcript, or recording. The address of Wayne State University Law School is 471 West Palmer Street, Detroit, Michigan 48202.

November 2004: Keynote Speaker, Annual Growers and Farmworkers Conference, Lansing, Michigan. Remarks supplied.

October 29, 2004: Introduction of Speaker, Lansing Branch of the NAACP, Lansing, Michigan. Remarks supplied.

October 2004: Conference Speaker, "Revitalizing the Purpose and Spirit of Education: The Imprint of *Brown v. Board of Education*," Marygrove College, Detroit, Michigan. I provided remarks concerning the *Brown v. Board of Education* decision and its impact today on education. I have no notes, transcript, or recording. The address of Marygrove College is 8425 McNichols Road, Detroit, Michigan 48221.

September 30, 2004: Speaker, 69th Annual State Bar of Michigan Annual Meeting, *Connecting the Dots: Brown v. Board and Its Impact on Equal Justice*, Lansing Center, Lansing, Michigan. My remarks were presented to members of the Michigan bar and focused on the impact of Proposal 2 on public education. I have no notes, transcript, or recording, but press coverage is supplied. The address of the State Bar of Michigan is 306 Townsend Street, Lansing, Michigan 48933.

September 26, 2004: Keynote Speaker, Saginaw Branch of the NAACP, Saginaw, Michigan. Remarks and press coverage supplied.

September 2004: In my capacity as the Director of the Michigan Department of Civil Rights, I participated in a Voter Information and Protection Drive, a comprehensive campaign in Michigan to provide information to potential voters regarding the rights and responsibilities associated with voting and protection to voters who encounter challenges in their effort to vote. I spoke at various forums and was interviewed by various media outlets across the state on the issue of voter information and protection. I have no notes, transcript, or recording.

Fall 2004: Moderator, *Race and Civil Rights in Detroit,* Detroit Public Library. I moderated a discussion following remarks provided by Kevin Boyle about his novel, *The Arc of Justice: A Saga of Race, Civil Rights, and Murder in the Jazz Age*. I have no notes, transcript, or recording. The address of the Detroit Public Library is 5201 Woodward Avenue, Detroit, Michigan 48202.

June 2004: Panelist, "Bridging the Racial Divide: A Business Imperative," Mackinac Policy Conference, Mackinac Island, Michigan," Detroit Regional Chamber of Commerce. Video supplied.

May 18, 2004: Keynote Speaker, "*Brown v. Board of Education*," Saginaw Branch of the NAACP, Saginaw, Michigan. Remarks supplied.

April 26, 2004: Opening Remarks, "One Michigan: The Dangers of Ethnic, Racial and Religious Intolerance in Our State, In Our Country and In Our World," Michigan Civil Rights Commission, Farmington Hills, Michigan. Remarks supplied.

April 15 2004: Keynote Speaker, Fair Housing Association of Southwest Michigan, Kalamazoo, Michigan. Remarks supplied.

April 1, 2004: Panelist, "Ward Connerly's Efforts to Undermine the University of Michigan Decisions," Equal Justice Society, University of Michigan Law School, Ann Arbor, Michigan. My remarks focused on the public statements and organizing by Ward Connerly in connection with his reaction to the United Supreme Court's ruling *Gratz v. Bollinger*, 539 U.S. 244 (2003). I have no notes, transcript, or recording. The address of the Equal Justice Society is 1999 Harrison Street, Suite 800, Oakland, California 94612.

March 22, 2004: Keynote Speaker, "The Path That We Are On," Lansing, Michigan. I have no notes, transcript or recording, and I cannot recall to whom the remarks were made.

March 10, 2004: Speaker, Citizens for Progressive Change, Benton Harbor, Michigan. In my capacity as the Director of the Michigan Department of Civil Rights, I provided remarks related to civil disturbances in the summer of 2003 in Benton Harbor, Michigan. I have no notes, transcript, or recording, but press coverage is supplied. The address of the Citizens for Progressive Change is 185 East Main Street, Benton Harbor, Michigan 49022.

January 2004: Panelist, "Detroit As A Cool City Beyond the 21st Century," Detroit Urban League and the American Jewish Committee of Michigan. I have no notes, transcript or recording. The address of the Detroit Urban League is 208 Mack Avenue, Detroit, Michigan 48201.

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.

Through review of my files and the Internet, I have attempted to locate any items

responsive to this question. During my tenure as the Director of the Michigan Department of Civil Rights, from 2003 to 2009, I gave many interviews to local radio, television and print media reporters. I do not recall all the interviews I have given or the dates of such interviews. The Department also issued press releases many times during my tenure and these press releases often contained a quote from me. I am providing copies of all the material that I could locate.

Summer 2012: Interview on Kiwanitalk, The Kiwanis Club of Dearborn. Video available at http://vimeo.com/51604129.

We've Got No Choice But To Change DPS, Detroit Free Press, March 10, 2010. Copy supplied.

Lawyer Was Champion For Civil Rights Causes, Detroit News, February 23, 2010. Copy supplied.

Former MDCR Head Linda V. Parker Sworn In As Wayne County Judge, Michigan Chronicle, June 10, 2009. Copy supplied.

King Tribute A Reminder Of Work Still To Be Done, Flint Journal, January 16, 2009. Copy supplied.

Press Release, *Civil Rights Commission To Host Southeast Michigan Public Forum On Racial Disparities In Health*, Michigan Department of Civil Rights, December 12, 2008. Copy supplied.

Press Release, *Public Forum To Discuss Disability And Voting Rights*, Michigan Department of Civil Rights, October 23, 2008. Copy supplied.

Diversity Continues To Grow In Stature, Corp! Magazine, October 16, 2008. Copy supplied.

Press Release, *Michigan Department Of Civil Rights Announces Voter Education Campaign for November 2008 Election,* Michigan Department of Civil Rights, October 2, 2008. Copy supplied.

Press Release, *Michigan Department Of Civil Rights Calls Upon The Secretary Of State To Live Up To Her Word*, Michigan Department of Civil Rights, October 1, 2008. Copy supplied.

Event Notes Michigan Hate Crime, American Renaissance, September 15, 2008. Copy supplied.

Press Release, *Hate Crime Conference Responds To Intolerance in Michigan*, Michigan Department of Civil Rights, September 8, 2008. Copy supplied.

Press Release, *International Human Rights Conference Coming to Detroit*, Michigan Department of Civil Rights, September 5, 2008. Copy supplied.

Press Release, *68th Annual Michigan NAACP State Conference Kicks Off With Press Conference Today, August 26; 'Voter Mobilization, Education and Health Among Top Priorities for Discussion at Annual Conference,'* PRNewswire, August 26, 2008. Copy supplied.

Press Release, *Civil Rights Department Dismayed By Outcome Of CMU Noose Investigation*, Michigan Department of Civil Rights, August 1, 2008. Copy supplied.

New Bill Would Expand State's Hate Crime Law, AP Alert – Michigan, July 24, 2008. Copy supplied.

Press Release, *Legislators, Law Enforcement, MDCR, Civil Rights Groups Join Together To Announce New 'Hate Crimes' Legislation*, Michigan Department of Civil Rights, July 23, 2008. Copy supplied.

Benton Harbor N The Benton, The Herald Paladium, July 22, 2008. Copy supplied.

Press Release, *MDCR Pleased That Young Males Targeted for Seat Belt Promotion, Not Enforcement*, Michigan Department of Civil Rights, May 23, 2008. Copy supplied.

Press Release, *Michigan Governor's Advisory Council On Asian Pacific American Affairs Addresses Tragedies In Myanmar and China,* May 20, 2008, Michigan Department of Civil Rights. Copy supplied.

Press Release, *Civil Rights Department Condemns Saginaw Noose Incident On Eve Of Commission Visit*, Michigan Department of Civil Rights, May 15, 2008. Copy supplied.

Hate vs. Free Speech Issues Eyed, Grand Rapids Press, April 1, 2008. Copy supplied.

Press Release, *Michigan Civil Rights Commission Seeks Student Victims Of Campus Hate For Testimony*, Michigan Department of Civil Rights, March 27, 2008. Copy supplied.

Diversity Is The Key Ingredient To Kellogg's Success, Diversity Magazine, March 2008. Copy supplied.

Press Release, *Keep Persons With Disabilities In Mind During Inclement Weather*, Michigan Department of Civil Rights, January 23, 2008. Copy supplied.

Press Release, *MDCR Hosts 2nd Annual "Martin Luther King, Jr. Day Youth Roundtable on Diversity" at Schoolcraft College*, Michigan Department of Civil Rights, January 18, 2008. Copy supplied.

Press Release, *The Michigan Department Of Civil Rights Statement On The Attorney General Ruling on the Proposed Closing Of The Buena Vista SOS Office*, Michigan Department of Civil Rights, December 27, 2007. Copy supplied.

Press Release, *Civil Rights Department Disturbed By CMU Nooses And Recent Spike In Symbols Of Hate*, Michigan Department of Civil Rights, November 16, 2007. Copy supplied.

Press Conference, *Senator Clarke & Civil Rights Department To Hold Detroit Press Conference on CMU Nooses,* Michigan Department of Civil Rights, November 16, 2007. I have no notes, transcript, or recording.

Ask The Director, The Herald Paladium, October 28, 2007. Copy supplied.

Press Release, *Civil Rights Director Applauds Justice Department Delaying Approval Of New SOS Voter ID Rules*, Michigan Department of Civil Rights, September 26, 2007. Copy supplied.

Press Release, *MIAAHC & MDCR Present: "Micihgan Response to Hate: Building United Communities,"* Michigan Department of Civil Rights, September 4, 2007. Copy supplied.

Civil Rights Calls For Public Hearing On Secretary Of State Voting Changes, The Michigan Bulletin, September 2007. Copy supplied.

Press Release, *Civil Rights Urges Public Hearing On Secretary of State Voting Changes*, Michigan Department of Civil Rights, August 30, 2007. Copy supplied.

Press Release, *Director Parker To Attend Public Hearing On Secretary Of State Office Closing*, Michigan Department of Civil Rights, July 30, 2007. Copy supplied.

Press Release, *Civil Rights Department Disappointed By U.S. Civil Rights Commission Selection of Leon Drolet*, Michigan Department of Civil Rights, June 11, 2007. Copy supplied.

Press Conference, *Detroit Branch NAACP Legal Redress Committee to Unveil 'And Justice For All,'* PRNewswire-USNewswire, May 29, 2007. I have no notes, transcript, or recording.

Press Release, *Civil Rights Department Affirms Right To File Complaints Without Retaliation*, Michigan Department of Civil Rights, May 21, 2007. Copy supplied.

Ladies Night, Every Night on Floor 19: No Men Allowed, ABC News, May 18, 2007. Copy supplied.

Partnership Addresses Aging Workforce, Granholm Calls On Partnership Committee To Address Future Labor Shortage Issues, Michigan Contractor and Builder, Volume 101; Issue 19, May 14, 2007. Copy supplied.

Ask the Director Questions and Answers on Civil Rights from Linda V. Parker, Director of Michigan Department of Civil Rights (MDCR), The New Citizens Press, May 13, 2007. Copy supplied.

May 2007: I was interviewed by Lansing Comcast Newsmakers. The primary focus of the interview was the aftermath of Proposal 2. I have been unable to obtain a transcript or recording.

May 2007: I was interviewed by Good Morning America to discuss the civil rights implications of a "women only" floor being promoted in a new Grand Rapids Marriott Hotel. Transcript supplied.

Civil Rights Commission Addresses Diversity Post-Proposal 2, The University Record On Line, University of Michigan News Service, March 16, 2007. Copy supplied.

March 16, 2007: I was a guest on the Lou Perry Show, a radio program broadcast on WLBY, 1600 AM. My remarks focused on the One Michigan at the Crossroads report issued by the Michigan Civil Rights Commission. I have been unable to obtain a transcript or recording.

Free Michigan American Indian Tuition Should Continue, Official Says, Detroit News, March 14, 2007. Copy supplied.

Panel: Most Programs Are Legal, www.michigandaily.com, March 8, 2007. Copy supplied.

Civil Rights Commission Investigates Impact On Proposal 2, WILX, March 7, 2007. Copy supplied.

Collective Bargaining, Foster Care Among State Programs In Jeopardy Because Of Prop 2, The Detroit News, March 7, 2007. Copy supplied.

Press Release, *Michigan Civil Rights Commission Re-Adopts Statement On Pay Equity*, Michigan Department of Civil Rights, April 25, 2007. Copy supplied.

Press Release, *Commission Plan To Promote Diversity In Compliance With Proposal 2*, Michigan Department of Civil Rights, March 7, 2007. Copy supplied.

March 2007: I spoke on a public affairs radio program, Manoranjan Show, which aired on WPON, 1460 AM. I spoke about civil rights issues in Michigan. I have been unable to obtain a transcript or recording.

Press Release, *Formal Charge Of Unlawful Discrimination Issued Against Century 21 Town & Country*, Michigan Department of Civil Rights, January 24, 2007. Copy supplied.

Press Release, *Statement Regarding Cristo Rey Fire*, Michigan Department of Civil Rights, December 7, 2006. Copy supplied.

Press Release, *Statement Regarding Attack on Detroit Muslim*, Michigan Department of Civil Rights, November 29, 2006. Copy supplied.

Court Battle Likely On Affirmative Action, The Washington Post, November 18, 2006. Copy supplied.

Press Release, *Michigan Civil Rights Commission and Department Statement Regarding Proposal 2*, Michigan Department of Civil Rights, November 8, 2006. Copy supplied.

New Study Says Mich. Seasonal Farm Workers Need More Services, Associated Press, December 5, 2006. Copy supplied.

Press Release, *Michigan Civil Rights Commission To Host Voter Information Forum In Detroit*, Michigan Department of Civil Rights, October 9, 2006. Copy supplied.

August 31, 2006: I participated in an interview with MIRS, the Michigan Information and Research Service, regarding the impact of eliminating affirmative action in the state of Michigan. I have been unable to obtain a transcript or recording.

Press Release, *Civil Rights Commission and Department Statement On Federal Court Ruling On MCRI,* Michigan Department of Civil Rights, August 30, 2006. Copy supplied.

August 22, 2006: I participated in a conversation televised on PBS as "Bridging the Racial Divide." I have been unable to obtain a transcript or recording.

Press Release, *Civil Rights Commission and Department File Brief Against Photo ID for Voters*, Michigan Department of Civil Rights, July 20, 2006. Copy supplied.

June 9, 2006: I participated in an MGTV interview discussing the topics of affirmative action and the Commission hearings on the Michigan Civil Rights Initiative petition fraud. Notes supplied.

June 16, 2006: I was interviewed by Ron Scott on For My People, a current events television program which is broadcast throughout various parts of Southeastern Michigan. The topic of the discussion was the outcome of the hearings conducted by the Michigan Civil Rights Commission on the signature gathering process for the Michigan Civil Rights Initiative. I have been unable to obtain a transcript or recording.

Press Release, *Michigan Civil Rights Commission Calling on Supreme Court and Attorney General to Take Action Regarding MCRI Fraud*, Michigan Department of Civil Rights, June 9, 2006. Copy supplied.

May 23, 2006: I participated in a taping for a local PBS documentary. The interview included a general discussion on race relations in Michigan with a particular focus on segregation, hate crime and affirmative action. Notes supplied.

May 1, 2006: I interviewed with One United Michigan to discuss affirmative action. Video supplied.

Press Release, *Civil Rights Commission Convenes Civil Rights Summit*, Michigan Department of Civil Rights, March 21, 2006. Copy supplied.

Press Release, *Formal Charge of Unlawful Discrimination Issued Against Century 21 Town & Country*, Michigan Department of Civil Rights, January 24, 2006. Copy supplied.

Call Sam Sports, Protecting The Civil Rights of Voters, Fraud Is Claimed On Ballot Initiative, Detroit Free Press, January 12, 2006. I have no notes, transcript, or recording.

Press Release, *Auditor General Report Affirms MDCR's Responsibility To Report On Commission Activities and Educate Public*, Michigan Department of Civil Rights, January 3, 2006. Copy supplied.

Press Release, *Civil Rights Commission Announces Public Hearing to Investigate*

Alleged Voter Fraud, Michigan Department of Civil Rights, January 3, 2006. Copy supplied.

It A-peers You're Not My peer-No Race Based Juries, Ah, Shoot! December 3, 2005. Copy supplied.

Michigan Students Warn of Dangers of Anti-Affirmative Action Ballot Initiative, The Leadership Conference, civilrights.org, November 4, 2005. Copy supplied.

Press Release, *Department Of Civil Rights Issues Charge Of Unlawful Discrimination Against Chesterfield Township*, Michigan Department of Civil Rights, October 14, 2005. Copy supplied.

Rash Of Cross-Burnings Seen In Michigan, National Public Radio, September 27, 2005. Audio available at http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=4865351&m=4865352.

State Pursues Realty Bias Charges, Detroit Free Press, July 28, 2005. Copy supplied.

Michigan Eagles Chapters Agree To Admit Women, Detroit News, July 13, 2005. Copy supplied.

June 12, 2006: Press Conference, Detroit, Lansing, Grand Rapids, Michigan. I along with the Chair of the Michigan Civil Rights Commission, held press conferences in the cities of Detroit, Lansing, and Grand Rapids to report the findings of the hearings on the allegations of petition fraud. Notes supplied.

Will Detroit Ever See Itself As It Is? Detroit Free Press, June 3, 2005. Copy supplied.

The Michigan Civil Rights Commission Decades Long Commitment to Equality for All, The New Citizens Press, February 20, 2005. Copy supplied.

Civil Rights Office Reopens In Benton Harbor, The Herald Paladium, December 15, 2004. Copy supplied.

State Civil Rights Office Taking Steps To Protect Voting, Detroiters D.E.A.P.E., October 9, 2004. Copy supplied.

Dept. Of Civil Rights Appoints LGBT Liaison, Pride Source, September 9, 2004. Copy supplied.

Macomb Youth Hall License Hits Snag, Detroit News, April 23, 2004. Copy supplied.

June 2004: I was interviewed by WJLB, an AM radio station in Detroit, Michigan. My remarks focused upon the Cool Cities Initiative advanced by Governor Jennifer Granholm and the aftermath of the conversation on race at the Mackinac Policy Conference. Notes supplied.

Face It, Realities Demand A Better Balance, Detroit Free Press, March 23, 2004. Copy supplied.

Civil Rights Chief Vows Aid To Benton Harbor, The Herald Paladium, March 11, 2004. I have no notes, transcript, or recording.

Press Release, *Michigan Civil Rights Commission Adopts Resolution Opposing Michigan Civil Rights Initiative*, Michigan Department of Civil Rights, March 11, 2004. Copy supplied.

Tenant Can Keep Dog Despite No Pets Policy, Rules Mich. Civil Rights Commission, Michigan Law Weekly, March 8, 2004. Copy supplied.

Civil Rights Director Leaves Post, Lansing State Journal, December 18, 2003. Copy supplied.

Ask The Director: "Sexual Harassment," Benton-Michigan Spirit Community Newspaper, unknown date. 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 2009, I have been a Circuit Court Judge for Wayne County Circuit Court. I was appointed to this position by then-Governor Jennifer M. Granholm in December 2008. I was elected to this position without opposition in November 2010 and reelected in a contested race in November 2012. As a Circuit Court Judge, I sit on a state court of general jurisdiction presiding over felonies, high misdemeanors and appeals from district court cases originating from various cities and/or municipalities in Wayne County. I also manage the docket for the Wayne County Drug Treatment Court.

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

As of August 2013, I have presided over approximately 158 cases that have gone to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	40%
bench trials:	60%

ii. Of these, approximately what percent were:

civil proceedings:	0%
criminal proceedings:	100%

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

As a state court trial judge sitting in a court of general jurisdiction, I have not written any published opinions. I have, in some cases, issued opinion orders which provide a detailed analysis of legal issues and findings of fact. I have also issued opinion orders which are responsive to Motions for Relief of Judgment filed by incarcerated persons seeking review of dispositions which led to their incarceration. The referenced orders are on file with the clerk of the court in hard copy and are not readily searchable.

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. Williams*, No. 09-016205-01 (Third Judicial Circuit, Wayne County, Michigan 2009), *remanded* No. 299446 (Michigan Court of Appeals 2011), *reversed and remanded* No. 299446 (Michigan Court of Appeals 2012) (copy of opinion on ineffective assistance of counsel and of orders remanding and reversing supplied).

This began as a jury trial involving charges of second degree murder. The first trial, over which I presided, resulted in a mistrial. Following the retrial, at which a jury found the defendant guilty, the defendant appealed the conviction on several grounds including ineffective assistance of counsel. Specifically, defense counsel failed to introduce cell phone tower records that placed defendant at a location a distance away from the murder scene. The Court of Appeals remanded on the issue of the ineffective assistance of counsel claim for a hearing. I conducted that hearing and found ineffective assistance of counsel, which was affirmed by the appellate court, which then reversed the previous conviction and remanded for a retrial. After a bench trial, I ultimately ruled in favor of acquittal.

Prosecutor:
Steven Kaplan (former Assistant Wayne County Prosecutor)
Rodnick Unger & Kaner PC
3280 East 13 Mile Road

Warren, MI 48092
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Defense Counsel:
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2. *People v. Cruz-Rivera*, No. 09-29738-01 (Third Judicial Circuit, Wayne County, Michigan 2009), *aff'd*, Michigan Court of Appeals, Nos. 298786 (2011) (copy supplied); *People v. Martinez-Lopez*, No. 09-29738-02 (Third Judicial Circuit, Wayne County, Michigan 2009), *aff'd*, Michigan Court of Appeals No. 298683 (2011) (copy supplied).

This was a two-defendant murder trial wherein the defendants were tried by separate juries. I ruled that each defendant was entitled to a separate jury trial because their defenses were inconsistent and irreconcilable. According to the prosecution, one of the defendants requested that the victim meet with him at a certain location. The prosecution theorized that it was the defendant's intent to murder the individual upon meeting. The second defendant was aware of the plan as he appeared immediately after the shooting to pick up the first defendant in his automobile. Each of the defendants was charged with premeditated murder. The jury found each defendant guilty of all of the charged offenses, and I sentenced both defendants to life without parole. The sentences and convictions were affirmed on appeal.

Prosecutor:
Mahmoud Awad
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Defense Counsel:
Craig Freeman (Deceased)

Delicia Coleman
Law Offices of D.C. Taylor and Associates
1274 Library Street, Suite 304
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(313) 574-4607

3. *People v. Dabish*, No.10-004848-01 (Third Judicial Circuit, Wayne County, Michigan 2010), *aff'd*, Michigan Court of Appeals, No. 301622 (2013) (copies previously supplied in Question 13c).

This was a jury trial involving charges of torture, homicide, and felony murder. The jury trial lasted for one month and generated a significant amount of media attention in the courtroom. The defendant and his girlfriend were at the defendant's apartment on the night of the murder. An argument ensued and the defendant physically abused his girlfriend during the evening. At some point during the abuse, he telephoned his girlfriend's father who was residing in another state and advised him that he was going to sexually abuse his daughter. He then beat the victim to death. Based upon testimony from the medical examiner, it was determined that the abuse amounted to torture given the duration of time which was established by the physical injuries. I ruled on numerous pre-trial evidentiary motions. I allowed the admission of evidence on prior acts of abused against women with whom defendant had been previously involved and denied both the motion to quash and to reduce the charge to second degree murder. The case was presented to a jury, which found the defendant guilty of felony murder and murder in the second degree. I sentenced the defendant to natural life on the felony murder charge and 23 to 80 years on the murder in the second degree charge. The sentences are concurrent.

Prosecutor:
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Defense Counsel:
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Susan Reed
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4. *People v. Delpiano*, No. 10-010022-01 (Third Judicial Circuit, Wayne County, Michigan 2010).

This was a jury trial involving charges of homicide in the second degree and three additional charges of vehicular homicide resulting from failure to stop at scene of accident, failure to use due care when passing emergency vehicle causing death and operating a vehicle with a revoked license. The victim was an auxiliary police

officer from Taylor, Michigan. After denying defendant's motion to quash the information setting forth the referenced charges, the case proceeded to jury trial. The jury trial lasted for one week. The defendant was found guilty of each of the four charges. I sentenced him to 45 to 67 years on murder in the second degree and 15 to 30 years on each of the three remaining counts. The sentences are concurrent.

Prosecutor:
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Defense Counsel:
Brian Gagniuk
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(248) 259-4381

5. *People v. Young*, No 11-005214-01 (Third Judicial Circuit, Wayne County, Michigan 2011).

The defendant was a lifelong government employee who had recently won close to $3 million from the state lottery. Not long after his lottery win, the defendant entered into an altercation with his daughter's landlord, which resulted in the death of the landlord. The first trial resulted in a mistrial based upon a statement made by a prosecution witness that I concluded would taint the jury. Following the second jury trial, which lasted for one week, the defendant was convicted of second degree murder and the commission of a felony with a firearm. I sentenced the defendant to a term of 20 to 35 years for second degree murder and the statutorily-mandated two years for commission of a felony with a firearm. These are consecutive sentences.

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Defense Counsel:
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Jeffrey Edison
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Larry Polk
Law Office of Larry R. Polk
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6. *People v. Thomas et al.*, Nos. 11-009271-01, 02, 03, 04 (Third Judicial Circuit, Wayne County, Michigan 2011).

This was a four-defendant trial in which three of the defendants were tried by jury and one waived his right to a jury trial and was tried by a bench trial. The defendant tried by bench was charged with being an accessory after the fact. I sentenced the defendant tried by bench trial to a term of one to ten years for evidence tampering and the statutorily mandated sentence of two years for felony firearm. By law, this was a consecutive sentence. Each of the defendants tried by jury was charged with three counts of first degree murder. The jury found one defendant guilty as charged, and was hung as to the other two defendants. I sentenced the defendant found guilty by jury of three counts of first degree murder to three concurrent life sentences. The retrial by jury as to the remaining two defendants was tried by another judge, but I understand that it also resulted in guilty verdicts.

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Keisha Glenn
Former Assistant Wayne County Prosecutor
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Longstreet Law Firm
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7. *People v. Wright*, No.08-017934-01 (Third Judicial Circuit, Wayne County, Michigan 2008).

This was a jury trial of a 25-year old cold case double murder involving local drug dealers and users. Prior to trial, the defendant argued that his confession was involuntary and should be suppressed because he was under the influence of medication and suffering from a painful leg injury. I observed the confession, which was taped, and noted that the defendant was read his constitutional rights prior to the interrogation, and concluded that although the defendant spoke about his leg discomfort, his recollection was not compromised as he had recall of details and never requested that the interrogation cease because of medication or discomfort. Thereafter, this witness-intensive case resulted in convictions of two counts of murder, three counts of assault with intent to murder and first degree criminal sexual conduct by the defendant. I sentenced the defendant to life imprisonment.

Prosecutor:
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Defense Counsel:
Coral Watt
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8. *People v. Beydoun*, No. 07-004130-01 (Third Judicial Circuit, Wayne County, Michigan 2009).

I received this case on remand from the Michigan Court of Appeals. The predecessor judge had granted defendant's motion to suppress which resulted in a dismissal of the matter. The Court of Appeals thereafter reinstated the charges and remanded to the Circuit Court. The case involved taxation and compliance requirements under both state and federal laws. The defendant was found guilty by a jury for a violation of the Tobacco Product Tax Act. Based on the sentencing guidelines, I sentenced the defendant to a term of probation for five years along with payment of the requisite tax and penalties.

Prosecutor:
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Attorney General of Michigan
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Defense Counsel:
Richard Lustig
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(248) 258-1600

9. *People v. Pittman*, No. 09-024303-01 (Third Judicial Circuit, Wayne County, Michigan 2009).

This was a bench trial involving nine counts of first degree criminal sexual conduct. The victim was a nine-year old girl who was the daughter of defendant's girlfriend. Defendant had been released from prison within the last year of incurring these charges for similar criminal behavior. I found the defendant guilty on each of the nine counts and imposed a consecutive sentence of 25 to 75 years for each of the nine counts.

Prosecutor:
Angela Povilaitis
Former Assistant Wayne County Prosecutor
Assistant Attorney General
Michigan Department of Attorney General

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Defense Counsel:
Catherine M. O'Meara
Law Office of Catherine M. O'Meara
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10. *People v. Flake*, No. 13-000835-01 (Third Judicial Circuit, Wayne County, Michigan 2013).

The defendant was charged with first degree premeditated murder, arson of a home, and the commission of a felony with a firearm. This was a jury trial. The evidence included a video that was captured by a surveillance camera on the grounds of a church located across the street of the home which was burned. The prosecution theorized that the defendant killed the victim with a gun while he was in his home, left the defendant's home and returned with gasoline and burned the home. After viewing the video, the jury found the defendant guilty of arson of a home and acquitted the defendant of premeditated murder and felony firearm charges. I sentenced the defendant to a term of 10.8 years to 20 years.

Prosecutor:
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Defense Counsel:
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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. *People v. Sproles*, Case No. 2007-024447-01 (Third Judicial Circuit, Wayne County, Michigan 2007) (copy supplied).

Prosecutor:
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1441 Saint Antoine
Detroit, MI 48226
(313) 224-5777

Defense Counsel:
Mack Carpenter
25742 Schoolcraft
Redford, MI 48239
(313) 541-9090

2. *People v. Kaltsas*, Case No. 2009-020367-0 (Third Judicial Circuit, Wayne County, Michigan 2009) (copy supplied).

Prosecutor:
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Defense Counsel:
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Law Firm of Bill Colovos
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3. *People v. Alexander*, Case No. 2010-002579 (Third Judicial Circuit, Wayne County, Michigan 2010) (copy supplied).

Prosecutor:
Stephanie Zeiger
Assistant Prosecuting Attorney
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Defense Counsel:
Christine M. Grand Attorney & Counselor
33830 Harper Ave
Clinton Township, MI 48035
(313) 790-5999

4. *People v. Borom*, Case No. 2012-004559-01 (Third Judicial Circuit, Wayne County, Michigan 2012) (copy supplied).

   Prosecutor:
   Lora Weingarden
   Wayne County Prosecuting Attorney
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   Detroit, MI 48226
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   Defense Counsel:
   Gabi Silver
   Cripps & Silver
   431 Gratiot Ave
   Detroit, MI 48226
   (313) 963-0210

5. *People v. Flores*, Case No. 2010-009189-01 (Third Judicial Circuit, Wayne County, Michigan 2010) (copy supplied), *aff'd* No. 303456 (Michigan Court of Appeals 2012) (copy supplied).

   Prosecutor:
   Lora Weingarden
   Wayne County Prosecuting Attorney's Office
   1441 Saint Antoine Street, Tenth Floor
   Detroit, MI 48226
   (313) 224-8081

   Defense Counsel:
   John Gonta
   P.O. Box 293
   Newport, MI 48166
   (734) 968-5144

6. *People v. Dabish*, Case No 2010-004848-01 (Third Judicial Circuit, Wayne County, Michigan 2010) (copy previously supplied in Question 13c).

   Prosecutor:
   Lisa Lindsey
   Wayne County Assistant Prosecutor
   1441 Saint Antoine Street, 12th Floor
   Detroit, MI 48226
   (313) 224-5777

Defense Counsel:
Domnick Sorise
645 Griswold Street, Suite 1717
Detroit, MI 48226
(313) 967-0100

Susan Reed
547 East Jefferson Avenue, Suite 202
Detroit, MI 48226
(313) 468-0990

7. *People v. Bell*, Case No. 2011-002792-01 (Third Judicial Circuit, Wayne County, Michigan 2011) (copy supplied).

   Prosecutor:
   Mari Birman
   Former Wayne County Assistant Prosecutor
   (current contact information not known)

   Defense Counsel:
   Antonio Tuddles
   Law Office of Antonio D. Tuddles
   615 Griswold Street, Suite 1509
   Detroit, MI 48226
   (313) 965-1457

8. *People v. Nahhas*, Case No. 2007-020843-01 (Third Judicial Circuit, Wayne County, Michigan 2007) (copy supplied).

   Prosecutor:
   Brian Siegel
   Law Office of Barry Siegel
   5221 Hardwoods Dr
   West Bloomfield, MI 48323
   (248) 376-5333

   Defense Counsel:
   David Lankford
   Legal Aid & Defender Association – Wayne County
   613 Abbott Street
   Detroit, MI 48226
   (313) 967-5048

9. *People v. Williams*, No. 09-016205-01 (Third Judicial Circuit, Wayne County, Michigan 2009), *remanded* No. 299446 (Michigan Court of Appeals 2011),

reversed and remanded No. 299446 (Michigan Court of Appeals 2012) (copies previously supplied in Question 13c).

Prosecutor:
Steven Kaplan (former Wayne County Assistant Prosecutor)
Rodnick Unger & Kaner PC
3280 East 13 Mile Road
Warren, MI 48092
(586) 574-0020

Defense Counsel:
Craig Daly
Craig A. Daly PC
615 Griswold Street, Suite 820
Detroit, MI 48226
(313) 963-1455

10. *People v. Conner*, No. 2008-002783-01 (Third Judicial Circuit, Wayne County Michigan 2008) (copy supplied).

Prosecutor
Amy Slameka
1441 Saint Antoine
Detroit, MI 48226
(313) 224-5777

Defense Counsel
George Dovas
10811 Farmington Road
Livonia, MI 48150
(734) 416-0999

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.

People v. Victor Oquendo, No. 304329 (Third Judicial Circuit, Wayne County Michigan), No. 10-013218 (Michigan Court of Appeals 2012) (copy of appellate opinion supplied).

I granted the defendant's motion to suppress his confession to murder on the grounds that his confession was coerced and he did not knowingly and voluntarily waive his right to counsel.

People v. Daniel McCullough, No. 311083 (Third Judicial Circuit, Wayne County Michigan), No. 11-012362 (Michigan Court of Appeals 2013) (copy of appellate opinion supplied).

I granted the defendant's motion to suppress statements made during a reenactment of activity which led to the death of an infant. The appellate court reversed my decision.

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.

None of my opinions have been published. Hard copies of these opinions are in the Wayne County Clerk's Office. Because they are in hard copy, they are not readily searchable.

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.

While I have not issued opinions on federal or state constitutional issues raising questions of first impression, I have on a regular basis issued opinions on both federal and state constitutional issues such as Fourth Amendment search and seizure, Fifth Amendment double jeopardy, Sixth Amendment right to counsel and right to a speedy trial. None of these rulings or opinions, however, have resulted in significant 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.

There are no cases in which I sat by designation on a federal court of appeals.

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

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

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

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

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

The Criminal Division employs a process that allows the trial court judge to decide the recusal motion in the first instance. Thereafter, if the requesting attorney would like to have the decision reviewed, the request will be reviewed by the Presiding Judge of the Criminal Division.

I am automatically recused from all cases in which James Anthony Parker, my brother, appears as a defense attorney in Wayne County Circuit Court where I am a sitting judge. In addition, where my brother has previously conducted the preliminary examination in district court, I recuse myself if the defense attorney on that case in Wayne County Circuit Court files a motion based upon the preliminary examination where my brother appeared as defense counsel.

In addition to the matters referenced above, there are two cases in which I recused myself.

In *People v. Moore*, 10-010389-01, the defense attorney was exceptionally contentious. His demeanor was disruptive to the court proceedings and I accordingly warned him that he could be held in contempt. He in turn asked that I recuse myself believing that I was biased. I declined to do so, explaining to him on the record that I had no bias but wanted only to be able to proceed with the trial without disruptive behavior. Consistent with the recusal policy of the Criminal Division, the defense attorney had the option of requesting to have the recusal motion heard by the Presiding Judge of the Criminal Division. He chose not to follow this procedure and the jury trial continued to verdict. At the conclusion of trial, the Wayne County Prosecutor's Office filed a grievance against the defense attorney with the Attorney Grievance Committee. I was contacted by the Attorney Grievance Committee and was asked to give a statement over the telephone as to specific behavior that was alleged to have occurred by the defense attorney while off the record. I provided an oral statement and thereafter reported the conversation to the Presiding Judge. It has since been determined by the Presiding Judge that I should recuse myself from all matters in which the defense attorney is the attorney of record until the Attorney Grievance Committee has reached a final decision. The matter remains open with the Attorney Grievance Committee.

In *People v. Jones*, 12-003509-01, it was brought to my attention that the defendant was a member of a family who belonged to the church where I also am a member. I brought this matter to the attention of both the prosecutor and the defense attorney. The defense attorney spoke with his client, who asked that I recuse myself. While I did not know or recognize the family members or the defendant, I recused myself in order to avoid the appearance of bias or any other impropriety.

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

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

I have not held public office other than judicial office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

I was nominated to the Michigan Board of Law Examiners by the Michigan Supreme Court and appointed by the then-Governors for two five-year terms. I was appointed by Governor John Engler in 2000 and by Governor Jennifer M. Granholm in 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.

In 2012, I authorized Judge Kelley to list me as an endorser of her candidacy for the Michigan Supreme Court.

I participated as a volunteer in former Michigan Governor Jennifer Granholm's initial run for office in 2002. I hosted a fundraiser, distributed literature and served as a surrogate speaker on one occasion.

I participated as a volunteer in former Detroit Mayor Dennis W. Archer's initial run for office in 1992. I was a member of Archer's Arrows, a women's group supporting his candidacy and attended campaign events and distributed literature.

I served as Treasurer for the re-election campaign of Judge Trudy Archer in 1990.

In 1996, I was one of several attorneys who signed a letter in support of the election of Judge Robert Young to the Michigan Court of Appeals following his appointment to the Michigan Court of Appeals in 1995.

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

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

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

From 1983 to 1985, I clerked for the Honorable Judge William S. Thompson, Senior Judge of the District of Columbia Superior Court.

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

I have never practiced alone.

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

1985 – 1989
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Staff Attorney in Offices of Toxic Substances and Hazardous Waste

1989 – 1994
Dickinson Wright
500 Woodward Avenue
Suite 4000
Detroit, MI 48226
Associate Attorney (1989 – 1992)
Partner (1992 – 1994)

1994 – 2000
United States Attorney's Office
211 West Fort Street
Detroit, MI 48226
Executive Assistant United States Attorney

2003 – 2008
Michigan Department of Civil Rights
Capital Tower Building

110 West Michigan Avenue, Suite 800
Lansing, MI 48933
Department Director

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

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.

After clerking, I joined the Environmental Protection Agency in 1985. My duties as a government lawyer at the Environmental Protection Agency focused on the enforcement of federal environmental laws and regulations. After joining Dickinson Wright in 1989, I represented clients in real estate transactions with environmental implications, negotiated consent agreements with state and federal environmental agencies and negotiated contracts for the removal of hazardous substances from commercial buildings.

The nature of my practice changed in 1994 when I joined the United States Attorney's Office in the Eastern District of Michigan as the Executive Assistant United States Attorney to United States Attorney Saul Green. I served as the office liaison between local, state, and federal law enforcement, as well as with members of the faith based, social justice, grass roots activists and neighborhood community associations. Issues addressed included closing drug houses, police misconduct, racial profiling, and the establishment of crime prevention task forces that were funded by federal grant dollars and included participation by all levels of law enforcement and community organizations.

My next legal position after leaving the United States Attorney's Office was my service from 2003 to 2008 as the Director of the Michigan Department of Civil Rights. I managed a 133-person office, which consisted of six separate offices throughout the State of Michigan. The office was primarily responsible for the resolution of administrative complaints pertaining to discrimination based upon race, religion, gender, and disabilities in the areas of housing, education and employment.

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

My typical clients during my practice at Dickinson Wright included commercial building owners and Fortune 500 companies in the automotive and manufacturing industries. I also assisted a colleague at my firm who served as common counsel to committees consisting of attorneys representing clients who were sued by the state and federal environmental agencies for the historic disposal of hazardous waste in Michigan and Minnesota. My area of specialization was environmental 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.

Prior to becoming a judge, I appeared in court infrequently. Although my legal practice involved litigation, the majority of that litigation was either resolved before trial or went to trial after I left. As an environmental lawyer at the United States Environmental Protection Agency, all of the cases for which I had responsibility were settled through negotiated consent decrees and/or the payment of fines and penalties. During my years at Dickinson Wright, my practice focused primarily on environmental matters, all of which were in litigation or could lead to litigation if compliance was not achieved or settlements not negotiated. I consulted periodically with respect to litigation involving environmental matters led by real estate and bankruptcy attorneys at the firm and participated in discovery and motions practice. As an Assistant U.S. Attorney, I appeared before a grand jury. As the Director of the Michigan Department of Civil Rights, I had oversight responsibilities for the administrative enforcement process, as well as the filing of amicus briefs in state court. Although I appeared in court rarely, I made two appearances in federal court in two separate cases. As a result, my percentage of appearance in court is as follows:

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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 did not try any cases to verdict, judgment, or final decision.

i. What percentage of these trials were:
   1. jury: 0%
   2. non-jury: 0%

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

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

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

a. the date of representation;

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

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

Environmental Protection Agency:

I worked as a staff attorney at the United States Environmental Protection Agency from 1985 through 1989. From 1985 to 1987, I worked in the Special Litigation Section of the Toxic Substance Enforcement Division. Enforcement actions were brought against individuals and companies for violations of the Toxic Substances Control Act (TSCA). Most of the complaints filed were based on violations concerning polychlorinated biphenyls (PCBs) and asbestos in buildings and schools. My cases all settled through negotiations or consent decrees. From 1987 to 1989, I worked in the Office of Waste Management, where I negotiated consent decrees under the Resource Conservation and Recovery Act (RCRA) which regulates the private sector, as well as federal, state and local government entities that generate, treat, store and dispose of hazardous waste.

Dickinson Wright:

During my years at Dickinson Wright, both as an associate and as a partner, between 1989 and 1994, my practice focused primarily on environmental matters, all of which were in litigation or could have led to litigation if compliance was not achieved or settlements not negotiated. Most of these matters arose from historic waste disposal and

involved the following types of actions where I assisted with representing the firm's corporate clients:

- Orders issued or threatened to be issued by federal or state agencies requiring response or cleanup actions;
- Actions filed or threatened litigation to recover costs incurred by federal or state agencies for response activities;
- Actions brought by one or more private parties against other parties seeking cost recovery or contribution for cleanup costs incurred and equitable relief with respect to future cleanup costs (I represented both plaintiffs and defendants);
- Actions involving insurance claims for coverage for environmental cleanup costs; and
- Toxic tort litigation

None of these cases went to trial while I was at the firm, as many of these matters were pending or evolving in different phases over several years. I assisted with negotiating consent decrees with state or federal environmental agencies. I also assisted with discovery, including depositions, interrogatories and requests for admissions in contribution or cost recovery actions, and motion practice. I also secured expert witnesses and worked with experts in developing their testimony, as well as taking and defending expert witness depositions. In addition to the above types of matters, I consulted periodically with respect to litigation involving environmental matters led by real estate and bankruptcy attorneys at the firm.

In *Rasmussen Group, et al. v. Eagle-Picher Industries*, No. 92-00948 (S.D. OH), *on appeal* No. 94-3337 (6th Cir.), I appeared in a case involving a bankrupt entity which owned a commercial building that sat on contaminated grounds. This bankruptcy case was first appealed to the district court and later appealed to the Sixth Circuit. The case was subsequently voluntarily dismissed by the parties.

Co-Counsel for Rasmussen Group:

Grady Lee Pettigrew, Jr. (retired)

Counsel for Eagle Pitcher Industries:

John Edmund Adams
Frost Brown & Todd
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202
(513) 651-6800

Counsel for Springfield Claimants:

Grady Lee Pettigrew, Jr. (retired)

Keith J. Lerminiaux
One Detroit Center
500 Woodward Avenue
Suite 4000
Detroit, MI 48226
(313) 223-3500

United States Attorney's Office for the Eastern District of Michigan:

During my years at the United States Attorney's Office, between 1994 and 2000, I worked on an environmental prosecution with federal agents, which resulted in three related cases. I appeared before a grand jury in the Eastern District of Michigan and provided opening remarks and presented witnesses. Each of the cases proceeded beyond the grand jury and ultimately resulted in plea bargains. I have listed the contact information below:

United States v. Wagerman, Case No. 5:02-cr-90040 (E.D. Mich.), Judge Marianne O. Battani, Magistrate Judge Thomas A. Carlson, presiding.

Co-Counsel:
Gary M. Felder
U.S. Attorney's Office
211 West Fort Street
Suite 2001
Detroit, MI 48226
(313) 226-9100

Defense Counsel:
Robert M. Morgan
Robert M. Morgan Law Office
615 Griswold
Suite 1125
Detroit, MI 48226
(313) 961-7070

United States v. Dolmetsch Case No. 5:01-cr-90019 (E.D. Mich.), Judge Marianne O. Battani, Magistrate Judge Thomas A. Carlson, presiding.

Co-Counsel:
Gary M. Felder
U.S. Attorney's Office
211 West Fort Street

Suite 2001
Detroit, MI 48226
(313) 226-9100

Defense Counsel:
Christopher A. Andreoff
Jaffe, Raitt, Heuer & Weiss
27777 Franklin Road
Suite 2500
Southfield, MI 48034-8214
(248) 351-3000

United States v. Simon, Case No. 5:02-cr-90039 (E.D. Mich.), Judge Marianne O. Battani, Magistrate Judge Thomas A. Carlson, presiding.

Co-Counsel:
Gary M. Felder
U.S. Attorney's Office
211 West Fort Street
Suite 2001
Detroit, MI 48226
(313) 226-9100

Defense Counsel:
Dennis J. Clark
Clark Law Firm, PLLC
615 Griswold Street
Suite 701
Detroit, MI 48226-3260
(313) 962-2233

In approximately 1997, I worked with the head of the Civil Rights Division on the Eastpointe Police Department matter, a racial profiling investigation. I was intimately involved with the investigation, which included interviewing many individuals who had encountered alleged instances of racial profiling while driving.

Michigan Department of Civil Rights:

As the Director of the Michigan Department of Civil Rights, a state agency with enforcement authority over state civil rights laws, I oversaw administrative complaints and amicus briefs filed in state and federal court that covered a range of topics that were relevant to the Department.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any

client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

United States Attorney's Office:

As the Executive Assistant United States Attorney for the Eastern District of Michigan, I developed and facilitated legal training responsive to the professional needs of the more than 100 local, state and federal law enforcement agencies operating within the district. Through the work of the Law Enforcement Coordinating Committee, I oversaw the facilitation and development of "Agents as Witnesses" training comprised of mock trial exercises in federal court with Assistant United States Attorneys and seasoned federal agents serving as instructors to federal and local agents and officers. I also worked on trainings for law enforcement agencies that covered a broad variety of specific legal and law enforcement topics, including Gangs and Gang Intervention, Asset Forfeiture, Counterfeit Item Identification, Domestic Terrorism, and Bank Fraud. Further, as a result of a partnership between the police academies in the district and Michigan State University, I oversaw community policing training for more than 150 line officers and supervisors using the Community Oriented Policing Services (COPS) training module.

I also developed a mentoring program within the Office for incoming Assistant United States Attorneys and facilitated a Monday Lunch Speaker Series which brought in various speakers to talk about issues affecting the external and internal work of the Office.

Circuit Judge:

Since joining the Third Judicial Circuit of Michigan in 2009, I have gained significant experience overseeing a broad variety of issues that arise during trial over the course of more than 150 cases that I have seen to verdict or judgment. These have included both bench and jury trials involving high misdemeanors and felonies.

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, with or without compensation, during my service with the court.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I would recuse myself from any case in which I participated while in private practice or as a government lawyer. In addition, my brother is a criminal defense attorney and while it is unlikely that he would have a case in federal court, should such occur, I would recuse myself from any such matter. I also would review on a case-by-case basis the existence of a potential conflict of interest arising from any former client relationships or financial interests. Thereafter, I would handle any potential conflicts in accordance with the recusal statutes and the Code of Conduct for United States Judges.

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

       If confirmed, I would consult and abide by rules and decisions that address what constitutes a conflict of interest including 28 USC Section 455 and the Code of Conduct for United States Judges.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar

Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a young lawyer in Washington, D.C., I devoted a significant amount of time to work with teen mothers. At that time, Washington, D.C. had one of the highest rates of teen pregnancy. From 1984 to 1989, I was the Chair of the Teen Pregnancy Committee within the Coalition of 100 Black Women of D.C., Inc., where we instituted a mentoring program pairing professional women with teen mothers. In addition to chairing that Committee for three years, I mentored a teen mother during this period.

In response to the homelessness crisis in America and particularly in Washington, D.C., I worked with a group of lawyers who formed an organization called North Star from 1987 to 1989. North Star recognized that one of the most critical challenges homeless children face is the constant changing of schools due to the transient nature of their families. North Star was aware that the evidence showed that residential instability is associated with poor academic outcomes among children. As a result, we instituted a tutoring program at the various shelters throughout the District of Columbia.

From 1991 to 1993, I worked at the Women's Justice Center where I prepared personal protection orders for victims and also served on the board of First Step, which is a shelter facility for victims of domestic and sexual violence.

From 1994 to 2000, I was involved with New Steps, Inc., an organization committed to providing services to new mothers in substance abuse recovery. I eventually became the Chair of the New Steps Board which was devoted to identifying needed resources for the mothers as well as raising funds to support their needs.

Since 1993, I have participated in the Detroit Public Schools COMPACT Program, which provided tutoring services to students and have served as a frequent "career day" speaker in schools in Detroit and throughout Southeastern Michigan.

For six years, I have served as a board member and am currently the board chair of Boys Hope Girls Hope of Detroit. The Detroit chapter, formed over 25 years ago, provides housing and private school education to academically gifted children (ages 7-18) who have resided in emotionally and physically dangerous home environments. These children receive financial support for college from the organization upon graduation from high school.

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.

A Judicial Advisory Committee was convened by Senators Carl Levin and Debbie Stabenow, and I submitted my application on January 31, 2013. I interviewed with the Judicial Advisory Committee on March 21, 2013, in Detroit. I received a letter on April 8, 2013 from Senators Levin and Stabenow indicating that with the recommendation of the Judicial Advisory Committee, my name would be forwarded to President Obama for his consideration to fill one of the four vacancies on the District Court for the Eastern District of Michigan. Since April 8, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 30, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On July 25, 2013, 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. 1/2013

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
Parker, Linda V.	United States District Court Eastern District of Michigan	07/25/2013
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**
Federal District Court Judge	☑ Nomination Date 07/25/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 07/24/2013
7. Chambers or Office Address		
401 Frank Murphy Hall of Justice 1441 St. Antoine 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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Trustee	Marygrove College
2.	Board Member/Chair	Boys Hope Girls Hope Detroit
3.	Board Member	Ceasar Chavez Academy
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 Parker, Linda V.	Date of Report 07/25/2013

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. 2013	Michigan Board of Law Examiners/Bar Examination Grader	$4,000.00
2. 2012	Michigan Board of Law Examiners/Bar Examination Grader	$8,000.00
3. 2011	Michigan Board of Law Examiners/Bar Examination Grader	$8,000.00
4. 2013	Third Judicial Circuit Court, Wayne County, Michigan Salary	$81,613.00
5. 2012	Third Judicial Circuit Court, Wayne County, Michigan Salary	$139,919.00
6. 2011	Third Judicial Circuit Court, Wayne County, Michigan Salary	$139,919.00

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

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Parker, Linda V.	Date of Report 07/25/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Parker, Linda V.	Date of Report 07/25/2013

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. AllianzGI NFJ Dividend Value Fund	A	Dividend	J	T	Exempt				
2. American Funds EuroPacific Growth Fund		None	L	T	Exempt				
3. American Growth Fund of America F1	A	Dividend	J	T	Exempt				
4. Artisan Mid Cap Value Fund	A	Dividend	J	T	Exempt				
5. Baron Small Cap Retail Fund		None	J	T	Exempt				
6. BlackRock Core Bond PTF A	A	Dividend	J	T	Exempt				
7. BlackRock High Yield Bond Portfolio	A	Dividend	J	T	Exempt				
8. BlackRock Low Duration Bond Fund	A	Dividend	J	T	Exempt				
9. Delaware Samll Cap Value Fund	A	Dividend	J	T	Exempt				
10. Henderson International Opportunities Fund	A	Dividend	J	T	Exempt				
11. Invesco Premier Portfolio	A	Dividend	J	T	Exempt				
12. Ivy Mid Cap Growth Fund		None	J	T	Exempt				
13. Oppenheimer International Bond Fund	A	Dividend	J	T	Exempt				
14. PIMCO Emerging Markets Bond Fund	A	Dividend	J	T	Exempt				
15. PIMCO Foreigh Bond Fund	A	Dividend	J	T	Exempt				
16. PIMCO Total Return Fund	A	Dividend	J	T	Exempt				
17. Schroder Emerging Market	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Parker, Linda V.	Date of Report 07/25/2013

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. SSgA Bond Market Index		None	L	T	Exempt				
19. SSgA S&P 500 Index Fund		None	L	T	Exempt				
20. SSgA S&P MidCap Index Fund		None	L	T	Exempt				
21. SSgA Yield Enhanced STIF		None	J	T	Exempt				
22. Chase Bank Detroit Michigan Cash Accounts	A	Interest	J	T	Exempt				
23. Michigan First Credit Union Cash Accounts	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Parker, Linda V.	Date of Report 07/25/2013

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/ Linda V. Parker**

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		5	600	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		310	515	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		112	489
Real estate owned – personal residence		125	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		10	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		112	489
				Net Worth		338	626
Total Assets		451	115	Total liabilities and net worth		451	115
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	
AllianzGI NFJ Dividend Value Fund	$ 5,102
American Funds EuroPacific Growth Fund	53,771
American Funds Growth Fund of America	7,584
Artisan Mid Cap Value Fund	1,274
Baron Small Cap Retail Fund	1,267
BlackRock Core Bond Trust	3,847
BlackRock High Yield Bond Portfolio	1,794
BlackRock Low Duration Bond Fund	13,756
Delaware Small Cap Value Fund	1,255
Henderson International Opportunities Fund	4,926
Invesco Premier Portfolio	8,863
Ivy Mid Cap Growth Fund	1,242
Oppenheimer International Bond Fund	1,747
PIMCO Emerging Markets Bond Fund	1,682
PIMCO Foreign Bond Fund	1,715
PIMCO Total Return Fund	3,750
Schroder Emerging Market	2,195
SSgA Bond Market Index	55,082
SSgA S&P 500 Index Fund	64,312
SSgA S&P MidCap Index Fund	73,736
SSgA Yield Enhanced STIF	1,615
Total Listed Securities	$ 310,515

Real Estate Mortgages Payable	
Personal residence mortgage	$ 95,489
Personal residence home equity line of credit	17,000
Total Real Estate Mortgages Payable	$ 112,489

AFFIDAVIT

I, Linda V. Parker, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7-26-13
(DATE)

Linda V. Parker
(NAME)

Tonia Frazier-Akins
(NOTARY)

TONIA FRAZIER AKINS
Notary Public - Michigan
Wayne County
My Commission Expires Dec 10, 2014
Acting in the County of Wayne

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Peter Joseph Kadzik

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

   Assistant Attorney General, Office of Legislative Affairs, U.S. 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.

   U.S. Department of Justice
   950 Pennsylvania Avenue NW
   Washington, D.C., 20530

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

   1953; Kenmore, 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.

   Georgetown University, 1974 – 77; J.D., 1977

   State University of New York at Buffalo, 1971 – 74; B.A., 1974

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

   U.S. Department of Justice
   Office of Legislative Affairs
   2013 – Present
   Principal Deputy Assistant Attorney General
   950 Pennsylvania Avenue, NW
   Washington, D.C. 20530

U.S. Department of Justice
Office of Legislative Affairs
2013 – 2013
Deputy Assistant Attorney General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Voter Participation Center
2012 – 2013
Assistant Secretary
1707 L Street, NW
Washington, D.C. 20036

Advisory Board, News Literacy Project
2011 – 2013 (estimated)
Member
5625 Devon Road
Bethesda, MD 20815

Advisory Board, Corporate Counsel Institute
Georgetown University Law Center
2005 – 2013 (estimated)
Member
600 New Jersey Avenue, NW
Washington, D.C. 20001

American Palm Oil Promotion Council
1994 – 2013 (estimated)
Secretary
1010 Wisconsin Avenue, NW
Washington, D.C. 20007

Dickstein Shapiro LLP
1986 – 2013
Partner
1825 Eye Street, NW
Washington, D.C. 20006

National Law Alumni Board, Georgetown University Law Center
1995 – 2002 (estimated)
Member
600 New Jersey Avenue, NW
Washington, D.C. 20001

President's Advisory Committee on the Arts, John F. Kennedy Center for the Performing Arts
1999 – 2001
Member
Washington, D.C. 20566

Board of Trustees, Washington Lawyers' Committee for Civil Rights and Urban Affairs
1990 – 2000 (estimated)
Member
11 Dupont Circle, NW
Washington, D.C. 20036

Advisory Board, AARP's Legal Counsel for the Elderly
1995 – 1998 (estimated)
Member
601 E Street, N.W.
Washington, D.C. 20049

Thrift Depositor Protection Oversight Board
1993 – 1995
Advisory Board Member
Washington D.C. 20232

Hearing Committee, DC Bar's Board on Professional Responsibility
1980 – 1987
Chairman and Member,
Washington, D.C. 20005

Dickstein Shapiro LLP
1980 – 1985
Associate
1825 Eye Street, NW
Washington, D.C. 20006

United States Senate
Committee on the Judiciary
June 1980
Intern
Dirksen Senate Office Building
Washington, D.C. 20510

Kennedy for President
January – June 1980
Advance Staff
1250 22nd Street NW
Washington, D.C. 20037

U.S. Department of Justice, United States Attorney's Office
1978 – 1980
Assistant United States Attorney
555 4th Street NW
Washington, D.C. 20530

Hon. Thomas A. Flannery
U.S. District Court for the District of Columbia
1977 – 1978
Law Clerk
333 Constitution Avenue, NW
Washington, D.C. 20001

Admissions Office, Georgetown University Law Center
1976 – 1977
Applications Reader
600 New Jersey Avenue, NW
Washington, D.C. 20001

Hodgson Russ Andrews Woods & Goodyear
1976 – 1976
Summer Associate
1 M&T Plaza
Buffalo, N.Y. 14203

Organization Resources and Systems Advisors
1975 – 1975
Summer Intern
223 Pennsylvania Avenue, SE
Washington, D.C. 20003

Hertel Florist
1972 – 1974
Driver
Hertel Avenue
Buffalo, N.Y. 14216

International Alliance of Theatrical and Stage Employees
1973 – 1974 (estimated)
Stagehand
Porter Avenue
Buffalo, N.Y. 14201

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 registered for selective service, but have not served in the U.S. 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.

Member, Signum Fidei Society, St. Joseph's Collegiate Institute, 2009 – Present

Member, Phi Beta Kappa, 1974 – Present

Articles Editor and Member, Georgetown Law Journal, 1975 – 77

B.A., summa cum laude, State University of New York at Buffalo, 1974

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.

Member, American Bar Association (Litigation and Antitrust Sections), 1980 – Present

Member, New York State Bar Association, 1980 – Present

Member, Erie County Bar Association, 1980 – Present

Member, Bar Association of the District of Columbia, 1980 – Present

10. **Bar and Court Admission**:

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

There have been no lapses in my memberships.

February 1978 – Present	New York Bar
October 1978 – Present	D.C. Bar

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.

There have been no lapses in my memberships.

October 1978 – Present	D.C. Court of Appeals
October 1980 – Present	United States District Court for the District of Columbia
January 1981 – Present	United States Court of Appeals for the District of Columbia Circuit
June 1982 – Present	United States Supreme Court
February 1988 – Present	United States District Court for the Southern District of New York
April 1989 – Present	United States Court of Appeals for the Eleventh Circuit
June 1995 – Present	United States District Court for the District

of Maryland

December 2000 – Present	United States Court of Appeals for the Fifth Circuit
November 2003– Present	United States Court of Appeals for the Federal Circuit
November 2005 – Present	United States Court of Appeals for the Eighth Circuit
February 2006 – Present	United States Court of Appeals for the Second Circuit
October 2010 – Present	United States District Court for the Eastern District of New York

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.

I have made financial contributions to charitable organizations over the years. I have not included in the list below any organizations to which I gave funds and did not otherwise participate in programmatic activities although the organization may label me a member. Although there may be others I have not found in my records, these organizations include:

Member, Washington Golf & Country Club, Arlington, Virginia, 1995 – Present.

Member Robert Trent Jones Golf Club, Gainesville, Virginia, 2011 – Present.

Member, Overlee Community Pool Association, Arlington, Virginia, 1986 – 95.

Advisory Board Member, AARP's Legal Counsel for the Elderly, Washington, D.C., 1995 – 98 (estimated).

Member, Board of Trustees, Washington Lawyers' Committee for Civil Rights and Urban Affairs, Washington, D.C., 1990 – 2000 (estimated).

Advisory Board Member, Corporate Counsel Institute, Georgetown University Law Center, Washington, D.C., 2000 – 13 (estimated).

Advisory Board Member, News Literacy Project, Bethesda, MD, 2011 – 13 (estimated).

Member, National Law Alumni Board, Georgetown University Law Center, Washington, D.C., 1995 – 02 (estimated).

Assistant Secretary, Voter Participation Center, Washington, D.C., 2012 – 13.

Secretary, American Palm Oil Promotion Council, Washington, D.C., 1994 – 2013 (estimated).

Chairman and Member, Hearing Committee, DC Bar's Board on Professional Responsibility, Washington, D.C., 1980 – 87.

Advisory Board Member, Thrift Depositor Protection Oversight Board, Washington D.C., 1993 – 95.

Member, President's Advisory Committee on the Arts, John F. Kennedy Center for the Performing Arts, Washington, D.C., 1999 – 2001.

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.

None to my knowledge.

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 any titles, publishers and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material, 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:

"Antitrust Concerns in Labor Union Organization of Independent Contractors," *Labor Law Exchange*, 1994. Copy Supplied.

"Antitrust Concerns in Labor Union Organization of Independent Contractors," *Labor Law Exchange*, Volume 13, 1992. Copy Supplied.

"More on the Fat Fight," Counsel for Malaysian Palm Oil Promotion Council, *Washington Post*, July 22, 1991. Copy Supplied.

"Compliance Guide to the Antitrust Laws of the United States," *International Company & Commercial Law Review*. Volume 2, 1991. Copy Supplied.

"Federal Preemption of State Payments of Unemployment Compensation to Strikers," *Georgetown Law Journal*, Volume 64, 1975 – 76. 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.

I have done my best to identify all testimony, official statements or other communications relating to public policy or legal interpretation, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other items I have been unable to identify, find, or remember. I have located the following:

Letter to Attorney General Kenneth Cuccinelli (VA) on behalf of the Voter Participation Center (VPC, f/k/a Women's Voices. Women Vote). July 25, 2012. Copy Supplied.

Testimony before the House Committee on Oversight and Government Reform, "Hearing on Presidential Pardons, Part II." March 1, 2001. Copy supplied.

Comments on Hearings on Global Competition and Innovation – Antitrust Improvements Act of 1976, provided to Donald S. Clark, Office of the Secretary, Federal Trade Commission. January 26, 1996. Copy supplied.

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

I have done my best to identify transcripts or recordings of all speeches or talks, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other items I have been unable to identify, find, or remember. I have located the following:

Question & Answer Session, "Dickstein Shapiro's Peter Kadzik," Law 360, August 10, 2009. Copy Supplied.

Speaker, "DNC Compliance with Congressional Campaign Fundraising Investigations," DNC Press Briefing, July 2, 1997. No transcript or notes available.

Speaker, "Antitrust Implications in Moving to More Competitive Utility Markets," Fourth Annual DOE-NARUC Natural Gas Conference, 1995. Copy 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.

I have done my best to identify all interviews, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other items I have been unable to identify, find, or remember. I have located the following:

Interview, "Romney Hits Suspect Voter Mailings; Forms Sent to Va. Pets, the Dead," David Sherfinski & Emily Hatton, Washington Times, July 26, 2012. Copy Supplied.

Interview, "Romney Seeks Va. Voter Form Probe," Kevin Robillard, Politico, July 25, 2012. Copy Supplied.

Interview, "Microsoft Bid Faces Scrutiny; But OK Likely for Purchase of Yahoo! Inc.," Robert Schmidt, The Record (NJ), Bloomberg News, February 2, 2008. Copy Supplied.

Interview, "Intellectual Property: Court Exonerates TV Makers In 'V-Chip;' Patent Case," Sarah Lai Stirland, Nat'l Journal's Tech. Daily, August 11, 2004. Copy Supplied.

Interview, "Intellectual Property: Judges Review 'V-Chip;' Patent-Infringement Case," Sara Lai Stirland, Nat'l Journal's Tech. Daily, August 6, 2004. Copy Supplied.

Interview, "Lobbyist? Who's a Lobbyist? When It Comes to Clemency, They Are Most Likely Advocates," Wash. Post, March 5, 2001. Copy Supplied.

Interview, "Primaries Schedule Evaluated," Stewart M. Powell, Contra Costa Times (California), February 13, 2000. Copy Supplied.

Interview, "Trail Mix; News from Campaign 2000," The Dallas Morning News, February 9, 2000. Copy Supplied.

Interview, "McCain Turns Net Into Gains," St. Petersburg Times (Florida), February 9, 2000. Copy Supplied.

Interview, "GOP, Democrats Agree To Alter Primary Schedule," The Stuart News/Port St. Lucie News (Stuart, FL), February 9, 2000. Copy Supplied.

Interview, "38 in Starr Inquiry Want Legal Bills Paid; Tab Will Total Millions After Investigation Ends, Justice Department Says," Michael Hedges, Arkansas Democrat-Gazette (Little Rock, AR), March 6, 1999. Copy Supplied.

Interview, "Taxpayers May Have to Foot the Bill for Legal Fees in Starr Probes," The Patriot Ledger (Quincy, MA), March 6, 1999. Copy Supplied.

Interview, "Witnesses In Starr-Clinton Battle Want Legal Fees Paid," Michael Hedges, The Plain Dealer (Cleveland, OH), March 6, 1999. Copy Supplied.

Interview, "Senate Impeachment Trial," Fox News Network, the Crier Report, February 3, 1999. Copy Supplied.

Interview, CNN Newsroom, February 2, 1999. Copy Supplied.

Interview, "Trial of the President: Deposition Day One," CNN Burden of Proof, February 1, 1999. Copy Supplied.

Interview, "Monica Lewinsky is Questioned Again; Despite Motion to Dismiss, Byrd Offers Little Comfort to Clinton; President Keeps Focus on Budget," CNN Inside Politics, February 1, 1999. Copy Supplied.

Interview, CNN Moneyline News Hour with Lou Dobbs, February 1, 1999. Copy Supplied.

Interview, "The Trial of Their Lives; President's Case Has Consumed His Team," Peter Baker, The Washington Post, January 19, 1999. Copy Supplied.

Interview, "Impeachment of President Clinton," CNBC, Rivera Live, December 18, 1998. Copy Supplied.

Interview, "Chances of President Clinton Being Impeached Dwindling, With Censure a More Likely Option," CNBC, Rivera Live, November 30, 1998. Copy Supplied.

Interview, "Microsoft Must Fight to Stay on Top," Anne Gearan, AP, November 27, 1998. Copy Supplied.

Interview, "The Problem with the American Way: Even in Capitalist U.S., Companies with Market Power Walk a Fine Line," Anne Gearan, National Post, November 27, 1998. Copy Supplied.

Interview, "Microsoft and the Murky World of Antitrust," Anne Gearan, Ottawa Citizen, November 27, 1998. Copy Supplied.

Interview, "Antitrust Laws Fraught with Internal Irony; The Get-Ahead Entrepreneur Must Make Sure He Doesn't Get Too Far Ahead," Anne Gearan, Arkansas Democrat-Gazette (Little Rock, AR), November 26, 1998. Copy Supplied.

Interview, "Fine Line for What's Allowed, and What's Not," AP, November 26, 1998. Copy Supplied.

Interview, "Brilliant or Brutal? Microsoft Walks Fine Line," Anne Gearan, Austin American-Statesman (Austin, TX), November 26, 1998. Copy Supplied.

Interview, "What is Revealed in the Audiotapes of Conversations Between Linda Tripp and Monica Lewinsky," CNBC, Rivera Live, November 26, 1998. Copy Supplied.

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Interview, "Court Makes Schools Liable for Sex Bias," Aaron Epstein, Miami Herald, February 27, 1992. 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.

Deputy Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, appointed by President Barack Obama (3/13).

Principal Deputy Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, designated by Attorney General Holder (4/13 to Present).

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.

1980: Kennedy for President, Advance Staff

1984: Mondale/Ferraro Campaign, Scheduler

1988: Dukakis/Bentsen Campaign, Advisor

1996: Clinton/Gore Campaign, Surrogate Scheduler

2004: Kerry/Edwards Campaign, Scheduler

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;

U.S. District Court for the District of Columbia
Honorable Thomas A. Flannery
1977 – 78
Law Clerk
333 Constitution Avenue, NW
Washington, D.C., 20001

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.

U.S. Department of Justice
Office of Legislative Affairs
2013 – Present
Principal Deputy Assistant Attorney General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

U.S. Department of Justice
Office of Legislative Affairs
2013 – 2013
Deputy Assistant Attorney General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dickstein Shapiro LLP
1986 – 2013
Partner
1825 Eye St. NW
Washington, D.C. 20006

Dickstein Shapiro LLP
1980 – 1985
Associate
1825 Eye St. NW
Washington, D.C. 20006

U.S. Department of Justice, United States Attorney's Office
1978 – 1980
Assistant United States Attorney
555 4th Street NW
Washington, D.C. 20530

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

I have never served as a mediator or arbitrator.

b. Describe

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

My law practice at Dickstein Shapiro focused on complex civil and antitrust litigation. I have represented clients in matters before the FTC, DOJ, state attorneys general, various state enforcement agencies and Congress. I also provided antitrust advice and counseling to Fortune 500 companies, trade associations, and labor organizations.

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

My typical clients included large companies involved in litigation or regulatory matters, such as Meritor, Inc. (and it predecessors ArvinMeritor, Inc., Arvin Industries, Inc., and Maremont Corp.), Duke Energy Corporation and Pfizer Inc. In other matters, I represented L-3 Corporation in a breach of contract matter, and First Chicago International, which was the victim of a check-kiting scheme.

I have also represented individuals and entities with respect to inquiries by congressional committees and state attorneys general, including Duke Energy Corporation, Meritor, Inc., Democratic National Committee, Financial Crisis Inquiry Commission, Martha Johnson, Jonathan Sliver, Wal-Mart, and others.

I also have represented entities with respect to mergers and acquisitions or in opposition to proposed transactions. Such clients have included National Association of Chain Drug Stores, Harbour Group, Brynwood Partners, and AT&T.

I helped form and represented labor management associations designed to provide a vehicle for employers and labor organizations to advocate for policies to promote domestic employment and job growth.

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 would estimate that over the course of more than 32 years in private practice, approximately 75% of my practice was litigation. I appeared in court frequently.

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

Dickstein Shapiro LLP (1980 – 2013)

1. federal courts; 80%
2. state courts of record; 20%

3. other courts; 0%
4. administrative agencies 0%

United States Attorney's Office, U.S. Department of Justice (1978 – 1980)

1. federal courts; 0%
2. state courts of record; 100%
3. other courts; 0%
4. administrative agencies 0%

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

Dickstein Shapiro LLP (1980 – 2013)

1. civil proceedings; 95%
2. criminal proceedings. 5%

United States Attorney's Office, U.S. Department of Justice (1978 – 1980)

1. civil proceedings; 0%
2. criminal proceedings. 100%

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.

During my tenure as an Assistant U.S. Attorney, I estimate that I tried 20-25 cases to verdicts as sole counsel. In private practice, I tried one case to judgment as associate counsel, obtained summary or default judgments or dismissals as chief counsel in approximately three cases.

i. What percentage of these trials were:
1. jury; 45%
2. non-jury. 55%

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

I have been a member of the Supreme Court bar since 1982. My practice did not frequently result in petitions for certiorari to the Supreme Court; however, I have served as counsel to clients who have submitted amicus briefs in connection with two Supreme Court cases.

1. *Franklin v. Gwinnett County Public Schools, et al.*, 503 U.S. 60 (1992). I was a lead counsel on a brief filed on behalf of the American Council of the Blind, Disability Rights Education and Defense Fund, Inc., and ten other disability rights advocacy and service organizations. Copy supplied.

2. *Quality King Distributors, Inc. v. L'Anza Research International, Inc.*, 523 U.S. 135 (1998). I served as co-counsel on an amicus brief filed on behalf of National Association of Chain Drug Stores and other entities in this case. Copy supplied.

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.

    The following lists of counsel identify primary and/or liaison counsel in cases where a full list of counsel would be unduly lengthy. These lists have been complied to the best of my ability from publicly available sources, as well as my personal recollection and records; however, due to the age of certain cases and the number of counsel involved, some information may be outdated or incomplete. Publicly available electronic records regarding each of the federal cases listed below may be viewed on the PACER website at https://pacer.login.uscourts.gov/cgi-bin/login.pl.

    (1) *In re Aftermarket Filters Antitrust Litigation*, 08-cv-4883 (N.D. Ill.)

    Judge(s): Hon. Robert W. Gettleman
    Hon. Geraldine Soat Brown
    Date of Rep.: 2008-2013
    Client(s): ArvinMeritor, Inc.; Purolator Products, NA LLC; Purolator Products Company LLC

    Description: I served as lead counsel for ArvinMeritor, Inc. (now Meritor, Inc.), and its former Purolator Products subsidiaries, in a multi-district litigation in the U.S. District Court for the Northern District of Illinois involving price-fixing allegations in the automotive aftermarket filters industry. This case involved allegations of a wide-ranging conspiracy dating back to 1999 that included every major U.S. manufacturer of automotive filters. Separate putative class action cases also were brought in Canada. The plaintiffs in the U.S. litigation included three putative classes of filter purchasers, as well as the State of Florida and a qui tam plaintiff (an alleged "whistleblower"). The DOJ also investigated the defendants in this litigation, but closed its investigation in early 2010 without any finding of wrongdoing. The qui tam action was dismissed with prejudice as to the whistleblower.

    Disposition: All U.S. actions were settled and dismissed; settlement discussions are ongoing in Canadian actions.

Counsel:

Party	Lead Counsel
Co-Lead Counsel, Direct Purchasers	Bernard Persky Labaton Sucharow LLP 140 Broadway, 23rd Floor New York, NY 10005 (212) 907-0700
Co-Lead Counsel, Direct Purchasers	Michael Jerry Freed Freed Kanner London & Millen, LLC 2201 Waukegan Road, Suite 130 Bannockburn, IL 60015 (224) 632-4500
Co-Lead Counsel, Direct Purchasers	Roberta D. Liebenberg Fine, Kaplan and Black, R.P.C. One South Broad Street, 23rd Floor Philadelphia, PA 19107 (215) 567-6565
Co-Lead Counsel, Direct Purchasers	Stuart V. Kusin Susman Godfrey LLP 1000 Louisiana, #5100 Houston, TX 77002 (713) 653-7812
Co-Lead Counsel, Indirect Purchasers	Christopher Lovell Lovell Stewart Halebian, LLP 61 Broadway, Suite 501 New York, NY 10006 (212) 608-1900
Co-Lead Counsel, Indirect Purchasers	Michael E. Jacobs Zelle, Hofmann, Voelbel, Mason & Gette, LLP 500 Washington Avenue South, Suite 4000 Minneapolis, MN 55415 (612) 339-2020
Co-Lead Counsel, Indirect Purchasers	Renae Steiner Heins Mills & Olson, P.L.C. 310 Clifton Avenue Minneapolis, MN 55403 (612) 338-4605
Co-Lead Counsel, Indirect Purchasers	Mario N. Alioto Trump, Alioto, Trump & Prescott 2280 Union Street San Francisco, CA 94123 (415) 563-7200

Party	Lead Counsel
Co-Lead Counsel, Gasoline Retailers	Gary D. McCallister Gary D. McCallister & Associates, Ltd. 120 North LaSalle Street, Suite 2800 Chicago, IL 60602 (312) 345-0611
Co-Lead Counsel, Gasoline Retailers	Martin R Fox Bleau Fox PLC 3575 Cahuenga Blvd West Ste 580 Los Angeles, CA 90068 (323) 874-8613
State of Florida	Christopher R. Hunt Office of The Attorney General of Florida Antitrust Division PL-01 The Capitol Tallahassee, FL 32399 (850) 414-3300
Affinia, Inc. & Wix Filtration Corp. LLC	John D. Briggs Axinn Veltrop Harkrider LLP 950 F. Street NW Washington, DC 20004 (202) 721-5400
Honeywell International, Inc.	Richard G. Parker O'Melveny & Myers LLP 1625 Eye Street NW Washington, DC 20006 (202) 383-5300
Champion Labs., Inc.	Margaret M. Zwisler Latham & Watkins LLP 55 Eleventh Street, NW, Suite 1000 Washington, DC 20004-1304 (202) 637-2200
Cummins Filtration Inc.	Michael A. Paskin Cravath Swaine & Moore LLP Worldwide Plaza 825 8th Avenue New York, NY 10019 (212) 474-1760
Donaldson Company, Inc.	James T. McKeown Foley & Lardner LLP 777 East Wisconsin Avenue Milwaukee, WI 53202 (414) 297-5530
Baldwin Filters, Inc.	Darrell Prescott Baker & McKenzie LLP 452 Fifth Avenue New York, New York 10018 (212) 626-4476

(2) *In re Air Cargo Shipping Service Antitrust Litigation*, 06-md-01775 (E.D.N.Y.); 11-5464-cv (2d Cir.)

Judge(s): Hon. John Gleeson (E.D.N.Y.)
Hon. Viktor V. Pohorelsky (E.D.N.Y.);
Hon. Jacobs, Kearse, and Hall (2d Cir.)
Date of Rep.: 2010-2012
Client(s): Saudi Arabian Airlines, Ltd.

Description: I served as lead counsel for Saudi Arabian Airlines beginning in October 2010 in a putative class action multi-district litigation alleging price-fixing by airlines that provided air cargo services into or out of the United States. Plaintiffs alleged an international conspiracy among airlines to fix prices with respect to such air cargo services. The claims by the indirect purchaser plaintiffs were dismissed in September 2009 on preemption grounds, and that dismissal was affirmed by the 2nd Circuit (October 2012). *See In re Air Cargo Shipping Servs. Antitrust Litig.*, 697 F.3d 154 (2d Cir. 2012). Saudi Arabian Airlines reached a settlement agreement with the direct purchaser plaintiffs, which was approved by the court in August 2012.

Disposition: Indirect purchaser actions were dismissed; direct purchaser actions were settled and dismissed.

Counsel:

Party	**Lead Counsel**
Co-Lead Counsel, Direct Purchaser Plaintiffs	Michael D. Hausfeld Hausfeld, L.L.P. 1700 K Street, NW Suite 650 Washington, DC 20006 (202) 540-7200
Co-Lead Counsel, Direct Purchaser Plaintiffs	Barbara J. Hart, Jay Himes Labaton Sucharow & Rudoff LLP 100 Park Avenue New York, NY 10017 (212) 907-0700
Co-Lead Counsel, Direct Purchaser Plaintiffs	Robert N. Kaplan Kaplan Fox & Kilsheimer LLP 805 Third Avenue 22nd Floor New York, NY 10022 (212) 687-1980
Co-Lead Counsel, Direct Purchaser Plaintiffs	Howard J. Sedran Levin, Fishbein, Sedran & Berman 510 Walnut Street, Suite 500 Philadelphia, PA 19106 (215) 592-1500

Party	Lead Counsel
Liaison Counsel for the Joint Defense Group	William R. Sherman Latham & Watkins LLP 555 Eleventh Street, NW Suite 1000 Washington, DC 20004 (202) 637-2200

(3) ***In re Western States Wholesale Natural Gas Antitrust Litigation, 03-cv-01431 (D. Nev.); 11-16786 (9th Cir.)***

Judge(s): Hon. Philip M. Pro (D. Nev.)
Hon. Peggy A. Leen (D. Nev.)
Hon. Bea, Watford, and Sessions (9th Cir.)
Date of Rep.: 2003-2012
Client(s): Duke Energy Corporation; Duke Energy Trading and Marketing, LLC

Description: I served as co-lead counsel for Duke Energy Corporation and Duke Energy Trading and Marketing, in a putative class action multi-district litigation that accused a group of energy trading companies of conspiring to manipulate the price of natural gas at markets throughout the United States. The plaintiffs alleged that the defendants made false transaction reports of prices and volumes to publishers of industry newsletters that published price "indices" used as price reference points in natural gas transactions. Dozens of suits arising from this alleged conduct were brought on behalf of classes of buyers located in several states (California, Colorado, Kansas, Missouri, Tennessee, and Wisconsin) in both state and federal courts, with claims under both state and federal antitrust and consumer protection laws. Duke Energy and other defendants won summary judgment on grounds of federal pre-emption in July 2011, and the cases were appealed to the Ninth Circuit. The Ninth Circuit reversed the decision on federal preemption (April 2013). *See In re Western States Wholesale Natural Gas Antitrust Litigation*, --- F.3d ---, 2013 WL 1449919 (9th Cir.).

Disposition: Summary judgment granted; however, the Ninth Circuit reversed the decision.

Counsel:

Party	Counsel
Co-Lead Counsel for Plaintiffs	Michael J. Boni Kohn, Swift & Graf, P.C. One South Broad Street, Suite 2100 Philadelphia, PA 19107 (215) 238-1700
Co-Lead Counsel for Plaintiffs	Marc H. Edelson Hoffman & Edelson 45 W. Court Street Doylestown, PA 18901 (215) 230-8043
Co-Lead Counsel for Plaintiffs	Craig C. Corbitt Zelle, Hofmann, Weibel, Mason & Gette LLP 44 Montgomery Street, Suite 3400 San Francisco, CA 94104 (415) 693-0700
Co-Lead Counsel for Plaintiffs	Susan G. Kupfer Glancy, Binkow & Goldberg LLP 455 Market Street, Suite 1810 San Francisco, CA 94105 (415) 972-8160
Defendant Coral Energy Resources L.P.	Joshua D. Lichtman Fulbright & Jaworski LLP 865 S. Figueroa Street, 29th Floor Los Angeles, CA 90017-2571 (213) 892-9200
Defendant AEP Energy Services, Inc.	Steven J. Routh Jonathan Abram Hogan & Hartson LLP 555 Thirteenth Street, NW Washington, DC 2004-1109 (202) 637-5600
Defendants Xcel Energy, Inc.; eprime, Inc.; and Northern States Power Company	Michael J. Miguel David Peterson Morgan Lewis & Bockius LLP 300 South Grand Avenue, Suite 2200 Los Angeles, CA 90071-3132 (213) 612-2500
Defendants Dynegy Inc.; Dynegy GP Inc.; DMT Holdings, L.P.; and Dynegy Marketing and Trade	Michael J. Kass Douglas R. Tribble Pillsbury Winthrop LLP 101 West Broadway, Suite 1800 San Diego, CA 92101 (619) 234-5000

Party	Counsel
Defendants Cantera Gas Company; Cantera Natural Gas, Inc.; CMS Energy; and CMS Marketing Services and Trading Company	Mark E. Haddad Sidley Austin Brown & Wood LLP 555 West 5th Street, 40th Floor Los Angeles, CA 90013 (213) 896-6000
Defendants Encana Corporation; Encana Energy Services, Inc.; WD Energy Services, Inc.	Robert A. Sacks Sullivan & Cromwell LLP 1888 Century Park East, 21st Floor Los Angeles, CA 90067 (310) 712-6600
Defendants ONEOK, Inc.; ONEOK Energy Services Company, L.P. (f/k/a ONEOK Energy Marketing and Trading Company, L.P.); and Kansas Gas Marketing Company	Oliver S. Howard Gable & Gotwals 100 W 5th St # 1100 Tulsa, OK 74103 (918) 595-4800
Defendants Reliant Energy, Inc. and Reliant Energy Services, Inc.	J. Gregory Copeland Baker Botts LLP One Shell Plaza 910 Louisiana Street Houston, Texas 77002-4995 (713) 229-1301
Defendant CenterPoint Energy, Inc.	Orrin L. Harrison, III Akin Gump Strauss Hauer & Feld LLP 1700 Pacific Avenue, Suite 4100 Dallas, TX 75201-4624 (214) 969-2860
Sempra Energy, Southern California Gas Company, and San Diego Gas & Electric Company	Richard P. Levy Gibson, Dunn & Crutcher LLP 333 S. Grand Ave. Los Angeles, CA 90071 (213) 229-7000 Aan Z. Yudkowsky Stroock & Stroock & Lavan LLP 2029 Century Park East, Suite 1800 Los Angeles, CA 90067-3086 (310) 556-5800
Sempra Energy Trading LLC (f/k/a Sempra Energy Trading Corp.)	William R. Urga Jolley Urga Wirth Woodbury & Standish 3800 Howard Hughes Pkwy Las Vegas, NV 89169 (702) 699-7500
Defendant Western Gas Resources, Inc.	James E. Scarboro Arnold & Porter LLP Suite 4400 370 Seventeenth Street Denver, CO 80202-1370 (303) 863-2311

Party	Counsel
Defendants The Williams Companies, Inc.; Williams Merchant Services Company, Inc.; and Williams Power Company, Inc. (f/k/a Williams Energy Marketing & Trading Company)	Graydon Dean Luthey, Jr. HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C. 320 South Boston Avenue Suite 200 Tulsa, OK 74103-3706 (918) 594-0400 Jeffrey Shohet DLA Piper Rudnick Gray Cary US LLP 4365 Executive Drive, Suite 1100 San Diego, CA 92121-2133 (858) 677-1400
Defendants El Paso Corporation and El Paso Marketing, L.P. (f/k/a El Paso Merchant Energy, L.P.)	Stacy Williams Locke Lord Bissell & Liddell LLP 2800 JPMorgan Chase Tower 600 Travis Houston, Texas 77002 (713) 226-1297 Diane E. Pirtchard Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105-2482 (415) 268-7000

(4) ***In re Natural Gas Commodity Litigation, 03-cv-06186 (S.D.N.Y.)***

Judge(s): Hon. Victor Marrero
Hon. Andrew Peck
Date of Rep.: 2003-2006
Client(s): Duke Energy Corporation; Duke Energy Trading and Marketing, LLC

Description: I served as lead counsel for Duke Energy Corporation and Duke Energy Trading and Marketing, in defending consolidated putative class action suits alleging violations of the Commodity Exchange Act and aiding and abetting violations by numerous defendants. The suits were brought on behalf of entities that traded natural gas futures and options contracts on the New York Mercantile Exchange during 2000 through 2002. The plaintiffs alleged that the defendants reported false and misleading trading information to trade publications and that certain defendants not including Duke Energy, engaged in "wash trades" for the purpose of artificially inflating the price of natural gas.

Disposition: Duke Energy Corporation was dismissed in 2004; Duke Energy Trading and Marketing settled with the plaintiffs and was dismissed from the action in 2006.

Counsel:

Party	Counsel
Co-Lead Counsel for Plaintiffs Cornerstone Propane Partners, L.P.; Roberto E. Calle Gracey; and Dominick Viola, Jr.	Bernard Persky Goodkind Labaton Rudoff & Sucharow LLP 140 Broadway New York, NY 10005 (212) 907-0700
Co-Lead Counsel for Plaintiffs Cornerstone Propane Partners, L.P.; Roberto E. Calle Gracey; and Dominick Viola, Jr.	Burton H. Finkelstein Finkelstein, Thompson & Loughran James Place 1077 30th Street, N.W. Suite #150 Washington, DC 20007 (202) 337-8000
Co-Lead Counsel for Plaintiffs Cornerstone Propane Partners, L.P.; Roberto E. Calle Gracey; and Dominick Viola, Jr.	Stephen Lowey Lowey Dannenberg Cohen & Hart, P.C. (f/k/a Lowey Dannenberg Bemporad & Selinger, P.C.) White Plains Plaza One North Broadway White Plains, NY 10601-2310 (914) 733-7217
Co-Lead Counsel for Plaintiffs Cornerstone Propane Partners, L.P.; Roberto E. Calle Gracey; and Dominick Viola, Jr.	Christopher Lovell Lovell Stewart Halebian, LLP 61 Broadway, Suite 501 New York, NY 10006 (212) 608-1900
Co-Lead Counsel for Plaintiffs Cornerstone Propane Partners, L.P.; Roberto E. Calle Gracey; and Dominick Viola, Jr.	Louis F. Burke Louis F. Burke, P.C. 460 Park Ave # 21 New York, NY 10022 (212) 682-1700
Counsel for American Electric Power Co., Inc. and AEP Energy Service, Inc.	Steven J. Routh Hogan & Hartson LLP 555 13th St NW # 800E Washington, DC (202) 637-5600
Counsel for Aquila Energy Marketing Corp. and Aquila Merchant Services, Inc.	William Molinski Orrick, Herrington & Sutcliffe LLP 777 South Figueroa Street Suite 3200 Los Angeles, CA 90017-5855 (213) 612-2256

Party	Counsel
Counsel for Calpine Energy Services, L.P.; Enserco Energy, Inc.	Richard P. Swanson Veronica Rendon Arnold & Porter LLP 399 Park Avenue New York, NY 10022-4690 (212) 715-1000
Counsel for Cinergy Marketing & Trading, L.P.	Steven M. Bierman Sidley Austin Brown & Wood 787 Seventh Avenue New York, New York 10019 (212) 839-5510
Counsel for Cantera Gas Company LLC; CMS Energy Resource Management Company	Daniel A. Mullen McDermott, Will & Emery 500 North Capitol St NW Washington, DC 20001 (202) 756-8000
Counsel for Cook Inlet Energy Supply LLC	Mary Anne Sullivan Hogan & Hartson LLP 555 13th Street, NW Washington, DC 20004 (202) 637-5600
Counsel for Coral Energy Resources, L.P.	Joshua D. Lichtman Fulbright & Jaworski LLP 865 S. Figueroa Street, 29th Floor Los Angeles, CA 90017-2571 (213) 892-9200
Counsel for Dynegy Marketing & Trade, West Coast Power, LLC	Douglas R. Tribble Pillsbury Winthrop LLP 101 West Broadway, Suite 1800 San Diego, CA 92101 (619) 234-5000
Counsel for El Paso Merchant Energy, L.P.	Stephanie J. Goldstein Fried Frank Harris Shriver & Jacobson LLP One New York Plaza New York, New York 10004 (212) 859-8254
Counsel for Entergy-Koch Trading, L.P.	Kenneth M. Raisler Sullivan & Cromwell LLP 125 Broad Street New York, New York 10004-2498 (212) 558-4000
Counsel for e prime, Inc.	Robert C. Micheletto Jones Day LLP 222 East 41st Street New York, New York 10017-6702 (212) 326-3690

Party	Counsel
Counsel for MidAmerican Energy Co.	Robert A. Jaffe Kutak Rock LLP 1101 Connecticut Avenue, N.W. Suite 1000 Washington, DC 20036 (202) 828-2434
Counsel for Mieco, Inc.	Richard T. Marooney, Jr. King & Spalding LLP 1185 Avenue of the Americas New York, NY 100036 (212) 556-2100
Counsel for ONEOK Energy and Marketing Company, L.P. and ONEOK, Inc.	Karen Michele Crupi Heller Ehrman, LLP Times Square Tower 7 Times Square New York, NY 10036-6524 (212) 832-8300
Counsel for Reliant Energy Services, Inc.	Greg Copeland Baker Botts LLP One Shell Plaza 910 Louisiana Street Houston, Texas 77002-4995 (713) 229-1301
Counsel for Sempra Energy Trading	Aan Z. Yudkowsky Stroock & Stroock & Lavan LLP 2029 Century Park East, Suite 1800 Los Angeles, CA 90067-3086 (310) 556-5800
Counsel for WD Energy Services, Inc.	Robert A. Sacks Sullivan & Cromwell LLP 1888 Century Park East, 21st Floor Los Angeles, CA 90067 (310) 712-6600
Counsel for Western Gas Resources, Inc.	Peter E. Greene Skadden, Arps, Slate, Meagher & Flom LLP 4 Times Square New York, New York 10036 (212) 735-3620
Counsel for Williams Energy Marketing and Trading Company, Williams Companies, Inc.	Mark Hamer Gray Cary Ware & Freidenrich, LLP 4365 Executive Dr., Suite 1100 San Diego, CA 92121 (858) 638-6758

(5) ***L-3 Communications Avionics Systems, Inc. v. Cirrus Design Corporation, 09-cv-01405 (D. Minn.)***

Judge(s): Hon. Patrick J. Schiltz
Hon. Leo I. Brisbois
Date of Rep.: 2009-2010

Client(s): L-3 Communications Avionics Systems, Inc.

Description: I served as lead counsel for L-3 Communications Avionics Systems, Inc. in a contract dispute involving the development of a proprietary system for a new model of aircraft. The defendant company had terminated the contract but refused to pay the amounts owed pursuant to a termination clause, for the investments made and development expenses incurred by L-3 Communications. After L-3 Communications prevailed on a significant discovery motion, the defendant entered into settlement negotiations.

Disposition: The parties reached a favorable settlement and agreed to dismiss the action.

Counsel:

Party	Counsel
Cirrus Design Corporation	Peter W. Carter Dorsey & Whitney LLP 50 S 6th St Ste 1500 Minneapolis, MN 55402-1498 (612) 340-5635

(6) ***Clayworth et al. v. Pfizer, Inc. et al., RG04172428 (Cal. Super. Ct.); A131804 (Cal. Ct. App.)***

Judge(s): Hon. Harry Sheppard (Cal. Sup. Ct.)
Hon. Ronald Sabraw (Cal. Sup. Ct.)
Hon. Kline, Haerle, and Richman (Cal. Ct. App.)
Date of Rep.: 2004-2010
Client(s): Pfizer, Inc.

Description: I served as lead counsel for Pfizer, Inc. in defending this litigation, an action by certain California pharmacies against Pfizer, other prescription drug manufacturers, and the trade association PhRMA, alleging state antitrust and unfair competition law violations. Plaintiffs asserted that defendants conspired to fix the prices of their prescription drugs sold in the United States at prices higher than those of the same drugs in Canada. Defendants prevailed at the state trial court level on their motion for summary judgment on the merits, and the California Court of Appeal affirmed this ruling in favor of Pfizer and the other defendants (August 2012). (unpublished).

Disposition: The California Court of Appeal affirmed the lower court's decision granting summary judgment in favor of Pfizer and the other defendants.

Counsel:

Party	Counsel
Counsel for Plaintiffs	Joseph M. Alioto Alioto Law Firm 555 California Street, 31st Floor San Francisco, CA 94104 (415) 434-8900

Counsel for Plaintiffs	Russell F. Brasso Foreman & Brasso 930 Montgomery Street, Suite 600 San Francisco, CA 94133 (415) 433-3475
Counsel for Plaintiffs	Jeffery K. Perkins Law Offices of Jeffery K. Perkins 1275 Columbus Avenue, Suite 208 San Francisco, CA 94133 (415) 474-3833
Counsel for Plaintiffs	John H. Boone Law Offices of John H. Boone 555 California Street, Suite 3160 San Francisco, CA 94104 (415) 434-1133
Counsel for Plaintiffs	James M. Dombroski Law Offices of James M. Dombroski P.O. Box 751027 Petaluma, CA 94975 (707) 762-7807
Counsel for Plaintiffs	Gary D. McCallister Gary D. McCallister & Associates 120 North LaSalle Street, Suite 2800 Chicago, IL 60602 (312) 346-0611
Attorneys For Defendant Abbott Laboratories	Tyler M. Paetkau Nicole P. Dogwill Winston & Strawn, LLP 101 California Street San Francisco, CA 94111 -5802 (415) 591-1000 James F. Hurst Susan A. Pipal Winston & Strawn, LLP 35 W. Wacker Drive Chicago, IL 60601 (312) 558-5600
Attorneys For Defendant Allergen, Inc.	Jeffrey T. Thomas James N. Knight Gibson, Dunn & Crutcher LLP 3161 Michelson Drive Irvine, CA 92612-4412 (949) 451-3800

Attorneys for Defendant Amgen Inc.	Steven O. Kramer Sheppard, Mullin, Richter & Hampton LLP 333 South Hope Street, 48th Floor Los Angeles, CA 90071-1448 (213) 620-1780 Joseph H. Young Steven F. Barley Hogan & Hartson LLP 111 South Calvert Street Baltimore, MD 21201 (410) 659-2775
Attorneys For Defendant AstraZeneca LP	William Fenrich Arthur Golden Davis, Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Telephone: (212) 450-4000 Peter A. Strotz William E. Steimle Filice Brown Eassa & McLeod LLP Lake Merritt Plaza 1999 Harrison Street, 18th Floor Oakland, CA 946 12-0850 (510) 444-3131
Attorneys For Defendant Boehringer Ingelheim Pharmaceuticals, Inc.	Jeffrey A. LeVee Jones Day 1755 Embarcadero Road Palo Alto, CA 94303 (650) 687-4166
Attorneys For Defendant Bristol-Myers Squibb Company	Elizabeth L. Grayer Jessica Burturla Cravath, Swaine & Moore LLP 825 Eighth Avenue New York, NY 10019 (212) 474- 1000 Paul J. Riehle Matthew A. Fischer Sedgwick, Detert, Moran & Arnold LLP One Market Plaza Steuart Tower, 8th Floor San Francisco, CA 94105 (415) 781-7900

Attorney for Defendant Eli Lilly	Michele Floyd Reed Smith LLP Two Embarcadero Center, Suite 2000 San Francisco, CA 94111 (415) 543-8700 Gary Hansen David P. Graham Oppenheimer Wolff & Donnelly Plaza VII, Suite 3300 45 South Seventh Street Minneapolis, MN 55402-1609 (612) 607-7584
Attorneys for Defendant GlaxoSmithKline PLC	George S. Cary Matthew I. Bachrack David Gelfand Cleary Gottlieb Steen & Hamilton LLP 2000 Pennsylvania Avenue, NW Washington, DC 20006 (202) 974-1500 Alexander F. Wiles John C. Keith Irell & Manella LLP 1800 Avenue of the Stars, Suite 900 Los Angeles, CA 90067-4276 (310) 277-1010
Attorneys for Defendant Hoffman-La Roche	H. Christian L'Orange Drinker Biddle & Reath LLP 50 Fremont Street, 20th Floor San Francisco, CA 94105-2235 (415) 591-1730 Paul H. Saint-Antoine Drinker Biddle & Reath LLP One Logan Square 18th & Cherry Streets Philadelphia, PA 19103-6996 (215) 988-2700
Attorneys for Defendants Johnson & Johnson Health Care Systems, Inc., Janssen Pharmaceutical, Inc., Ortho Biotech, Inc., and Ortho-McNeil Pharmaceutical, Inc.	Beatrice B. Nguyen Cecilia Ogbu Tracy Reichmuth Crowell & Moring LLP 275 Battery Street, 23rd Floor San Francisco, CA 941 11 (415) 986-2800
Attorneys for Defendant Merck Sharp & Dohme Corp.	Rita M. Haeusler Hughes Hubbard & Reed LLP 350 South Grand Avenue Los Angeles, CA 90071 (213) 613-2800

Attorneys For Defendant Novartis Pharmaceuticals Corporation	Aton Arbisser Kaye Scholer LLP 1999 Avenue of the Stars, Suite 1700 Los Angeles, CA 90067-6048 (310) 788-1000 Saul P. Morgenstern Kaye Scholer LLP 425 Park Avenue New York, NY 10022 (212) 836-8000 James A .O'Neal Faegre & Benson LLP 2200 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402 (612) 766-8420
Attorneys for Defendant Pharmaceutical Research and Manufacturers of America	Margaret M. Zwisler Latham & Watkins LLP 55 Eleventh Street, NW, Suite 1000 Washington, DC 20004-1304 (202) 637-2200 Charles H. Samel Latham & Watkins LLP 355 South Grand Avenue Los Angeles, CA 90071-1560 (213) 485-1234
Attorneys for Defendant Wyeth	Ronald C. Redcay Arnold & Porter LLP 777 South Figueroa Street, 44th Floor Los Angeles, CA 90017-2513 (213) 243-4000 Douglas L. Wald Arnold & Porter LLP 555 Twelfth Street, NW Washington, DC 20004-1206 (202) 942-5000

(7) ***In re Canadian Import Antitrust Litigation, 04-cv-02724 (D. Minn.); 05-3873 (8th Cir.)***

Judge(s): Hon. Jonathan Lebedoff (D. Minn.)
Hon. Joan N. Ericksen (D. Minn.)
Hon. Susan Richard Nelson (D. Minn.)
Hon. Colloton, Gibson, and Loken (8th Cir.)
Date of Rep.: 2004-2006
Client(s): Pfizer, Inc.

Description: I served as lead counsel for Pfizer, Inc. in securing a complete dismissal of this action. A nationwide class of U.S. prescription drug purchasers filed this case against Pfizer and other manufacturers of prescription drugs alleging federal and state antitrust and state unfair competition violations. Plaintiffs alleged that defendants conspired to prevent the importation into the U.S. of lower-priced prescription drugs from Canada thereby forcing them to purchase higher-priced prescription drugs from U.S. pharmacies. In August 2005, defendants prevailed on their motion to dismiss the complaint in its entirety. On appeal by Plaintiffs, the Eighth Circuit unanimously affirmed the dismissal of the case (November 2006). *See In re Canadian Import Antitrust Litigation*, 470 F.3d 785 (8th Cir. 2006).

Disposition: The Eighth Circuit unanimously affirmed the trial court's dismissal of this action in favor of Pfizer and the other defendants.

Counsel:

Party	**Counsel**
Lead Counsel for Plaintiffs	Marvin A. Miller Jennifer W. Sprengel William R. Kane Miller Faucher and Cafferty LLP 30 North LaSalle Street Chicago, IL 60602 (312) 782-4880
Liaison Counsel for Plaintiffs	Daniel E. Gustafson Karla M. Gluek Gustafson Gluek PLLC 725 Northstar East 608 Second Avenue South Minneapolis, MN 55402 (612) 333-8844
Liaison Counsel for Defendants	Michael McCarthy Gary J. Haugen Maslon Edelman Borman & Brand LLP 3300 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402 (612) 672-8347

(8) ***Sony Electronics, et al .v. Soundview Tech, Inc., 00-cv-00754 (D. Conn.); 2004-1057 (Fed. Cir.)***

Judge(s): Hon. Janet Bond Arterton (D. Conn.)
Hon. Newman, Rader, and Bryson (Fed. Cir.)
Date of Rep.: 2000-2005
Client(s): Consumer Electronics Association and Electronic Industries Alliance

Description: I served as lead counsel for two trade associations (Consumer Electronics Association and Electronic Industries Alliance) in litigation involving the holder of a patent for certain v-chip technology (Soundview Industries). Soundview

alleged patent infringement and a conspiracy to boycott licenses for its technology, which conspiracy was allegedly facilitated by the trade associations. The trial court ruled that there was no patent infringement and no antitrust violation. *See Sony Elecs. v. Soundview Techs.*, 225 F. Supp. 2d 164 (D. Conn. 2002); *Sony Elecs., Inc. v. Soundview Techs., Inc.*, 281 F. Supp. 2d 399 (D. Conn. 2003). The rulings were affirmed by the Federal Circuit (August 2004) (unpublished).

Disposition: The Federal Circuit affirmed the trial court's ruling, and the action was ultimately dismissed.

Counsel:

Party	**Counsel**
Hitachi America Ltd.	Kathleen McGillis Haley McDermott, Will & Emery 600 13th St., N.W. Washington, DC 20005-3096 (202) 756-8000
JVC Americas Corp.; Matsushita Electric Corp. of America	Morton Amster Amster, Rothstein & Ebenstein 90 Park Avenue 21St Floor New York, NY 10016 (212) 697-5995
Mitsubishi Digital Electronics America, Inc.; Mitsubishi Electronics America Inc.	Vincent J. Belusko Morrison & Foerster 555 W. Fifth St. Suite 3500 Los Angeles, CA 90013-1024 (213) 892-5593
Phillips Electronics NA Corp.	Garrand Russ Beeney Sullivan & Cromwell 125 Broad Street New York, NY 10004 (212) 558-4000
Pioneer Electronics (USA), Inc.	Keri R. Curtis Howrey, Simon, Arnold & White 550 So. Hope St., Suite 1400 Los Angeles, CA 90071 (213) 892-1800
Samsung Electronics America, Inc.	Robert A. Johnson Akin, Gump, Strauss, Hauer & Feld LLP 590 Madison Ave. New York, NY 10022 (212) 872-1077
Sharp Electronics Corp.	Robert W. Adams Nixon & Vanderhye 1100 N. Glebe Rd., 8th Fl. Arlington, VA 22201 (703) 816-4122

	William M. Bloss Koskoff, Koskoff & Bieder, P.C. 350 Fairfield Ave. Bridgeport, CT 06604 (203) 336-4421
Sony Corporation of America	Richard M. Steuer Mayer Brown Rowe & Maw LLP 1675 Broadway New York, NY 10019-5820 212-506-2530
Sony Electronics, Inc.	Richard L. DeLucia Kenyon & Kenyon One Broadway New York, NY 10004 (212) 425-7200
Soundview Tech., Inc.	John J. Bogdanski Howd & Ludorf 65 Wethersfield Ave. Hartford, CT 06114-1190 (860) 249-1361 Joseph L. Clasen Robinson & Cole 1055 Washington Boulevard 9th Floor Stamford, CT 06901-2249 (203) 462-7510
Thomson Consumer Electronics, Inc.	Peter C. McCabe, III. Winston & Strawn 35 West Wacker Drive Chicago, IL 60601 (312) 558-5600
Toshiba America Consumer Products Inc.	Thomas G. Gallatin, Jr. Latham & Watkins 885 Third Ave., 53rd Fl. Suite 1000 New York, NY 10022-4802 (212) 906-1200

(9) ***Chevron USA, Inc. v. GPM Gas Corporation, 97-cv-199 (W.D. Tex.); No. 99-50987 (5th Cir.)***

Judge(s): Hon. Lucius D. Bunton III (W.D. Tex.)
Hon. Politz, DeMoss, Stewart (5th Cir.)
Date of Rep.: 1999-2002
Client(s): GPM Gas Corporation

Description: I served as lead appellate counsel for GPM Gas Corporation (an affiliate of Duke Energy) in a contract dispute between Chevron and GPM as successors-in-interest to contracts involving the sale of casinghead gas. I was brought in as appellate counsel after a bench trial that resulted in a $13.8 million judgment

against GPM. GPM asserted numerous arguments on appeal, including a basis for voiding the underlying contractual provisions and that the claims were time barred. After oral argument, the Fifth Circuit affirmed the judgment of the trial court (June 2001) (unpublished). GPM filed a petition for certiorari to the Supreme Court, but it was denied.

Disposition: The Fifth Circuit affirmed the trial court's award of $13.8 million in damages. A petition for certiorari to the Supreme Court was denied.

Counsel:

Party	**Lead Counsel***
Chevron USA, Inc.	Steven Carroll Kiser Andrew Harper Estes Lynch, Chappell & Alsup, P.C. Suite 700 300 N. Marienfeld Street The Summit Midland, TX 79701-4322 (432) 683-3351
	*appellate counsel only listed.

(10) ***Sonitrol of Fresno, et al. v. AT&T, et al., 83-cv-2324 (D.D.C.)***

Judge(s): Hon. June L. Green
Date of Rep.: 1983-1987
Client(s): AT&T

Description: I served as counsel for AT&T in an action involving numerous allegations, including unlawful conspiracies in restraint of trade and monopolization relating to the development of remote alarm system services. Defendants successfully obtained summary judgment on antitrust claims in rulings that acknowledged that telephone company rates and facilities that were subject to state government regulation were exempt from attack under the federal antitrust laws. *See Sonitrol of Fresno, et al. v. AT&T, et al.*, 629 F. Supp. 1089 (D.D.C. 1986), and 1986-1 CCH Trade Reg. 67,107 (unpublished).

Disposition: The D.C. District Court granted summary judgment in favor of AT&T and its affiliates.

Counsel:

Party	**Lead Counsel****
Sonitrol Plaintiffs	David S. Cohen; Cohen & White, Washington, DC Brian E. Moran, Chapman & Moran, Stamford, Conn., Robert N. Kaplan, Kaplan, Kilsheimer & Foley, New York, NY William Knecht, Moraga, CA Henry M. Burwell, Barringer, Allen, Pinnex & Burwell, Greenville, SC
** No further contact information available due to age of litigation.	

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.)

In addition to extensive civil litigation, I represented and counseled numerous clients during my time in private practice in non-litigation matters. Such matters included criminal investigations, congressional investigations, and representation before the Federal Trade Commission (FTC), the Department of Justice (DOJ), state attorneys general, and various state enforcement agencies. I also counseled clients on voting/electoral reform efforts and matters of antitrust compliance, as well as in connection with mergers and acquisitions. I have described the most significant representative matters below.

Investigations:

- Represented the Democratic National Committee in connection with Congressional investigations and hearings into campaign finance and fundraising irregularities during the 1996 Presidential campaign.
- Represented then Chief of Staff to President Clinton, John Podesta, in various Congressional and other investigations related to the Monica Lewinsky matters.
- Represented public officials in Congressional investigations before the House Committee on Oversight and Government Reform and House Committee on Energy and Commerce. Representative clients include former U.S. Administrator of General Services at the General Services Administration (GSA), Martha Johnson, and former Executive Director of the Loan Programs Office at the Department of Energy, Jonathan Silver.
- Represented an automotive parts manufacturer in federal and state price-fixing investigations.
- Represented a major energy company in connection with federal and state criminal and regulatory investigations concerning production, distribution, and trading practices, all of which were resolved on favorable terms.
- Represented various trade associations and corporate clients in connection with the enforcement activities and investigations by state attorneys general.

Voting/Electoral Reform:

- Represented and counseled the Voter Participation Center (VPC, f/k/a Women's Voices. Women Vote) and Women's Voices. Women Vote Action Fund (WVWVAF) in its voter registration and electoral reform efforts, programs, and publications.
- Advised VPC and WVWVAF generally with regard to corporate structure and governance, fundraising and solicitation registration, and strategic planning.
- Advised the Boards of the VPC and WVWVAF.

Antitrust Compliance:

- Presented more than 100 antitrust compliance seminars and conducted more than a dozen antitrust audits for a Fortune 100 company, a major manufacturer of automotive replacement parts, the national trade association for mutual fund companies, a diversified supplier of energy services, a natural gas distributor, and a number of manufacturing enterprises, and trade associations
- Counseled clients on related antitrust matters and queries to ensure compliance with all applicable rules and regulations.

Labor Management Committees (LMCs):

- Provided advice on the formation of committees for labor-management cooperation to advocate for common issues affecting the industry relating to job creation and growth.
- Served as counsel to LMCs in various industries, including pharmaceuticals, timber, and oil and natural gas. Provided advice on corporate formation, tax status, registration, and record-keeping requirements. Attended annual meetings and counseled LMCs on antitrust matters to ensure compliance.

Mergers and Acquisitions:

- Represented the National Association of Chain Drug Stores (NACDS) in its joint opposition with the National Community Pharmacists Association (NCPA) to the Express Scripts, Inc. (ESI)-Medco Health Solutions (Medco) merger, including representation before FTC Commissioners, Committees of Congress, and various state attorneys general.
- Represented clients and made presentations to the FTC Commissioners and agency staff in defense of proposed mergers and acquisitions in a wide variety of industries for Harbour Group and other clients.
- Advised clients in connection with Hart Scott Rodino (HSR) filings and represented companies subject to second requests for information, negotiated compliance with such requests, and represented witnesses deposed by FTC and DOJ staff for Harbour Group and other clients.
- Counseled clients seeking to instigate FTC or DOJ activity with respect to mergers contemplated by their competitors or suppliers for NACDS and other clients.

Lobbying activities:

- From September to December of 2000, I was a registered lobbyist for the Harbour Group and worked on matters related to amendments to the Hart Scott Rodino Act.
- From 1999-2000, I was a registered lobbyist for Case Corporation and worked on matters related to the export of farm equipment to Russia.
- From January to July 2002, I was a registered lobbyist for the Cigar Association of American and worked on matters related to the labeling of cigars.
- From 1999 to 2007, I was a registered lobbyist for the International Brotherhood of Teamsters and worked on matters related to relief from provisions of a consent decree.

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.

    None.

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.

    My capital account at Dickstein Shapiro LLP was $697,000 upon my withdrawal from the partnership. Absent acceleration, pursuant to the terms of the partnership agreement, I received approximately 25% of that amount on May 30, 2013, and will receive 33.33% of the remaining amount on the anniversary date in 2014, 2015, and 2016 with 6% interest on the deferred amounts. Also, as a U.S. government employee, I participate in the Thrift Savings Plan.

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.

    None.

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.

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 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 I have entered into with the Department's designated ethics official.

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 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 I have entered into with the Department's designated 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.

I served as chair of the pro bono committee for Dickstein Shapiro LLP from approximately 1990 to 1996 where I coordinated and encouraged pro bono service by all attorneys at the firm. I also served as co-chair of the firm's diversity committee for a number of years. I also represented and counseled numerous pro bono clients and supervised many associates in pro bono matters throughout my 32 years in private practice at Dickstein Shapiro LLP. Representative clients include the following:

- *Hovsepyan v. Broadcasting Board of Governors*, 1:10-cv-00868 (D.D.C): I represented a client in an employment discrimination and retaliation case under the Rehabilitation Act and the Age Discrimination in Employment Act. After the client's initial pro se complaint was dismissed, I was appointed by the court to represent him. The case is pending in the United States District Court for the District of Columbia, in front of Judge Rosemary Collyer. Upon joining the Department of Justice, I withdrew from the case.

- The Voter Participation Center (VPC, f/k/a Women's Voices. Women Vote): I provided ongoing counseling with regard to VPC's voter registration and reform efforts, including its programs and initiatives to register and turn out historically underrepresented groups at the polls.

- Disability Rights Education and Defense Fund, Inc.: As noted in Item 14(e) above, I co-authored an amicus brief submitted to the Supreme Court on their behalf that supported a right of damages under Title IX.

- The News Literacy Project: I provided ongoing counseling with regard to non-profit formation, corporate structure and board issues, fundraising solicitation registration, partnerships and contract issues, and general programming and strategic planning.

- People for The American Way: I represented employees of the organization in connection with third-party subpoenas they received in an action brought in Tennessee regarding the censorship of textbooks.

- AARP's Legal Counsel for the Elderly: I supervised young lawyers who prepared living wills and powers of attorney for elderly clients.

- Washington Lawyers' Committee for Civil Rights and Urban Affairs: I supervised young lawyers who represented clients in fair housing and race discrimination cases.

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		364	000	Notes payable to banks-secured			0
U.S. Government securities-add schedule		40	964	Notes payable to banks-unsecured			0
Listed securities-add schedule	3	319	434	Notes payable to relatives			0
Unlisted securities--add schedule (see attached)		59	536	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due		10	000
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable-add schedule **(see attachment A)**		957	550
Real estate owned-add schedule **(see attachment A)**	3	099	880	Chattel mortgages and other liens payable			0
Real estate mortgages receivable		220	000	Other debts-itemize:			0
Autos and other personal property		100	000				
Cash value-life insurance			0				
Other assets itemize:			0				
Law Firm Capital Account		697	000				
Government Thrift Savings Plan		6	253				
				Total liabilities		967	550
				Net Worth	6	939	517
Total Assets	7	907	067	Total liabilities and net worth	7	907	067
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)	NO		
On leases or contracts		16	000	Are you defendant in any suits or legal actions?	NO		
Legal Claims			0	Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax			0				
Other special debt			0				

Attachment A:

Real Estate Owned	Property Value
Washington, DC (with spouse)	$ 1,358,230
Healdsburg, CA (with spouse)	$ 1,310,000
Arlington, VA (50% interest with ex-spouse)	$ 431,650
	$ 3,099,880

Real Estate Mortgages	
Washington, DC (PNC Bank)	$ 330,483
Home Equity Line of Credit (PNC Bank)	$ 27,982
Healdsburg, CA (PNC Bank)	$ 599,085
	$ 957,550

Unlisted Securities	
DSMO Metier LLC	$ 25,538
DSM Poseidon LLC	$ 33,998
	$ 59,536

AFFIDAVIT

I, Peter Joseph Kadzik, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8/23/13
(DATE)

Peter J. Kadzik
(NAME)

Washington, District of Columbia
Subscribed and sworn to before me, in my presence,
this 23RD day of AUGUST, 2013
by PETER JOSEPH KADZIK
Notary Public
My Commission Expires 08/31/2015

SYLVIA J. TURNER
Notary Public, District of Columbia
My Commission Expires August 31, 2015

SYLVIA J. TURNER NOTARY PUBLIC DISTRICT OF COLUMBIA

U.S. Senator Chuck Grassley • Iowa

Ranking Member • Senate Judiciary Committee

http://grassley.senate.gov

Prepared Statement of Ranking Member Grassley of Iowa
U.S. Senate Committee on the Judiciary
Nominations of John B. Owens, to be United States Circuit Judge for the Ninth Circuit
Matthew Frederick Leitman, to be United States District Judge for the Eastern District of Michigan
Judith Ellen Levy, to be United States District Judge for the Eastern District of Michigan
Laurie J. Michelson, to be United States District Judge for the Eastern District of Michigan
Linda Vivienne Parker, to be United States District Judge for the Eastern District of Michigan
Peter Joseph Kadzik, to be an Assistant Attorney General (Office of Legislative Affairs)
Wednesday, October 30, 2013

Madame Chairwoman,

I join you in welcoming the nominees who are here today with their families and friends. It is a milestone in each of nominees' careers, and a proud moment for their families.

Today's hearing is the 14th judicial nominations hearing this year during which we will have considered a total of 48 judicial nominees. This hearing record is especially remarkable when you compare this pace to the first year of President Bush's second term. At this stage in President Bush's second term, the Committee had held only 4 hearings for 8 nominees. In fact, for the entire year of 2005, the Judiciary Committee held only 6 hearings for 15 district and circuit nominees. Again, we have greatly exceeded that number – 14 hearings and 48 judicial nominees.

Today we consider a nominee to the 9th Circuit, and regarding this particular seat, a bit of history is in order. For nearly a decade, there has been some dispute over this seat. It became vacant on December 31, 2004 when Judge Stephen Trott, took senior status. I would note that Judge Trott was from Virginia at the time of his nomination. He moved to Idaho upon confirmation, where he maintained his chambers throughout his service on the Court. When Judge Trott took senior status, President Bush nominated Randy Smith, of Idaho, to fill the vacancy. The Smith

nomination was blocked by Senate Democrats because the California delegation asserted that the seat belonged to California.

Mr. Smith had his hearing in March 2006 and was voted out of Committee that May. But Senate Democrats repeatedly refused to grant the request to hold the nominee in the Senate during a recess, and demanded his nomination be returned to the President. Of course, at the same time, Senate Democrats were filibustering another nominee to the Ninth Circuit, William Myers. After a failed cloture vote and repeatedly returning his nomination to the President during recess periods, Myers was forced to withdraw.

Ultimately, after this dual track obstruction in the Ninth Circuit, the President withdrew Mr. Smith's original nomination and nominated him to the seat to which Mr. Myers had been nominated. Judge Smith was confirmed to this position in February 2007 by a vote of 94 – 0. Mr. Myers was never confirmed. After the Smith nomination was blocked, the seat remained vacant, with no nominee throughout the remainder of President Bush's second term and with no nominee throughout President Obama's first term.

That is the recent history of this seat. I am not suggesting that I know the right way to handle the situation here, but it is important to remember how the Democrats treated the last nominee to this seat – a seat, I would like to remind my fellow committee members, that does not 'belong' to any state. In fact, this seat has been filled by judges sitting in Idaho, California, Washington and Oregon.

But in 2005, one senior Judiciary Committee Member accused the White House of attempting to "steal a seat" by nominating Mr. Smith. Another Member said that she would not "sit by and let this happen… If I have to filibuster this judge I will do so". And that's essentially what happened, as I have outlined.

In addition to the judicial nominees, we are considering the nomination of Peter Kadzik, to be an Assistant Attorney General to head the Office of Legislative Affairs. He is presently serving as Principal Deputy Assistant Attorney General and in that capacity he heads that office.

I have concerns about Mr. Kadzik's history in dealing with Congressional oversight.

On May 14, 2002, the House Committee on Government Reform released a report on the White House's pardon of Marc Rich. That report details how the Committee received records on the Rich pardon from Mr. Kadzik's law firm, Dickstein, Shapiro, Morin & Oshinsky, which represented the billionaire tax fugitive in his quest for a pardon.

According to the Committee's report, those records reflected that Mr. Kadzik had worked on the pardon. Mr. Kadzik was called to testify at a hearing on the matter. According to the House Committee report, "Kadzik declined to testify voluntarily. Then, when he was informed that the Committee would issue a subpoena to compel his attendance at the hearing, he left Washington, mistakenly assuming that the Committee would not be able to serve him."

The record of the Committee's interactions with Mr. Kadzik's attorneys is well-documented. Through consultation with the House Committee, I was able to obtain the contemporaneous handwritten notes documenting the Committee's interactions with Mr. Kadzik's attorneys.

The notes show that Government Reform Committee staff first had contact on Friday, February 16, 2001, with Richard Conway, Andrew Zausner, and Henry Cashen, all colleagues of Mr. Kadzik's at Dickstein Shapiro. Committee staff had several interactions with Mr. Kadzik's attorneys throughout the next week. Then, on Friday, February 23, 2001, at 5:25 pm, Committee staff left a message for Mr. Conway stating that Mr. Kadzik would be called to testify at a Committee hearing the next Thursday, March 1, 2001.

According to contemporaneous notes, Mr. Conway returned the call on Monday, February 26, and spoke again with Committee staff later that day. In the second conversation, Mr. Conway said Mr. Kadzik's schedule reflected that he planned to fly to California on Wednesday. Committee staff reiterated that Mr. Kadzik would be required to attend the Thursday hearing. That day, the Committee Chairman sent Mr. Kadzik a letter notifying him that he would be called to testify.

The next day, on Tuesday, February 27, Mr. Conway contacted Committee staff at 11:47 am to say that he had informed Mr. Kadzik about the hearing, but that Mr. Kadzik still intended to go to California instead. Mr. Conway spoke with Committee staff again at 2:55 pm, according to contemporaneous notes. According to the Committee report, Mr. Kadzik sent a letter to the

Committee at 7:40 pm that night declining to testify. Notes from Government Reform Committee staff show that they then tried to reach Mr. Conway, Mr. Zausner, and Mr. Cashen. Committee staff left messages for all three of the Dickstein Shapiro attorneys on Tuesday February 27, stating that Mr. Kadzik would be *required* to attend the Thursday hearing.

The next morning, Mr. Kadzik's flight was scheduled to leave for California at 11 am. At 8:19 am, Mr. Conway and Mr. Zausner telephoned Government Reform Committee staff. According to contemporaneous notes, Mr. Conway and Mr. Zausner stated that neither of them was authorized to accept service of the subpoena. These notes make absolutely clear that attorneys for Mr. Kadzik were aware of the subpoena, and that they refused to cooperate in facilitating service of the subpoena informally.

At 9:29 am, Committee staff spoke with Mr. Cashen. That was followed by a third call, this time with just Mr. Zausner. According to the notes, Mr. Zausner told Committee staff that Mr. Kadzik had said he had to go to California. These three contacts were all before Mr. Kadzik's scheduled flight at 11 am.

The notes also indicate a fourth call with Mr. Kadzik's attorneys at 11:15 am. Committee staff asked Mr. Zausner for Mr. Kadzik's flight information and told him that the Committee would have to serve the subpoena in California. Mr. Kadzik was served by a U.S. Marshal at 1:58 pm on Wednesday, and ultimately flew back to Washington that night to testify at the hearing on Thursday.

Mr. Kadzik and his attorneys' initial refusal to cooperate required the Committee to expend the time, effort, and resources to effect service in person through the U.S. Marshals. That is an extraordinary level of non-cooperation, even if Mr. Kadzik had not additionally boarded a plane for California, further frustrating the Committee's attempt to serve him. That level of resistance from a reluctant witness sometimes occurs, but committees of Congress ought to able to expect better conduct from a professional member of the bar, let alone from someone seeking Senate confirmation.

The Government Reform Committee's May 14, 2002 report, which documented this entire episode, concluded: "While the Committee was able to serve Kadzik and receive testimony from him, his attempts to avoid compulsory process were unseemly."

Upon reviewing the initial report, Mr. Kadzik sent the Government Reform Committee a letter on March 13, 2002. In his letter, he claimed: "First, and most importantly, at no point before I boarded an airplane to California on February 28, 2001, did any member of the Committee's staff inform me or any attorney with my firm that the Committee would subpoena me to attend the hearing."

The final report called that claim "utterly false." The Government Reform Committee had 24 contacts with Mr. Kadzik's attorneys leading up to the subpoena. The Committee Chairman promptly responded to Mr. Kadzik on March 15, 2002, documenting the Committee's interactions with Mr. Kadzik's attorneys. Both Mr. Kadzik's letter and the Chairman's reply were attached as exhibits to the May 14, 2002 report.

It is clear that Mr. Kadzik's attorneys were informed both the day before and the morning of his flight that he would be required to attend the hearing. They had known at least a week earlier that the Committee planned to call him to testify. Mr. Kadzik's attorneys were obviously aware of the subpoena before he boarded the flight, since they refused to accept service of the subpoena informally on his behalf. Thus, the most charitable reading of these facts possible for Mr. Kadzik would be that his claim, that there were no contacts with his attorneys about the subpoena, was made without any basis for knowing whether or not it was true. And that can only be believed either if he failed to consult with his attorneys or if his attorneys failed to inform him of their contacts about the subpoena.

In Operation Fast and Furious, the Inspector General documented this exact type of problem with the Office of Legislative Affairs at the Justice Department. That office made representations to Congress that were false, and at best, the result of a failure to find out whether the claim was true before writing it down and sending to Congress. It later had to withdraw the letter later for its inaccuracies. Now, it appears to be well documented that Mr. Kadzik engaged in the same conduct with a congressional committee in another controversy. However, he has not yet withdrawn his inaccurate letter.

Whether in Fast and Furious or in Mr. Kadzik's case, shooting letters willy-nilly to Congress without checking on their accuracy is simply unacceptable. And that's just the most charitable interpretation of Mr. Kadzik's letter. Many might look at the same facts and seriously question whether there was an intentional attempt to evade service of a Congressional subpoena to avoid testifying at a contentious public hearing.

The Assistant Attorney General for Legislative Affairs is our official direct point of contact with the Department of Justice. We interact with his office more than anyone else in the Department. His job requires him to ensure Congress receives accurate and prompt information from the Department. I have serious concerns about whether this nominee's record demonstrates an ability to restore trust and confidence to the Office of Legislative Affairs.

Even in his current position at the Department, his office's conduct raises questions about his ability and willingness to fully respond to Congressional requests. Last week the Bureau of Alcohol, Tobacco, Firearms and Explosives was instructed by Mr. Kadzik's office not to brief my staff. After a phone call with the Office of Legislative Affairs, ATF staff walked out of the briefing citing supposed concerns about the Privacy Act, even though the Act authorizes disclosures to congressional committees and even though my staff had a Privacy Act waiver from the ATF whistleblower whose personal information was to be discussed. This sort of obstruction of Department components is extremely disturbing.

To get to the bottom of how this happened I sent Mr. Kadzik a letter asking four specific questions and requesting copies of all records and communications related to the briefing.

Mr. Kadzik's reply letter failed to answer the questions or provide the documents requested. Nothing in his response indicates that he intends to answer my questions or provide the documents. Instead, my questions and requests were simply ignored. These types of non-response responses are unacceptable and disrespectful of this institution. Specific questions and requests should be acknowledged, and if there is a reason not to answer or to withhold the documents requested, then those reasons should be explained in the reply.

This sort of interference with component agencies' communications with my office is not limited to ATF. On May 3, 2012, Senator Whitehouse and I wrote to the Government Accountability

Office to request a study of the extent to which the Drug Enforcement Administration policies and regulations may contribute to the growing drug shortage crisis with regard to controlled substances. In order for GAO to complete our request, GAO needs to analyze information in possession of DEA. This should not be a hard request, as GAO has a statutory right of access. However, it has been over a year and DEA has refused to provide GAO with access to the records necessary to complete our request.

DEA's refusal to honor its legal obligation to cooperate with GAO has unnecessarily delayed GAO's work and thwarted its ability to respond to our request. I tried to help resolve the dispute by requesting a meeting with the DEA Administrator and the GAO to discuss the issues. But the Justice Department's Office of Legislative Affairs under Mr. Kadzik's leadership instructed DEA not to even meet with me and GAO to discuss it. In refusing to meet with me, DEA cited a "DOJ policy" against meetings with Members of Congress and "third parties." Essentially, the DEA, due to this policy, refused to meet and discuss this issue with GAO present.

This makes absolutely no sense. The GAO is part of the legislative branch of government, not a "third party." Further, I have been a Senator conducting oversight of DOJ for 33 years and I have never heard of this third party policy. By statute, GAO has a broad right of access to agency records. Deputy Attorney General Cole has admitted to GAO that DEA has a legal obligation to comply, but Mr. Kadzik's office continues to obstruct my efforts to help GAO get access to the records it needs to do their work. Mr. Kadzik's office should not be interfering with my attempts to meet with the DEA administrator to resolve these issues with GAO. More importantly, DOJ's standoff with GAO risks wasting time and taxpayer's money on litigation with GAO that the DEA will eventually lose.

So, this is a troubling nomination, and I have questions for Mr. Kadzik.

Again, I welcome the nominees and their families to this hearing and look forward to the testimony.

Statement of Introduction on the Nomination of
John B. Owens to the U.S. Court of Appeals for the Ninth Circuit

Senator Dianne Feinstein

Senate Judiciary Committee

October 30, 2013

I will now introduce John Owens, who has been nominated to serve on the U.S. Court of Appeals for the Ninth Circuit.

I know his wife Marjorie, and his daughters Jaclyn and Audrey, are here, as are his daughter's godmother and her family. I would like to welcome them all to this Committee, and to thank them for being here.

Though born in Washington, D.C., John Owens was raised in California. He lived in Silicon Valley during the school year, but he spent summers and many weekends on a farm in rural Modesto.

He earned his Bachelor's Degree with high distinction from U.C. Berkeley in 1993, and was inducted into Phi Beta Kappa.

He graduated first in his class at Stanford Law School in 1996, where he was inducted into the *Order of the Coif* and served as Executive Editor of the *Stanford Law Review*.

From 1996 to 1997, he served as a law clerk to Judge J. Clifford Wallace, a noted conservative jurist appointed by President Nixon, on the Ninth Circuit.

Then, from 1997 to 1998, he served as a law clerk to Justice Ruth Bader Ginsburg on the Supreme Court of the United States.

From 1998 to 1999, he served as a Trial Attorney in the Office of Consumer Litigation at the Department of Justice, where he handled white collar criminal investigations and affirmative civil litigation under statutes like the Food, Drug, and Cosmetic Act.

He then joined the Washington office of the law firm O'Melveny & Myers, where he co-tried two jury trials.

In 2001, he joined the United States Attorney's Office in Los Angeles, where he served as a Federal prosecutor.

He began in the General Crimes Section, prosecuting a wide variety of violent crimes, drug crimes, and white collar crimes. He also served in the Public Corruption and Government Fraud Section.

In addition, during his time in the Los Angeles U.S. Attorney's Office, Mr. Owens served as counsel of record in more than 20 cases before the Ninth Circuit.

From 2004 to 2012, he served as an Assistant U.S. Attorney in San Diego. His primary focus was investigating and prosecuting complex white collar crimes, including fraud, health care, money laundering, public corruption, and national security cases.

In 2008, he rose to become Deputy Chief of the Major Frauds Sectior in San Diego, and in 2010 he was named Chief of the Criminal Division.

In multiple cases, Mr. Owens prosecuted individuals for conspiracy and wire fraud in financial fraud cases where victims lost millions of dollars. These were highly complex cases, often involving dozens of witnesses at trial. The defendants were convicted and sentenced, and those judgments were affirmed by the Ninth Circuit.

One of these cases – *United States v. Treadwell* – received nationwide press attention on the CNBC show "American Greed."

This case, in the words of the Ninth Circuit, involved "a massive four-year Ponzi scheme in which more than 1,700 investors across the United States lost over $40 million."

As Chief of the Criminal Division, he was responsible for supervising more than 100 attorneys and more than 5,000 prosecutions, and he reviewed each appellate brief filed by his office.

The role of Chief of the Criminal Division is especially important in San Diego, because the federal court's criminal docket is huge.

In fact, in recent statistics, the San Diego Federal Court ranked second nationally in terms of the number of criminal felony filings per judgeship.

John Owens served as Chief of the Criminal Division in this busy district with great distinction, receiving the Director's Award from the Justice Department for his Superior Performance in that role.

He also earned numerous other awards for his prosecutorial service, including the Secret Service Honor Award, another Director's Award from the Justice Department, a Special Achievement Award from the Justice Department, and an Award for Excellence from the Federal Bureau of Investigation.

In 2012, he joined the prestigious law firm of Munger, Tolles, & Olsen as a Partner in the firm's Los Angeles Office.

During his time at the Munger firm, Mr. Owens has represented individuals and corporations in a wide variety of cases, including civil, criminal, and administrative cases, as well as internal investigations.

And, he has devoted part of his time to *pro bono* cases, including amicus briefs in the U.S. Supreme Court filed on behalf of the National Association of Criminal Defense Lawyers, the National Association of Federal Defenders, and California Attorneys for Criminal Justice.

The record I have just described is one of great distinction. It is a record of excellence at every level. And, it is a record of balance and good judgment that will serve Mr. Owens and the people of all states in the Ninth Circuit very well.

In fact, Mr. Owens has a broad base of support across the ideological spectrum.

For example, several corporate general counsels and other corporate officials wrote to the Committee to support this nomination.

They stressed that the Ninth Circuit's extraordinary caseload produces significant delays in resolving appeals, and how the backlog of cases in the Ninth Circuit undermines the need for certainty and resolution of litigation.

A group of 27 individuals who clerked on the Supreme Court the same year Mr. Owens clerked for Justice Ginsburg also wrote to support his nomination.

These individuals clerked for every Justice who served that year, including Chief Justice Rehnquist, Justice Scalia, and Justice Thomas.

They wrote: "During that year, we developed a deep appreciation for John's sharp legal mind, incredible good humor, openness to all points of view, and adherence to the highest possible standard of personal and professional ethics."

Four individuals who served as United States Attorneys in California under President George W. Bush also wrote in praise of John Owens.

They wrote that: "While his impeccable academic credentials are impressive, that is not all John brings to this nomination. John is both smart and thoughtful, and he performs his job with the combination of judgment, skill, fairness and appropriate restraint that is so important in the world of criminal prosecution."

They concluded their letter by stating: "In a time of rising caseloads and shrinking judicial resources, this is truly an appointment of which both parties and the President can be proud." In fact, one of those U.S. Attorneys told my Judicial Selection Committee that Mr. Owens "was simply the best legal mind in the U.S. Attorney's Office."

Paul Charlton, who served as U.S. Attorney for the District of Arizona under President Bush from 2001 to 2007, also wrote in to support Mr. Owens.

He said: "what distinguishes good prosecutors from great ones is the ability to do what is right, to make sure that neither 'the innocent suffer nor the guilty escape.' By continually doing what is right, by proving himself a person of integrity, Mr. Owens earned the reputation of a great prosecutor."

When my judicial selection committee considered candidates for the Ninth Circuit, John Owens truly stood out from the pack. And when I reviewed Mr. Owens' record, what emerged for me was an individual who will be an outstanding Ninth Circuit Judge. It is as simple as that.

Thus, he has my strongest support, and I urge my colleagues on this Committee and in the full Senate to support his nomination.

Questions for the Record
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Senator Chuck Grassley
Questions for the Record for
Peter Joseph Kadzik
Nominee for Assistant Attorney General
Office of Legislative Affairs, Department of Justice

1. Circumstances of the House Subpoena

At your confirmation hearing on October 30, 2013, you testified as to the circumstances regarding your failure to voluntarily appear to the House Committee on Government Reform Hearing on March 1, 2001. You said "At the time I got on the plane, no one had advised me that my appearance would be mandatory." However, on March 13, 2002, you wrote a letter representing more than that to the House. Your letter asserted that no one on the Committee informed *anyone* at your firm of the subpoena. Given the notes from Committee staff that we discussed at your hearing, that does not appear to be true. The notes indicate three attorneys at your firm knew that the Committee was attempting to serve you and two of them explicitly declined to accept informal service on your behalf.

What was your basis for asserting to the House Committee that no one at your firm was aware of the Committee's attempt to serve you a subpoena?

Did you check the accuracy of your letter with your colleagues at the firm before sending it? If not, then why did you make a claim beyond the extent of your personal knowledge without having any basis for knowing whether it was true?

At your confirmation hearing you had difficulty squaring your letter's claim that neither you nor your attorneys were informed about the House Government Reform's plans to subpoena you with the Committee staff's contemporaneous handwritten notes showing that your attorneys were in fact informed. You claimed you had difficulty because you "hadn't seen those notes before" and because you were "not aware of what notes were made by Committee staff at that time." Now that you have become familiar with the notes, how do you square your claim that no one told you or your attorneys about the subpoena with these notes which show that your attorneys were in fact informed?

2. Testimony before the House Committee

In response to my first question at your confirmation hearing, you stated:

> Moreover, at the time of my testimony [before the House Committee in 2002], which was contemporaneous with the events that occurred, I laid out the chronology that occurred, and ***I did not receive a single question*** about my testimony at that time.

To Senators who might not be familiar with the record of the House proceedings, this response clearly leaves the impression that the House Committee failed to ask you any questions following

your refusal to testify voluntarily, your flight to California, and your return after being served a subpoena in California. In fact, however, during your appearance before the House Committee, you were asked a total of 39 questions.

Why did you represent to me and to the Committee during your confirmation hearing that you "did not receive a single question," when you actually received 39 questions?

3. Marc Rich representation

I understand that you billed billionaire tax fugitive Marc Rich for approximately 12 hours of work performed in 1999 and 2000 as part of your representation of him in his pardon application process. How much were you paid for these 12 hours of service?

Were you paid on any other occasions by Marc Rich, Pincus Green, or any entities associated with either of them?

You testified at the House hearing that you were consulted in the late 1980s by other lawyers for Marc Rich in the early years after he fled to Switzerland for advice how to approach the Southern District of New York about a possible settlement.

Were you compensated for your advice?

What was your advice?

Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity? If not, why not?

You also testified at the House hearing that you were consulted again in 1999 about another effort to settle the case while Rich was still a fugitive. You testified that your advice was, "that I thought that approaching the Justice Department, rather than the U.S. Attorney's Office would be more fruitful,"

Were you compensated for your advice on this occasion?

Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity on this occasion? If not, why not?

Why did you think the Justice Department would be more likely to negotiate with a billionaire tax fugitive than the U.S. Attorney's Office would?

At any time prior to the pardon, did you ever have any communications with anyone at the Justice Department, including Eric Holder, about Marc Rich? If so, please indicate with whom and provide a detailed description of your communications.

Please provide a detailed explanation of how you came to represent Marc Rich.

4. Discrepancies in testimonies of Kadzik and Podesta at the 2001 hearing

At the March 1, 2001, you and Mr. John Podesta testified as to the nature of your communications with each other regarding the Rich pardon.

Specifically, you testified as follows:

> Mr. LATOURETTE. Did Mr. Podesta indicate to you at any point in time how the President of the United States felt about this particular pardon application?
>
> Mr. KADZIK. No, he simply indicated to me the decision was the President's.[1]

However, Mr. Podesta testified as follows:

> I told him that yes the President was considering additional pardons and commutations, *but it was unlikely that one would be granted under the circumstances he had briefly described* unless the counsel's office, having reviewed the case on the merits, believed that some real injustice had been done. *I thought a pardon in the Rich/Green case was unlikely* but still knew very little about it. (emphases added).[2]
>
> * * *
>
> I told him that I, along with the entire White House staff counsel, opposed it *and that I did not think it would be granted.* At that point, I believed that the pardons would not be granted in light of the uniform staff recommendation to the contrary and that little more needed to be done on the matter. (emphasis added).[3]
>
> * * *
>
> Mr. Kadzik made one more call to me, and I believe we spoke on either January 15 or 16. He told me he had been informed that the President had reviewed the submissions Mr. Quinn had sent in and was impressed with them and was once again considering the pardon. I told him I was strongly opposed to the pardons *and that I did not believe they would be granted.* (emphasis added).[4]

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[1] *Id.* at 459.
[2] *Id.* at 316.
[3] *Id.* at 317.
[4] *Id.*

According to Mr. Podesta's version, on several occasions, you appeared to be obtaining information from him for Marc Rich about how President Clinton was likely to decide the matter.

Do you dispute Mr. Podesta's account? If so, please explain. If not, how do you square it with your testimony?

Do you believe that the primary reason that you were hired was your previous relationship with Mr. Podetsta and thus your ability to access the President's Chief of Staff and obtain information about the state of internal deliberations about the pardon?

If confirmed, how would you reconcile your role in asserting the Department's policy against disclosing information about internal Executive Branch deliberations with your previous experience in being paid by March Rich to obtain that type of information for the benefit of his effort to obtain a pardon.

5. ATF Briefing

On October 24, 2013, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) walked out of a briefing with my staff. The briefing surrounded ATF's initial denial of a request by Special Agent John Dodson for approval to publish a manuscript about his experiences in blowing the whistle on the connection between Operation Fast and Furious and the death of Border Patrol Agent Brian Terry.

ATF claimed to have consulted with the Department prior to walking out. To get to the bottom of how this happened, I sent you an October 28 letter asking you four specific questions and requesting copies of all records relating to communications to and from your office concerning the briefing. In response, you sent me a letter on October 29.

Your letter stated: "ATF's understanding was that the briefing requested by Chairman Issa . . . would be for staff of the House Committee on Oversight and Government Reform." However, Chairman Issa's staff clearly communicated to ATF's Chief of Legislative Affairs that they had invited my staff, and my staff discussed this with ATF prior to the briefing.

Your letter also failed to answer several of my questions or provide the documents I requested. Therefore, I asked you specifically about this at the hearing. In response, you testified: "Senator, I believe that my letter answered your questions. I set forth the misunderstanding that occurred on the behalf of the ATF representatives. In fact, my office didn't instruct them not to go forward with the briefing. They wanted to get guidance on the Privacy Act; they returned, got that guidance. They came back to that—to the Senate that very afternoon to conduct the briefing, and at your staff's request it was postponed until this Monday, and it just occurred on Monday."

When I asked you about the documents, you testified: "With respect to the documents, I interpreted your letter to mean documents with respect to the Privacy Act advice, and to the best of my knowledge, there are no documents. When they got back, I understand they showed the waiver, consulted, and realized that the waiver was valid, and they went back and attempted to—to conduct the briefing but it was postponed."

QUESTIONS:

a. Both your letter and your hearing response implied that this was a misunderstanding on the part of ATF surrounding the Privacy Act waiver we provided. However, this fails to address the question of whether your office instructed ATF not to brief my staff in the absence of a waiver. **Prior to** the October 24, 2013 briefing, did your staff have communications with ATF about Chairman Issa's invitation to my staff and what to do if my staff attended? If so, please describe those communications in detail? Were any of the communications in writing? What did your office instruct ATF to do in the event my staff arrived at the briefing without a waiver?

b. Prior to the October 24, 2013 briefing, did you have any communications with anyone about the briefing? If so, please describe them in detail.

c. Prior to noon on October 24, 2013, were you aware of the instruction given to ATF to exclude my staff?

d. At your hearing, you indicated that you believed my October 28, 2013 letter sought only documents with respect to the Privacy Act advice. The letter stated: "Prior to your confirmation hearing, I would appreciate a written explanation for these events, to include **copies of all records relating to communications to and from your office related to this briefing**." Please produce those records, to include any e-mails related to the scheduling of the briefing or any other issues surrounding the briefing.

e. By what authority did the Department disclose Privacy Act information at the rescheduled briefing to Ranking Member Cummings' staff contrary to the express lack of consent by Special Agent Dodson?

f. Given the Department's so-called policy against Ranking Members receiving Privacy Act information, please identify why it would apply to Ranking Member Cummings' staff but not to my staff.

g. Where there is a specific waiver from the individual concerned, why would the Department disclose Privacy Act information contrary to the express limitations in the waiver?

h. Given the Department's so-called policy against Ranking Members receiving Privacy Act information, do you believe the October 12, 2012 ATF briefing which disclosed personal information about William McMahon's outside employment to my staff without a request from the Chairman of the Senate Judiciary Committee was a violation of the Privacy Act? If not, why not? If so, what steps has the Department taken to notify Mr. McMahon's counsel of the violation or otherwise remedy it? If none, why not?

6. Privacy Act

In last week's hearing you agreed to review whether the Department's so-called policy against Ranking Members receiving Privacy Act information is required by law. You also agreed that if you found that legal precedent supports a Ranking Member's ability to receive Privacy Act information, you will change the policy. I trust that you will carry this out in good faith.

As you may be aware, Section 552a(b)(9) of the Privacy Act permits the Executive Branch to provide information that would otherwise be protected by the Act to Congress or a "committee or subcommittee thereof." Nevertheless, an Office of Legal Counsel (OLC) opinion of December 5, 2001, concludes that the Privacy Act prohibits the disclosure of Privacy Act-protected information to the ranking minority members. The OLC opinion cites no legal authority and does not address contrary authority, such as a Second Circuit Court of Appeals case decided a year and a half earlier. That opinion, *Devine v. United States*, held that information sent to a congressman in his official capacity as a member of a subcommittee fell "squarely within the ambit of § 552a(b)(9)." [See *Devine v. United States*, 202 F.3d 547, 551 (2nd Cir. 2000).]

QUESTIONS:

a. Why is the Department's policy contrary to the Second Circuit decision?

b. Are you aware of any other court decision that contradicts the Second Circuit decision?

c. What is your view of the persuasiveness of the above OLC opinion?

d. Since the OLC opinion was written after the Second Circuit decision, shouldn't the case at least have been cited and analyzed in the opinion? Does the fact that it ignores relevant legal precedent make the OLC opinion less persuasive? Why or why not?

e. Does the Department claim the right to completely ignore the courts and assert its own opinion of what the law is, regardless of what the courts say?

f. The Privacy Act does not address the Congressional exemption in terms of the origin of a request. It does not even refer to any request from any source. Rather, it simply exempts disclosures *to a Committee*. In other words, the statutory structure conditions the exemption on the *recipient* alone. Given the plain words of the statute, do you agree that so long as the disclosure is made *to a Committee*, that it qualifies for the Congressional exemption? Why or why not?

g. Given the above, do you agree that a request is not even necessary—the Department can volunteer Privacy Act information, so long as the recipient of the volunteered information is a Committee? Why or why not?

h. Congress is capable of limiting its own access to records depending on the identity of an appropriate requestor. It does so in the context of tax return information under 26 U.S.C. § 6103 by allowing disclosure to Congress only upon request of the Chairman of the Finance or Ways and Means Committees or the staff director of the Joint Tax Committee. Given that no such restriction appears in the text of the Privacy Act, why should disclosure be conditioned on the identity of a requestor, as asserted in the OLC opinion?

7. Third Party Meeting Policy

Senator Whitehouse and I have a request with the Government Accountability Office (GAO) for a report on drug shortages that is being held up because of Drug Enforcement Administration's (DEA) refusal to provide data. I tried to resolve the dispute, but your office instructed the DEA Administrator not to meet with me and the Comptroller General. DEA said it could not take the meeting because of your office's so-called "third party meeting" policy. This policy supposedly prohibits agencies from meeting with Members of Congress and any "third party" at the same time.

During your nominations hearing, you stated the Department imposes this policy so to "avoid any inference or implications that there has been any political interference on our litigation and law enforcement priorities so in order to protect ourselves and Members of Congress." When I pointed out that GAO is non-political—not to mention a part of the legislative branch—you testified:

> I am not saying that the GAO is a political entity, but certainly with respect to a Member of Congress, if we were to meet with respect to ongoing prosecutions or litigation, that could lead to the inference or the implication that our decisions have been influenced by political leaders, and that is something we would like to avoid.

By this logic, just a meeting with *me* could lead to the inference you reference, whether or not GAO is present in the meeting. This does not provide a logical reason for excluding GAO. Besides, the subject of the meeting was *not* ongoing prosecutions or litigation, as far as I'm aware.

My meeting request did not include a constituent or anyone that has litigation before the Department. It was a simple meeting request between three government agencies to resolve a dispute that has lasted entirely too long.

QUESTIONS

a. Please provide a written copy of the third party meeting policy.

b. Please explain the background and history that led to the development of the third party meeting policy.

c. Please provide any legal precedent that requires the third party meeting policy.

d. Is the issue on which I requested to meet with the DEA Administrator and the Comptroller General in current litigation? If not, how can you cite this as a reason for denying the meeting with GAO and DEA?

8. DOJ involvement in the recent *Mount Holly* settlement.

On June 17, 2013, the Supreme Court decided to grant certiorari in *Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc.*, a case that challenged whether claims of discrimination under a disparate impact theory are permitted under the Fair Housing Act.[5]

In 2012, the Supreme Court was poised to hear oral argument in *Magner v. Gallagher*, a case that presented the same legal question that is at issue in *Mount Holly.*[6] Concerned that the Court would rule that disparate impact claims could not be brought under the Fair Housing Act, then-Assistant Attorney General Thomas Perez struck a secret deal with the petitioner in *Manger* – the City of St. Paul, Minnesota – in order to have *Magner* withdrawn from the Court's docket.

The deal consisted of the Department declining to intervene in two False Claims Act cases in exchange for the City withdrawing *Magner* from the Supreme Court. This *quid pro quo* manipulated the rule of law and cost the federal government the opportunity to recover over $200 million in U.S. taxpayer money.[7]

With the granting of certiorari in *Mount Holly,* I was concerned that the Justice Department may once again attempt to exert improper influence over a Supreme Court case to which the United States is not a party involving the highly questionable disparate impact theory.

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[5] *Township of Mount Holly, New Jersey. et al.* v. *Mt. Holly Gardens Citizens inAction, Inc., et al.*, No. 11-1507 (U.S. June 17,2013) (granting petition for a writ of certiorari).

[6] *See Magner* v. *Gallagher,* 132 S. Ct. 546 (Nov. 7, 2011) (granting petition for a writ of certiorari).

[7] The full facts are detailed in an April 20 13 joint Committee report. *See* H. Comm. on Oversight & Gov't Reform, S. Comm. on the Judiciary, & H. Comm. on the Judiciary, *DO.!'s Quid Pro Quo with* Sf. *Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Jgnored the Rule of Law* (2013).

According to news reports, as of November 1, 2013, just one month away from when oral arguments were scheduled to be heard before the Supreme Court, parties to the *Mount Holly* case were reportedly close to settlement.[8]

QUESTIONS

a. Have you or any other Justice Department official communicated with, either directly or through a third party, anyone affiliated with the Township of Mt. Holly, New Jersey, regarding *Mount Holly* v. *Mt. Holly Gardens Citizens in Action, Inc.?*

   i. If so, please describe all such communications in detail.

   ii. Please provide all records relating to any contact with the Township of Mt. Holly about the Supreme Court case, *Mount Holly* v. *Mt. Holly Gardens Citizens in Action, Inc.*

b. Have you or any other Justice Department official had discussions, meetings, or deliberations with officials from any other federal department or agency referring or relating to the Township of *Mt. Holly*'s petition for certiorari?

   i. If so, please provide all records relating to these discussions, meetings, or deliberations with officials from any other federal department or agency referring or relating to the Township of Mt. Holly's petition for certiorari.

c. Have you or any other Justice Department official had discussions, meetings, or deliberations with any official from the Executive Office of the President referring or relating to the Township of Mt. Holly's petition for certiorari?

   i. If so, please provide all records relating to these discussions, meetings, or deliberations with any official from the Executive Office of the President referring or relating to the Township of *Mt. Holly*'s petition for certiorari.

d. Have you or any other Justice Department official had discussions, meetings, or deliberations with individuals, advocacy groups, or other entities outside of the federal government regarding *Mount Holly* v. *Mt. Holly Gardens Citizens in Action, Inc.?*

   i. If so, please provide all records relating to these discussions, meetings, or deliberations with individuals, advocacy groups, or other entities outside of the federal government regarding *Mount Holly* v. *Mt. Holly Gardens Citizens in Action, Inc.*

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[8] Mortgage News Daily, *Disparate Impact Case Settled Before Getting to Supreme Court*, Jann Swanson, November 1, 2013, http://www.mortgagenewsdaily.com/11012013_fair_housing_eoca.asp, accessed November 6, 2013.

Senator Chuck Grassley
Questions for the Record

Matthew Frederick Leitman
Nominee, U.S. District Judge for the Eastern District of Michigan

1. At your hearing I asked what you believed to be a judge's role in *qui tam* cases, you responded that you would follow precedent. Could you please expound on this answer?

2. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

3. What is the most important attribute of a judge, and do you possess it?

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?

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

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?

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?

8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

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? Please explain.

10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

11. 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?

12. If confirmed, how do you intend to manage your caseload?

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?

14. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

16. Please describe with particularity the process by which these questions were answered.

17. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Judith Ellen Levy
Nominee, U.S. District Judge for the Eastern District of Michigan

1. In 2009 at the Hot Topics in Fair Housing Event, you said "the issue of racial integration is the most pressing issue facing fair housing enforcers." What role do you believe the courts should play in the issue of racial integration?

2. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

3. What is the most important attribute of a judge, and do you possess it?

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?

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?

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?

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?

8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

9. What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

10. 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?

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? Please explain.

12. If confirmed, how do you intend to manage your caseload?

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?

14. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

16. Please describe with particularity the process by which these questions were answered.

17. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Laurie J. Michelson
Nominee, U.S. District Judge for the Eastern District of Michigan

1. I asked you about you thoughts on cameras in the federal courtroom and you responded that you would follow the rules of that court. However, judges are often called upon to suggest rule changes in their courts.

    a. Can you please answer whether, if authorized, you would approve or disapprove of the use of audiovisual media during court proceedings?

2. You have been a magistrate judge for around three years. What have you found to be the most challenging requirement of a jurist?

3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

4. What is the most important attribute of a judge, and do you possess it?

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?

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. 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?

13. If confirmed, how do you intend to manage your caseload?

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?

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

17. Please describe with particularity the process by which these questions were answered.

18. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

John B. Owens
Nominee, United States Circuit Judge for the Ninth Circuit

1. At your hearing, you said that the "a judge's primary job is determining congressional intent". This seems to be a misstatement of what is a judge's "primary job". Please clarify exactly what you meant by this statement. What is the role of judges under the Constitution and organic statutes of the judiciary?

2. What is your understanding of the constitutionality of states to provide "conscience rights" to pharmacists and health care providers who refuse to facilitate abortions or fill prescriptions for contraceptives if they are personally opposed to such practices?

3. There was a recent decision by the New Mexico Supreme Court[1] where the Court held that a photographer improperly discriminated against a gay couple when she refused to take photos for their commitment ceremony for religious reasons and, as the Court stated in its opinion, the Respondents are, "now are compelled by law to compromise the very religious beliefs that inspire their lives."[2]

    a. How would you respond if a party in a similar case claimed this was a Freedom of Speech violation? Particularly with respect to a creative and expressive art form such as photography?

    b. Do you think the New Mexico state legislature, by requiring companies that advertise publicly to act in this way, compels the company to speak the government's message?

    c. How would you respond if an individual or company in this circumstance raised a Free Exercise claim?

4. If confirmed, what would be your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

5. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

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[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).

[2] *Id.*, Para. 90.

6. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?

7. Do you believe that the death penalty is an acceptable form of punishment?

8. Do you believe there is a right to privacy in the U.S. Constitution?

    a. Where is it located?

    b. From what does it derive?

    c. What is your understanding, in general terms, of the contours of that right?

9. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

    a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

    b. Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?

10. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

11. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

    a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

    b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

12. What would be your definition of an "activist judge"?

13. What is the most important attribute of a judge, and do you possess it?

14. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

15. 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?

16. In general, Supreme Court precedents are binding on all lower federal courts. 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?

17. 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?

18. 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?

19. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

20. What weight should a judge give legislative intent in statutory analysis?

21. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

22. 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? Please explain.

23. 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?

24. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

25. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

26. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

27. Please describe with particularity the process by which these questions were answered.

28. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Linda Vivienne Parker
Nominee, U.S. District Judge for the Eastern District of Michigan

1. You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for some of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks?

   a. April 30, 2013: Speaker, "Public Defense Reform: The Impact on the School to Prison Pipeline"

      i. In addition to a more detailed description of this talk, can you also elaborate on "the need for enhance funding for public defense?"

   b. April 21, 2009: Panel Moderator: "Leading Economic Transformation with Diversity"

2. In 2004 you stated that "fair housing must be recognized as a human right." Can you please explain further what you meant by this statement and any legal arguments you believe to back up this assertion?

3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

4. What is the most important attribute of a judge, and do you possess it?

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?

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. 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?

13. If confirmed, how do you intend to manage your caseload?

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?

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

17. Please describe with particularity the process by which these questions were answered.

18. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record for
Peter Joseph Kadzik
Nominee for Assistant Attorney General
Office of Legislative Affairs, Department of Justice

Answering subpart questions

1. In your first set of Questions for the Record, you declined to answer the vast majority of the individual questions. In your future responses to Questions for the Record or questions in letters from Members of the Committee, will you pledge to provide individual answers to each individual question? If not, please explain why not.

Cooperation with the House Committee

2. In your response to my Questions for the Record, you state that you "returned to Washington from a business trip to California to *cooperate fully*, appear before the House Committee, and answer all questions posed by its Members." What do you mean by claiming that you cooperated fully? Do you mean to imply that your decision to return to Washington D.C. and testify was voluntary, rather than legally compelled by the subpoena?

3. Do you acknowledge that if you had refused to return to Washington D.C. to testify, that the Committee could have legitimately held you in contempt?

4. If your intent was to "cooperate fully" with the Committee's investigation, then why did you force the Committee to resort to compulsory process by refusing to appear voluntarily?

Awareness of Committee's intent to issue subpoena

5. Regarding your efforts to verify your claim that no one at your firm was aware of the Committee's intent to require your testimony by subpoena, your response to my Questions for the Record states, "Furthermore, at the time of my March 13, 2002 letter, I had consulted with my colleagues at Dickstein Shapiro and had no knowledge that anyone at the firm had notice of the Committee's *attempt to serve* the subpoena prior to my boarding the noted flight to California (February 28, 2001)." Did you have any knowledge that anyone at the firm had notice of the Committee's ***intent to issue*** a subpoena?

6. According to the contemporaneous Committee staff notes, two of the three attorneys at your firm who were aware of the Committee's intent to subpoena you also indicated prior to your boarding the plane for California that they were not "authorized to accept service" of the subpoena informally on your behalf. Did you have any communications with

anyone about whether you would cooperate with informal service of a subpoena by authorizing its acceptance on your behalf? If so, please describe those communications in detail.

7. In your answers to Questions for the Record, you indicated that, "at the time of my March 13, 2002 letter, I had consulted with my colleagues at Dickstein Shapiro and had no knowledge that anyone at the firm had notice of the Committee's attempt to serve the subpoena prior to my boarding the noted flight to California February 28, 2001)." Do you mean to indicate that your colleagues failed to inform you that they had refused to accept informal service of the subpoena on your behalf?

8. One of the questions you failed to answer in your responses to Questions for the Record was: "Did you check the accuracy of your letter with your colleagues at the firm before sending it? If not, then why did you make a claim beyond the extent of your personal knowledge without having any basis for knowing whether it was true?" Please answer this question and indicate specifically whether or not you ever shared a draft of your letter or the final version with your colleagues at the firm.

9. When you read the response from the Committee dated March 15, 2002 expressing concern about the claim in your letter that no one at the Committee informed anyone at your firm of the subpoena, did you have any concern that your representation might not have been true? If not, please explain why not.

10. The final version of the report described the exchange of letters between you and the Committee and concluded with regard to your claim that no on at your firm was aware of the subpoena, "It is troubling that Peter Kadzik would make a false assertion that is so easily disproved." What steps, if any, did you take to ascertain whether or not your claim might have been inaccurate, and if so, correct the record? If none, then please explain why not.

11. Do you agree to testify voluntarily before this Committee without insisting on compulsory process?

12. If a disagreement arose between you and this Committee about whether and when you would agree to testify, and if this Committee indicated an intent to require your attendance through compulsory process, would you agree to accept informal service of process on your behalf by your colleagues at the Office of Legislative Affairs? Or would you insist on in person service of compulsory process?

Marc Rich representation

You did not answer the following questions. Please answer each one individually, numbering your responses accordingly:

13. I understand that you billed billionaire tax fugitive Marc Rich for approximately 12 hours of work performed in 1999 and 2000 as part of your representation of him in his pardon application process. How much were you paid for these 12 hours of service?

14. Were you paid on any other occasions by Marc Rich, Pincus Green, or any entities associated with either of them?

15. You testified at the House hearing that you were consulted in the late 1980s by other lawyers for Marc Rich in the early years after he fled to Switzerland for advice on how to approach the Southern District of New York about a possible settlement. Were you compensated for your advice?

16. Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity? If not, why not?

17. You also testified at the House hearing that you were consulted again in 1999 about another effort to settle the case while Rich was still a fugitive. You testified that your advice was, "that I thought that approaching the Justice Department, rather than the U.S. Attorney's Office would be more fruitful." Were you compensated for your advice on this occasion?

18. Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity on this occasion? If not, why not?

19. Why did you think the Justice Department would be more likely to negotiate with a billionaire tax fugitive than the U.S. Attorney's Office would?

20. In your response you stated that, "My colleagues also consulted me to gain insight into the status of Mr. Rich's pardon application at the White House." What insight did you have into the process that your colleagues did not have?

Discrepancies in testimonies of Kadzik and Podesta at the 2001 hearing

21. You did not specifically answer the following question. Please provide an answer to it. Do you believe that the primary reason that you were hired was your previous relationship with Mr. Podesta and thus your ability to access the President's Chief of Staff and obtain information about the state of internal deliberations about the pardon?

22. In retrospect, do you have any concern about the potential appearance that you were paid primarily because of who you knew at the White House? If not, please explain why not.

23. The normal method for obtaining information about the procedural status of a pardon is to ask the Pardon Attorney at the Department of Justice. Why did you believe it was

necessary and appropriate to contact the White House Chief of Staff for a mere procedural inquiry rather than the Pardon Attorney?

Privacy Act

You did not provide a specific answer to the following three questions. Please answer each one individually.

24. Since the OLC opinion was written after the Second Circuit decision, shouldn't the case at least have been cited and analyzed in the opinion? Does the fact that it ignores relevant legal precedent make the OLC opinion less persuasive? Why or why not?

25. The Privacy Act does not address the Congressional exemption in terms of the origin of a request. It does not even refer to any request from any source. Rather, it simply exempts disclosures *to a committee*. In other words, the statutory structure conditions the exemption on the *recipient* alone. Given the plain words of the statute, do you agree that so long as the disclosure is made *to a committee*, that it qualifies for the Congressional exemption? Why or why not?

26. Given the above, do you agree that a request is not even necessary—the Department can volunteer Privacy Act information, so long as the recipient of the volunteered information is a committee? Why or why not?

27. The OLC memo states: "[A] disclosure of Privacy Act information *solely* to a ranking minority member is not a disclosure to the committee, and the congressional-disclosure exception is therefore unavailable." However, do you agree that so long as the disclosure is made to the committee through both the chairman and ranking member, that disclosure is authorized by the Privacy Act? Why or why not?

28. Is it my experience that the Department's policy and practice is to transmit reports, correspondence, and other communications, including those that contain Privacy Act information, *to a committee* by sending them separately to both the chairman and the ranking member, as opposed to sending them only to the chair. Is that consistent with your understanding?

29. The OLC memo asserts, without any citation to legal authority, "As a general matter, ranking minority members are not authorized to . . . *act as the official recipient of information* for a committee[.]" What is the basis for this assertion?

30. The court in *Devine* wrote: "It is undisputed that the IG addressed and sent his letter regarding the OIG investigation and the MSPB's decision to Congressman Gallegly in his official capacity as a member of the Subcommittee, not as an individual member of Congress." Representative Gallegly was neither the chair nor the ranking member of the Committee or the Subcommittee, merely a member. How do you square this language

from the court's opinion with the assertion that members of a committee other than a chairman are not authorized by the statute to receive Privacy Act information?

31. How is the Department's own policy and practice of transmitting information to both the chairman and separately to the ranking member as a mode of disclosing it to a committee consistent with the OLC's assertion that ranking members are not authorized to receive information disclosed to a committee?

32. The next line of the OLC memo says, "We understand that the ranking minority member has not received such an authorization from the Finance Committee." What is the legal authority to support the assertion that a ranking member must have authorization from a chairman in order to merely receive information disclosed to a committee?

33. If confirmed, under your leadership would the Department disclose Privacy Act information to *only* the chairman of a committee if the chairman of the committee requested that information and withheld authorization from the ranking member to receive that information? Or would you insist on providing the information to both the majority and the minority on the committee even in the absence of the chairman's authorization for the minority to receive it? Please explain why or why not.

34. On October 28, 2013, the Department disclosed Privacy Act information involving ATF Special Agent John Dodson to the staff of the Ranking Member of House Oversight and Government Reform Committee. Did the Chairman of that Committee provide authorization to the Ranking Member to receive it? If not, then why did the Department make that disclosure in the absence of the Chairman's authorization for that Ranking Member to receive it?

35. You did not specifically answer the following question. Please provide a response. Congress is capable of limiting its own access to records depending on the identity of an appropriate requestor. It does so in the context of tax return information under 26 U.S.C. § 6103 by allowing disclosure to Congress only upon request of the Chairman of the Finance or Ways and Means Committees or the staff director of the Joint Tax Committee. Given that no such restriction appears in the text of the Privacy Act, why should disclosure be conditioned on the identity of a requestor, as asserted in the OLC opinion?

36. In your previous responses, you assert that, "The Department's position is well grounded in the December 5, 2001, OLC opinion, which cites to a Congressional Research Service (CRS) report that also supports the Department's position." However, the CRS memo cited in the OLC opinion merely describes the uncontroversial fact that minority members may not exercise on their own the power of the Committee to compel the production of documents or testimony. The quoted portion from CRS in the OLC opinion further states: "Individual members may seek the voluntary cooperation of agency officials or private persons." Nothing in text of the Privacy Act, the Department's policy, or the Department's practice suggests that compulsory process is required in order to authorize disclosures of Privacy Act information to Congressional committees. A reply to chairman's request is also a voluntary cooperation of an agency. So how does the CRS report support the Department's position?

Questions arising from matters before your time at the Department

37. You have repeatedly stated that since you were not employed by the Department in October 2012, you have no information responsive to questions regarding whether ATF's briefing on William McMahon's outside employment complied with the Privacy Act. However, you were able to represent that the third party meeting policy has "long been communicated to Congressional staff," even though those alleged representations also pre-date your time at the Department. Have you sought information about the circumstances of the McMahon briefing in order to answer my questions as you similarly sought information about the third party meeting policy in order to answer my questions? If not, will you do so and provide the answers to the questions regarding the circumstances of the McMahon briefing?

38. Given that I already asked in a letter about the McMahon briefing, why didn't you seek to become familiar with the circumstances under which it occurred before responding to my letter or to Questions for the Record?

ATF Briefing Documents

39. I have now twice made a document request that you have ignored. The initial request in my October 28, 2013 letter stated: "Prior to your confirmation hearing, I would appreciate a written explanation for these events, to include **copies of *all records* relating to communications to and from your office *related to this briefing***." In your hearing, you stated: "I interpreted your letter to mean documents with respect to the Privacy Act advice, and to the best of my knowledge, there are no documents." I clarified in Questions for the Record that I was not just seeking documents with respect to Privacy Act advice, but wanted **all records related to this briefing**, to include any e-mails related to the scheduling of the briefing or any other issues surrounding the briefing. I reiterated the request in Questions for the Record. In response, you simply wrote: "[T]here are no documents setting forth an instruction to exclude your staff." My request

extends beyond merely documents setting forth an instruction to exclude my staff. My request was for all documents related to the briefing. Will you provide the documents? If not, please explain why not.

Third Party Meeting Policy

You did not specifically answer any of the three following questions. Please answer each one individually.

40. Please explain the background and history that led to the development of the third party meeting policy. Please include a description of when and why this policy arose.

41. Please provide any legal precedent that requires the third party meeting policy. If there is no relevant legal precedent, please indicate that there is none.

42. Is the issue on which I requested to meet with the DEA Administrator and the Comptroller General in current litigation? If not, how can you cite this as a reason for denying the meeting with GAO and DEA? *Why* did you cite this as a reason in your confirmation hearing?

Senator Chuck Grassley
Questions for the Record for
Peter Joseph Kadzik
Nominee for Assistant Attorney General
Office of Legislative Affairs, Department of Justice

Response to IRS Targeting Letter from House Committee on Oversight and Government Reform

On December 2, 2013, Chairman Darrell Issa on the House Committee on Oversight and Government Reform and Chairman Jim Jordan of the Subcommittee on Economic Growth, Job Creation and Regulatory Affairs copied me on a letter to Federal Bureau of Investigation (FBI) Director James Comey. The letter involves questions Chairman Issa and Chairman Jordan had posed to the FBI regarding its investigation into findings of the Treasury Inspector General for Tax Administration (TIGTA) report regarding the Internal Revenue Service (IRS) targeting applicants for tax-exempt status based on political belief.

According to the letter, Monique Kelso, Unit Chief of the FBI Office of Congressional Affairs, stated on November 18, 2013 that the FBI "will not produce a single document" in response to the Committee's request. Instead, Ms. Kelso represented that Valerie Parlave, Director of the FBI's Washington Field Office and the agent responsible for the FBI's investigation, would be willing to meet with Chairman Jordan to discuss the Committee's requests and the Committee's questions about the FBI's investigation. That day, Chairman Jordan's staff e-mailed FBI Congressional Affairs with several dates and times for the meeting.

On November 19, 2013, Ms. Kelso's colleague, Kirk Melquist, responded: "Sorry for the delay. I am waiting for guidance from DOJ and will give you a status as soon as I hear something." On November 20, 2013, both Ms. Kelso and Mr. Melquist called Committee staff. According to the letter, "Ms. Kelso stated that she contacted several individuals within the Department of Justice via e-mail about the FBI's proposed meeting with Chairman Jordan, including Peter Kadzik, the Principal Deputy Assistant Attorney General for Legislative Affairs . . . ." Ms. Kelso also said that she was withdrawing the offer for Chairman Jordan to meet with Ms. Parlave.

Please answer each question individually.

1. Did you receive an e-mail from anyone at the FBI requesting guidance on this issue?

2. Did you respond, via e-mail or any other form of communication? If so, in what form and what was your guidance?

3. Did you discuss this matter with any of your colleagues in the Office of Legislative Affairs? If, what was your position?

Privacy Act

4. You stated in response to question 36: "The Privacy Act's exemption (b)(9) applies to requests from Committees of Congress." I am aware of no language in the Act stating that (b)(9) refers to "requests" or a "request" from Congress. It simply authorizes disclosures to committees. What specific language in the Act do you believe refers to a request from Congress?

5. The Privacy Act's exemption (b)(7) explicitly states that it only applies "if the head of the agency or instrumentality [conducting a civil or criminal law enforcement activity] has made a written request to the agency which maintains the record . . . ." Do you believe the same standard of requiring a request applies to (b)(9) even though that language was omitted from (b)(9)? If so, why?

6. Does the Privacy Act's exemption (b)(6) require a written request from the National Archives and Records Administration in order to disclose information for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has sufficient historical or other value to warrant its continued preservation by the United States government? If not, why not?

7. Does the Privacy Act's exemption (b)(12) require a written request from a consumer reporting agency in order to disclose information? If not, why not?

8. You stated in response to question 26: "It is my understanding that the Department's long-standing practice is not to disclose information covered by the Privacy Act except in response to requests from Committee Chairmen." Is it your belief that this practice is legally required by the statute? Why or why not?

9. Do you believe that it is legally permissible and within the discretion of the Department to make disclosures of such information to a Committee (i.e. to the Chairman and the Ranking Member) in the absence of a chairman's request if it chose to depart from its previous practice? Why or why not?

ATF Briefing Documents

10. After I made the request a third time, you responded to question 39: "The Department does not disclose documents related to the scheduling and planning of briefings except in the most extraordinary of circumstances." Why not?

11. Your response to question 39 also stated: "I understand . . . that ATF has been providing the House Committee on Oversight and Government Reform with the documents it requested concerning Mr. Dodson's application for outside employment."

    The request to which you refer was an October 10, 2013 letter from Chairman Darrell Issa and myself. There was not a separate request that was exclusive to the House

Committee on Oversight and Government Reform. It was a joint request. Does the Department intend to withhold documents from me and provide them only to the House Committee? If so, why?

12. Contrary to your response to question 39, ATF has not been providing the documents we requested concerning Mr. Dodson's application for outside employment. Other than the November 22, 2013 ethics opinion rendered by the Department's Ethics Office, which was written well after mine and Chairman Issa's October 10, 2013 request, all documents produced by ATF have related to requests by other ATF employees. Despite several repeated reminders from congressional staff, ATF has thus far failed to respond to the second request in our letter: "All documents, including e-mails, relating to ATF's decision to deny Special Agent Dodson's Request to Engage in Outside Employment."

    On December 3, 2013, staff for the House Committee on Oversight and Government Reform e-mailed ATF:

    > [W]hen is ATF going to provide *any* documents pursuant to [the] second request in the October 10 letter? It has now been nearly two months since Chairman Issa and Senator Grassley sent their letter, and we are five weeks removed from John Hageman's comment that the documents would take two weeks to compile. When is ATF planning on producing documents? The unnecessary and unexplainable delay coming from ATF gives the impression that ATF is yet again unwilling to cooperate with the Chairman's request and that the documents may need to be obtained through other means.

    Why did you state in your response that ATF had been providing these documents when that is not true?

13. What is the reason for the delay in producing these documents?

14. Have you given ATF any guidance on the production of these documents, and if so, what was your guidance?

November 12, 2013

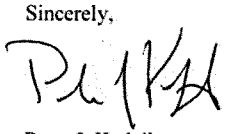
The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you again for giving me the opportunity to appear before the Committee on October 30, 2013. I enclose my responses to the Questions for the Record that I received from Senator Grassley.

Sincerely,



Peter J. Kadzik

Enclosure

Senator Chuck Grassley
Questions for the Record for
Peter Joseph Kadzik
Nominee for Assistant Attorney General
Office of Legislative Affairs, Department of Justice

1. Circumstances of the House Subpoena

At your confirmation hearing on October 30, 2013, you testified as to the circumstances regarding your failure to voluntarily appear to the House Committee on Government Reform Hearing on March 1, 2001. You said "At the time I got on the plane, no one had advised me that my appearance would be mandatory." However, on March 13, 2002, you wrote a letter representing more than that to the House. Your letter asserted that no one on the Committee informed *anyone* at your firm of the subpoena. Given the notes from Committee staff that we discussed at your hearing, that does not appear to be true. The notes indicate three attorneys at your firm knew that the Committee was attempting to serve you and two of them explicitly declined to accept informal service on your behalf.

What was your basis for asserting to the House Committee that no one at your firm was aware of the Committee's attempt to serve you a subpoena?

Did you check the accuracy of your letter with your colleagues at the firm before sending it? If not, then why did you make a claim beyond the extent of your personal knowledge without having any basis for knowing whether it was true?

At your confirmation hearing you had difficulty squaring your letter's claim that neither you nor your attorneys were informed about the House Government Reform's plans to subpoena you with the Committee staff's contemporaneous handwritten notes showing that your attorneys were in fact informed. You claimed you had difficulty because you "hadn't seen those notes before" and because you were "not aware of what notes were made by Committee staff at that time." Now that you have become familiar with the notes, how do you square your claim that no one told you or your attorneys about the subpoena with these notes which show that your attorneys were in fact informed?

RESPONSE: Consistent with my 2001 testimony before the House Committee on Government Reform, my March 13, 2002, letter to that Committee, and my recent testimony before the Senate Committee on the Judiciary, at no time prior to boarding my scheduled flight to California on February 28, 2001, did Committee staff or anyone at Dickstein Shapiro advise me of the Committee's attempt to serve me with a subpoena. As I testified in 2001 and again on October 30, 2013, I learned of the subpoena for the first time when I got off the plane in California on February 28, 2001. I immediately booked a return flight and flew back to Washington to testify the same day (within hours after I landed).

Furthermore, at the time of my March 13, 2002 letter, I had consulted with my colleagues at Dickstein Shapiro and had no knowledge that anyone at the firm had

notice of the Committee's attempt to serve the subpoena prior to my boarding the noted flight to California (February 28, 2001). As to the handwritten notes represented as those of House Committee staff from 2001, I had no knowledge of these notes at the time of my 2001 testimony or 2002 letter. I saw the notes for the first time at the October 30, 2013, hearing and cannot speak to their veracity.

2. Testimony before the House Committee

In response to my first question at your confirmation hearing, you stated:

> Moreover, at the time of my testimony [before the House Committee in 2002], which was contemporaneous with the events that occurred, I laid out the chronology that occurred, and ***I did not receive a single question*** about my testimony at that time.

To Senators who might not be familiar with the record of the House proceedings, this response clearly leaves the impression that the House Committee failed to ask you any questions following your refusal to testify voluntarily, your flight to California, and your return after being served a subpoena in California. In fact, however, during your appearance before the House Committee, you were asked a total of 39 questions.

Why did you represent to me and to the Committee during your confirmation hearing that you "did not receive a single question," when you actually received 39 questions

RESPONSE: In my October 30, 2013 statement quoted above regarding my 2001 testimony before the House Committee on Government Reform, I noted that "*I laid out the chronology that occurred*, and I did not receive a single question about my testimony at that time" (emphasis added). It was my understanding that your question in the October 30, 2013, hearing concerned the chronology of events leading up to my 2001 testimony, and therefore, I explained that Chairman Burton, Representative LaTourette, and other members of the Committee raised *no questions with regard to the chronology* I provided in my sworn testimony. In fact, after I provided that chronology to the House Committee, Chairman Burton thanked me on the record for my testimony and excused me early to return to California. In my recent testimony before the Senate Judiciary Committee, I in no way suggested that I did not receive other questions during the hearing. Indeed, as the Committee is well aware, I had returned to Washington from a business trip to California to cooperate fully, appear before the House Committee, and answer all questions posed by its Members. I also provided the transcript of the 2001 hearing, including my answers to all Members' questions, to the Senate Judiciary Committee as an attachment to my Committee questionnaire.

3. Marc Rich representation

I understand that you billed billionaire tax fugitive Marc Rich for approximately 12 hours of work performed in 1999 and 2000 as part of your representation of him in his pardon application process. How much were you paid for these 12 hours of service?

Were you paid on any other occasions by Marc Rich, Pincus Green, or any entities associated with either of them?

You testified at the House hearing that you were consulted in the late 1980s by other lawyers for Marc Rich in the early years after he fled to Switzerland for advice how to approach the Southern District of New York about a possible settlement.

Were you compensated for your advice?

What was your advice?

Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity? If not, why not?

You also testified at the House hearing that you were consulted again in 1999 about another effort to settle the case while Rich was still a fugitive. You testified that your advice was, "that I thought that approaching the Justice Department, rather than the U.S. Attorney's Office would be more fruitful,"

Were you compensated for your advice on this occasion?

Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity on this occasion? If not, why not?

Why did you think the Justice Department would be more likely to negotiate with a billionaire tax fugitive than the U.S. Attorney's Office would?

At any time prior to the pardon, did you ever have any communications with anyone at the Justice Department, including Eric Holder, about Marc Rich? If so, please indicate with whom and provide a detailed description of your communications.

Please provide a detailed explanation of how you came to represent Marc Rich.

RESPONSE: As I testified before the House Committee on Government Reform in 2001, my law firm at that time, Dickstein Shapiro, represented Marc Rich over the course of many years, primarily through services provided by Messrs. Leonard Garment, Michael Green, and Lewis Libby. During this decades-long representation, these members of the firm consulted me occasionally on various matters. For instance, colleagues asked for my advice about potentially engaging the United States Attorney's Office for the Southern District of New York (USAO-

SDNY) to revisit Mr. Rich's case. My colleagues also consulted me to gain insight into the status of Mr. Rich's pardon application at the White House. In these instances, I believe the firm billed for legal services. I received no additional compensation beyond my allocated share as a firm partner for the work on the Rich matter. At the time of its lengthy and comprehensive investigation, the House Committee on Government Reform subpoenaed some of my law firm's billing records on this matter. I understand that those records are now publicly available as part of the Committee's report. *See, e.g.*, House Report 107-454, Exhibit 143. I did not prepare or review these bills and, therefore, I do not know any specifics with regard to the legal bills or the amount or timing of compensation received by the firm for this work. As I also explained in my testimony before the House in 2001, when consulted by my colleagues, I advised that they contact Department of Justice officials in Washington in addition to continuing discussions with the USAO-SDNY. I did not contact anyone at the Department of Justice.

4. Discrepancies in testimonies of Kadzik and Podesta at the 2001 hearing

At the March 1, 2001, you and Mr. John Podesta testified as to the nature of your communications with each other regarding the Rich pardon.

Specifically, you testified as follows:

> Mr. LATOURETTE. Did Mr. Podesta indicate to you at any point in time how the President of the United States felt about this particular pardon application?
>
> Mr. KADZIK. No, he simply indicated to me the decision was the President's.[1]

However, Mr. Podesta testified as follows:

> I told him that yes the President was considering additional pardons and commutations, *but it was unlikely that one would be granted under the circumstances he had briefly described* unless the counsel's office, having reviewed the case on the merits, believed that some real injustice had been done. *I thought a pardon in the Rich/Green case was unlikely* but still knew very little about it. (emphases added).[2]
>
> * * *
>
> I told him that I, along with the entire White House staff counsel, opposed it *and that I did not think it would be granted.* At that

[1] *Id.* at 459.
[2] *Id.* at 316.

> point, I believed that the pardons would not be granted in light of the uniform staff recommendation to the contrary and that little more needed to be done on the matter. (emphasis added).[3]
>
> * * *
>
> Mr. Kadzik made one more call to me, and I believe we spoke on either January 15 or 16. He told me he had been informed that the President had reviewed the submissions Mr. Quinn had sent in and was impressed with them and was once again considering the pardon. I told him I was strongly opposed to the pardons *and that I did not believe they would be granted.* (emphasis added).[4]

According to Mr. Podesta's version, on several occasions, you appeared to be obtaining information from him for Marc Rich about how President Clinton was likely to decide the matter.

Do you dispute Mr. Podesta's account? If so, please explain. If not, how do you square it with your testimony?

Do you believe that the primary reason that you were hired was your previous relationship with Mr. Podetsta and thus your ability to access the President's Chief of Staff and obtain information about the state of internal deliberations about the pardon?

If confirmed, how would you reconcile your role in asserting the Department's policy against disclosing information about internal Executive Branch deliberations with your previous experience in being paid by March Rich to obtain that type of information for the benefit of his effort to obtain a pardon.

> **RESPONSE: There is no discrepancy between my testimony and John Podesta's testimony on March 1, 2001. In the portion of my testimony quoted above, I explained that Mr. Podesta did not indicate to me how the President felt about the Marc Rich pardon application. In the portion of Mr. Podesta's testimony quoted above, Mr. Podesta explained that he told me that he and other staffers in the White House opposed granting Mr. Rich a pardon and thus, believed it was unlikely—Mr. Podesta did not provide President Clinton's position on the matter. Indeed, in another portion of Mr. Podesta's testimony from that hearing (omitted from the quotes above), Mr. Podesta explained to Chairman Burton that even though the President's staff had opposed the pardon, the decision belonged to the President. Mr. Podesta stated: "The President understood our views; and, ultimately, it's his decision to grant or not to grant the pardon."**
>
> **As I explained in my testimony on March 1, 2001, when I called Mr. Podesta, I did not seek internal deliberative information; rather, I simply made a procedural inquiry as to the status of Mr. Rich's pardon application and the White House**

---

[3] *Id.* at 317.
[4] *Id.*

process for considering pardon applications. If I am fortunate enough to be confirmed, I will ensure that the Department's Office of Legislative Affairs assists Members of Congress in providing their constituents with appropriate information about Department processes, consistent with policies and procedures governing internal deliberations.

5. ATF Briefing

On October 24, 2013, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) walked out of a briefing with my staff. The briefing surrounded ATF's initial denial of a request by Special Agent John Dodson for approval to publish a manuscript about his experiences in blowing the whistle on the connection between Operation Fast and Furious and the death of Border Patrol Agent Brian Terry.

ATF claimed to have consulted with the Department prior to walking out. To get to the bottom of how this happened, I sent you an October 28 letter asking you four specific questions and requesting copies of all records relating to communications to and from your office concerning the briefing. In response, you sent me a letter on October 29.

Your letter stated: "ATF's understanding was that the briefing requested by Chairman Issa . . . would be for staff of the House Committee on Oversight and Government Reform." However, Chairman Issa's staff clearly communicated to ATF's Chief of Legislative Affairs that they had invited my staff, and my staff discussed this with ATF prior to the briefing.

Your letter also failed to answer several of my questions or provide the documents I requested. Therefore, I asked you specifically about this at the hearing. In response, you testified: "Senator, I believe that my letter answered your questions. I set forth the misunderstanding that occurred on the behalf of the ATF representatives. In fact, my office didn't instruct them not to go forward with the briefing. They wanted to get guidance on the Privacy Act; they returned, got that guidance. They came back to that—to the Senate that very afternoon to conduct the briefing, and at your staff's request it was postponed until this Monday, and it just occurred on Monday."

When I asked you about the documents, you testified: "With respect to the documents, I interpreted your letter to mean documents with respect to the Privacy Act advice, and to the best of my knowledge, there are no documents. When they got back, I understand they showed the waiver, consulted, and realized that the waiver was valid, and they went back and attempted to—to conduct the briefing but it was postponed."

QUESTIONS:

a. Both your letter and your hearing response implied that this was a misunderstanding on the part of ATF surrounding the Privacy Act waiver we provided. However, this fails to address the question of whether your office instructed ATF not to brief my staff in the absence of a waiver. **Prior to** the October 24, 2013 briefing, did your staff have communications with ATF about Chairman Issa's invitation to my staff and what to do if

my staff attended? If so, please describe those communications in detail? Were any of the communications in writing? What did your office instruct ATF to do in the event my staff arrived at the briefing without a waiver?

RESPONSE: The House Oversight and Government Reform Committee (HOGR) originally scheduled a hearing for October 23, 2013 to obtain information about the ATF's decisions regarding Special Agent Dodson's plan to publish a book relating to his experience as an ATF agent. During the week of October 21, 2013, the Committee elected to postpone the hearing and instead requested a briefing on the same topic. Consistent with established practice, staff in the Office of Legislative Affairs (OLA) consulted with ATF staff about plans for the hearing and the briefing in an effort to assure that ATF was prepared to be as responsive as possible to the Committee's interests in this matter.

As indicated in my letter of October 29, 2013 (copy enclosed) and my testimony on October 30, 2013, there was some misunderstanding by ATF about the briefing requested by Chairman Issa. Since the content of the briefing involved information protected by the Privacy Act of 1974, 5 U.S.C. 552a, it was important to ensure that ATF's disclosures complied with that statute. In advance of the briefing, it was ATF's understanding that under exemption (b)(9) of the statute, the briefing could proceed given the Committee's request. When your staff handed an ATF representative a Privacy Act waiver signed by Special Agent Dodson (which appeared to apply only to Chairman Issa's staff and your staff) as the briefing was about to begin, ATF staff sought advice as to its Privacy Act implications, but was unable to get advice immediately. When the Department reviewed the waiver, in conjunction with information indicating that Chairman Leahy of the Senate Judiciary Committee (SJC) regarded the briefing as a continuation of the investigation into Operation Fast and Furious jointly conducted by HOGR and SJC, and that majority and minority staffs of both committees could attend, ATF returned that same afternoon to conduct the briefing. While ATF waited to begin, Committee staff decided to reschedule the briefing for the following Monday, October 28, 2013, and it occurred at that time.

As I explained in my letter of October 29, 2013, I was not employed at the Department in October 2012 and have no information responsive to your question about the ATF briefing related to William McMahon's outside employment at that time.

b. Prior to the October 24, 2013 briefing, did you have any communications with anyone about the briefing? If so, please describe them in detail.

RESPONSE: Please see answer to 5a.

c. Prior to noon on October 24, 2013, were you aware of the instruction given to ATF to exclude my staff?

RESPONSE: There was no instruction to exclude your staff.

d. At your hearing, you indicated that you believed my October 28, 2013 letter sought only documents with respect to the Privacy Act advice. The letter stated: "Prior to your confirmation hearing, I would appreciate a written explanation for these events, to include **copies of all records relating to communications to and from your office related to this briefing**." Please produce those records, to include any e-mails related to the scheduling of the briefing or any other issues surrounding the briefing.

RESPONSE: Please see answer to 5c; there are no documents setting forth an instruction to exclude your staff.

e. By what authority did the Department disclose Privacy Act information at the rescheduled briefing to Ranking Member Cummings' staff contrary to the express lack of consent by Special Agent Dodson?

RESPONSE: Please see answer to 5a.

f. Given the Department's so-called policy against Ranking Members receiving Privacy Act information, please identify why it would apply to Ranking Member Cummings' staff but not to my staff.

RESPONSE: Please see answer to 5a.

g. Where there is a specific waiver from the individual concerned, why would the Department disclose Privacy Act information contrary to the express limitations in the waiver?

RESPONSE: Please see answer to 5a.

h. Given the Department's so-called policy against Ranking Members receiving Privacy Act information, do you believe the October 12, 2012 ATF briefing which disclosed personal information about William McMahon's outside employment to my staff without a request from the Chairman of the Senate Judiciary Committee was a violation of the Privacy Act? If not, why not? If so, what steps has the Department taken to notify Mr. McMahon's counsel of the violation or otherwise remedy it? If none, why not?

RESPONSE: Please see answer to 5a.

6. Privacy Act

In last week's hearing you agreed to review whether the Department's so-called policy against Ranking Members receiving Privacy Act information is required by law. You also agreed that if

you found that legal precedent supports a Ranking Member's ability to receive Privacy Act information, you will change the policy. I trust that you will carry this out in good faith.

As you may be aware, Section 552a(b)(9) of the Privacy Act permits the Executive Branch to provide information that would otherwise be protected by the Act to Congress or a "committee or subcommittee thereof." Nevertheless, an Office of Legal Counsel (OLC) opinion of December 5, 2001, concludes that the Privacy Act prohibits the disclosure of Privacy Act-protected information to the ranking minority members. The OLC opinion cites no legal authority and does not address contrary authority, such as a Second Circuit Court of Appeals case decided a year and a half earlier. That opinion, *Devine v. United States*, held that information sent to a congressman in his official capacity as a member of a subcommittee fell "squarely within the ambit of § 552a(b)(9)." [See *Devine v. United States*, 202 F.3d 547, 551 (2nd Cir. 2000).]

QUESTIONS:

a. Why is the Department's policy contrary to the Second Circuit decision?

RESPONSE: The Department's position on the Privacy Act is not inconsistent with the case you have cited, *Devine v. United States*, 202 F.3d 547 (2d Cir. 2000), which addressed whether to "read[] a motive requirement into [the congressional disclosure exception] under which § 552a(b)(9) would not apply if the government agency knew or should have known that the information would eventually be released to the public." *Id.* at 551. In concluding that the provision "does not permit a construction that would incorporate a motive requirement into the exception," *id.* at 553, the Court did not address the same question as the **Department's Office of Legal Counsel (OLC) opinion.**

The Department's position is well grounded in the December 5, 2001, OLC Opinion, which cites to a Congressional Research Service report that also supports the Department's position. While I understand that the Department respectfully disagrees with your view of the Privacy Act, the Department's position has remained unchanged for decades. I am advised that the Department's actions have complied faithfully with that position, regardless of the political parties in leadership in the Executive Branch and in the Congress.

b. Are you aware of any other court decision that contradicts the Second Circuit decision?

RESPONSE: Please see answer to 6a.

c. What is your view of the persuasiveness of the above OLC opinion?

RESPONSE: Please see answer to 6a.

d. Since the OLC opinion was written after the Second Circuit decision, shouldn't the case at least have been cited and analyzed in the opinion? Does the fact that it ignores relevant legal precedent make the OLC opinion less persuasive? Why or why not?

RESPONSE: Please see answer to 6a.

e. Does the Department claim the right to completely ignore the courts and assert its own opinion of what the law is, regardless of what the courts say?

RESPONSE: Please see answer to 6a.

f. The Privacy Act does not address the Congressional exemption in terms of the origin of a request. It does not even refer to any request from any source. Rather, it simply exempts disclosures *to a Committee*. In other words, the statutory structure conditions the exemption on the *recipient* alone. Given the plain words of the statute, do you agree that so long as the disclosure is made *to a Committee*, that it qualifies for the Congressional exemption? Why or why not?

RESPONSE: Please see answer to 6a.

g. Given the above, do you agree that a request is not even necessary—the Department can volunteer Privacy Act information, so long as the recipient of the volunteered information is a Committee? Why or why not?

RESPONSE: Please see answer to 6a.

h. Congress is capable of limiting its own access to records depending on the identity of an appropriate requestor. It does so in the context of tax return information under 26 U.S.C. § 6103 by allowing disclosure to Congress only upon request of the Chairman of the Finance or Ways and Means Committees or the staff director of the Joint Tax Committee. Given that no such restriction appears in the text of the Privacy Act, why should disclosure be conditioned on the identity of a requestor, as asserted in the OLC opinion?

RESPONSE: Please see answer to 6a.

7. Third Party Meeting Policy

Senator Whitehouse and I have a request with the Government Accountability Office (GAO) for a report on drug shortages that is being held up because of Drug Enforcement Administration's (DEA) refusal to provide data. I tried to resolve the dispute, but your office instructed the DEA Administrator not to meet with me and the Comptroller General. DEA said it could not take the meeting because of your office's so-called "third party meeting" policy. This policy supposedly prohibits agencies from meeting with Members of Congress and any "third party" at the same time.

During your nominations hearing, you stated the Department imposes this policy so to "avoid any inference or implications that there has been any political interference on our litigation and law enforcement priorities so in order to protect ourselves and Members of Congress." When I

pointed out that GAO is non-political—not to mention a part of the legislative branch—you testified:

> I am not saying that the GAO is a political entity, but certainly with respect to a Member of Congress, if we were to meet with respect to ongoing prosecutions or litigation, that could lead to the inference or the implication that our decisions have been influenced by political leaders, and that is something we would like to avoid.

By this logic, just a meeting with *me* could lead to the inference you reference, whether or not GAO is present in the meeting. This does not provide a logical reason for excluding GAO. Besides, the subject of the meeting was *not* ongoing prosecutions or litigation, as far as I'm aware.

My meeting request did not include a constituent or anyone that has litigation before the Department. It was a simple meeting request between three government agencies to resolve a dispute that has lasted entirely too long.

QUESTIONS

a. Please provide a written copy of the third party meeting policy.

RESPONSE: The Department has had a longstanding policy of declining to conduct meetings with Congressional offices and Committees in the presence of third parties. Among other concerns, the policy serves to protect both the Department and Members of Congress from the suggestion that the Department's litigation or prosecution priorities or other Departmental decisions are subject to or influenced by political pressure. Although the policy has not been reduced to writing, it has long been communicated to Congressional staff and received without significant objection, particularly since the Department is generally willing to meet separately with Congressional offices and Committees to discuss matters of interest to Congress. With reference to the particular requests for information made by GAO, we continue to work cooperatively with GAO to find reasonable accommodations and have made significant progress in meeting their needs.

b. Please explain the background and history that led to the development of the third party meeting policy.

RESPONSE: Please see answer to 7a.

c. Please provide any legal precedent that requires the third party meeting policy.

RESPONSE: Please see answer to 7a.

d. Is the issue on which I requested to meet with the DEA Administrator and the Comptroller General in current litigation? If not, how can you cite this as a reason for denying the meeting with GAO and DEA?

RESPONSE: Please see answer to 7a.

8. DOJ involvement in the recent *Mount Holly* settlement.

On June 17, 2013, the Supreme Court decided to grant certiorari in *Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc.*, a case that challenged whether claims of discrimination under a disparate impact theory are permitted under the Fair Housing Act.[5]

In 2012, the Supreme Court was poised to hear oral argument in *Magner v. Gallagher*, a case that presented the same legal question that is at issue in *Mount Holly.* [6] Concerned that the Court would rule that disparate impact claims could not be brought under the Fair Housing Act, then-Assistant Attorney General Thomas Perez struck a secret deal with the petitioner in *Manger* – the City of St. Paul, Minnesota – in order to have *Magner* withdrawn from the Court's docket.

The deal consisted of the Department declining to intervene in two False Claims Act cases in exchange for the City withdrawing *Magner* from the Supreme Court. This *quid pro quo* manipulated the rule of law and cost the federal government the opportunity to recover over $200 million in U.S. taxpayer money.[7]

With the granting of certiorari in *Mount Holly,* I was concerned that the Justice Department may once again attempt to exert improper influence over a Supreme Court case to which the United States is not a party involving the highly questionable disparate impact theory.

According to news reports, as of November 1, 2013, just one month away from when oral arguments were scheduled to be heard before the Supreme Court, parties to the *Mount Holly* case were reportedly close to settlement.[8]

QUESTIONS

a. Have you or any other Justice Department official communicated with, either directly or through a third party, anyone affiliated with the Township of Mt. Holly, New Jersey, regarding *Mount Holly* v. *Mt. Holly Gardens Citizens in Action, Inc.?*

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[5] *Township of Mount Holly, New Jersey. et al.* v. *Mt. Holly Gardens Citizens inAction, Inc., et al.*, No. 11-1507 (U.S. June 17,2013) (granting petition for a writ of certiorari).

[6] *See Magner* v. *Gallagher,* 132 S. Ct. 546 (Nov. 7, 2011) (granting petition for a writ of certiorari).

[7] The full facts are detailed in an April 20 13 joint Committee report. *See* H. Comm. on Oversight & Gov't Reform, S. Comm. on the Judiciary, & H. Comm. on the Judiciary, *DO.I's Quid Pro Quo with* Sf. *Paul: How Assistant Attorney General Thomas Perez Manipulated Justice and Jgnored the Rule of Law* (2013).

[8] Mortgage News Daily, *Disparate Impact Case Settled Before Getting to Supreme Court*, Jann Swanson, November 1, 2013, http://www.mortgagenewsdaily.com/11012013_fair_housing_eoca.asp, accessed November 6, 2013.

i. If so, please describe all such communications in detail.

RESPONSE: Please see answer below.

ii. Please provide all records relating to any contact with the Township of Mt. Holly about the Supreme Court case, *Mount Holly* v. *Mt. Holly Gardens Citizens in Action, Inc.*

RESPONSE: Please see answer below.

b. Have you or any other Justice Department official had discussions, meetings, or deliberations with officials from any other federal department or agency referring or relating to the Township of *Mt. Holly*'s petition for certiorari?

i. If so, please provide all records relating to these discussions, meetings, or deliberations with officials from any other federal department or agency referring or relating to the Township of Mt. Holly's petition for certiorari.

RESPONSE: Please see answer below.

c. Have you or any other Justice Department official had discussions, meetings, or deliberations with any official from the Executive Office of the President referring or relating to the Township of Mt. Holly's petition for certiorari?

i. If so, please provide all records relating to these discussions, meetings, or deliberations with any official from the Executive Office of the President referring or relating to the Township of *Mt. Holly*'s petition for certiorari.

RESPONSE: Please see answer below.

d. Have you or any other Justice Department official had discussions, meetings, or deliberations with individuals, advocacy groups, or other entities outside of the federal government regarding *Mount Holly* v. *Mt. Holly Gardens Citizens in Action, Inc.?*

i. If so, please provide all records relating to these discussions, meetings, or deliberations with individuals, advocacy groups, or other entities outside of the federal government regarding *Mount Holly* v. *Mt. Holly Gardens Citizens in Action, Inc.*

RESPONSE: As the Department explained in our August 21, 2013 letter to your office, with respect to the *Mount Holly* litigation, the Supreme Court invited the Solicitor General to file a brief expressing the views of the United States as to whether the Court should hear the case. As is customary in the process of determining the United States' position in response to a request from the Court at the certiorari stage, the Office of the Solicitor General contacted and met with counsel for the petitioners in the case to hear the parties' views. The Department also consulted other federal agencies with equities in this matter, including

the Department of Housing and Urban Development. As a result of the government's deliberations, the United States filed a brief in the Supreme Court, which expressed the Department's view that the Court should deny the petition for a writ of certiorari. The Court, however, granted the petition for a writ of certiorari, limited to the question of whether a disparate-impact cause of action is available under the Fair Housing Act (FHA). As your question above notes, it has been publicly reported that the parties in *Mount Holly* have been engaged in settlement discussions. The Department has not been a participant in these discussions. In October 2013, the Department filed an amicus brief on the merits of the case. The Department also filed a related motion for leave to participate in the oral argument. I am enclosing these filings.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 29, 2013

The Honorable Charles Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Grassley:

This is in response to your letter dated October 28, 2013, regarding the briefing that House Committee on Oversight and Government Reform Chairman Darrell E. Issa requested from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) regarding Special Agent John Dodson's request to publish a manuscript.

At the outset, the Department has great respect for your work on behalf of whistleblowers and the American people. If confirmed, I will be committed to working with your staff to provide requested information, consistent with the Department's legal and law enforcement obligations. Indeed, I am glad that ATF and Department representatives were able to provide your staff with a full briefing on Special Agent Dodson's request yesterday.

The briefing was postponed briefly last week as a result of a misunderstanding. ATF's understanding was that the briefing requested by Chairman Issa, which was scheduled for 1:00 p.m. on October 24, 2013, would be for staff of the House Committee on Oversight and Government Reform. The subject matter of the briefing was to be detailed information related to Special Agent Dodson and thus implicated the Privacy Act of 1974, 5 U.S.C. § 522a, which bars government agencies from disclosing individuals' records without their consent unless a statutory exception applies. At the time it scheduled the briefing, ATF believed it could provide the information sought by the House Oversight Committee under the Act's exception for congressional committees, 5 U.S.C. § 522a (b)(9).

However, as the briefing was about to begin, your staff presented a Privacy Act waiver signed by Special Agent Dodson, which consented to the provision of information to your staff and staff for Chairman Issa. ATF's Chief of Congressional Affairs was uncertain at that moment about the implications of the waiver and its interplay with exception (b)(9) of the Privacy Act, and who could attend the meeting. As your letter notes, he contacted this office in an effort to obtain legal advice, but because we did not have a copy of the waiver, we were not able to provide immediate assistance with respect to the application of the Privacy Act. Without

guidance, ATF believed that it was necessary to postpone the briefing. We note that within hours of the postponement, ATF obtained advice that the briefing could go forward, and ATF returned to the Senate to provide the briefing later that same day.

Ultimately, at the request of your staff, the briefing was rescheduled for your staff, as well as other Senate Judiciary Committee and House Oversight Committee staff, and occurred yesterday. We understand that Department representatives discussed these matters with your staff for two hours and answered your questions regarding Special Agent Dodson's request. I was not at the Department for the October 2012 briefing mentioned in your letter regarding William McMahon, and I am not familiar with the circumstances under which it occurred. If confirmed, however, I look forward to working with Committee staff to schedule informational briefings in the future and to promote better communication between our offices.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

Peter J. Kadzik
Principal Deputy Assistant Attorney General

cc: The Honorable Patrick Leahy
Chairman, Committee on the Judiciary

The Honorable Darrell Issa
Chairman, Committee on Oversight and Government Reform

The Honorable B. Todd Jones
Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

No. 11-1507

In the Supreme Court of the United States

TOWNSHIP OF MOUNT HOLLY, NEW JERSEY, ET AL.,
PETITIONERS

v.

MT. HOLLY GARDENS CITIZENS IN ACTION, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether disparate-impact claims are cognizable under Section 804(a) of the Fair Housing Act, 42 U.S.C. 3604(a).

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In the Supreme Court of the United States

No. 11-1507

TOWNSHIP OF MOUNT HOLLY, NEW JERSEY, ET AL.,
PETITIONERS

v.

MT. HOLLY GARDENS CITIZENS IN ACTION, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

INTEREST OF THE UNITED STATES

This case presents the important question whether a disparate-impact cause of action is cognizable under Section 804(a) of the Fair Housing Act (FHA or Act), 42 U.S.C. 3604(a).[1] The FHA prohibits discrimination

[1] Although the question on which this Court granted review addresses the availability of disparate-impact claims under the FHA generally, respondents' complaint alleges a disparate-impact claim under Section 804(a) only. This case therefore affords no occasion for the Court to consider the availability of disparate-impact liability under other prohibitions in the FHA. Unlike Section 804(a), certain of the FHA's other prohibitions make it unlawful "[t]o discriminate against any person" in specified, housing-related actions, *e.g.*, 42 U.S.C. 3604(b), 3605(a), and the term "discriminate" readily accommodates an interpretation encompassing disparate-impact liability. See, *e.g.*, *Alexander* v. *Choate*, 469 U.S. 287, 292

on various bases in the sale or rental of housing and in related services. See 42 U.S.C. 3604, 3605. The Act gives the Secretary of the Department of Housing and Urban Development (HUD) "authority and responsibility for administering [the FHA]," including the authority to promulgate regulations interpreting the Act and to enforce the Act through administrative proceedings. 42 U.S.C. 3608(a), 3612, 3614a. In exercising its rule-making and adjudicatory authority under the statute, HUD has consistently interpreted the Act to permit disparate-impact claims. See 78 Fed. Reg. 11,460-11,482 (Feb. 15, 2013); *Mountain Side Mobile Estates P'ship* v. *HUD*, 56 F.3d 1243, 1251 (10th Cir. 1995). The Department of Justice also has authority to enforce the FHA, see 42 U.S.C. 3612(*o*), 3614(a)-(d), and has brought disparate-impact claims in its enforcement actions. See, *e.g.*, *United States* v. *City of Black Jack*, 508 F.2d 1179, 1186 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975). At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage of this case.

STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the FHA, 42 U.S.C. 3601 *et seq.*, and select other statutory provisions are set forth in an appendix to this brief. App., *infra.*

STATEMENT

1. Mount Holly Gardens (the Gardens) is a 30-acre neighborhood of roughly 330 homes, located in the Township of Mount Holly, in Burlington County, New

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(1985). Petitioner does not argue that other FHA provisions do or do not encompass disparate-impact claims, and this Court should decline various amici's invitation to consider a question neither raised in the petition nor addressed by the parties.

Jersey. Pet. App. 5a. Nearly all Gardens residents earn less than 80% of the area's median income, and most earn much less. *Ibid.* At the time of the 2000 Census, approximately 20% of Gardens residents were white, 46% were African-American, and 29% were Hispanic. *Id.* at 6a. Overall, the Township of Mount Holly is 66% white, 23% African-American, and 13% Hispanic. *Id.* at 78a-79a.

In 2000, petitioners (the township, township council, and township officials) determined that the Gardens should be designated as an "area in need of redevelopment" under New Jersey law. Pet. App. 7a-8a. Petitioners implemented an evolving series of redevelopment plans, culminating in a plan to buy all the homes in the Gardens, demolish them, and rebuild the neighborhood. *Id.* at 8a-10a. Many Gardens residents objected to the redevelopment plan, observing that they would be unable either to afford to purchase a home in the area after redevelopment or to live elsewhere in the township. *Id.* at 9a, 11a. Although petitioners offered to pay qualified homeowners in the Gardens between $32,000 and $49,000 for their homes, plus relocation assistance of $15,000 and $20,000 of no-interest loan assistance toward the purchase of a new home, the estimated cost of a new home in the Gardens after redevelopment was between $200,000 and $275,000. *Id.* at 10a. Renters in the Gardens were also unlikely to be able to afford rents in the Gardens after redevelopment. *Ibid.* Most Gardens residents would therefore be unable to afford to live in the Gardens after redevelopment, including in the homes designated as affordable housing. *Id.* at 9a.

2. a. Respondents are Gardens residents, former residents, and a residents' association. Pet. App. 4a.

In 2008, respondents filed suit in federal court alleging, *inter alia*, violations of Section 804(a) of the FHA, including disparate-impact claims, and seeking declaratory and injunctive relief. *Id.* at 12a. During the litigation, respondents submitted the report of a statistical and demographic expert, who concluded that the displacement that would result from the redevelopment plan would adversely affect 22.54% of the township's African-American households and 32.31% of the Hispanic households, but only 2.73% of the white households. *Id.* at 15a-16a, 43a. The expert further concluded that the new homes in the redeveloped Gardens area would be affordable for 79% of Burlington County's white households, but for only 21% of African-American and Hispanic households in the county. *Id.* at 16a, 45a n.9. The expert also concluded that most displaced Gardens residents would be unable to afford to relocate elsewhere in the township. *Id.* at 18a.

b. The district court converted petitioners' motion to dismiss into a motion for summary judgment and granted it. Pet. App. 33a-61a. In relevant part, the court concluded that respondents had failed to establish a prima facie case of disparate-impact discrimination under Section 804(a) of the FHA. *Id.* at 41a-47a. Although the court acknowledged respondents' evidence that the disproportionately minority households in the Gardens before redevelopment would be unable to afford to stay in the area, it rejected respondents' statistical analysis because the analysis did not account for how many minorities might move into Mount Holly. *Id.* at 43a-46a & n.9. The court also faulted respondents for failing to demonstrate that the redevelopment plan would affect minority households in

the Gardens in a different way than it would affect white households in the Gardens. *Id.* at 45a.

The court concluded in the alternative that, even if respondents had established a prima facie disparate-impact case, petitioners met their burden of showing a legitimate interest in pursuing the redevelopment plan. Pet. App. 43a & n.6. And, the court determined, respondents had not rebutted that legitimate interest by identifying a less discriminatory alternative available to petitioners. *Id.* at 47a-51a.

c. The court of appeals reversed the district court's grant of summary judgment and remanded for further factual development on respondents' claims under Section 804(a) of the FHA. Pet. App. 1a-29a. The court concluded that the district court erred in rejecting the statistical data respondents submitted in support of their disparate-impact claim. *Id.* at 15a-18a. The court also noted that the district court had conflated the concepts of disparate impact and disparate treatment when it reasoned that each white Gardens resident was treated the same as each African-American or Hispanic Gardens resident. *Id.* at 19a. The court of appeals thus concluded that respondents had established a prima facie case of disparate-impact discrimination under the FHA. *Id.* at 23a-24a.

The court of appeals further noted that "everyone agrees that alleviating blight is a legitimate interest." Pet. App. 24a. The court found, however, a disputed issue of fact as to whether petitioners had alternative means of addressing blight that would be less discriminatory than the redevelopment plan. *Id.* at 25a-26a. The court of appeals thus remanded for further factual development to be followed by renewed motions for summary judgment. *Id.* at 28a-29a.

SUMMARY OF ARGUMENT

The United States Department of Housing and Urban Development—the agency principally charged with administering and enforcing the Fair Housing Act—has authoritatively construed Section 804(a) of the Act to encompass disparate-impact liability. That construction is the best (and certainly a permissible) reading of the statutory text, and it comports with the uniform judicial construction of the Act over four decades. The agency's construction is entitled to deference.

A. The authoritative interpretation of the agency charged with administering the statute should resolve the question presented. The FHA grants HUD broad authority to administer and enforce the statute, including by promulgating rules implementing the statute and conducting formal adjudications of FHA complaints. HUD has promulgated a rule recognizing that Section 804(a) encompasses disparate-impact claims. In exercising its authority to conduct formal adjudications, HUD has also consistently recognized that disparate-impact claims are cognizable under the statute. This Court's decisions make clear that such authoritative agency interpretations command the full measure of deference under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837 (1984).

B. HUD's construction of Section 804(a) follows directly from the statute's text, structure, and history. Section 804(a) makes it unlawful to "refuse to sell or rent" or "otherwise make unavailable or deny" housing to a person "because of" a protected characteristic, including race. 42 U.S.C. 3604(a). That language supports liability based on the disparate effects caused by a challenged action because it focuses on

the consequences of the action—the unavailability or denial of a dwelling—rather than the motivation of the actor. This Court, for the same reason, has held that Section 703(a)(2) of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. 2000e-2(a)(2), and Section 4(a)(2) of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 623(a)(2), encompass disparate-impact claims. Those provisions make it unlawful to "deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of," *inter alia*, race or age. 29 U.S.C. 623(a)(2); 42 U.S.C. 2000e-2(a)(2). Section 804(a) similarly makes it unlawful to "make unavailable or deny" housing "because of," *inter alia*, race. 42 U.S.C. 3604(a).

The FHA also contains particularized exemptions that presuppose the existence of disparate-impact liability under Section 804(a). Those exemptions insulate actions that deny housing based on: a person's conviction for certain drug offenses; a reasonable governmental rule limiting the number of occupants; or an appraiser's taking into consideration factors other than race, gender, family status, or other protected characteristics. Each of those statutory exemptions is grounded in concerns that, in the absence of the exemption, the statute would bar actions within the scope of the exemption on a disparate-impact theory. Without the exemptions, for instance, a claim could be made that a policy denying housing to persons with drug convictions has a disparate impact based on a protected characteristic.

The history of the statute lends further support to the conclusion that disparate-impact claims are cognizable under Section 804(a). When Congress in 1988

comprehensively amended the FHA, including Section 804(a), Congress was aware of the uniform body of court of appeals precedent supporting disparate-impact claims but did not amend the statute to limit such claims. To the contrary, Congress rejected efforts to amend the statute to require proof of discriminatory intent in a category of cases.

C. Petitioners err in suggesting that Section 804(a)'s disparate-impact prohibition does not apply to local governments while its disparate-treatment prohibition does. The plain text of Section 804(a) applies to any person or entity that makes housing unavailable on a specified basis. Nor do petitioners' constitutional-avoidance arguments have merit. A local government does not violate the Equal Protection Clause merely by considering whether a proposed action will have a disparate impact on the basis of race. And requiring consideration of potential disparate-impacts raises no federalism concerns. As explained in HUD's regulation, a local government (like any defendant) may proceed with an action that has a discriminatory effect if it is necessary to achieve a substantial and legitimate nondiscriminatory interest that cannot be accomplished through less discriminatory means.

ARGUMENT

DISPARATE-IMPACT CLAIMS ARE COGNIZABLE UNDER SECTION 804(a) OF THE FHA

The federal agency with authority to administer the FHA has long interpreted Section 804(a), 42 U.S.C. 3604(a), to authorize disparate-impact claims. The agency's conclusion follows from the statute's text, structure, and history. And it accords with the uniform decisions of the 11 courts of appeals to have

considered the question. See p. 22 & n.5, *infra*. Because the text of Section 804(a) is best read to include—and certainly does not foreclose—disparate-impact claims, HUD's interpretation is dispositive. See *Meyer* v. *Holley*, 537 U.S. 280, 287-288 (2003).

A. HUD Has Authoritatively Interpreted Section 804(a) Of The FHA To Encompass Disparate-Impact Liability

The FHA aims "to provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. 3601; *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 380 (1982) (recognizing Congress's "broad remedial intent" in passing the Act). To that end, Section 804(a) of the FHA makes it unlawful:

> To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

42 U.S.C. 3604(a).

Congress vested HUD with broad authority to implement and construe the FHA. Exercising that authority, HUD has long interpreted Section 804(a) to support a disparate-impact theory of discrimination. HUD recently reaffirmed that interpretation after notice-and-comment rulemaking.

1. The FHA grants HUD broad authority to promulgate rules implementing and construing the statute. 42 U.S.C. 3614a ("The Secretary may make rules * * * to carry out this subchapter."); 42 U.S.C. 3608(a) (vesting "authority and responsibility for administering this Act" in the Secretary of HUD); see also 42 U.S.C. 3535(d) (general rulemaking authority).

Rules promulgated pursuant to that authority are entitled to deference under *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837 (1984).

HUD recently issued a regulation reaffirming that the FHA, including Section 804(a), authorizes disparate-impact claims. 78 Fed. Reg. at 11,481-11,482. The rule amends Part 100 of Title 24 of the Code of Federal Regulations to provide: "Liability may be established under the Fair Housing Act based on a practice's discriminatory effect * * * even if the practice was not motivated by a discriminatory intent." 78 Fed. Reg. at 11,482; 24 C.F.R. 100.500. The regulation further states:

> A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

24 C.F.R. 100.500(a).

The rule's preamble articulates the principal bases for HUD's longstanding view that Section 804(a) encompasses disparate-impact claims. The statutory text—"otherwise make unavailable or deny [a dwelling]"—focuses on the *effect* of a challenged action, not the relevant actor's motivation, reflecting congressional intent that liability flow from disparate impact and not be limited to disparate treatment. 78 Fed. Reg. at 11,466; see pp. 12-18, *infra*. HUD also relied on three statutory exemptions that "presuppose that the Act encompasses an effects theory of liability" and that "would be wholly unnecessary if the Act prohibited only intentional discrimination." 78 Fed. Reg. at 11,466; see pp. 18-21, *infra*. Uniform judicial prece-

dent both before and after Congress amended the FHA in 1988 provides further support for HUD's reading of the text. And, HUD concludes, its textual interpretation is consistent with the broad purpose and legislative history of the Act, including the sponsor's recognition of the need to address "[o]ld habits" and "frozen rules," including "the refusal by suburbs and other communities to accept low-income housing." 78 Fed. Reg. at 11,467.

2. HUD's rule reaffirmed the agency's longstanding interpretation of the FHA. See 42 U.S.C. 3610 and 3612. Through formal adjudications that become final agency decisions after an opportunity for all parties to petition the Secretary for review, see 42 U.S.C. 3612(g) and (h); 24 C.F.R. 180.675, HUD has interpreted the FHA—including Section 804(a)—to encompass disparate-impact claims in every adjudication to address the issue.[2] In addition, in a formal adjudication raising the question whether a disparate-impact claim is cognizable in an action under Section 804(a), the Secretary concluded that liability could be premised on a disparate-impact showing and that disparate-impact liability had been established in the case. *HUD* v. *Mountain Side Mobile Estates P'ship*, No. 08-92-0010-1, 1993 WL 307069, at *5 (July 19, 1993), aff'd in relevant part, 56 F.3d 1243 (10th Cir. 1995).

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[2] See *e.g.*, *HUD* v. *Twinbrook Vill. Apartments*, No. 02-00-0256-8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001); *HUD* v. *Pfaff*, No. 10-93-0084-8, 1994 WL 592199, at *7-9 (HUD ALJ Oct. 27, 1994), rev'd on other grounds, 88 F.3d 739 (9th Cir. 1996); *HUD* v. *Ross*, No. 01-92-0466-8, 1994 WL 326437, at *5, *7 (HUD ALJ July 7, 1994); *HUD* v. *Carter*, No. 03-90-0058-1, 1992 WL 406520, at *5 (HUD ALJ May 1, 1992).

When, as here, Congress expressly affords an agency authority to issue formal adjudications carrying the force of law, see 42 U.S.C. 3612, the agency's reasonable interpretation of the statute in such adjudications is entitled to the full measure of *Chevron* deference. See *United States* v. *Mead Corp.*, 533 U.S. 218, 230 & n.12 (2001); *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 424-425 (1999).

B. The Text, Structure, History, And Purpose Of The Statute Support HUD's Recognition Of Disparate-Impact Claims

Because Congress charged HUD with administering the FHA, HUD's interpretation of the statutory language controls unless it is "arbitrary or capricious in substance, or manifestly contrary to the statute." *Mead*, 533 U.S. at 227. HUD's interpretation is neither, and its interpretation thus commands deference. See *Smith* v. *City of Jackson*, 544 U.S. 228, 243 (2005) (Scalia, J., concurring in part and in the judgment) (agency's exercise of rulemaking authority in ADEA presented "an absolutely classic case for deference to agency interpretation"); *Meacham* v. *Knolls Atomic Power Lab.*, 554 U.S. 84, 103-104 (2008) (Scalia, J., concurring in the judgment) (deferring to EEOC's reasonable construction of ADEA); *General Dynamics Land Sys., Inc.* v. *Cline*, 540 U.S. 581, 601 (2004) (Scalia, J., dissenting) (same).

1. The text of Section 804(a) encompasses a disparate-impact cause of action

a. Section 804(a) makes it unlawful, *inter alia*, "[t]o refuse to sell or rent * * * or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national

origin." 42 U.S.C. 3604(a). That language is best read to encompass disparate-impact claims. By banning actions that "make unavailable or deny" housing on one of the specified bases, Section 804(a) focuses on the result of challenged actions—the unavailability or denial of a dwelling—rather than exclusively on the intent of the actor. Such a prohibition on specified outcomes that adversely affect an identifiable group is most naturally read to support a disparate-impact claim.

b. This Court has drawn precisely that conclusion when construing other anti-discrimination statutes that similarly place principal focus on the discriminatory consequences of the challenged actions rather than the actor's motive. In particular, both Section 703(a)(2) of Title VII, 42 U.S.C. 2000e-2(a)(2), and Section 4(a)(2) of the ADEA, 29 U.S.C. 623(a)(2), make it unlawful for an employer "to limit, segregate, or classify his employees in any way" that would "deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of" a specified characteristic (race, color, religion, sex, or national origin for Title VII; age for the ADEA).

In *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 431 (1971), this Court held that Section 703(a)(2) of Title VII prohibits employers from taking actions that have the effect of discriminating on the basis of race, regardless of whether the actions are motivated by discriminatory intent. The Court explained that "Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation." *Id.* at 432. See *Watson* v. *Fort Worth Bank & Trust*, 487 U.S. 977, 990-991 (1988) (noting that, if

employer's practice "has precisely the same effects as a system pervaded by impermissible intentional discrimination, it is difficult to see why Title VII's proscription against discriminatory actions should not apply"); see also *Smith*, 544 U.S. at 235 (plurality) (noting Court's recognition that its "holding [in *Griggs*] represented the better reading of the statutory text").[3]

The same is true of the parallel terms in Section 4(a)(2) of the ADEA, which this Court, in *Smith*, *supra*, likewise held encompass disparate-impact claims. The Court explained that, in prohibiting actions that "deprive any individual of employment opportunities or otherwise adversely affect his [employment] status[] because of" his age, 29 U.S.C. 623(a)(2), "the text" of the statute—like Section 703(a)(2) of Title VII—"focuses on the *effects* of the action on the employee rather than the motivation for the action of the employer." *Smith*, 544 U.S. at 235-236 (plurality); see *id.* at 243 (Scalia, J., concurring in part and in the judgment) ("agree[ing] with all of the Court's reasoning"). That focus, the Court explained, "strongly suggests that a disparate-impact theory should be cognizable." *Id.* at 236 (plurality).

The textual similarities between Section 804(a) and the disparate-impact provisions in Title VII and the ADEA fully justify HUD's conclusion that Section 804(a) authorizes disparate-impact claims. Actions that "make unavailable or deny[] a dwelling to any

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[3] In 1991, Congress amended Title VII to add a provision expressly recognizing the existence of "disparate impact cases" under the statute, 42 U.S.C. 2000e-2(k), but Title VII contained no such provision when this Court in *Griggs* construed Section 703(a)(2) to encompass disparate-impact liability.

person"—like actions that "deprive any individual of employment opportunities"—"focus[] on the *effects* of the [challenged] action * * * rather than the motivation for the action." *Smith*, 544 U.S. at 236 (plurality). This focus on effects rather than motivations is the essence of a disparate-impact prohibition.

Petitioners' efforts (Br. 19-24) to distinguish Section 804(a) are unavailing. Title VII and the ADEA both prohibit actions that "deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect" his "status as an employee, because of," *inter alia*, race or age. 42 U.S.C. 2000e-2(a)(2); 29 U.S.C. 623(a)(2). The FHA analogously prohibits actions that "refuse to sell or rent" or "otherwise make unavailable or deny" housing to an individual "because of," *inter alia*, race. 42 U.S.C. 3604(a). Like Title VII and the ADEA, Section 804(a) enumerates a handful of specific prohibited actions *and* includes a nonspecific catch-all phrase that focuses on the prohibited effects of the specified actions, regardless of the motivation behind them. See *Smith*, 544 U.S. at 235 (plurality). To be sure, Title VII and the ADEA, which apply to employment-related actions generally, broadly prohibit actions that "tend to deprive any individual of employment opportunities"—while Section 804(a), which applies to a subset of housing-related transactions, more narrowly targets actions that have the effect of making housing unavailable. But the similarities in the textual structure of the prohibitions are more material than the differences in statutory scope. Given those similarities—and especially when read against the backdrop of Title VII, which was enacted before the FHA—Section 804(a) of the FHA is best read to include a

prohibition on actions having the effect of disproportionately denying housing based on a protected characteristic, without regard to the actor's motivation.

c. Petitioners' contrary parsing of the statutory text to reach an "unambiguous" result is unpersuasive.

First, petitioners argue (Br. 17, 24-26) that Section 804(a)'s requirement that the prohibited discrimination arise "because of" a protected characteristic limits the provision's reach to cases in which a defendant "has made a conscious decision to discriminate on that basis." Pet. Br. 24. Petitioners concede (Br. 25-26), however, that the disparate-impact provisions of Title VII and the ADEA also require that the prohibited discrimination arise "because of" a specified characteristic. 29 U.S.C. 623(a)(2); 42 U.S.C. 2000e-2(a)(2). See *Meacham*, 554 U.S. at 96 (explaining that, "in the typical disparate-impact case" under the ADEA, "the employer's practice is 'without respect to age' and its adverse impact (*though 'because of age'*) is 'attributable to a nonage factor'") (emphasis added; citation omitted). The phrase "because of" should not prohibit a disparate-impact cause of action under the FHA when the same phrase embraces such a cause of action in Title VII and the ADEA.

Petitioners rely (Br. 24) on this Court's decision in *Gross* v. *FBL Financial Services, Inc.*, 557 U.S. 167 (2009), which held that an ADEA plaintiff is never entitled to a mixed-motive jury instruction. *Id.* at 173-179. Relying on its earlier opinion in *Hazen Paper Co.* v. *Biggins*, 507 U.S. 604, 610 (1993), the Court in *Gross* explained that "the ordinary meaning of the ADEA's requirement that an employer took adverse action 'because of' age is that age was the 'reason' that

the employer decided to act." *Gross*, 557 U.S. at 176; see Pet. Br. 24. But both *Gross* and *Hazen Paper* involved exclusively disparate-treatment claims under the ADEA. See *Gross*, 557 U.S. at 170; *Hazen Paper*, 507 U.S. at 609; see also *Smith*, 544 U.S. at 237 (plurality opinion) (noting that the "opinion in *Hazen Paper* * * * did not address or comment on" the availability of a disparate-impact cause of action under the ADEA). The reasoning supporting the mixed-motive holding of *Gross* thus sheds no light on the operation of the ADEA's disparate-impact prohibition (which does not concern motive at all), let alone the prohibition in Section 804(a).

Second, petitioners argue (Br. 18-19) that Section 804(a)'s prohibition on "otherwise mak[ing] housing unavailable" encompasses only intentional discrimination. That is incorrect. The plain meaning of the phrase "make unavailable" includes actions that have the result of making housing unavailable, regardless of whether the actions were intended to have that result. This Court explained long ago that "[t]he word 'make' has many meanings, among them 'To cause to exist, appear or occur.'" *United States* v. *Giles*, 300 U.S. 41, 48 (1937) (quoting *Webster's New International Dictionary* (2d ed. 1934)); see *Webster's Third New International Dictionary* 1364 (1966) (noting that "make" "can comprise any such action" that "cause[s] something to come into being," "whether by an intelligent or blind agency"); *Black's Law Dictionary* 1107 (rev. 4th ed. 1968) ("[t]o cause to exist"). One may cause a result to "exist, appear or occur," *Giles*, 300 U.S. at 48, without specifically intending to do so. For example, a landlord may make her housing unavailable to blind individuals by refusing to permit

pets. Intent is not a prerequisite to making housing unavailable.

Third, petitioners' reading of Section 804(a) is at odds with decades of uniform precedent from the courts of appeals: all 11 circuits to have addressed the issue have concluded that the FHA encompasses disparate-impact liability. See p. 22 & n.5, *infra*. In light that that precedent, "it would be difficult indeed" to conclude that the text is, in the way petitioners suggest, "unambiguous." *Smiley* v. *Citibank (S.D.), N.A.*, 517 U.S. 735, 739 (1996); see *ibid.* (finding ambiguity in part from the conflict among lower court opinions).

2. The structure of the FHA confirms that the Act prohibits actions that cause a disparate impact on a specified basis

The Act's structure adds further support to HUD's interpretation of Section 804(a). The Act contains three exemptions from liability that presuppose the availability of a disparate-impact claim.

First, Congress specified that "[n]othing in [the FHA] prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance." 42 U.S.C. 3607(b)(4). Because the Act contains no direct prohibition on discriminating against individuals with drug convictions, the inclusion of that exemption makes sense only if actions denying housing to individuals with such drug convictions would otherwise be subject to challenge on the ground that they have a disparate impact based on a protected characteristic. That the exemption presupposes a disparate-impact theory of discrimination is made clear by a similar exemption in Title VII. See 42 U.S.C. 2000e-2(k)(3). Congress

enacted the Title VII exemption for drug users as part of a provision expressly addressed to "disparate impact cases," 42 U.S.C. 2000e-2(k), and the language of the exemption specifies that it applies solely to disparate-impact claims, see 42 U.S.C. 2000e-2(k)(3) (allowing employers to prohibit employment of individuals who use or possess drugs unless "such [a] rule is adopted or applied with an intent to discriminate because of race").

Second, Congress specified that "[n]othing in [the FHA] limits the applicability of any reasonable * * * restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. 3607(b)(1). Because the Act contains no direct bar against discrimination based on number of occupants, the purpose of the exemption necessarily was to preclude suits contending that otherwise reasonable occupancy limits have a disparate impact based on a protected characteristic such as familial status or race. See *City of Edmonds* v. *Oxford House, Inc.*, 514 U.S. 725, 735 n.9 (1995).

Finally, the FHA includes a targeted exemption specifying that "[n]othing in [the Act] prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status." 42 U.S.C. 3605(c). There would be no reason to enact an exemption for appraisers' actions based on factors *other than* protected characteristics unless the statute would otherwise bar such actions on a disparate-impact theory. See *Meacham*, 554 U.S. at 96 ("action based on a 'factor other than age' is the very premise for disparate-impact liability"). These statutory exemptions thus

strongly support the conclusion that Section 804(a) of the Act encompasses disparate-impact claims.

Petitioners contend (Br. 31-34) that the exemptions suggest nothing about whether the FHA encompasses disparate-impact claims, contending that "all three exemptions offer valuable defenses to disparate-treatment claims." Pet. Br. 33. That is incorrect. The classic defense to a disparate-treatment claim is that the defendant undertook the challenged action for a nondiscriminatory reason. A defendant's showing that she denied housing based on (for example) a prospective buyer's drug offense would defeat disparate-treatment liability whether or not Congress had enacted Section 3607(b)(1). Congress thus had no reason to identify three particular exemptions if the FHA extends only to claims of disparate treatment. In contrast, liability for disparate impact arises precisely when a nondiscriminatory basis, such as a prior drug offense, affects a specified group disproportionately. Indeed, analogous claims had been litigated by the time Congress acted in 1988. See, *e.g.*, *New York City Transit Auth.* v. *Beazer*, 440 U.S. 568 (1979) (asserting disparate-impact liability under Title VII based on an agency's refusal to hire methadone users). That Congress chose to identify these three exemptions from liability makes sense only if Congress had disparate-impact liability in mind.

Five members of this Court endorsed this very reasoning in *Smith* when considering the ADEA's "RFOA" defense, which allows an employer to escape liability if it relied on a "reasonable factor[] other than age." 544 U.S. at 238-239 (plurality); *id.* at 243 (Scalia, J., concurring in part and concurring in the judgment) (expressly agreeing with "all of the Court's reason-

ing); see 29 U.S.C. 623(f)(1). The RFOA defense would be "unnecessary" if the ADEA prohibited only disparate treatment because "[i]n most disparate-treatment cases, if an employer in fact acted on a factor other than age, the action would not be prohibited under [the disparate-treatment provision] in the first place." *Smith*, 544 U.S. at 238 (plurality). Because the defense "plays its principal role by precluding liability if the adverse impact was attributable to a nonage factor that was 'reasonable,'" the availability of the defense "supports" the conclusion that the ADEA encompasses disparate-impact claims. *Id.* at 239 (plurality). Just so here.[4]

3. The history of the 1988 amendments to the FHA supports the availability of disparate-impact claims

The history of the 1988 amendments to the FHA likewise supports the existence of a disparate-impact theory of discrimination under Section 804(a). Between the enactment of the FHA in 1968 and its substantial amendment in 1988, see Fair Housing Amendments Act of 1988 (1988 Amendments), Pub. L. No. 100-430, 102 Stat. 1619, all nine courts of appeals to consider the issue concluded that the Act authorizes suits based on disparate-impact claims. See, *e.g.*, *Huntington Branch, NAACP* v. *Town of Huntington*, 844 F.2d 926, 935-936 (2d Cir.), aff'd in part, 488 U.S. 15 (1988); *Resident Advisory Bd.* v. *Rizzo*, 564 F.2d

[4] Petitioners argue that "nothing in their text" indicates that the exemptions would have "no role" in a disparate-treatment case. Br. 34. But the task of statutory construction is to harmonize the relevant statutory provisions, not marginalize them by denying them their most obvious meaning.

126, 146 (3d Cir. 1977), cert. denied, 435 U.S. 908 (1978); *Smith* v. *Town of Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982); *Hanson* v. *Veterans Admin.*, 800 F.2d 1381, 1386 (5th Cir. 1986); *Arthur* v. *City of Toledo*, 782 F.2d 565, 574-575 (6th Cir. 1986); *Metropolitan Hous. Dev. Corp.* v. *Village of Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978); *United States* v. *City of Black Jack*, 508 F.2d 1179, 1184-1185 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975); *Halet* v. *Wend Inv. Co.*, 672 F.2d 1305, 1311 (9th Cir. 1982); *United States* v. *Marengo Cnty. Comm'n*, 731 F.2d 1546, 1559 n.20 (11th Cir.), cert. denied, 469 U.S. 976 (1984).[5]

Against that background, Congress substantially amended the Act in 1988, adding new provisions barring discrimination based on familial status and disability, establishing the statutory exemptions that presuppose the availability of disparate-impact actions (see pp. 18-21, *supra*), and enhancing HUD's authority to interpret and implement the Act. See 1988 Amendments §§ 1-15, 102 Stat. 1619-1636. Congress was aware that the FHA, including Section 804(a), had uniformly been interpreted to encompass disparate-impact claims.[6] Significantly Congress nevertheless

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[5] The First and Tenth Circuits directly confronted the question for the first time after the 1988 amendments and agreed with their sister circuits, see *Langlois* v. *Abington Hous. Auth.*, 207 F.3d 43, 49 (1st Cir. 2000); *Mountain Side Mobile Estates P'ship*, 56 F.3d at 1251, while the D.C. Circuit has yet to decide the issue, see *Greater New Orleans Fair Hous. Action Ctr.* v. *HUD*, 639 F.3d 1078, 1085 (D.C. Cir. 2011).

[6] See *e.g.*, H.R. Rep. No. 711, 100th Cong., 2d Sess. 21 (1988) (citing courts of appeals decisions in discussing a policy that could have a "discriminatory effect" on minority households); 134 Cong. Rec. 23,711 (1988) (statement of Sen. Kennedy) (noting unanimity

chose when amending the Act—including an amendment of Section 804(a) to add familial status as a protected characteristic—to leave that provision's operative language unchanged. See *Forest Grove Sch. Dist.* v. *T.A.*, 557 U.S. 230, 244 n.11 (2009) ("When Congress amended [the Act] without altering the text of [the relevant provision], it implicitly adopted [this Court's] construction" of that provision.); cf. *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978) (noting that "every court to consider the issue" had agreed on the statute's interpretation, and explaining that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change"). Moreover, Congress specifically rejected an amendment that would have overturned precedent recognizing disparate-impact challenges to zoning decisions. See H.R. Rep. No. 711, 100th Cong., 2d Sess. 89-91 (1988) (dissenting views of Rep. Swindall); see 78 Fed. Reg. at 11,467 (noting five other occasions on which Congress declined to impose an intent requirement).

Petitioners note (Br. 35-36) that President Reagan, when signing the 1988 amendments, declared that the amendments did not "represent any congressional or executive branch endorsement of the notion, expressed in some judicial opinions," of a disparate-impact theory of discrimination under the FHA. *Remarks on Signing the Fair Housing Amendments Act of 1988*, 24 Weekly Comp. Pres. Doc. 1141 (Sept. 13,

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of courts of appeals as to the disparate-impact test); *Fair Housing Amendments Act of 1987: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*, 100th Cong., 1st Sess. 529-557 (1987) (testimony of Prof. Robert Schwemm) (same).

1988). And HUD regulations issued soon thereafter declined to "resolve the question of whether intent is or is not required to show a violation." 54 Fed. Reg. 3235 (Jan. 23, 1989). But neither of those statements casts doubt on Congress's awareness of courts' unanimous construction of the FHA as encompassing disparate-impact claims when Congress amended the FHA without changing its operative language.[7] In any event, once HUD directly confronted the question in administrative adjudications and other contexts under the authority granted to it by the 1988 amendments, HUD consistently determined that the FHA encompasses disparate-impact liability.

4. HUD's interpretation furthers the FHA's purpose

Construing Section 804(a) to encompass a disparate-impact cause of action is a reasonable implementation of the FHA's broad antidiscrimination purpose.

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[7] Nor do subsequently enacted statutes in which Congress explicitly provided for disparate-impact liability (see Pet. Br. 31) shed light on the intent of Congress in passing the FHA or its amendments. That is particularly so as to Title VII—although Congress added language in 1991 that more explicitly provided for disparate-impact claims, this Court had already held that Title VII's original language provided for such claims. *Griggs*, 401 U.S. at 431. There is no merit to petitioners' suggestion that Congress's failure to amend the FHA when it amended Title VII in 1991 "speaks volumes about" whether Congress intended Section 804(a) to encompass disparate-impact claims. Pet. Br. 31. Petitioners rely on this Court's decision in *Gross*—but *Gross* compared *contemporaneous* amendments of Title VII and the ADEA, explaining that "'negative implications raised by disparate provisions are strongest' when the provisions were 'considered simultaneously when the language raising the implication was inserted.'" 557 U.S. at 175 (quoting *Lindh* v. *Murphy*, 521 U.S. 320, 330 (1997)). No such negative implication is appropriate here.

Individual motives are difficult to prove directly and Congress has frequently required proof of only discriminatory effect as a means of overcoming discriminatory practices—including in Title VII, enacted only four years before the FHA. This Court explained in *Griggs* that Congress's objective in enacting Title VII, including its disparate-impact prohibition, "was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees." 401 U.S. at 429-430. "Under the Act," the Court explained, "practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices." *Id.* at 430. The Court in *Griggs* thus had little trouble concluding that the defendant employer's education and "intelligence" requirements for certain work assignments violated Title VII even while acknowledging the employer's "lack of discriminatory intent." *Id.* at 431-433.

When enacting the FHA, Congress similarly sought to overcome entrenched barriers to equal opportunity in housing by prohibiting acts that have the effect of denying such opportunities on a specified basis. Petitioners err in arguing (Br. 27-28) that there is less need for a disparate-impact cause of action in the housing context than there is in the employment context because (they assert) it is easier to establish the motivation of individual decisionmakers in the housing context. Housing-related decisions (like employment-related decisions) frequently involve a significant degree of subjectivity. A would-be renter who is denied a lease when others receive one will often

have just as much difficulty discerning the basis for that treatment as she would if she were informed that a potential employer had filled available job openings with more qualified applicants. The difficulties in proof are only exacerbated when the defendant in a housing action is a local government body, whose discriminatory motives can be particularly hard to discern.

Petitioners further err in asserting that "barriers erected by past discrimination do not have the same persistent legacy in housing transactions as in employment decisions." Br. 28. Housing discrimination can entail the "loss of social, professional, and economic benefits," *Havens Realty Corp.*, 455 U.S. at 376-377; see *Trafficante* v. *Metropolitan Life Ins. Co.*, 409 U.S. 205, 208 (1972), by, *e.g.*, depressing prices, reducing the number of buyers in a particular market, diminishing the tax base, and making affordable housing unavailable, *Gladstone Realtors* v. *Village of Bellwood*, 441 U.S. 91, 110-111 & n.24 (1979). In many areas of the country, substantial residential segregation persists as a result of past discrimination. Indeed, according to 2010 Census data, the Philadelphia-Camden area, which includes Mount Holly, is among the ten most segregated large metropolitan areas for African-American residents. http://www.censusscope.org/2010Census/FREY2010BLK100MetroSeg.xls (last visited Oct. 25, 2013). Section 804(a)'s prohibition on actions that have a disparate impact on a specified basis is an important tool in ameliorating such conditions.

5. HUD's interpretation is consistent with the position of the Department of Justice

HUD and the Department of Justice are in accord with respect to disparate-impact liability under the FHA. The FHA grants the Department of Justice authority to enforce the statute by filing actions in federal court. See 42 U.S.C. 3612(*o*), 3614(a)-(d). The Department has filed numerous briefs (including in the court of appeals in this case) explaining that the FHA supports disparate-impact liability. See, *e.g.*, Br. for the United States as Amicus Curiae in *Mt. Holly Gardens Citizens in Action, Inc.* v. *Township of Mt. Holly*, 658 F.3d 375 (3d Cir. 2011) (No. 11-1159); Br. for the United States as Amicus Curiae in *Veles* v. *Lindow*, 243 F.3d 552 (9th Cir. 1999) (No. 99-15795); Br. for the United States in *United States* v. *Glisan*, Nos. 81-1746 and 81-2205, at 15-20 (10th Cir. 1981).

Petitioners observe (Br. 36) that, in 1988, the government filed an amicus brief in this Court arguing that the FHA proscribes only intentional discrimination. See Br. for the United States as Amicus Curiae at 13-18, *Town of Huntington* v. *Huntington Branch, NAACP*, 488 U.S. 15 (1988) (No. 87-1961). But that brief was filed before the enactment of the 1988 statutory amendments giving HUD its full authority to administer and enforce the Act, and thus before the agency's formal adjudications and other administrative pronouncements endorsing the existence of a disparate-impact theory of discrimination under the statute. The brief also predated the enactment of the statutory exemptions that presuppose the viability of disparate-impact claims (see pp. 18-21, *supra*). As explained, moreover, the United States has repeatedly filed briefs since the 1988 amendments espousing the

position that the amended Act encompasses disparate-impact claims. That is the precise interpretation HUD has adopted here, and it is that agency interpretation that commands deference.

C. Congress Did Not Exempt Local Governments From Section 804(a)

Petitioners argue (Br. 37-48) that this Court should construe Section 804(a) not to impose disparate-impact liability on local governments. There is no basis in the statute's text for such an argument; nor is such a counter-textual construction compelled by constitutional concerns.

1. In drafting Section 804(a), Congress broadly declared it unlawful to refuse to sell or rent a dwelling "or otherwise make unavailable or deny[] a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. 3604(a). Nothing in the text of the provision indicates that some categories of defendants are entirely immune from claims of disparate impact, even though they are otherwise fully covered by the statute. This Court has long recognized "the FHA's 'broad and inclusive' compass," and "accord[ed] a 'generous construction'" to achieve the statute's purpose of providing for fair housing. *City of Edmonds*, 514 U.S. at 731 (quoting *Trafficante*, 409 U.S. at 209). The FHA's sponsors indicated an intent to cover local governments, explaining that the law was intended to stop municipalities whose segregation rules were struck down by courts from enacting "[l]ocal ordinances with the same effect, although operating more deviously in an attempt to avoid the Court's prohibition." 114 Cong. Rec. 2699 (1968); see also *id.* at 2277 (noting segrega-

tion was exacerbated by local governments' refusal to allow low-income housing).

Other provisions confirm Section 804(a)'s applicability to local governments. The FHA's exemption from liability for "any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling," 42 U.S.C. 3607(b)(1), would have been largely unnecessary if local governments were not potentially liable under the statute for other types of local housing regulations with a discriminatory effect. In addition, Section 810 of the FHA, which governs the Secretary's administrative enforcement, specifies that the Secretary must refer any complaint filed under the FHA to the Department of Justice "[i]f the Secretary determines that the matter involves the legality of any State or local zoning or other land use law or ordinance." 42 U.S.C. 3610(g)(2)(C). That provision, too, presupposes application of the FHA's substantive prohibitions to local governments. Especially in light of those clear statutory statements, the Court should decline petitioners' late-breaking invitation (Br. 37-38) to invent a statutory limit that appears nowhere in the text and is at odds with congressional intent.

2. Petitioners are also incorrect (Br. 39-42) that Congress's inclusion of disparate-impact liability in Section 804(a) raises constitutional concerns when applied to local governments. A local government does not violate the Equal Protection Clause merely by considering the racial effects of a proposed action and possibly altering its course if such action will impose disparate burdens on one racial group. On the contrary, consideration of a course of action's actual consequences may *assist* a municipality in acting in a

racially neutral manner and providing equality of opportunity to its citizens. In an analogous context, this Court explained that Title VII's disparate-treatment prohibition "does not prohibit an employer from considering, before administering a test or practice, how to design that test or practice in order to provide a fair opportunity for all individuals, regardless of their race." *Ricci* v. *DeStefano*, 557 U.S. 557, 585 (2009). Neither does the Equal Protection Clause prohibit a municipality from considering the effects of a proposed action in order to ensure that it does not unnecessarily burden one racial group.

Cases such as *Parents Involved in Community Schools* v. *Seattle School District Number 1*, 551 U.S. 701, 711-712, 718-719 (2007) (Pet. Br. 41), do not support petitioners here. Those cases involve the intentional distribution of a limited set of benefits that, if allocated on a preferential basis to members of one race, could not then be allocated to members of another race. There is no analogue here—petitioners would not, for example, be forced to redevelop (or be foreclosed from redeveloping) a white neighborhood by the outcome of the redevelopment decision here. The merits question in this case is simply whether petitioners may proceed with a project if it will have a discriminatory effect on African-American and Hispanic residents. Petitioners point to nothing in the record suggesting that adopting a different redevelopment plan (or no redevelopment plan at all) would have any effect at all on citizens of other races. As Justice Kennedy explained in his concurring opinion in *Parents Involved in Community Schools*, when a government "considers the impact a given approach might have on [citizens] of different races," it does not

run afoul of the Constitution—instead, it acts in service of its duty "to preserve and expand the promise of liberty and equality on which [the Nation] was founded." 551 U.S. at 787, 789.

3. Petitioners are also incorrect (Br. 42-44) that Congress's decision to prohibit disparate-impact discrimination undermines principles of federalism. At no previous point in this litigation have petitioners challenged the constitutionality of Section 804(a) or suggested that it violates the Tenth Amendment. As this case comes to the Court, it is a given that Section 804(a) is a constitutional exercise of Congress's enumerated powers and that it therefore does not violate the Tenth Amendment. And, as discussed at pp. 13-18, *supra*, the plain and expansive text of Section 804(a) provides a sufficiently "clear and manifest statement," Pet. Br. 43, that Congress intended its prohibitions to apply to local governments.

To the extent petitioners suggest that this Court should not defer to HUD's regulatory interpretation of Section 804(a) because of federalism concerns about supplanting local land-use decisions, this Court recently rejected a similar argument. In *City of Arlington* v. *FCC*, 133 S. Ct. 1863 (2013), the Court considered whether a federal court or a federal agency should resolve ambiguous language in a federal statute that supplanted some local land-use discretion. That choice, the Court explained, "has nothing to do with federalism." *Id.* at 1873. Here, local governments are plainly subject to Section 804(a)'s requirements. In the words of this Court, petitioners raise a "faux-federalism argument" in insisting that this Court's independent construction of any ambiguous

language should trump HUD's considered judgment, based on its expertise and rulemaking authority. *Ibid.*

Local governments are subject to myriad federal rules and regulations, including with respect to their land-use decisions. The Telecommunications Act of 1996, for example, leaves intact local governments' authority to direct the placement of telecommunications towers *except* insofar as such decisions would discriminate among providers or have the effect of prohibiting the provision of personal wireless service. 47 U.S.C. 332(c)(7). Local governments similarly must ensure that their land-use decisions do not discriminate on the basis of religion. 42 U.S.C. 2000cc. And local governments must comply with federal environmental protections by, *e.g.*, conforming stormwater discharges to limits in permits issued pursuant to federal law. 33 U.S.C. 1342(p). Such regulations, if authorized pursuant to an enumerated power, do not violate federalism principles. Neither does Section 804(a).

4. Finally, petitioners err in arguing (Br. 44-48) that requiring local governments to comply with Section 804(a)'s prohibition on taking actions that have the effect of making housing unavailable on a specified basis "undermine[s] the FHA's core objectives." Pet. Br. 44. In particular, petitioners contend (Br. 44-45) that local governments will be loath to undertake any project to improve a blighted area that is predominantly minority. Not so. Disparate-impact liability under the FHA has been the law of the land for more than three decades, and petitioners offer no evidence that the FHA has prevented local officials from addressing blighted neighborhoods in that time.

For good reason. Section 804(a) does not prevent local officials from addressing urban blight, either in this case or elsewhere. As reflected in HUD's recent regulation, a defendant may move forward with a proposed action that has an otherwise-prohibited disparate impact when the defendant establishes that the proposed action is necessary to achieve a substantial, legitimate nondiscriminatory interest and the plaintiff does not establish that the defendant's interest could be served by another practice with a less discriminatory effect. 78 Fed. Reg. at 11,482; 24 C.F.R. 100.500(b) and (c). In this case, the court of appeals found that petitioners had satisfied their burden of establishing a legitimate interest. Pet. App. 24a ("[E]veryone agrees that alleviating blight is a legitimate interest."). Finding a disputed issue of fact about whether petitioners may use alternative means of addressing blight that would be less discriminatory than the redevelopment plan, the court remanded for further proceedings. *Id.* at 25a-29a. Thus, petitioners may yet be permitted to proceed with their redevelopment plan. Or they may discover an alternative, less discriminatory plan that would achieve their goals, while providing more affordable housing. Either way, Section 804(a)'s disparate-impact cause of action does not prevent municipalities from alleviating blight.

Experience confirms that Section 804(a)'s disparate-impact prohibition does not prevent cities from implementing appropriate revitalization projects. In the decades since courts have recognized the existence of disparate-impact liability under the FHA, cities have taken steps to address blight by, *e.g.*, enforcing building code requirements, securing vacant

homes, and maintaining surrounding public and abandoned space. See, *e.g.*, Allison Plyler, Elaine Ortiz, and Kathryn L.S. Pettit, *Optimizing Blight Strategies: Deploying Limited Resources in Different Neighborhood Housing Markets* 9, 16 (Nov. 2010) (*Optimizing Blight Strategies*); Joseph Schilling & Elizabeth Schilling, *Leveraging Code Enforcement for Neighborhood Safety: Insights for Community Developers* 2-3 (June 20, 2007). And, as discussed, where such alternate means cannot achieve the substantial, legitimate nondiscriminatory goals of a municipality, Section 804(a)'s disparate-impact prohibition will not stand in its way.

Finally, petitioners' concern that disparate-impact liability "undermine[s] the FHA's core objectives" (Br. 44) rings hollow. At the outset, it is the Secretary of HUD, not petitioners, that Congress charged with determining how best to advance the core objectives of the Act. In any event, the availability of disparate-impact liability here serves the core purposes of the Act without unduly burdening petitioners. Before undertaking their redevelopment project, petitioners have already conducted studies, inspected properties, considered alternatives, amended their plans several times, and followed state procedures to designate the Gardens as blighted. See Pet. App. 7a-11a. It is reasonable for Congress to require petitioners—before displacing long-time residents and seizing homes through eminent domain—to also consider whether their plan will have a discriminatory effect and, if so, whether a less discriminatory alternative would serve petitioners' legitimate interests. As Justice Thomas explained in his dissent in *Kelo* v. *City of New London*, 545 U.S. 469 (2005), urban development plans in

this country have historically had the effect of disproportionately displacing racial minorities. *Id.* at 522; see *ibid.* ("Urban renewal projects have long been associated with the displacement of blacks; '[i]n cities across the country, urban renewal came to be known as 'Negro removal.'") (brackets in original) (quoting Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 Yale L. & Pol'y Rev. 1, 47 (2003)); see Institute for Justice Amicus Br. 9-34. Congress and the Secretary made a reasonable policy choice in requiring municipalities to avoid such harmful and disparate effects when those effects are unnecessary to achieving the municipalities' legitimate goals. Disparate-impact liability thus advances, rather than undermines, the core objectives of the FHA.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
JOCELYN SAMUELS
Acting Assistant Attorney General
IAN HEATH GERSHENGORN
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OCTOBER 2013

APPENDIX

Relevant Fair Housing Act Provisions

1. 42 U.S.C. 3604 provides in pertinent part:

Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

* * * * *

2. 42 U.S.C. 3605 provides in pertinent part:

Discrimination in residential real estate-related transactions

* * * * *

(c) Appraisal exemption

Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

3. 42 U.S.C. 3607 provides in pertinent part:

Religious organization or private club exemption

* * * * *

(b)(1) Nothing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this subchapter regarding familial status apply with respect to housing for older persons.

* * * * *

(b)(4) Nothing in this subchapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 802 of title 21.

* * * * *

4. 42 U.S.C. 3608 provides in pertinent part:

Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

* * * * *

Relevant Provisions of Title VII of the Civil Rights Act of 1964

5. 42 U.S.C. 2000e-2 provides in pertinent part:

Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

* * * * *

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

* * * * *

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if—

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and

the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

* * * * *

Relevant Provision of the Age Discrimination in Employment Act

6. 29 U.S.C. 623 provides in pertinent part:

Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer—

* * * * *

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age.

* * * * *

IN THE SUPREME COURT OF THE UNITED STATES

No. 11-1507

TOWNSHIP OF MOUNT HOLLY, NEW JERSEY, ET AL., PETITIONERS

v.

MT. HOLLY GARDENS CITIZENS IN ACTION, INC., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States as amicus curiae, respectfully moves that the United States be granted leave to participate in oral argument in this case and that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting respondents. Counsel for respondents has consented to an allocation of ten minutes of argument time to the United States that would normally be allotted to respondents.

The question presented in this case is whether disparate-impact claims are cognizable under Section 804(a) of the Fair Housing Act (FHA), 42 U.S.C. 3601(a).

Petitioner Mount Holly is a township located in New Jersey. In 2000, the township determined that a predominantly minority neighborhood knows as "the Gardens" was in need of redevelopment. Petitioners then implemented an evolving series of redevelopment plans, culminating in a plan to buy all the homes in the Gardens, demolish the homes, and rebuild the neighborhood. Respondents, residents of the Gardens, filed suit alleging, inter alia, that the redevelopment plan imposes a disparate impact on the basis of race in violation of Section 804(a) of the FHA. The district court granted summary judgment for petitioners and respondents appealed. The court of appeals reversed, holding that petitioners had established a prima facie case of disparate impact. The court of appeals remanded the case for further development on the question whether respondents could establish that petitioners can achieve their legitimate, substantial nondiscriminatory interests through less discriminatory means.

The Court granted the petition for a writ of certiorari limited to the question whether a disparate-impact cause of action is available under the FHA. The United States has filed a brief as amicus curiae in support of respondents. The brief

argues that the court of appeals -- like every court of appeals to have considered the question --decided correctly that Section 804(a) of the FHA encompasses disparate-impact suits.

The United States has a substantial interest in the question presented by this case. The FHA gives the Secretary of the Department of Housing and Urban Development (HUD) "authority and responsibility for administering [the FHA]." 42 U.S.C. 3608(a), 3614a. HUD recently promulgated a regulation, following notice-and-comment rulemaking, articulating the Department's longstanding interpretation of Section 804(a) as prohibiting actions with a disparate impact on a specified basis. 78 Fed. Reg. 11,460-11,482 (Feb. 15, 2013). In addition, in exercising its adjudicatory authority under the statute, HUD has long interpreted the Act to permit disparate-impact claims. See, e.g., Mountain Side Mobile Estates P'ship v. HUD, 56 F.3d 1243, 1251 (10th Cir. 1995). The Department of Justice also has authority to enforce the FHA, see 42 U.S.C. 3612(o), 3614(a)-(d), and has brought disparate-impact claims in its enforcement actions. See, e.g., United States v. City of Black Jack, 508 F.2d 1179, 1186 (8th Cir. 1974), cert. denied, 422 U.S. 1042 (1975). At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage.

The United States has regularly participated in oral argument as amicus curiae in cases presenting questions relating to the interpretation of federal antidiscrimination laws. See, e.g., Lewis v. City of Chicago, No. 08-974 (argued Feb. 22, 2010); Gross v. FBL Financial Servs., Inc., No. 08-441 (argued Mar. 31, 2009); Meacham v. Knolls Atomic Power Laboratory, No. 06-1505 (argued Apr. 23, 2008).

We therefore believe that oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record

OCTOBER 2013

November 19, 2013

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you again for giving me the opportunity to appear before the Committee on October 30, 2013. I enclose my responses to additional Questions for the Record that I received from Ranking Member Grassley.

Sincerely,

Peter J. Kadzik

Enclosure

Senator Chuck Grassley
Questions for the Record for
Peter Joseph Kadzik
Nominee for Assistant Attorney General
Office of Legislative Affairs, Department of Justice

Answering subpart questions

1. In your first set of Questions for the Record, you declined to answer the vast majority of the individual questions. In your future responses to Questions for the Record or questions in letters from Members of the Committee, will you pledge to provide individual answers to each individual question? If not, please explain why not.

I certainly intended to answer all questions in my first set of responses; however, because many questions concerned the same topic or events, I provided a narrative response because I thought that doing so would be more comprehensive and efficient. I believe that the Department's Office of Legislative Affairs should facilitate communication and information flow between the Department and Congress, and if confirmed, I will provide as much information as possible in responses to Congress, consistent with the Department's national security, law enforcement and other confidentiality interests, and will endeavor to provide individual responses.

Cooperation with the House Committee

2. In your response to my Questions for the Record, you state that you "returned to Washington from a business trip to California to *cooperate fully*, appear before the House Committee, and answer all questions posed by its Members." What do you mean by claiming that you cooperated fully? Do you mean to imply that your decision to return to Washington D.C. and testify was voluntary, rather than legally compelled by the subpoena?

By "cooperate fully," I meant that before I left for my business trip to California, I informed the House Committee on Government Reform of my scheduling conflict and offered to meet upon my return. As soon as I learned of the subpoena, I immediately returned to Washington to testify before the Committee on March 1, 2001, and provided all information sought by the Committee. As noted in my first set of responses, in my testimony, I laid out the chronology with regard to my appearance before the House Committee in the March 2001 hearing, and no Member asked me questions regarding that chronology. Chairman Burton thanked me for my appearance and testimony, and excused me early to return to California. On February 27, 2001, before I had left for California, I advised the Committee of my business commitments in California and expressed my desire to cooperate fully, writing, "I intend to fully cooperate with the Committee's efforts. I will return to Washington next week [following business commitments in California] and am willing to meet with you or your staff at a mutually convenient time."

3. Do you acknowledge that if you had refused to return to Washington D.C. to testify, that the Committee could have legitimately held you in contempt?

As soon as I was aware of the Committee's subpoena, I immediately returned to Washington to testify before the House Committee on Government Reform and did indeed testify on March 1, 2001. Because it had always been my intention to cooperate fully with the Committee, no further proceedings were necessary.

4. If your intent was to "cooperate fully" with the Committee's investigation, then why did you force the Committee to resort to compulsory process by refusing to appear voluntarily?

I intended to cooperate fully with the Committee and did not know that the Committee intended to issue a subpoena. On February 26, 2001, I received a letter from the House Committee requesting my appearance on March 1, 2001. On February 27, 2001, I responded, explaining that I had prior business commitments in California that week and reiterated my willingness to appear voluntarily before the Committee: "I intend to fully cooperate with the Committee's efforts. I will return to Washington next week [following business commitments in California] and am willing to meet with you or your staff at a mutually convenient time." When I had not received a response from the Committee before my scheduled flight to California on the morning of February 28, 2001, I proceeded with that flight.

As I explained previously, at no time prior to boarding that flight, did I have notice of the Committee's intent to issue a subpoena. As soon as I received notice that my appearance would be mandatory, I returned to Washington immediately and testified before the House Committee. As noted previously, I laid out the chronology with regard to the circumstances leading to my appearance before the House Committee in my sworn testimony at the March 2001 hearing and did not receive questions regarding that chronology.

<u>Awareness of Committee's intent to issue subpoena</u>

5. Regarding your efforts to verify your claim that no one at your firm was aware of the Committee's intent to require your testimony by subpoena, your response to my Questions for the Record states, "Furthermore, at the time of my March 13, 2002 letter, I had consulted with my colleagues at Dickstein Shapiro and had no knowledge that anyone at the firm had notice of the Committee's *attempt to serve* the subpoena prior to my boarding the noted flight to California (February 28, 2001)." Did you have any knowledge that anyone at the firm had notice of the Committee's ***intent to issue*** a subpoena?

No, I did not know that anyone at the firm had notice of the Committee's intent to issue a subpoena.

6. According to the contemporaneous Committee staff notes, two of the three attorneys at your firm who were aware of the Committee's intent to subpoena you also indicated prior to your boarding the plane for California that they were not "authorized to accept service" of the subpoena informally on your behalf. Did you have any communications with anyone about whether you would cooperate with informal service of a subpoena by authorizing its acceptance on your behalf? If so, please describe those communications in detail.

I did not know that the Committee intended to issue a subpoena to me and had not had discussions with my colleagues regarding service of a subpoena.

7. In your answers to Questions for the Record, you indicated that, "at the time of my March 13, 2002 letter, I had consulted with my colleagues at Dickstein Shapiro and had no knowledge that anyone at the firm had notice of the Committee's attempt to serve the subpoena prior to my boarding the noted flight to California February 28, 2001)." Do you mean to indicate that your colleagues failed to inform you that they had refused to accept informal service of the subpoena on your behalf?

I wish that I could be more helpful on this matter, but there appear to be differing recollections among attorneys at Dickstein Shapiro and Committee staffers regarding conversations that may have occurred more than 12 years ago, and in which I did not participate. Because I was not involved in these conversations, I cannot shed light on whose recollection is more accurate, but I can explain the facts surrounding my departure for California. At no time prior to boarding my scheduled flight to California on February 28, 2001, was I advised of the Committee's intention to issue a subpoena, and as soon as I learned that the Committee expected my testimony on March 1, 2001, I immediately returned and testified fully.

8. One of the questions you failed to answer in your responses to Questions for the Record was: "Did you check the accuracy of your letter with your colleagues at the firm before sending it? If not, then why did you make a claim beyond the extent of your personal knowledge without having any basis for knowing whether it was true?" Please answer this question and indicate specifically whether or not you ever shared a draft of your letter or the final version with your colleagues at the firm.

Yes, I shared a draft with my colleagues.

9. When you read the response from the Committee dated March 15, 2002 expressing concern about the claim in your letter that no one at the Committee informed anyone at your firm of the subpoena, did you have any concern that your representation might not have been true? If not, please explain why not.

When I read the Committee's draft report, I was concerned because it seemed to suggest that I knew of the Committee's intent to issue a subpoena before I left for California, which I did not. As I have explained, at no time prior to boarding my

scheduled flight to California on February 28, 2001, did Committee staff or anyone at Dickstein Shapiro advise me of the Committee's intent to issue a subpoena, nor did I have knowledge that anyone at the firm had notice of any attempt by the Committee to serve the subpoena prior my boarding the noted flight.

10. The final version of the report described the exchange of letters between you and the Committee and concluded with regard to your claim that no on at your firm was aware of the subpoena, "It is troubling that Peter Kadzik would make a false assertion that is so easily disproved." What steps, if any, did you take to ascertain whether or not your claim might have been inaccurate, and if so, correct the record? If none, then please explain why not.

I do not believe that I made any false assertion. Please note the extensive written record regarding this matter, which includes sworn testimony (2001 and 2013), letters (2001 and 2002), and responses to your previous Questions for the Record (2013).

11. Do you agree to testify voluntarily before this Committee without insisting on compulsory process?

Yes, if I am fortunate enough to be confirmed, I will testify voluntarily, consistent with Department guidance.

12. If a disagreement arose between you and this Committee about whether and when you would agree to testify, and if this Committee indicated an intent to require your attendance through compulsory process, would you agree to accept informal service of process on your behalf by your colleagues at the Office of Legislative Affairs? Or would you insist on in person service of compulsory process?

I do not expect there to be any disagreement, but it is my understanding that the Department has accepted informal service through staff in the Office of Legislative Affairs (OLA) in the past and I would expect that practice to continue.

Marc Rich representation

You did not answer the following questions. Please answer each one individually, numbering your responses accordingly:

13. I understand that you billed billionaire tax fugitive Marc Rich for approximately 12 hours of work performed in 1999 and 2000 as part of your representation of him in his pardon application process. How much were you paid for these 12 hours of service?

As stated in my first set of responses, I received no additional compensation beyond my allocated share as a firm partner for work on the Rich matter. I believe the firm billed for legal services and received compensation for services rendered; however, I

did not prepare, review or approve these bills. Therefore, I do not know any specifics with regard to the legal bills or the amount or timing of compensation received by the firm for this work.

14. Were you paid on any other occasions by Marc Rich, Pincus Green, or any entities associated with either of them?

I never received any personal compensation from these individuals or any entities associated with them. As stated in my first set of responses and above, I received no additional compensation beyond my allocated share as a firm partner for work on matters related to Mr. Rich or Mr. Green. I believe the firm billed for legal services and received compensation for services rendered; however, I did not prepare, review or approve these bills. Therefore, I do not know any specifics with regard to the legal bills or the amount or timing of compensation received by the firm for work related to Mr. Rich or Mr. Green.

15. You testified at the House hearing that you were consulted in the late 1980s by other lawyers for Marc Rich in the early years after he fled to Switzerland for advice on how to approach the Southern District of New York about a possible settlement. Were you compensated for your advice?

As stated in my first set of responses and above, I received no additional compensation beyond my allocated share as a firm partner for work on matters related to Mr. Rich. In fact, I do not recall whether I recorded any time for the noted consultations. I also have no knowledge of whether the firm billed for such time, if any, or received compensation for services rendered. If the firm did bill for such time, I did not prepare, review or approve these bills. Therefore, I do not know any specifics with regard to any such legal bills or the amount or timing of compensation received by the firm for this work.

16. Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity? If not, why not?

My recollection of these events is that Mr. Rich's attorneys sought his return to the United States; therefore, such advice on my part was not called for.

17. You also testified at the House hearing that you were consulted again in 1999 about another effort to settle the case while Rich was still a fugitive. You testified that your advice was, "that I thought that approaching the Justice Department, rather than the U.S. Attorney's Office would be more fruitful." Were you compensated for your advice on this occasion?

As stated in my first set of responses and above, I received no additional compensation beyond my allocated share as a firm partner for work on matters related to Mr. Rich. I do not recall whether I recorded any time for these consultations. I believe the firm billed for legal services and received compensation

for services rendered; however, I did not prepare, review or approve these bills. Therefore, I do not know any specifics with regard to the legal bills or the amount or timing of compensation received by the firm for this work.

18. Did you encourage Rich's attorneys to attempt to persuade him to return from his fugitivity on this occasion? If not, why not?

My recollection of these events is that Mr. Rich's attorneys sought his return to the United States; therefore, such advice on my part was not called for.

19. Why did you think the Justice Department would be more likely to negotiate with a billionaire tax fugitive than the U.S. Attorney's Office would?

I did not believe that the Department would be more likely to negotiate; I simply suggested an alternative approach.

20. In your response you stated that, "My colleagues also consulted me to gain insight into the status of Mr. Rich's pardon application at the White House." What insight did you have into the process that your colleagues did not have?

My colleagues simply sought to learn the status of Mr. Rich's pardon application and therefore, I made an inquiry to that effect.

Discrepancies in testimonies of Kadzik and Podesta at the 2001 hearing

21. You did not specifically answer the following question. Please provide an answer to it. Do you believe that the primary reason that you were hired was your previous relationship with Mr. Podesta and thus your ability to access the President's Chief of Staff and obtain information about the state of internal deliberations about the pardon?

Please note that I was not hired by Mr. Rich. As stated in my first set of responses, my firm represented Mr. Rich over the course of many years, primarily though services provided by Messrs. Leonard Garment, Michael Green, and Lewis Libby. During this decades-long representation, these members of the firm consulted me occasionally on various matters. In this case, they asked me to inquire about the status of the pardon application and therefore, I made an inquiry to that effect.

22. In retrospect, do you have any concern about the potential appearance that you were paid primarily because of who you knew at the White House? If not, please explain why not.

No; as explained previously, I was not hired by or paid individually by Mr. Rich. My firm represented Mr. Rich over the course of many years, primarily though services provided by Messrs. Leonard Garment, Michael Green, and Lewis Libby. During this decades-long representation, these members of the firm consulted me occasionally on various matters. In this case, they asked me to inquire about the status of the pardon application and therefore, I made an inquiry to that effect.

23. The normal method for obtaining information about the procedural status of a pardon is to ask the Pardon Attorney at the Department of Justice. Why did you believe it was necessary and appropriate to contact the White House Chief of Staff for a mere procedural inquiry rather than the Pardon Attorney?

We understood that the application was under consideration at the White House. My colleagues asked me to inquire about the status of Mr. Rich's pardon application and therefore, I made an inquiry to that effect.

Privacy Act

You did not provide a specific answer to the following three questions. Please answer each one individually.

24. Since the OLC opinion was written after the Second Circuit decision, shouldn't the case at least have been cited and analyzed in the opinion? Does the fact that it ignores relevant legal precedent make the OLC opinion less persuasive? Why or why not?

As you know, I did not write or review the OLC opinion at the time it was written, nor was I at the Department at the time it was written. I do not know whether OLC considered the case to be relevant legal precedent.

25. The Privacy Act does not address the Congressional exemption in terms of the origin of a request. It does not even refer to any request from any source. Rather, it simply exempts disclosures *to a committee*. In other words, the statutory structure conditions the exemption on the *recipient* alone. Given the plain words of the statute, do you agree that so long as the disclosure is made *to a committee*, that it qualifies for the Congressional exemption? Why or why not?

It is my understanding that when the Department discloses information to a Committee of Congress under the relevant Privacy Act exemption, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

26. Given the above, do you agree that a request is not even necessary—the Department can volunteer Privacy Act information, so long as the recipient of the volunteered information is a committee? Why or why not?

It is my understanding that the Department's long-standing practice is not to disclose information covered by the Privacy Act except in response to requests from Committee Chairmen.

27. The OLC memo states: "[A] disclosure of Privacy Act information *solely* to a ranking minority member is not a disclosure to the committee, and the congressional-disclosure

exception is therefore unavailable." However, do you agree that so long as the disclosure is made to the committee through both the chairman and ranking member, that disclosure is authorized by the Privacy Act? Why or why not?

It is my understanding that when the Department discloses information to a Committee of Congress under the relevant Privacy Act exemption, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

28. Is it my experience that the Department's policy and practice is to transmit reports, correspondence, and other communications, including those that contain Privacy Act information, *to a committee* by sending them separately to both the chairman and the ranking member, as opposed to sending them only to the chair. Is that consistent with your understanding?

It is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

29. The OLC memo asserts, without any citation to legal authority, "As a general matter, ranking minority members are not authorized to . . . *act as the official recipient of information* for a committee[.]" What is the basis for this assertion?

While I am not in a position to elaborate on the OLC opinion, it is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman *and* Ranking Member of the Committee.

30. The court in *Devine* wrote: "It is undisputed that the IG addressed and sent his letter regarding the OIG investigation and the MSPB's decision to Congressman Gallegly in his official capacity as a member of the Subcommittee, not as an individual member of Congress." Representative Gallegly was neither the chair nor the ranking member of the Committee or the Subcommittee, merely a member. How do you square this language from the court's opinion with the assertion that members of a committee other than a chairman are not authorized by the statute to receive Privacy Act information?

The court in *Devine* indicated that the disclosure was made "to Congressmen Smith and Gallegly, in their capacities as, respectively, Chairman and Member of the Subcommittee." 202 F.3d at 549. As described above, it is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

31. How is the Department's own policy and practice of transmitting information to both the chairman and separately to the ranking member as a mode of disclosing it to a committee

consistent with the OLC's assertion that ranking members are not authorized to receive information disclosed to a committee?

I do not believe that OLC has asserted that Ranking Members are not authorized to receive information disclosed to a Committee. It is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

32. The next line of the OLC memo says, "We understand that the ranking minority member has not received such an authorization from the Finance Committee." What is the legal authority to support the assertion that a ranking member must have authorization from a chairman in order to merely receive information disclosed to a committee?

I do not understand the OLC memo to require Ranking Members to have authorization from a Chairman to receive information disclosed to a Committee in response to a Chairman's request. As described above, it is my understanding that when the Department discloses information to a Committee of Congress, the Department provides copies of that information to the Chairman and Ranking Member of the Committee.

33. If confirmed, under your leadership would the Department disclose Privacy Act information to *only* the chairman of a committee if the chairman of the committee requested that information and withheld authorization from the ranking member to receive that information? Or would you insist on providing the information to both the majority and the minority on the committee even in the absence of the chairman's authorization for the minority to receive it? Please explain why or why not.

If fortunate enough to be confirmed, I would seek to ensure that the Department continues its practice of disclosing information to Committees of Congress by providing copies of that information to the Chairman and Ranking Member of the Committee.

34. On October 28, 2013, the Department disclosed Privacy Act information involving ATF Special Agent John Dodson to the staff of the Ranking Member of House Oversight and Government Reform Committee. Did the Chairman of that Committee provide authorization to the Ranking Member to receive it? If not, then why did the Department make that disclosure in the absence of the Chairman's authorization for that Ranking Member to receive it?

It is my understanding that the House Oversight Committee—through Chairman Issa—had requested the information related to Mr. Dodson. Accordingly, the Department disclosed information to the House Oversight Committee by providing that information to the Chairman and Ranking Member of the Committee.

35. You did not specifically answer the following question. Please provide a response. Congress is capable of limiting its own access to records depending on the identity of an appropriate requestor. It does so in the context of tax return information under 26 U.S.C. § 6103 by allowing disclosure to Congress only upon request of the Chairman of the Finance or Ways and Means Committees or the staff director of the Joint Tax Committee. Given that no such restriction appears in the text of the Privacy Act, why should disclosure be conditioned on the identity of a requestor, as asserted in the OLC opinion?

The Privacy Act's exemption (b)(9) applies to requests from Committees of Congress. The OLC opinion explains the Department's position that a Ranking Member or individual member of the Committee other than the Chairman cannot exercise the power of the Committee.

36. In your previous responses, you assert that, "The Department's position is well grounded in the December 5, 2001, OLC opinion, which cites to a Congressional Research Service (CRS) report that also supports the Department's position." However, the CRS memo cited in the OLC opinion merely describes the uncontroversial fact that minority members may not exercise on their own the power of the Committee to compel the production of documents or testimony. The quoted portion from CRS in the OLC opinion further states: "Individual members may seek the voluntary cooperation of agency officials or private persons." Nothing in text of the Privacy Act, the Department's policy, or the Department's practice suggests that compulsory process is required in order to authorize disclosures of Privacy Act information to Congressional committees. A reply to chairman's request is also a voluntary cooperation of an agency. So how does the CRS report support the Department's position?

The Privacy Act's exemption (b)(9) applies to requests from Committees of Congress. The OLC opinion explains the Department's position that a Ranking Member or individual member of the Committee other than the Chairman cannot exercise the power of the Committee, and the CRS report supports this position. I do not understand the analysis to turn on whether there has been compulsory process.

Questions arising from matters before your time at the Department

37. You have repeatedly stated that since you were not employed by the Department in October 2012, you have no information responsive to questions regarding whether ATF's briefing on William McMahon's outside employment complied with the Privacy Act. However, you were able to represent that the third party meeting policy has "long been communicated to Congressional staff," even though those alleged representations also pre-date your time at the Department. Have you sought information about the circumstances of the McMahon briefing in order to answer my questions as you similarly sought information about the third party meeting policy in order to answer my questions? If not, will you do so and provide the answers to the questions regarding the circumstances of the McMahon briefing?

While I have sought to provide information in response to your questions about Department policies, your question here seeks details about decisions in a particular matter (rather than a longstanding Department policy) that were made before I joined the Department. I have asked my staff to inquire further into the circumstances of ATF's briefing on William McMahon's outside employment and to follow up with staff.

38. Given that I already asked in a letter about the McMahon briefing, why didn't you seek to become familiar with the circumstances under which it occurred before responding to my letter or to Questions for the Record?

I have asked my staff to inquire further into the circumstances of ATF's briefing on William McMahon's outside employment and to follow up with staff.

ATF Briefing Documents

39. I have now twice made a document request that you have ignored. The initial request in my October 28, 2013 letter stated: "Prior to your confirmation hearing, I would appreciate a written explanation for these events, to include **copies of *all records* relating to communications to and from your office *related to this briefing*.**" In your hearing, you stated: "I interpreted your letter to mean documents with respect to the Privacy Act advice, and to the best of my knowledge, there are no documents." I clarified in Questions for the Record that I was not just seeking documents with respect to Privacy Act advice, but wanted **all records related to this briefing**, to include any e-mails related to the scheduling of the briefing or any other issues surrounding the briefing. I reiterated the request in Questions for the Record. In response, you simply wrote: "[T]here are no documents setting forth an instruction to exclude your staff." My request extends beyond merely documents setting forth an instruction to exclude my staff. My request was for all documents related to the briefing. Will you provide the documents? If not, please explain why not.

The Department does not disclose documents related to the scheduling and planning of briefings except in the most extraordinary of circumstances. I understand that facts and circumstances of the underlying matter—Mr. Dodson's request to engage in outside employment—have been relayed to your staff and that ATF has been providing the House Committee on Oversight and Government Reform with the documents it requested concerning Mr. Dodson's application for outside employment.

Third Party Meeting Policy

You did not specifically answer any of the three following questions. Please answer each one individually.

40. Please explain the background and history that led to the development of the third party meeting policy. Please include a description of when and why this policy arose.

I understand that the third party meeting policy arose over time when it became clear that there is a risk of real or perceived political pressure if the Department agrees to take meetings with a Member of Congress and a third party in whose matters the Member has an interest. This policy applies to situations in which the third party has a matter in litigation with the Department, or simply when the third party has an interest in the Department making a certain policy decision. This policy has been upheld and applied consistently throughout Administrations.

41. Please provide any legal precedent that requires the third party meeting policy. If there is no relevant legal precedent, please indicate that there is none.

It is my understanding that the third party meeting policy is based upon separation of powers considerations.

42. Is the issue on which I requested to meet with the DEA Administrator and the Comptroller General in current litigation? If not, how can you cite this as a reason for denying the meeting with GAO and DEA? *Why* did you cite this as a reason in your confirmation hearing?

I did not intend my answer to encompass only litigation matters, and as my previous responses to your Questions for the Record indicate, the policy extends beyond matters in litigation to matters of policy.

December 11, 2013

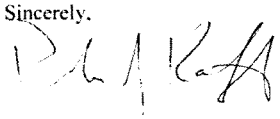
The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you again for giving me the opportunity to appear before the Committee on October 30, 2013. I enclose my responses to additional Questions for the Record that I received from Ranking Member Grassley.

Sincerely,



Peter J. Kadzik

Enclosure

Senator Chuck Grassley
Questions for the Record for
Peter Joseph Kadzik
Nominee for Assistant Attorney General
Office of Legislative Affairs, Department of Justice

Response to IRS Targeting Letter from House Committee on Oversight and Government Reform

On December 2, 2013, Chairman Darrell Issa on the House Committee on Oversight and Government Reform and Chairman Jim Jordan of the Subcommittee on Economic Growth, Job Creation and Regulatory Affairs copied me on a letter to Federal Bureau of Investigation (FBI) Director James Comey. The letter involves questions Chairman Issa and Chairman Jordan had posed to the FBI regarding its investigation into findings of the Treasury Inspector General for Tax Administration (TIGTA) report regarding the Internal Revenue Service (IRS) targeting applicants for tax-exempt status based on political belief.

According to the letter, Monique Kelso, Unit Chief of the FBI Office of Congressional Affairs, stated on November 18, 2013 that the FBI "will not produce a single document" in response to the Committee's request. Instead, Ms. Kelso represented that Valerie Parlave, Director of the FBI's Washington Field Office and the agent responsible for the FBI's investigation, would be willing to meet with Chairman Jordan to discuss the Committee's requests and the Committee's questions about the FBI's investigation. That day, Chairman Jordan's staff e-mailed FBI Congressional Affairs with several dates and times for the meeting.

On November 19, 2013, Ms. Kelso's colleague, Kirk Melquist, responded: "Sorry for the delay, I am waiting for guidance from DOJ and will give you a status as soon as I hear something." On November 20, 2013, both Ms. Kelso and Mr. Melquist called Committee staff. According to the letter, "Ms. Kelso stated that she contacted several individuals within the Department of Justice via e-mail about the FBI's proposed meeting with Chairman Jordan, including Peter Kadzik, the Principal Deputy Assistant Attorney General for Legislative Affairs . . . ." Ms. Kelso also said that she was withdrawing the offer for Chairman Jordan to meet with Ms. Parlave.

Please answer each question individually.

1. Did you receive an e-mail from anyone at the FBI requesting guidance on this issue?

   No, no one at the FBI emailed me regarding this issue before the Federal Bureau of Investigation received Chairman Issa's and Representative Jordan's letter on December 2, 2013.

2. Did you respond, via e-mail or any other form of communication? If so, in what form and what was your guidance?

   I did not provide any guidance to FBI on this issue.

3. Did you discuss this matter with any of your colleagues in the Office of Legislative Affairs? If, what was your position?

Through communications with my staff in the Office of Legislative Affairs, I was aware that FBI was in communication with staff of the House Oversight and Government Reform Committee regarding the Committee's request for documents from an open investigation. I took no position on the matter because it was my understanding that FBI had made the determination that, consistent with longstanding Department policy, it was unable to provide non-public documents or a briefing regarding the pending law enforcement matter.

Privacy Act

4. You stated in response to question 36: "The Privacy Act's exemption (b)(9) applies to requests from Committees of Congress." I am aware of no language in the Act stating that (b)(9) refers to "requests" or a "request" from Congress. It simply authorizes disclosures to committees. What specific language in the Act do you believe refers to a request from Congress?

It is my understanding that it is the Department's longstanding policy to provide Privacy Act protected information to Committees of Congress, under exemption (b)(9), only when that information is requested by the Chairman of a Committee of Congress. The December 5, 2001, OLC opinion sets forth the Executive Branch's position on disclosures of Privacy Act protected information to Congress and the reasons for that position.

5. The Privacy Act's exemption (b)(7) explicitly states that it only applies "if the head of the agency or instrumentality [conducting a civil or criminal law enforcement activity] has made a written request to the agency which maintains the record . . . ." Do you believe the same standard of requiring a request applies to (b)(9) even though that language was omitted from (b)(9)? If so, why?

Because I am not an expert on the Privacy Act, I am not in a position to answer this question.

6. Does the Privacy Act's exemption (b)(6) require a written request from the National Archives and Records Administration in order to disclose information for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has sufficient historical or other value to warrant its continued preservation by the United States government? If not, why not?

Because I am not an expert on the Privacy Act, I am not in a position to answer this question.

7. Does the Privacy Act's exemption (b)(12) require a written request from a consumer reporting agency in order to disclose information? If not, why not?

Because I am not an expert on the Privacy Act, I am not in a position to answer this question.

8. You stated in response to question 26: "It is my understanding that the Department's long-standing practice is not to disclose information covered by the Privacy Act except in response to requests from Committee Chairmen." Is it your belief that this practice is legally required by the statute? Why or why not?

As I have explained above, I am not an expert on the Privacy Act. The December 5, 2001 OLC opinion sets forth the Executive Branch's position on disclosures of Privacy Act protected information to Congress and the reasons for that position.

9. Do you believe that it is legally permissible and within the discretion of the Department to make disclosures of such information to a Committee (i.e. to the Chairman and the Ranking Member) in the absence of a chairman's request if it chose to depart from its previous practice? Why or why not?

As I have explained above, I am not an expert on the Privacy Act. The December 5, 2001, OLC opinion sets forth the Executive Branch's position on disclosures of Privacy Act protected information to Congress and the reasons for that position.

<u>ATF Briefing Documents</u>

10. After I made the request a third time, you responded to question 39: "The Department does not disclose documents related to the scheduling and planning of briefings except in the most extraordinary of circumstances." Why not?

It is my understanding that the Executive Branch has a long-standing practice of protecting these types of documents because they implicate substantial Executive Branch confidentiality interests and separation of powers principles. In addition, disclosing them could have a chilling effect on the Department's ability to respond to congressional inquiries.

11. Your response to question 39 also stated: "I understand . . . that ATF has been providing the House Committee on Oversight and Government Reform with the documents it requested concerning Mr. Dodson's application for outside employment."

The request to which you refer was an October 10, 2013 letter from Chairman Darrell Issa and myself. There was not a separate request that was exclusive to the House Committee on Oversight and Government Reform. It was a joint request. Does the Department intend to withhold documents from me and provide them only to the House Committee? If so, why?

It is my understanding that ATF has been providing its responses both the House Committee on Oversight and Government Reform and to the Senate Judiciary Committee, including your Committee staff.

12. Contrary to your response to question 39, ATF has not been providing the documents we requested concerning Mr. Dodson's application for outside employment. Other than the November 22, 2013 ethics opinion rendered by the Department's Ethics Office, which was written well after mine and Chairman Issa's October 10, 2013 request, all documents produced by ATF have related to requests by other ATF employees. Despite several repeated reminders from congressional staff, ATF has thus far failed to respond to the second request in our letter: "All documents, including e-mails, relating to ATF's decision to deny Special Agent Dodson's Request to Engage in Outside Employment."

    On December 3, 2013, staff for the House Committee on Oversight and Government Reform e-mailed ATF:

    > [W]hen is ATF going to provide *any* documents pursuant to [the] second request in the October 10 letter? It has now been nearly two months since Chairman Issa and Senator Grassley sent their letter, and we are five weeks removed from John Hageman's comment that the documents would take two weeks to compile. When is ATF planning on producing documents? The unnecessary and unexplainable delay coming from ATF gives the impression that ATF is yet again unwilling to cooperate with the Chairman's request and that the documents may need to be obtained through other means.

    Why did you state in your response that ATF had been providing these documents when that is not true?

    It is true that ATF has been providing requested documents to the House Committee on Oversight and Government Reform and the Senate Committee on the Judiciary, including your Committee staff. It is my understanding that ATF has provided your Committee staff with responses to questions 1, 3, and 4 of the Committees' joint October 10, 2013, inquiry, and has explained that its search for and review of documents responsive to question 2 is well underway. In its email response to the email quoted above, ATF explained that the two-week timeframe referred to the initial electronic search for documents; ATF is now reviewing the results of that search to determine which documents are responsive to the Committees' request. In addition, I understand that ATF has been in frequent communication with the Committees' staffs regarding the status of the search and review of these documents, as well as to respond to other questions from the Committees' staffs.

13. What is the reason for the delay in producing these documents?

As ATF has explained to the Committees' staffs, ATF is reviewing the documents it has collected and will provide responsive material to the Committees as soon as its review is complete.

14. Have you given ATF any guidance on the production of these documents, and if so, what was your guidance?

No.

Questions for the Record
Senator Ted Cruz

Responses of Matthew F. Leitman
Nominee, United States District Court for the Eastern District of Michigan

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to approach each case impartially, to focus carefully and narrowly on the issues presented, and to decide each case by applying governing precedent to the facts of the case. I have not studied the judicial philosophies of any individual justices in sufficient detail to determine which of their philosophies is most analogous to mine. I have tremendous respect for the Supreme Court as an institution and would faithfully apply all of its decisions to the cases before me.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If I am fortunate enough to be confirmed, when confronted with a case presenting a question of constitutional interpretation, I would be guided by the precedents of the Supreme Court and the United States Court of Appeals for the Sixth Circuit concerning the proper framework for resolving constitutional questions. I am aware that in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court looked to the original understanding of the constitutional text by ordinary citizens at the time of its adoption in resolving a constitutional question, and I am committed to following *Heller* and other binding constitutional interpretation precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: As a district judge, I would not overrule a precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The Supreme Court's decision in the *Garcia* case is binding precedent that all district judges are required to follow and apply. If confirmed, I would follow *Garcia* (and other relevant precedents from the Supreme Court and Sixth Circuit) where applicable.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: If confirmed and presented with a case concerning the extent of Congress' power under the Commerce Clause, I would follow applicable Supreme Court and Sixth Circuit precedent. I am aware that in *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), the Supreme Court acknowledged that under the Commerce Clause, Congress may regulate: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities that have a substantial relation to interstate commerce. *See also United States v. Morrison*, 529 U.S. 598, 608-09 (2000). I also recognize Justice Scalia's conclusion in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring in the judgment), that under the Supreme Court's precedents "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce."

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has explained that "[t]he President's authority to act, as with the exercise of any government power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (Jackson, J., concurring)). If confirmed, I would follow *Medellin* and other relevant Supreme Court and Sixth Circuit precedent concerning the extent of the President's authority.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: According to the Supreme Court, a right is "fundamental" for purposes of the Due Process Clause if it is "objectively, 'deeply rooted in this nation's history and tradition,' and implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted). If confirmed, I would follow Supreme Court and Sixth Circuit precedent regarding the determination of whether a right is "fundamental" for substantive due process purposes.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that "equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976).

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: The Supreme Court addressed the issue of racial preferences in higher education in *Grutter* and, more recently, in *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013). If confirmed, I would follow and apply *Grutter* and *Fisher*.

Senator Chuck Grassley
Questions for the Record

Matthew Frederick Leitman
Nominee, United States District Judge for the Eastern District of Michigan

1. **At your hearing I asked what you believed to be a judge's role in *qui tam* cases, you responded that you would follow precedent. Could you please expound on this answer?**

   Response: I have represented defendants in approximately three qui tam cases, and I have given presentations about the development and implementation of corporate programs that are intended to insure compliance with applicable laws, including laws prohibiting the submission of false claims to the government. My involvement in these matters would not affect the manner in which I would approach qui tam cases if confirmed as a district judge. In qui tam cases, as in all other cases, I would begin by identifying the relevant statutory provision(s) and applicable precedent from the Supreme Court and the Sixth Circuit. I would then apply the statutory language and controlling precedent to the facts of the case. I would approach every case, including qui tam cases, in an entirely impartial manner and would not favor one side or the other.

2. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

   Response: No. A judge must always remain neutral and may never favor one side over the other.

3. **What is the most important attribute of a judge, and do you possess it?**

   Response: In my opinion, the most important attribute of a judge is respect – for precedent, for the other branches of government, and for the attorneys and litigants who appear before the court. I also think it is essential that a judge have an unwavering commitment to fairness and impartiality. I have these attributes.

4. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: I believe that when dealing with attorneys and parties, a judge should be firm but fair and should always treat all who appear before him with courtesy. A judge should

also have patience and should conduct himself in a manner that makes clear to the parties that he is approaching all matters before him with impartiality and an open mind. I would bring these elements of judicial temperament to the bench if confirmed.

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I am fully committed to following the binding precedents from the United States Supreme Court and the Sixth Circuit. Indeed, in my view respect for precedent is one of the bedrock principles of our legal system.

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 presented with a question of first impression concerning the interpretation of a federal statute, I would begin with the plain language of the statute. If the language, alone, did not resolve the question, I would follow the rules of statutory construction established by the Supreme Court and the Sixth Circuit to attempt to discern the statute's meaning, and I would consider the structure and context of the provision at issue. I would also carefully consider any Supreme Court or Sixth Circuit decisions construing analogous statutory provisions.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would faithfully apply the controlling precedent without any regard for my personal view of its correctness.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: When confronted with a constitutional challenge to a federal statute, a federal court must begin with the presumption that the statute is constitutional. *See, e.g., United States v. Morrison*, 529 U.S. 598, 607 (2000). Moreover, a federal statute "ought not to be construed to violate the Constitution if any other possible construction remains available." *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979). When a federal court cannot avoid reaching a constitutional question, it should declare a federal statute unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *Morrison*, 529 U.S. at 607.

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? Please explain.

Response: With the exception of English common law, it is not appropriate for judges to rely on foreign law or the views of the "world community" in determining the meaning of the Constitution.

10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I give the committee my most solemn assurance that I will set aside any political views and/or motivations when rendering decisions and that I will ground my decisions in applicable precedent and text.

11. 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 the proposition that, if confirmed, any personal views would have no place in my judicial decision making. In my nearly twenty years as a federal court litigator, I have represented a wide variety of clients – from large corporations to indigent individuals – as both plaintiffs and defendants, and that experience, along with my commitment to treat all parties equally and fairly, will enable me to dispense justice even-handedly to all who appear before me.

12. If confirmed, how do you intend to manage your caseload?

Response: I would meet with counsel and with the parties early in the litigation process, would set a fair but firm schedule and would hold the parties to the schedule, and would work hard to resolve outstanding motions and matters on my docket. Finally, I would actively encourage the parties to utilize alternative dispute resolution mechanisms (e.g., mediation, facilitation, etc.) with the hope that such mechanisms would resolve a reasonable percentage of cases on my docket.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe that judges play an important role in controlling the pace and conduct of litigation. If confirmed, I would meet with counsel early in the litigation process to establish a fair but reasonable schedule for proceedings, and I would hold counsel to that schedule. I would make myself available to parties promptly to resolve discovery disputes in order to avoid having those disputes bog down the litigation. I would hear and resolve motions promptly.

14. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: As a judge, I would begin the decision-making process by giving the parties a full and fair opportunity to present their arguments and positions. I would then look first to statutory language (if the case involved a question of statutory interpretation) and for binding precedent from the Supreme Court and/or Sixth Circuit. If there were no binding precedents, I would look for persuasive decisions from other federal courts. I would resolve cases by applying the relevant precedents to the facts before me. I expect that the most challenging aspect of the transition from private practice to judicial office will be attempting to learn new areas of the law in which I have not practiced, but I am committed to doing the work and study necessary to understand issues that are new to me. I also anticipate that adjusting to a new and comparatively isolated work environment that does not include my outstanding colleagues at my law firm will be a challenging aspect of my transition.

15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

16. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on November 6, 2013, and then prepared my responses. I next discussed my responses with a representative of the Department of Justice. I authorized the Department of Justice to submit my responses to the Committee.

17. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Judith Ellen Levy
Nominee, U.S. District Judge for the Eastern District of Michigan

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I believe that a judge should approach each case with an open mind and be fair, impartial, and respectful to all participants in the process. A district court judge should also apply established law to the facts in each case in order to reach a carefully reasoned and well-articulated decision.

I am most familiar with the judges I practice in front of and I have not studied the judicial philosophies of Supreme Court Justices on the Warren, Burger or Rehnquist Courts.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: I believe that constitutional interpretation should be undertaken by following Supreme Court and Sixth Circuit precedent. For example, the Supreme Court has applied originalism, and specifically, original public meaning, in cases including *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would follow Supreme Court precedent in all cases.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: I cannot think of any circumstance in which I would overrule precedent as a district court judge.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed, I would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), which held that certain provisions of the Fair Labor Standards Act were constitutional. However, after the *Garcia* case, in *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992), the Supreme Court struck down the imposition of federal regulations related to the purchase of guns and the handling of low level radioactive waste upon states. If confirmed, I would faithfully apply these

decisions and any other relevant Supreme Court or Sixth Circuit precedent applicable to the balance between federal and state sovereign powers as set forth in the Constitution.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court set forth parameters for analyzing the constitutionality of a statute enacted pursuant to the Commerce Clause in *United States v. Morrison*, 529 U.S. 598, 610-611, 613 (2000), and *United States v. Lopez*, 514 U.S. 549, 560-561, 566-567 (1995). In both of those cases, the Court struck down acts of Congress and highlighted the non-economic nature of the activity that Congress had sought to regulate. However, the Court did not hold that non-economic activity can never be regulated by an act of Congress, and in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia explained that "even non-economic activity . . . that is a necessary part of a more general regulation of interstate commerce" can properly be regulated. *Id.* at 37 (Scalia, J., concurring). If I am confirmed, and a case presenting this issue came before me, I would apply all relevant precedents from the Supreme Court and the Sixth Circuit.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The general standard for evaluating the President's ability to issue executive orders or actions is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-638 (1952), (Jackson, J. concurring). In order to issue an executive order or take executive action, the President must have the power directly derived from the Constitution or directly given to the President through an act of Congress. *See Id.* at 585.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

The Supreme Court has identified rights as "fundamental" when they 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 exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted).

If I am confirmed as a district court judge, I would follow Supreme Court precedent to determine whether the Court had characterized a particular right as "fundamental." If the Supreme Court has not ruled on the particular right at issue, I would follow Sixth Circuit precedent.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it classifies based on race, alienage, national origin, or gender. The Court has also ruled that heightened scrutiny should be applied when a classification burdens a right the Court has identified as "fundamental."

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If faced with a case raising the issue of the use of racial preferences in admissions decisions by institutions of public higher education, I would apply all applicable Supreme Court and Sixth Circuit precedent, including *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas*, 133 S.Ct. 2411 (2013). If confirmed to serve as a district court judge, my personal views and expectations would play no role in deciding a case on this or any other issue.

Senator Chuck Grassley
Questions for the Record

Judith Ellen Levy
Nominee, U.S. District Judge for the Eastern District of Michigan

1. **In 2009 at the Hot Topics in Fair Housing Event, you said "the issue of racial integration is the most pressing issue facing fair housing enforcers." What role do you believe the courts should play in the issue of racial integration?**

   When I gave that talk, I was speaking as an advocate for the government, which has a responsibility to enforce federal laws regarding fair housing. If confirmed as a judge, my role would be to uphold and apply the law as it stands, not to advocate for any one side.

   The role of the district court judge should be to approach every case with an open mind and be fair, impartial and respectful to all participants. A trial court judge should also apply established law to the facts in each case in order to reach a carefully reasoned and thoughtfully articulated decision. If I am confirmed to serve as a district court judge and a case is assigned to me that relates in some manner to race discrimination or racial integration, I would use this approach to handling the case. The federal courts are limited to the cases or controversies that are brought before them and in all cases must apply the law to the facts. Federal courts do not have any other specific role in the issue of racial integration.

2. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

   No. A judge should be fair and impartial to all parties and participants in the process.

3. **What is the most important attribute of a judge, and do you possess it?**

   A judge should approach every case with an open mind and be fair, impartial and respectful to all participants. A trial court judge should also apply established law to the facts in each case in order to reach a carefully reasoned and thoughtfully articulated decision. I believe these are the most important attributes of a judge, and I possess the ability to do them.

4. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should work hard and be fair, impartial, patient and respectful to all participants. I consider these to be the most important elements of judicial temperament and I meet this standard.

5. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

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 I am confirmed as a district court judge and I am faced with a case of first impression involving interpretation of a statute, I would turn first to the language of the statute. If the text is clear, I would stop there and apply the plain language of the statute to the facts of the case before me. If the statutory language did not lead to a clear understanding, I would look to the structure and context of the provision, and turn to Supreme Court and Sixth Circuit precedent interpreting similar provisions. If these were not available, I would look to relevant decisions by other Courts of Appeals for guidance.

7. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

   Response: If confirmed as a federal judge, I will apply Supreme Court and Sixth Circuit precedent in all cases regardless of whether I agree with the decisions.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

   Response: I believe that a district court judge must presume that a statute passed by Congress is constitutional and should be found unconstitutional only if it clearly conflicts with the Constitution as interpreted by the Supreme Court and relevant circuit courts, or if Congress clearly acted beyond its constitutional authority.

9. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will be grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

   Response: As an Assistant United States Attorney, I have always applied established law to the facts of any matter I have handled in order to determine whether to recommend that the United States bring a case in federal court or assert a particular defense. My own political views have never played a role in any decision I have made on behalf of the United States, and if confirmed as a district court judge, I would not permit my personal beliefs to play a role in my decision-making.

10. 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 have never permitted my personal views to play a role in how I have approached a case or matter as a practicing attorney, and I would not do this as a judge. I would put aside any personal views I might hold in order to reach a fair and unbiased decision in each case.

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? Please explain.

Response: No, I do not believe foreign law or the views of the "world community" should apply when determining the meaning of the Constitution.

12. If confirmed, how do you intend to manage your caseload?

Response: If I am confirmed as a district court judge, I will manage my caseload by working hard, staying engaged with setting scheduling orders, and referring pre-trial matters to the assigned Magistrate Judge where appropriate.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: I believe that trial court judges have a very important role to play in controlling the pace and conduct of litigation. If confirmed as a district court judge, I will strive to ensure that cases move forward in a timely and efficient manner. For example, I would take an active role in issuing scheduling orders in cases and ensuring that discovery disputes in civil cases are resolved expeditiously. I would also refer matters to the assigned Magistrate Judge where appropriate.

14. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: If confirmed as a district court judge, I will reach decisions by applying established law to the facts in each case in order to reach a carefully reasoned and thoughtfully articulated decision. I will look to the applicable Supreme Court and Sixth Circuit precedent to guide my decisions.

I expect that the most difficult part of this transition will be managing complex criminal cases with multiple defendants; however, I feel prepared to take on this challenge as a result of my experience in the United States Attorney's Office over the last thirteen years.

15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: I have not had any contact with the AAJ or any group associated with it.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

16. Please describe with particularity the process by which these questions were answered.

Response: I received these questions from the Department of Justice on November 6, 2013, and prepared my responses. I discussed my responses with a representative of the Department of Justice, and I authorized the Department of Justice to submit my responses.

17. Do these answers reflect your true and personal views?

Response: Yes.

Response of Laurie J. Michelson
United States District Judge Nominee for the Eastern District of Michigan
To Questions for the Record from Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is to fairly and impartially decide the issues before me based on the specific facts of the case and controlling law. While I review Supreme Court decisions for substantive guidance, I do not have sufficient familiarity with the body of decisions of any particular Justice of the Warren, Burger, or Rehnquist Courts to identify a single Justice whose judicial philosophy might be described as most analogous with mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If I am fortunate enough to be confirmed as a district judge, then in deciding cases involving constitutional interpretation, my obligation would be to determine whether there is binding precedent from the United States Supreme Court and United States Court of Appeals for the Sixth Circuit and to follow that precedent, including where the appellate courts have interpreted the Constitution using originalism. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (applying original public meaning).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: A fundamental responsibility of a district judge is to follow controlling precedent. If confirmed, there is no circumstance in which I would overrule controlling precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed, I would be bound by and would follow the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985), without regard to any personal agreements or disagreements with its reasoning.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has found that the Commerce Clause allows congressional regulation of three general categories of activity: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). The Supreme Court has emphasized the non-economic nature of regulated activity in invalidating certain legislation as exceeding Congress's commerce power, *see, e.g.*, *United States v. Morrison*, 529 U.S. 598 (2000) (emphasizing the non-economic nature of the activity in holding that the Commerce Clause did not provide Congress with authority to enact the civil remedy provisions of the Violence Against Women Act), *Lopez*, 514 U.S. at 567 (holding that Congress exceeded its Commerce Clause power by criminalizing the possession of firearms in a school zone because such conduct was not an economic activity substantially affecting interstate commerce). The Supreme Court has also, however, concluded that Congress may regulate non-economic activity where such regulation is "an essential part of a larger regulation of economic activity," *Lopez,* 514 U.S. at 561; *Gonzales v. Raich*, 545 U.S. 1, 34 (Scalia, J., concurring). If confirmed, I would follow these precedents and any other binding precedent from the Supreme Court and the United States Court of Appeals for the Sixth Circuit on the issue of Congress' Commerce Clause power.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court recently reiterated that "[t]he President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). If confirmed, I would apply that precedent and any other relevant precedent of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit defining the limits of a President's power.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: If I was confirmed and a case presenting this issue came before me, I would look to Supreme Court and Sixth Circuit precedent to determine whether they had held that a particular right was "fundamental." *See, e.g.*, *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (explaining 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.'" (citations omitted)).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that "strict scrutiny" applies to classifications based upon "race, alienage, or national origin," *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985), and has applied intermediate scrutiny to classifications based upon gender and illegitimacy, *id.* at 440-41. I will apply this precedent and any other relevant precedent from the Supreme Court and the Sixth Circuit.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: Since *Grutter*, the Supreme Court has recently addressed racial preferences in public higher education in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013). If confirmed, I would follow the Supreme Court's precedents on this issue without regard to any personal views or expectations.

Response of Laurie J. Michelson
United States District Judge Nominee for the Eastern District of Michigan
To Senator Chuck Grassley's Questions for the Record

1. **I asked you about your thoughts on cameras in the federal courtroom and you responded that you would follow the rules of that court. However, judges are often called upon to suggest rule changes in their courts.**

   a. **Can you please answer whether, if authorized, you would approve or disapprove of the use of audiovisual media during court proceedings?**

   Response: I appreciate the various considerations underlying the decision whether to allow cameras in the courtroom – e.g., enhancing public understanding of and confidence in the operation of the courts, ensuring litigants' rights to a fair trial and due process, and protecting the privacy and safety interests of various trial participants. Thus, if our court were to adopt a rule authorizing each individual judge to approve or disapprove the use of audiovisual media during court proceedings, I would make the decision on a case-by-case basis after analyzing the scope of the authorization, hearing from the parties, and considering the issues referenced above.

2. **You have been a magistrate judge for around three years. What have you found to be the most challenging requirement of a jurist?**

   Response: The entirety of the job is challenging, though I consider it an honor and a privilege to work hard to meet the challenges. As a Magistrate Judge, I frequently deal with complicated issues. I think about the fact that my decisions can significantly impact people's lives, whether plaintiffs or defendants, and often their freedoms. It is an awesome responsibility and it humbles me every day. I have found the greatest challenge to be deciding whether someone charged with or indicted for a federal crime should be detained pending trial. In my circuit, "[t]he default position of the law . . . is that a defendant should be released pending trial." *United States v. Stone*, 608 F.3d 939, 945 (6th Cir. 2010). Pursuant to "the Bail Reform Act, 18 U.S.C. § 3142 . . . a defendant may be detained pending trial only if a judicial officer 'finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community[.]'" *Id.* (quoting 18 U.S.C. § 3142(e)). Making this determination prior to any adjudication of guilt, with the possibility of depriving someone of their liberty is, and should be, extremely challenging.

3. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: No, it is never the role of a judge to favor one party over another. To the contrary, the role of a judge is to fairly and impartially decide the issues before him or her based on the relevant facts and controlling law and to do so for all parties.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is fair-mindedness, which is defined as having an honest, fair, and impartial way of thinking. Yes, I possess this attribute.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: My view of the appropriate judicial temperament is that a judge should treat all lawyers, litigants, and their issues with respect, patience, and a polite demeanor. I consider all of these elements important and I meet this standard.

6. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: For nearly three years as a Magistrate Judge I have been committed to following the precedents of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit faithfully and giving them full force and effect. If I was confirmed as a federal district court judge, I would continue to be committed to following those precedents.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: For cases that involve statutory or constitutional interpretation, I first look to the text of the relevant provision and utilize the canons of statutory construction to determine whether the provision's meaning was clear and unambiguous. If the language is clear and unambiguous, the statute or constitutional provision is applied as written. If the language is ambiguous, I look to precedent from the United States Supreme Court and United States Court of Appeals for the Sixth Circuit for guidance – for example, to see if they have interpreted provisions in other laws with similar wording. If further guidance is needed, I will review case law from other jurisdictions within the United States analyzing the same or analogous statutory or constitutional provisions. I follow this same approach in other types of cases as well – i.e., in the absence of controlling precedent, I review persuasive authorities from other jurisdictions that discuss and/or address the issue(s) under consideration.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: A fundamental responsibility of a district judge is to follow controlling precedent irrespective of his or her personal views regarding the correctness of the decision. I have done so as a United States Magistrate Judge for nearly three years and will continue to do so if confirmed as a district judge. At all times, therefore, I will follow the decisions of the Supreme Court and the United States Court of Appeals for the Sixth Circuit.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: I respect the role of Congress as the duly elected representatives of the American people responsible for enacting legislation. The statutes enacted by Congress are presumed to be constitutional. A Court should declare a federal statute unconstitutional only when Congress has exceeded its authority under the United States Constitution or the statute violates a provision of the United States Constitution.

10. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No.

11. **What assurances or evidence can you give the Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: As a United States Magistrate Judge for nearly three years, the Committee can review my record, including transcripts of hearings, reports and recommendations, and opinions and orders, to see that my decisions are grounded in precedent and the text of the law. Political ideology and motivation play no role in my decision-making. If confirmed as a district judge, I will continue to fairly and impartially apply the decisions of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit in all cases.

12. **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: As mentioned above, as a United States Magistrate Judge for nearly three years, the Committee can review my record, including transcripts of hearings, reports and recommendations, and opinions and orders, to see that my personal views play no role in my decision-making and that I am fair to all who appear before me. If confirmed as a district judge, I will continue to fairly and impartially apply the decisions of the United States Supreme Court and United States Court of Appeals for the Sixth Circuit for all litigants.

13. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will continue to manage my caseload effectively and efficiently both through my efforts and the efforts of my staff according to the case management procedures set forth in Question 14.

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 believe that judges have an important role in controlling the pace and conduct of litigation. As a United States Magistrate Judge, I work closely with my staff to control our docket. I monitor the electronic filings daily and actively supervise all cases from the time of filing to disposition. In addition to making sure that the parties comply with their scheduling orders and applicable local and federal rules, I conduct regular telephone and in-person status conferences to discuss and resolve case management issues. In fact, I encourage the parties to contact our chambers when discovery disputes arise and strive to resolve them informally. I also work hard to schedule hearings and issue rulings as expeditiously as possible. For criminal cases, I will certainly abide by the Speedy Trial Act. Additionally, as a current Magistrate Judge, I am confident in my ability to utilize Magistrate Judges most effectively to assist in controlling my docket. If confirmed, I will continue these case management practices and, following consultation with more experienced District Judges, modify them and/or adopt new procedures as necessary.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: My decision-making process as a Magistrate Judge is to study the record and learn the facts, research and study the controlling law and rules, consider the parties' arguments, and then fairly and impartially apply the controlling law to the relevant facts. The sources of information that I look to for guidance are the precedents from the United States Supreme Court and the United States Court of Appeals for the Sixth Circuit as well as the relevant Federal Rules of Civil and Criminal Procedure. In the absence of any controlling precedent, I consider persuasive authority from other jurisdictions within the United States.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

17. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on November 6, 2013 and promptly prepared responses which I forwarded to the Department of Justice on November 8, 2013. I then made some revisions and sent final responses to the Department of Justice on November 15, 2013.

18. Do these answers reflect your true and personal views?

Response: Yes.

Questions for Judicial Nominees
Senator Ted Cruz

John B. Owens
Nominee, United States Circuit Judge for the Ninth Circuit

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My philosophy is that an appellate court judge plays a very limited role in our judicial system. That role is to review only the case before the court under the proper standard of review, to follow binding precedent, and to base any decision solely on the facts in the record. At no time do one's personal views come into play. In carrying out one's duties, the judge always must have an open mind, be prepared through hard work, and treat the parties, staff, and fellow judges with respect. Although I cannot say that my philosophy is specific to any of the courts or Justices mentioned above, I have tremendous respect for the work ethic, intellectual abilities, and leadership skills of Justice Ruth Bader Ginsburg and Chief Justice Rehnquist.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has stated that originalism should be employed when interpreting the Constitution. If confirmed and a case presenting this issue came before me, I would follow the approach taken in cases like *District of Columbia v. Heller*, 554 U.S. 570 (2008).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: A three-judge panel cannot overrule binding precedent of the Ninth Circuit or Supreme Court. Federal Rule of Appellate Procedure 35 provides that the en banc process can overrule Ninth Circuit precedent only when the matter "involves a question of exceptional importance" or review "is necessary to secure or maintain uniformity of the court's decisions[.]" If confirmed, I would follow Rule 35 and the applicable Ninth Circuit procedures concerning en banc proceedings.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." Garcia v. San Antonio Metro Transit Auth., 469 U.S. 528, 552 (1985).

Response: *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), is binding Supreme Court precedent. If confirmed and this issue came before me, I would follow that precedent when addressing questions of state sovereign interests, as well as other binding precedent including *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has invalidated federal statutes that exceeded Congress' Commerce Clause Power, and stressed the non-economic nature of the activities that those statutes regulated. *See United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). However, the Supreme Court has not held that Congress can never regulate non-economic activity through Commerce Clause legislation. If confirmed and this issue came before me, I would carefully review binding Supreme Court and Ninth Circuit precedent concerning the limits of Congress's power under the Commerce Clause to regulate non-economic activity.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952), addressed how courts should review a President's executive orders and actions, and the Supreme Court adopted this concurrence as a majority holding in *Dames & Moore v. Regan*, 453 U.S. 654 (1981). In *Youngstown* and *Dames & Moore*, the Supreme Court set out three guideposts for reviewing the actions of the President. First, "[w]hen the President acts pursuant to an express or implied authorization from Congress, he exercises not only his powers but also those delegated by Congress. In such a case the executive action 'would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.'" Second, "[w]hen the President acts in the absence of congressional authorization he may enter 'a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain.'" In this situation, the Court must "consider[] all the circumstances which might shed light on the views of the Legislative Branch toward such action, including 'congressional inertia, indifference or quiescence.'" Third, "when the President acts in contravention of the will of Congress, 'his power is at its lowest ebb,' and the Court can sustain his actions 'only by disabling the Congress from acting upon the subject.'" *Dames & Moore*, 453 U.S. at 668-69 (quoting *Youngstown*). If confirmed and a case presenting this issue came before me, I would follow this and other relevant Supreme Court and Ninth Circuit precedent when addressing challenges to executive orders and actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court reviewed its precedent and discussed two aspects of its substantive due process clause analysis. First, the Court recognized that "the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition.'" Second, the Court recognized that it has "required in substantive-due-process cases a 'careful description' of the asserted fundamental liberty interest." *Id.* at 720-21 (citations omitted). If confirmed and a case presenting this issue came before me, I would follow *Glucksberg* and any other relevant Supreme Court and Ninth Circuit precedent applying *Glucksberg*.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Supreme Court precedent dictates that the Equal Protection Clause triggers heightened scrutiny (either strict or intermediate) when reviewing classifications like race, gender and religion. If confirmed and this issue came before me, I would follow binding Supreme Court and Ninth Circuit precedent.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed and this issue came before me, I would follow relevant Supreme Court and Ninth Circuit precedent concerning the use of racial preferences in higher education, and this would include cases like *Grutter* and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013). Any personal expectation that I might have as to this issue (or any other issue) would not be relevant.

Senator Chuck Grassley
Questions for the Record

John B. Owens
Nominee, United States Circuit Judge for the Ninth Circuit

1. **At your hearing, you said that the "a judge's primary job is determining congressional intent". This seems to be a misstatement of what is a judge's "primary job". Please clarify exactly what you meant by this statement. What is the role of judges under the Constitution and organic statutes of the judiciary?**

   Response: An appellate court judge's "primary job" in our judicial system is a limited one. That role is to review the case before him or her (so long as Article III standing exists) solely on the facts in the record, under the controlling standards of review, and with a strict adherence to Supreme Court and circuit precedent. An appellate judge may never treat an appeal as a "do-over," nor confuse his or her role with that of the legislature.

   At my hearing, when I said that "a judge's primary job is determining congressional intent," I was referring to the principle that a judge must follow the intent of Congress when interpreting a federal statute, even if he or she disagrees with the intent of Congress or believes that the law should have been written in a different way (or not at all). A judge may not permit his or her personal views to influence the interpretation of a federal statute.

2. **What is your understanding of the constitutionality of states to provide "conscience rights" to pharmacists and health care providers who refuse to facilitate abortions or fill prescriptions for contraceptives if they are personally opposed to such practices?**

   Response: I do not believe that the Supreme Court or Ninth Circuit has addressed this issue. Because a case presenting this issue could come before me if I am fortunate enough to be confirmed (and I understand that other courts are reviewing this issue), I do not believe that I can address this issue at this time. Moreover, because there is no case or controversy before me, I do not have the necessary briefing or factual record to help analyze this important question. I can say that if the Supreme Court or Ninth Circuit decides this issue, I would follow that precedent.

3. **There was a recent decision by the New Mexico Supreme Court[1] where the Court held that a photographer improperly discriminated against a gay couple when she refused to take photos for their commitment ceremony for religious reasons and, as the Court**

[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).

stated in its opinion, the Respondents are, "now are compelled by law to compromise the very religious beliefs that inspire their lives."[2]

a. How would you respond if a party in a similar case claimed this was a Freedom of Speech violation? Particularly with respect to a creative and expressive art form such as photography?

Response: I do not believe that the Ninth Circuit or Supreme Court has addressed this issue, and any decisions of the New Mexico Supreme Court are not binding on the Ninth Circuit. Because this issue could come before me if I am fortunate enough to be confirmed, I do not believe that I can address this issue at this time. Moreover, because there is no case or controversy before me, I do not have the necessary briefing or factual record to help analyze this important question. I can say that if the Supreme Court or Ninth Circuit decides this issue, I would follow that precedent, including First Amendment case law concerning speech and religion.

b. Do you think the New Mexico state legislature, by requiring companies that advertise publicly to act in this way, compels the company to speak the government's message?

Response: See 3a above.

c. How would you respond if an individual or company in this circumstance raised a Free Exercise claim?

Response: See 3a above.

4. If confirmed, what would be your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

Response: If confirmed, I would first determine whether Article III standing exists. Next, I would review the text of the statutes or regulations in conjunction with the constitutional provisions at issue, and do so in a manner that is consistent with the constitutional avoidance doctrine. I then would consult relevant precedent from the Supreme Court and Ninth Circuit.

5. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

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[2] *Id.*, Para. 90.

Response: I do not believe that evolving norms or traditions should have any role in interpreting the Constitution. As the Supreme Court has recognized, the Framers used certain language in the Constitution – such as in the Fourth Amendment – to ensure that the Constitution would continue to protect the rights of its citizens despite the changes in technology. *See Kyllo v. United States*, 533 U.S. 27 (2001).

6. **What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?**

Response: The Supreme Court has stated that "there is room for play in the joints between the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free exercise requirements, without offense to the Establishment Clause." *Cutter v. Wilkinson*, 544 U.S. 709, 713 (2005) (citation and internal quotation marks omitted). If confirmed and the issue came before me, I would apply *Cutter* and other relevant Supreme Court and Ninth Circuit precedent.

7. **Do you believe that the death penalty is an acceptable form of punishment?**

Response: Yes. The Supreme Court has held that the death penalty is permissible so long as certain procedural safeguards are observed. If confirmed and the issue came before me, I would follow that precedent.

8. **Do you believe there is a right to privacy in the U.S. Constitution?**

Response: The Supreme Court has not found a generalized right to privacy in the Constitution. However, the Supreme Court has used the term privacy when describing some of the protections that the Bill of Rights and Fourteenth Amendment guarantee. If confirmed, I would follow those precedents.

a. Where is it located?

Response: For example, the Supreme Court has used the term "privacy" when describing the protections that the Fourth Amendment guarantees. *See, e.g.*, *Kentucky v. King*, 131 S. Ct. 1849, 1862 (2011). The Supreme Court has held that the Fourteenth Amendment protects certain rights deeply rooted in our Nation's history, such as the right to have children, *Skinner v. Oklahoma*, 316 U.S. 535 (1942), to direct the education of one's children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965).

b. From what does it derive?

Response: See 8a above.

c. What is your understanding, in general terms, of the contours of that right?

Response: See 8a above.

9. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

Response: No I do not. If confirmed, I would not "read between the lines" when faced with a case that featured constitutional issues. Rather, I would follow the analysis set forth in *Washington v. Glucksberg*, 521 U.S. 702 (1997).

b. Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?

Response: No it is not. If confirmed, I would not search for "penumbras" or "emanations" when faced with a case that featured constitutional issues. Rather, I would follow the analysis set forth in *Washington v. Glucksberg*, 521 U.S. 702 (1997).

10. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 628 n.27 (2008), the Supreme Court noted that a standard of scrutiny higher than rational basis would apply in Second Amendment challenges against Federal and State gun laws. Because this issue could come before me if I am fortunate enough to be confirmed, I do not believe that I can address this issue at this time. Moreover, because there is no case or controversy before me, I do not have the necessary briefing or a complete factual record before me to help analyze this important issue. I can say that I would follow the Court's instruction in *Heller* that the standard of scrutiny would be higher than rational basis, and if the Supreme Court or Ninth Circuit subsequently provides guidance about the appropriate standard of review, I would follow that precedent.

11. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. **When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?**

Response: I do not think it is appropriate for appellate judges to conduct research outside the record of a case.

b. **When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?**

Response: If such studies are part of the appellate record, an appellate judge could consider these studies in limited situations, such as whether the district court properly admitted certain expert opinion testimony under Federal Rule of Evidence 702.

12. What would be your definition of an "activist judge"?

Response: I define an activist judge as one who decides cases based on his or her personal views, and not on an unbiased reading of the law and facts in a case.

13. What is the most important attribute of a judge, and do you possess it?

Response: Judge Wallace and Justice Ginsburg both taught me that fairness and impartiality are a judge's most important attributes, and I have seen the best judges display these attributes at the trial and appellate level. During my career, I have served as a federal prosecutor, a criminal defense attorney, a plaintiff's attorney, and a civil defense attorney. By occupying all four corners of the courtroom, I am confident that I will be fair and impartial if I am fortunate enough to be confirmed, and I believe that I have demonstrated this attribute throughout my career.

14. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

Response: In my view, collegiality is essential to the work of the circuit court. If confirmed, I would always keep an open mind, carefully consider the briefs and arguments of counsel, and listen to my colleagues. I also would be respectful to court staff at all times.

15. 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 federal judge must never forget that he or she is extremely fortunate to hold an Article III position. Accordingly, a judge at all times must be collegial to the parties, court staff, and fellow judges, and always keep an open mind and be willing to listen to others. I believe that I have shown throughout my career that I meet this standard.

16. In general, Supreme Court precedents are binding on all lower federal courts. 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.

17. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If the case involved statutory or constitutional interpretation, I would look to the text of the relevant statute or section of the Constitution. I also may look to analogous Supreme Court and Ninth Circuit precedent, and possibly to persuasive and non-binding out-of-circuit authority that had addressed the issue. At all times, I would attempt to decide the case on the narrowest ground possible.

18. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: If confirmed, I would follow all binding precedent, even if I believed that the Supreme Court or Ninth Circuit had seriously erred in rendering it.

19. 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 strive to uphold a congressional statute unless there has been a plain showing that the statute is unconstitutional. As part of this analysis, the court should, when necessary, apply the constitutional avoidance doctrine to interpret the statute in a fashion that would render it constitutional.

20. What weight should a judge give legislative intent in statutory analysis?

Response: In determining legislative intent, the Supreme Court has instructed courts to start with the text of the statute, as the text sets out what Congress intended. If the text is plain, then no further inquiry is needed as to what Congress intended. In the rare case where the text does not end the inquiry as to what Congress intended, then a lower court should follow Supreme Court and circuit authority to resolve any ambiguity as to what Congress intended.

21. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

Response: No I do not. The outcome of a case should never be influenced by the particular judge's gender, ethnicity, or other demographic factor.

22. 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? Please explain.

Response: No I do not. I do not believe that foreign law or "world community" views play any role when determining the meaning of the U.S. Constitution.

23. 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: Impartiality lies at the core of our judicial system, and I learned this both as a law clerk and as a trial attorney who has appeared before federal judges around the country. And by serving many roles in the courtroom – prosecutor, criminal defense attorney, plaintiff's attorney, and civil defense attorney – I have gained a broad perspective that will ensure that I will be fair and impartial at all times. Throughout my career, I have never based any litigation decisions on any personal beliefs that I might have.

24. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: A three-judge panel cannot overturn binding precedent of the Ninth Circuit or Supreme Court. Federal Rule of Appellate Procedure 35 provides that the en banc process can overrule Ninth Circuit precedent only when the matter "involves a question of exceptional importance" or review "is necessary to secure or maintain uniformity of the

court's decisions." If confirmed, I would follow Rule 35 and the applicable Ninth Circuit procedures concerning en banc proceedings.

25. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

If confirmed, I would confine my review to the case before me, and limit my decision to the facts in the record and the arguments made by the parties in their briefs and at oral argument. For guidance, I would look to Supreme Court and Ninth Circuit precedent, and when necessary, out-of-circuit precedent that might be persuasive though nonbinding. I also would consider the views of my colleagues before rendering any final decision.

Judges in the Ninth Circuit review a wide array of cases and areas of law, and encounter a very heavy caseload. If I am confirmed, undoubtedly I will encounter areas of law that are new to me, along with a considerable backlog of cases to decide. Both of these issues will prove difficult. To overcome this, I will work hard and put in the extra effort necessary to ensure that all parties receive a reasoned and careful decision in every case.

26. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.**

Response: No I have not.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: I am not aware of any such endorsements or promised endorsements.

27. Please describe with particularity the process by which these questions were answered.

Response: On the afternoon of November 6, 2013, I received these questions and prepared my answers. I reviewed my answers with an attorney at the Justice Department and then finalized them for submission.

28. Do these answers reflect your true and personal views?

Response: Yes.

Senator Ted Cruz
Questions for the Record

Linda Vivienne Parker
Nominee, U.S. District Judge for the Eastern District of Michigan

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy as a state court judge for nearly five years could best be characterized by faithfully upholding the rule of law by the application of controlling appellate precedent to the facts of the cases before me. If confirmed, I will continue to adhere to this most sacred principle and decide each case with impartiality, issue thoughtful decisions promptly and treat all parties that appear before me with respect. I have not studied Supreme Court history with an eye toward the judicial philosophies of the Justices, so I cannot analogize my beliefs to those of any one Justice.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has used "original intent" and "original public meaning" when interpreting the Constitution in certain cases. I would faithfully follow that precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district court judge, there would be no circumstances under which I would overrule precedent. I would faithfully follow applicable controlling precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed, to the extent that *Garcia* is controlling precedent, I would follow it and all other controlling precedent in any case before me.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court, in *United States v. Lopez*, 514 U.S. 549, 558-559 (1995), identified three general categories of activity that Congress may regulate under its Commerce Clause power: (1) the use of channels of interstate commerce, (2) instrumentalities of interstate commerce and persons or things in interstate commerce, and (3) activities that substantially

affect interstate commerce. In *United States v. Lopez, supra,* and *United States v. Morrison,* 529 U.S. 598 (2000) the Supreme Court has also articulated limitations to the reach of the Commerce Clause to certain non-economic activities. If confirmed as a district court judge and presented with a challenge to the constitutionality of a statute on the grounds that it impermissibly extended to non-economic activity, I would apply controlling precedent in making my ruling.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The power of the President to issue executive orders or executive actions "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet and Tube v. Sawyer,* 343 U.S. 579, 586 (1952).

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has stated that the "Due Process Clause specially protects those fundamental rights and liberties which are, objectively 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg,* 521 U.S. 702, 720 (1997) (citations omitted). If confirmed, I would apply the precedent of the Supreme Court and the Sixth Circuit Court of Appeals.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has ruled that "equal protection analysis requires strict scrutiny of a legislative classification when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia,* 427 U.S. 307, 312 (1976). See also *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432, 440 (1985) (noting that strict scrutiny applies to classifications based on "race, alienage or national origin" or when "laws impinge on personal rights protected by the Constitution"; otherwise "heightened" review applies to classifications based on gender and illegitimacy).

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: For nearly five years as a state court judge, any personal expectations or beliefs I might have with respect to the issues before me have been irrelevant to my judicial decisions. If I were confirmed as a federal district court judge, that will continue to be true. I will apply the controlling precedents of the Supreme Court and Sixth Circuit Court of Appeals in all areas of the law, including *Grutter* and *Fisher v. University of Texas,* 133 S. Ct. 2411 (2013).

Senator Chuck Grassley
Questions for the Record

Linda Vivienne Parker
Nominee, U.S. District Judge for the Eastern District of Michigan

1. **You indicated in your questionnaire that have unable to find notes, transcripts, or recordings for some of your speeches. Could you provide the committee with a more detailed description of the points covered in your lecture than is provided in your original questionnaire for the following talks?**

   a. **April 30, 2013: Speaker, "Public Defense Reform: The Impact on the School to Prison Pipeline"**

      Response: Respectfully, please note that as indicated in my questionnaire, the referenced remarks were provided in the year 2010, not 2013. While I am unable to recall the points that I covered with specific detail, I do know that I underscored the importance of completing a high school education, noting that many individuals who have had consistent contacts with the criminal justice system have not completed high school.

      i. **In addition to a more detailed description of this talk, can you also elaborate on "the need for enhance funding for public defense?"**

         Response: My recollection is that at the time I gave the speech, there had been a significant amount of state and national research which generated discussion in Michigan regarding the necessity of increased funding for indigent or public defense systems operating in Michigan. My remarks acknowledged the importance of this research.

   b. **April 21, 2009: Panel Moderator: "Leading Economic Transformation with Diversity"**

      Response: I was asked to moderate a discussion among university and business leaders about their perspective on the role of diversity in Michigan's economy. I am unable to recall the specifics of my brief remarks as the moderator but I likely introduced the panelists.

2. **In 2004 you stated that "fair housing must be recognized as a human right." Can you please explain further what you meant by this statement and any legal arguments you believe to back up this assertion?**

   Response: At the time that I made the referenced statement I was the director of the Michigan Department of Civil Rights. As an advocate for the Department, the referenced

statement reflected our work and recognition that where a person lives can determine the quality of basic services to which they have access and in turn have an impact on the quality of their life. In retrospect, I should have been more precise in my language, as there is no legal argument of which I am aware that I believe supports the assertion that fair housing must be recognized as a human right. As I stated in my hearing, I would not seek to find a new constitutional right in this area.

3. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?**

Response: No. There are no circumstances under which it is ever the role of a judge to favor one party over the other.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attributes of a judge are to honor the rule of law, to apply the applicable law to the facts of each case without bias or preconception, and to hold a deep and abiding respect for the unique and limited role of the judiciary. I believe that I possess these attributes and have demonstrated them throughout my service as a state trial court judge.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: I believe that the appropriate temperament for a judge is characterized by a continuous display of respect for all participants in the judicial process, open-mindedness, impartiality, and humility. I believe that I meet this standard and have applied it in my years as a trial court 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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Faithful application of Supreme Court and Circuit Court precedents is the highest duty of a federal court judge. By giving full force and effect to these precedents, both the litigants and the public at large are assured equal treatment and justice under the law. If confirmed, I will continue to adhere to these legal tenets irrespective of any personal views or opinions to the extent that I have any.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a case of first impression, I would apply the canons of statutory construction. First, I would look to the plain language of the provision in question. Only if the provision was ambiguous would I go further in the analysis. If the provision was ambiguous, I would examine precedent from the Supreme Court and the Sixth Circuit. If those courts did not provide any guidance I would then turn to other Circuit and District Courts addressing analogous provisions for persuasive, but not binding, authority.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: Whether or not I believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision, I would honor the rule of law and faithfully apply the controlling precedent of the Supreme Court and the Sixth Circuit as required by the doctrine of *stare decisis*.

9. **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 to be constitutional. It is only appropriate to declare a statute enacted by Congress unconstitutional under one of the following two scenarios: 1) where Congress has clearly exceeded its authority; or 2) where the enacted statute violates a constitutional provision based upon clear precedent established by the appellate courts.

10. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No. Neither foreign law nor the views of the "world community" are proper sources upon which a judge should rely for purposes of determining the meaning of the Constitution.

11. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: As a judge for nearly five years, my decisions have remained grounded in precedent and the text of the law rather than any underlying political ideology or motivation. During my service as a judge, I have only been overturned twice. I have consistently adhered to the rule of law and have been committed to the faithful application

of applicable precedent. There is no place for political ideology or motivation in rendering judicial decisions.

12. 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: As a trial court judge, I have faithfully applied controlling appellate precedent to each case before me and have acted consistently upon my commitment to treat each party with respect. Through adherence to the rule of law and by being respectful to all, I will continue to demonstrate to all who come before me that they will be accorded equal treatment under the law.

13. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I intend to utilize pretrial and status conferences where firm and reasonable deadlines will be established, issue rulings in a timely manner, and make myself accessible to attorneys. Further, I intend to confer with other judges of the district to learn and borrow their best practices regarding case management so that I can be fully successful in managing my caseload.

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: In my present role as a trial court judge, I deeply believe that judges have an important role in controlling the pace and conduct of litigation. If confirmed as a federal district judge, I would continue to be very clear regarding my expectations in terms of timelines. Further, I would ensure that I remain accessible to attorneys so that unexpected occurrences can be promptly addressed.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: In reaching a decision in cases that come before me, I first begin with a respectful reading of the positions of each side. If an oral argument has been made, I rely upon my copious notes and review the transcript of the proceeding. Thereafter, I thoroughly research the issues, identify the applicable appellate law and apply it to the facts of the case.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

17. **Please describe with particularity the process by which these questions were answered.**

Response: I reviewed the questions upon receipt and reflected upon each of the questions. Thereafter, I drafted a response to each of the questions, discussed them with representatives of the Department of Justice, put them in final form and authorized submission to the Committee.

18. **Do these answers reflect your true and personal views?**

Response: Yes.



AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

August 2, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of John B. Owens to the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy:

I am writing as the acting chair of the ABA Standing Committee on the Federal Judiciary as a result of the recusal of the current chair for the evaluation of the above nominee, John B. Owens.

The Committee has completed its evaluation of the professional qualifications of John B. Owens who has been nominated for a position on the United States Court of Appeals for the Ninth Circuit. As a result of our investigation, the Committee is of the opinion that for this position Mr. John B. Owens is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. Owens.

Sincerely,

Benjamin H. Hill
Acting Chair

cc: Mr. John B. Owens, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on August 2, 2013.

September 20, 2013

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
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We write to support John Owens's nomination for a seat on the U.S. Court of Appeals for the Ninth Circuit.

Each of us served alongside John as a law clerk at the Supreme Court of the United States during the 1997–98 Term. During that year, we developed a deep appreciation for John's sharp legal mind, incredible good humor, openness to all points of view, and adherence to the highest possible standards of personal and professional ethics. Since his clerkship, John served for more than a decade as a distinguished federal prosecutor, and he also practiced at two leading private law firms. Each of us holds him in the highest esteem.

John is everything one would hope for in a federal judge. Should the Senate confirm him, we are confident that he will serve with great distinction on the Ninth Circuit. We enthusiastically support his nomination.

Sincerely,

Samuel R. Bagenstos
Professor of Law
University of Michigan Law School*
Ann Arbor, MI
Law Clerk to Justice Ruth Bader Ginsburg 1997-98

* All institutional affiliations are for identification purposes only.

J. Scott Ballenger
Partner
Latham & Watkins LLP
Washington, DC
Law Clerk to Justice Antonin Scalia, 1997-98

Anthony J. Bellia Jr.
Professor of Law and Notre Dame Presidential Fellow
University of Notre Dame
Notre Dame, IN
Law Clerk to Justice Antonin Scalia, 1997-98

Paul Schiff Berman
Vice Provost for Online Education and Academic Innovation
Manatt/Ahn Professor of Law
George Washington University
Washington, DC
Law Clerk to Justice Ruth Bader Ginsburg 1997-98

Stephanos Bibas
Professor of Law and Criminology and Director of the Supreme Court Clinic
University of Pennsylvania
Philadelphia, PA
Law Clerk to Justice Anthony M. Kennedy, 1997-98

Elizabeth Cavanagh
Adjunct Professor
Washington College of Law at American University
Washington, DC
Law Clerk to Justice John Paul Stevens, 1997-98

Thomas Colby
Professor of Law
George Washington University Law School
Washington, DC
Law Clerk to Justice David H. Souter, 1997-98

Laura Dickinson
Oswald Symister Colclough Professor of Law
George Washington University Law School
Washington, DC
Law Clerk to Justice Stephen G. Breyer and Justice Harry Blackmun, 1997-98

David Friedman
Senior Vice President/Special Counsel
Boston Red Sox
Boston, MA
Law Clerk to Justice John Paul Stevens, 1997-98

Lisa Kern Griffin
Professor of Law
Duke Law School
Durham, NC
Law Clerk to Justice Sandra Day O'Connor, 1997-98

Caitlin Halligan
New York, NY
Law Clerk to Justice Stephen G. Breyer, 1997-98

Deborah Hamilton
Trial Attorney
Equal Employment Opportunity Commission
Chicago, IL
Law Clerk to Justice David H. Souter, 1997-98

Rachel A. Harmon
Sullivan & Cromwell Professor of Law
University of Virginia Law School
Charlottesville, VA
Law Clerk to Justice Stephen G. Breyer, 1997-98

Sarah O. Jorgensen
Senior Counsel
McKool Smith
Law Clerk to Chief Justice William H. Rehnquist, 1997-98

John P. Kelsh
Partner
Sidley Austin LLP
Chicago, IL
Law Clerk to Chief Justice William H. Rehnquist, 1997-98

Matthew Martens
Chief Litigation Counsel
Securities and Exchange Commission
Washington, D.C.
Law Clerk to Chief Justice William H. Rehnquist, 1997-98

Christopher Meade
Washington, DC
Law Clerk to Justice John Paul Stevens, 1997-98

Gillian Metzger
Vice Dean and Stanley H. Fuld Professor of Law
Co-Director, Center for Constitutional Governance
Columbia Law School
New York, NY
Law Clerk to Justice Ruth Bader Ginsburg 1997-98

Charles C. Moore
Trilantic Capital Partners
New York, NY
Law Clerk to Justice Stephen G. Breyer, 1997-98

Carl Nichols
Partner
WilmerHale
Washington, DC
Law Clerk to Justice Clarence Thomas, 1997-98

Mary-Rose Papandrea
Professor
Boston College Law School
Newton Centre, Massachusetts
Law Clerk to Justice David H. Souter, 1997-98

Benjamin A. Powell
Partner
WilmerHale
Washington, DC
Law Clerk to Justice John Paul Stevens and Justice Byron R. White, 1997-98

Theodore W. Ruger
Deputy Dean and Professor of Law
University of Pennsylvania Law School
Philadelphia, PA
Law Clerk to Justice Stephen G. Breyer, 1997-98

Silvija A. Strikis
Partner
Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC
Washington, DC
Law Clerk to Justice Sandra Day O'Connor, 1997-98

Harry Susman
Partner
Susman Godfrey
Houston, TX
Law Clerk to Justice Anthony M. Kennedy, 1997-98

John Wood
Partner
Hughes, Hubbard & Reed LLP.
Washington, DC
Law Clerk to Justice Clarence Thomas, 1997-98

Christopher Yoo
John H. Chestnut Professor of Law, Communication, and Computer & Information Science and Founding Director of the Center for Technology, Innovation and Competition
University of Pennsylvania Law School
Philadelphia, PA
Law Clerk to Justice Anthony M. Kennedy, 1997-98

September 3, 2013

By Mail & Email

Hon. Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
473 Russell Senate Office Building
Washington D.C. 20510

Hon. Chuck Grassley, Ranking Member
United States Senate
Committee on the Judiciary
135 Hart Senate Office Building
Washington D.C. 20510

Re: Nomination of John Owens as Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We the undersigned executives write in support of the nomination of John Owens to the Ninth Circuit Court of Appeals. In various parts of his career, we have become familiar with his professional skills and personal integrity. He has shown his commitment to public service through years of work with the Justice Department and has a profound understanding of the perspective of the individual and corporate participant in the legal process through his years of private practice. In all aspects of his career, John has shown a profound sense of fairness in justice.

As executives, we understand the importance of certainty and resolution of the litigation that is a fact of corporate existence. The backlog of cases in the Ninth Circuit undermines those principles. For those of us who know Judge Trott, whose vacancy John is nominated to, there could be no better candidate or successor to that seat. It is time to fill the position and filling it with a person of John's integrity, skill and judgment will serve the interests of all citizens within the Circuit.

We urge the Committee to swiftly and favorably act on Mr. Owens' nomination.

Respectfully,

Ira H. Raphaelson
Executive Vice President &
Global General Counsel
Las Vegas Sands Corp.

Colin Stretch
Vice President and General Counsel
Facebook, Inc.

Joseph E. Gallo
President and CEO
E. & J. Gallo Winery

Brandi R. Steege
Senior Vice President,
General Counsel & Secretary
Mindspeed Technologies, Inc.

Stan A. Mortensen
Executive Vice President and
General Counsel
Corinthian Colleges, Inc.

Linden S. Blue
Vice Chairman
General Atomics

Robert L. Adler
Executive Vice President
and General Counsel
Edison International

Steven E. Zipperstein
Chief Legal Officer, General Counsel
and Corporate Secretary
BlackBerry Ltd.

John A. Rogovin
Executive Vice President & General Counsel
Warner Bros. Entertainment, Inc.

Erin Lewin
Senior Vice President & General Counsel
Avnet, Inc.

Alec Scheiner
President
Cleveland Browns

Allen M. Katz
Interim Senior Vice President and General Counsel
Transocean Ltd.

Don J. Rosenberg
Executive Vice President and General Counsel
Qualcomm Inc.

Alan M. Cohen
Former Partner
O'Melveny & Myers

HENRY WEISSMANN
355 SOUTH GRAND AVENUE
THIRTY-FIFTH FLOOR
LOS ANGELES, CALIFORNIA 90071-1560
(213) 683-9150

September 3, 2013

Hon. Harry Reid, Majority Leader
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

Hon. Mitch McConnell, Republican Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Hon. Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
473 Russell Senate Office Building
Washington, D.C. 20510

Hon. Chuck Grassley, Ranking Member
United States Senate
Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Re: *Nomination of John Owens*

Dear Senators Reid, McConnell, Leahy and Grassley:

I write in support of the nomination of John Owens to the United States Court of Appeals for the Ninth Circuit.

I am a partner of Mr. Owens at Munger, Tolles & Olson LLP. Prior to joining Munger, Tolles, I had the honor of serving as a law clerk to Justice Antonin Scalia of the Supreme Court and Judge James L. Buckley of the United States Court of Appeals for the D.C. Circuit. I am also a past President of the Los Angeles Chapter of the Federalist Society and serve on the Executive Committee of its National Telecommunications Practice Group. Although I do not agree with President Obama on many issues, I completely agree with his nomination of Mr. Owens.

I have had the pleasure of working closely with Mr. Owens since he joined our firm in January 2012. He is a brilliant lawyer. He has exceptional judgment. He has addressed difficult ethical situations diplomatically but with a firm conviction of what is right. He is respected and liked by colleagues and opponents alike. Most importantly, he is a careful lawyer, applying the law in an honest and forthright manner. I have never seen any hint of politics in Mr. Owens's lawyering.

I have every confidence that, as a judge, Mr. Owens would apply the law faithfully, objectively, and even-handedly. Mr. Owens would be an outstanding addition to the Ninth Circuit, and I support his nomination enthusiastically.

Sincerely,

Henry Weissmann

HW:v

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001.2113
TELEPHONE: +1.202.879.3939 • FACSIMILE: +1.202.626.1700

Direct Number: (202) 879-5485
nfrancisco@jonesday.com

JP009352 September 26, 2013

The Honorable Michael S. Lee
Member, Senate Judiciary Committee
316 Hart Senate Office Building
Washington, DC 20510

Dear Senator Lee:

I write in support of the nomination of John B. Owens to a seat on the U.S. Court of Appeals for the Ninth Circuit.

I do not make this recommendation lightly. Like you, I believe in constitutional principles and limited government. Towards that end, judges should faithfully interpret and apply the Constitution as it is written. I likewise believe that the Senate's advice and consent power is critical to safeguarding these constitutional principles. The Senate should not "rubber stamp" the President's nominees. Instead, it should assure itself that judicial nominees have appropriate respect for the important but limited role that judges play in our system of separated powers and are otherwise well qualified to assume the duties of life-tenured judges. The Senate's responsibilities are, moreover, particularly important when it comes to the Ninth Circuit, given the geographic scope of that court's jurisdiction and, hence, its ability to impact millions of individuals and businesses throughout the country.

In my judgment, John possesses the intellect, qualifications, demeanor, and appropriate respect for the judicial role to warrant Senate confirmation to the Ninth Circuit. I first met John in 1997, when he served as a law clerk to Justice Ruth Bader Ginsburg and I to Justice Antonin Scalia. Prior to that, John served as a law clerk to Ninth Circuit Judge J. Clifford Wallace. Since then, I have known John both socially and professionally. John's qualifications are, of course, outstanding. Not only has he held prestigious clerkships for both conservative and liberal judges. In addition, he served the country with great distinction as an Assistant United States Attorney and has developed an outstanding reputation as a private practitioner. His skills, temperament, and demeanor, moreover, match his qualifications. John is, quite simply, one of the most delightful people that I know.

This, of course, is not to say that John and I would reach the same conclusions on any given legal issue. To the contrary, we have disagreed in the past and I am quite certain we will disagree in the future on the proper resolution of many of the important legal questions facing the country. But I firmly believe that John will approach these issues with an open mind and a strong desire to determine what the law, rather than his own personal policy preference, requires.

In any event, whatever differences John and I may have on our approach to the law, he is, without question, the very best candidate that President Obama has nominated, or is likely to nominate, to the Ninth Circuit. Indeed, I have no doubt that, if confirmed, John would move the Ninth Circuit in a more conservative direction.

In short, I strongly recommend that John be confirmed to the Ninth Circuit. Please do not hesitate to contact me if I can provide any further information. I can be reached at (202) 879-5485. Also, please note that I have sent an identical letter to Senator Cruz.

Sincerely,

Noel J. Francisco

cc: Hon. Patrick J. Leahy,
Chairman, Senate Judiciary Committee
Hon. Chuck Grassley
Ranking Member, Senate Judiciary Committee
Hon. Ted Cruz
Member, Senate Judiciary Committee

September 24, 2013

By Mail & Email

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
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of John Owens as Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We are former United States Attorneys who served under former President George W. Bush. Each of us was privileged to have John Owens work in our respective offices as an Assistant United States Attorney, and we write in support of his nomination to the Ninth Circuit Court of Appeals. John is an extremely gifted individual and a skilled attorney. While his impeccable academic credentials are impressive, that is not all John brings to this nomination. John is both smart and thoughtful, and he performs his job with the combination of judgment, skill, fairness and appropriate restraint that is so important in the world of criminal prosecution. These are the same attributes we value in our federal judges, and that is why we view John as a first-rate nominee to the federal appellate bench.

John is an experienced appellate advocate and trial attorney (one investment fraud case he tried in San Diego resulted in a 300-month sentence for the lead defendant, earning John one of the Department of Justice's highest awards). John ultimately assumed the challenging and critically important position of Criminal Chief of the U.S. Attorney's Office in the Southern District of California, which handles one of the highest caseloads in the country, and he will bring invaluable insights from that experience to the appellate bench.

In a time of rising caseloads and shrinking judicial resources, this is truly an appointment of which both parties and the President can be proud. We urge the Committee to act swiftly and favorably on Mr. Owens' nomination.

Respectfully yours,

JOHN S. GORDON
Partner, Quinn Emanuel Urquhart & Sullivan LLP
(U.S. Attorney for the Central District of California, 2001-2002)

KAREN P. HEWITT
Partner, Jones Day
(U.S. Attorney for the Southern District of California, 2007-2010)

CAROL C. LAM
Deputy General Counsel, QUALCOMM Incorporated
(U.S. Attorney for the Southern District of California, 2002-2007)

DEBRA WONG YANG
Partner, Gibson Dunn
(U.S. Attorney for the Central District of California, 2002-2006)

Gallagher&Kennedy

Paul K. Charlton
Attorney
Direct: (602) 530-8585
Email: paul.charlton@gknet.com

October 3, 2013

By Mail & Email

Hon. John McCain
United States Senate
241 Russell Senate Office Building
Washington, D.C. 20510

Hon. Jeff Flake
United States Senate
Committee on the Judiciary
Senate Russell Office Building 368
Washington D.C. 20510

Re: Nomination of John B. Owens as Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit

Dear Senators McCain and Flake:

It is my privilege to write in support of the nomination of John B. Owens to the Ninth Circuit Court of Appeals. I do so with confidence because of Mr. Owens' stellar reputation as a former prosecutor and his impeccable academic history.

As you know, I was the former U.S. Attorney in Arizona, and during that time, Mr. Owens worked in the offices of former U.S. Attorney Debra Yang in Los Angeles, and former U.S. Attorney Carol Lam in San Diego. Both Ms. Yang and Ms. Lam, experienced federal prosecutors in their own rights, speak glowingly about Mr. Owens' service, abilities, intelligence, and good judgment. In fact, Mr. Owens became the Criminal Chief of the San Diego U.S. Attorney's Office and managed one of the nation's highest case loads.

As for Mr. Owens' academic credentials, one would be hard pressed to find a more impressive record. Those accomplishments are many, but among the more outstanding are the following: number 1 in his class at Stanford Law School; Phi Beta Kappa at Berkley; and a law clerk to Justice Ruth Bader Ginsberg.

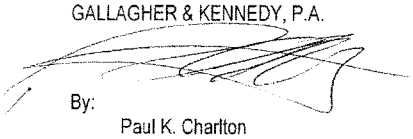
This combination of intelligence and good judgment made Mr. Owens a good prosecutor. But what distinguishes good prosecutors from great ones is the ability to do what is right, to make sure that neither

the "innocent suffer nor the guilty escape." By continually doing what is right, by proving himself a person of integrity, Mr. Owens earned the reputation of a great prosecutor.

Integrity, intelligence, and good judgment are among the most important qualities to be sought in a Judge. It is because Mr. Owens possesses these qualities that I strongly support his nomination.

Respectfully yours,

GALLAGHER & KENNEDY, P.A.



By:
Paul K. Charlton
(U.S. Attorney for the District of Arizona, 2001-2007)

PKC:gk
3773158

cc: Hon. Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

Hon. Chuck Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

3773158v1/1-0006

GK

Please respond to:
Judy Perry Martinez, Esquire
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

July 26, 2013

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 Frederick Leitman 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 Matthew Frederick Leitman who has been nominated for a position on the United States District Court for the Eastern District of Michigan. As a result of our investigation, the Committee is of the opinion that for this position Matthew Frederick Leitman is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. Leitman.

Sincerely,

Judy Perry Martinez
Chair

cc: Matthew F. Leitman, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 26, 2013.

Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

Please respond to:
Judy Perry Martinez, Esquire
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

VIA EMAIL AND FIRST CLASS MAIL

July 26, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Judith Ellen Levy 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 Judith Ellen Levy who has been nominated for a position on the United States District Court for the Eastern District of Michigan. As a result of our investigation, the Committee is of the opinion that for this position Judith Ellen Levy is Unanimously Qualified.

A copy of this letter has been provided to Ms. Levy.

Sincerely,



Judy Perry Martinez
Chair

cc: Judith E. Levy, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 26, 2013.

Defending Liberty
Pursuing Justice

D. Scott
Salt Lake, Utah
New Orleans, LA
Nancy Anderson
2980 Fairview Park Drive
Falls Church, VA 22042
FIRST CIRCUIT
Lisa G. Arrowood
Boston, MA 02110
11 Pleasant Street
Boston, MA 02108
SECOND CIRCUIT
Robert B. Fiske, Jr.
51 Madison Avenue
New York, NY 10010-1603
THIRD CIRCUIT
Robert C. Heim
One Logan Square
100 North 18th Street
Philadelphia, PA 19103-2799
FOURTH CIRCUIT
E. Montgomery Abbott, III
Suite 2100
101 South Tryon Street
Charlotte, NC 28280-0100
FIFTH CIRCUIT
Wayne J. Lee
540 Gravier Street
New Orleans, LA 70130
SIXTH CIRCUIT
Charles E. Fagan, Jr.
Suite 700
1101 College Street
Bowling Green, KY 42102-1390
SEVENTH CIRCUIT
Patricia Cummins Sowinski
Suite 6300
233 South Wacker Drive
Chicago, IL 60606-6357
EIGHTH CIRCUIT
Daniel L. Brown
Suite 4700
U.S. Bank Building
425 Marquette Street
Des Moines, IA 50309-4716
NINTH CIRCUIT
Edith R. Matthai
Suite 1500
350 South Grand Avenue
Los Angeles, CA 90071
Daniel J. Weiner
Suite 4100
1420 Fifth Street
Seattle, WA 98101
TENTH CIRCUIT
Jon Cain
Suite 4000
1700 Lincoln Street
Denver, CO 80203-4550
ELEVENTH CIRCUIT
Kenneth A. Raskin
Suite 1238
1428 South Highland Boulevard
Miami, FL 33139-2139
D.C. CIRCUIT
Benjamin A. Lee
1440 New York Avenue
Washington, DC 20005
FEDERAL CIRCUIT
Ellen C. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401
STAFF COUNSEL
Denise A. Cardman
202.662.1761
denise.cardman@americanbar.org

Please respond to:
Judy Perry Martinez, Esquire
Northrop Grumman Corporation
2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

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

July 26, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Laurie Jill Michelson 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 Laurie Jill Michelson who has been nominated for a position on the United States District Court for the Eastern District of Michigan. As a result of our investigation, the Committee is of the opinion that for this position Magistrate Judge Michelson is Unanimously Well Qualified.

A copy of this letter has been provided to Magistrate Judge Michelson.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Laurie J. Michelson (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 26, 2013.



CHAIR
Judy Perry Martinez
New Orleans, LA

CHAIR-ELECT
Robert D. Evans
Washington, DC

IMMEDIATE PAST CHAIR
Lucian T. Pera
Memphis, TN

SECOND CIRCUIT
Barbara F. Parker
Rochester, NY

THIRD CIRCUIT
Robert N.C. Nix, III
Philadelphia, PA

FOURTH CIRCUIT
Mark W. Merritt
Richmond, VA

FIFTH CIRCUIT
Lamont J. Jones
New Orleans, LA

SIXTH CIRCUIT
Charles R. Bourland, Jr.
Lexington, KY

SEVENTH CIRCUIT
Patricia Cronin Brady
Chicago, IL

EIGHTH CIRCUIT
Daniel L. Brown
Omaha, NE

NINTH CIRCUIT
Debra R. Bernard
San Francisco, CA

TENTH CIRCUIT
Jon Cole
Denver, CO

ELEVENTH CIRCUIT
Anthony A. Yanny
Miami, FL

D.C. CIRCUIT
Donald A. Tobin
Upper Marlboro, MD

FEDERAL CIRCUIT
Ellen L. Flannigan
Washington, DC

STATE COUNSEL
Dennis A. Cardman
Richmond, VA

Please respond to:
Judy Perry Martinez, Esquire
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2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

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

July 26, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Linda Vivienne Parker 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 Linda Vivienne Parker who has been nominated for a position on the United States District Court for the Eastern District of Michigan. As a result of our investigation, the Committee is of the opinion that for this position Circuit Judge Linda Vivienne Parker is Substantial Majority Qualified, Minority Not Qualified.

A copy of this letter has been provided to Judge Parker.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Linda V. Parker (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on July 26, 2013.

Senator Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

October 22, 2013

Dear Chairman Leahy and Ranking Member Grassley,

We write in support of the nomination of Peter J. Kadzik to be confirmed as Assistant Attorney General for the Office of Legislative Affairs at the Department of Justice. Having served in that position we appreciate the important trust imbued in this role. We are confident that Mr. Kadzik will serve both the Department of Justice, and Congress, well.

Mr. Kadzik's professional career well suits him to this position. Upon graduating from Georgetown University Law Center, Mr. Kadzik clerked for the Honorable Thomas Flannery on the U.S. District Court for the District of Columbia. He then continued his career in public service as an Assistant United States Attorney in the District of Columbia. Before joining the Department of Justice Office of Legislative Affairs earlier this year, Kadzik spent 32 years in the law firm Dickstein Shapiro, LLP where he specialized in antitrust and commercial litigation and congressional investigations. The combination of public and private sector experience leaves him well qualified for this important position of responsibility.

Each of us has served in the role to which he has been nominated, for different Administrations and Attorneys General. We know from experience that the job requires responsiveness to Congress, transparency to the American people, and fidelity to the Department's mandate to execute the laws established by the Congress.

To ensure the right balance, the candidate should have deep respect for each function, and the experience to properly balance the three. We are confident, having observed his current tenure in this role, that he will perform this important function effectively.

We encourage the Senate to confirm Mr. Kadzik as Assistant Attorney General. Please feel free to contact any of us if we may be of further assistance.

Sincerely,

Dan Bryant

Richard Hertling

Robert Raben

Ronald Weich

DICKSTEINSHAPIRO LLP
1825 Eye Street NW | Washington, DC 20006-5403
TEL (202) 420-2200 | FAX (202) 420-2201 | dicksteinshapiro.com

September 23, 2013

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We respectfully write to express our strong support for the confirmation of our former colleague, Peter Joseph Kadzik, to serve as the Assistant Attorney General for the Office of Legislative Affairs in the United State Department of Justice.

Prior to beginning his service at the Department of Justice, Peter had a long and distinguished career as an accomplished attorney at Dickstein Shapiro, LLP. We have had the honor and privilege to work closely with Peter for a combined 20 years at Dickstein Shapiro, and hold him in the highest regard.

Peter has demonstrated great legal talent and sound judgment during his 33 years at our law firm. Through his stellar legal work, unwavering commitment to pro bono matters, and consistent service on non-profit boards, Peter has gained great respect in the community for his honesty, fairness, and intellect.

We have no doubt that Peter will serve the United States Department of Justice with professionalism and integrity. He will continue to utilize sound legal judgment, respect for the rule of law, and stellar leadership and managerial skills to ensure the Office of Legislative Affairs upholds its duty to the American people. We give Peter Kadzik our highest recommendation.

Sincerely,

J. Dennis Hastert

Speaker J. Dennis Hastert

Tim Hutchinson

Senator Tim Hutchinson

Albert R. Wynn

Congressman Albert R. Wynn

DSMDB-3197619v1

Opening Statement of Peter J. Kadzik
Nominee for Assistant Attorney General, Office of Legislative Affairs, Department of Justice
October 30, 2013

Madame Chairman, Ranking Member Grassley, and Members of the Committee, it is an honor and privilege to appear before you today as the President's nominee to be the Assistant Attorney General for the Office of Legislative Affairs at the Department of Justice. In my time at the Department, I have sought to improve the Department's responsiveness to inquiries from congressional committees and Members of Congress and, if confirmed, I will continue to improve our performance.

In many respects, I consider myself to be the beneficiary of the "American Dream." All four of my grandparents were immigrants from Poland. They worked hard so my parents could graduate from high school. My parents also worked hard—my father worked in a factory in Buffalo, NY for more than 30 years—so that their children could attend college and graduate school. I began working part-time when I was a junior in high school to help finance my education and I continued to work through college and law school.

I had the good fortune to attend the Georgetown University Law Center, and then to clerk for Judge Flannery on the U.S. District Court here in the District of Columbia. Judge Flannery had previously served as the United States Attorney for the District of Columbia, and he steered me into that office and remained my mentor throughout my career. As I have often said, there has been no greater honor in my career than to stand in a courtroom as an Assistant United States Attorney and state that "I represent the people of the United States of America." Returning to the Department of Justice has long been my dream and I look forward to continuing to work for the people of the United States. If confirmed, I also look forward to working with you to assist the Committee in performing its legislative and oversight functions.

If I may take a moment, I would like to introduce my family here with me today: my daughter Melissa, a former Peace Corps volunteer who works for the Centers for Disease Control in Atlanta; my daughter Mary-Pat, who works for the University of Chicago Endowment, and her husband David Barron; and my son P.J., who works for the Malala Fund, a non-profit organization, in New York City My daughter Alison, also a Georgetown Law graduate who practices in San Francisco, could not be here today because she is more than eight months pregnant with our first grandchild, so she remained in San Francisco with her husband, Chris Gathright. My step-son Jack, who attends the Field School here in Washington, could not be here because he is participating in the cross-country championships. And finally, also with me here today is my wife, Amy Weiss.

I look forward to answering any questions you may have.

Statement on the Ninth Circuit Seat
Vacated by Judge Stephen Trott

Senator Dianne Feinstein

Senate Judiciary Committee

October 30, 2013

- This is the longest-running vacancy in the entire Federal Judiciary. It has been vacant since December 2004 – almost nine years ago.

- The Ninth Circuit is the busiest Federal circuit. Its pending caseload per panel is the highest. It takes far longer than it does elsewhere to resolve an appeal. It is simply unacceptable to leave a seat vacant for so long.

- Let me explain the background here. Judge Stephen Trott, whom Mr. Owens would replace, spent his entire legal career in California before joining the Justice Department under President Reagan.

- Let me review Judge Trott's record for the Committee. Throughout his career, he was licensed to practice law in one state: California.

- Beginning in 1965, he served as a County Prosecutor in Los Angeles, California.

- In 1975, according to a *Los Angeles Times* article, Trott sought the position of District Attorney from the L.A. County Board of Supervisors after then-District Attorney Joseph Busch passed away.

- When John Van De Kamp was named District Attorney, Trott was chosen as his Chief Deputy, the second-in-command in the D.A.'s office.

- In 1981, he was appointed United States Attorney for the Central District of California by President Reagan. Trott was recommended for this position by Senator S.I. Hayakawa of California.

- In 1982, while serving as U.S. Attorney, Trott again submitted an application to the L.A. Board of Supervisors to become District Attorney, after the D.A., John Van De Kamp, was elected to be the state's Attorney General.

- He was nominated by President Reagan in 1983 to serve as Assistant Attorney General for the Criminal Division at the Department of Justice.

- At his confirmation hearing for that position, Senator Pete Wilson of California introduced him.

- In 1986, he was nominated by President Reagan to be Associate Attorney General – the third-ranking position in the Justice Department.

- Once again, Senator Wilson of California introduced him at his confirmation hearing.

- In 1987, President Reagan nominated Trott to the Ninth Circuit. This Committee sent its blue slips to Senators Wilson and Cranston of California.

- Trott stated in his questionnaire that his "two clients have been the People of the State of California and the Government of the United States."

- He was confirmed in 1988 to a seat previously held by Judge Joseph Sneed, a California nominee. Judge Sneed's connection to the Ninth Circuit prior to his appointment was his nine-year tenure as a Professor at Stanford Law School. He established his chambers in San Francisco.

- These are the facts. Judge Trott was a California nominee to a California seat on the Ninth Circuit, as was his predecessor.

- But, once confirmed, he established his chambers in Idaho.

- This personal choice of residence, essentially an arbitrary occurrence, cannot result in a state losing a judgeship to another state.

- As we all know, the overwhelming practice of Administrations and Senates of both parties has been to retain each state's representation on its respective circuit.

- Look at the makeup of the circuits represented by the members of this Committee. Both Iowans on the Eighth Circuit occupy Iowa seats. All three Alabamans on the Eleventh Circuit occupy Alabama seats. All three Arizonans on the Ninth Circuit were preceded by Arizonans.

- This is not by accident. There is a reason for it. It is fundamental to how administrations of both parties get the advice and consent of the Senate on judicial appointments. Simply put, any President has to know which Senators to seek advice from on these appointments.

- This is not a partisan principle. It is something Presidents and Senators of both parties rely on in order to staff the entire Federal Judiciary year after year.

- It means, for example, that President Obama has to consult with Senators Flake and McCain on Arizona appointments to the Ninth Circuit and with Senators Hatch and Lee on Utah appointments to the Tenth Circuit.

- No senator would allow the arbitrary occurrence of a Judge's personal choice of residence to remove a judgeship from the senator's home state.

- And, there is also no objective justification for taking this seat away from California.

- In fact, by every objective metric, California is underrepresented and Idaho is overrepresented.

- California generated an average of 67.4% of Ninth Circuit cases since 2002.

- California has the ninth largest economy in the world, as well as 38 million people. This is more than 21 states and D.C. combined, and 60.3% of the Ninth Circuit's population.

- Yet California has fewer judgeships than its caseload or population suggests it should have

- Idaho, by contrast, generated only 1.25% of Ninth Circuit cases over that period. Last year, it generated only 157.

- Idaho also has only 2.5% of the Ninth Circuit's population.

- Yet Idaho has 3.57% of Ninth Circuit judgeships – already more than its share of caseload and population.

- In fact, if Idaho were to get an additional judgeship, its representation on the Ninth Circuit would be 5.5 times its share of caseload.

- It would also have twice the seats Montana and Hawaii have, even though those states generate more Ninth Circuit cases than Idaho.

- Thus, there is no rational basis to move this seat – which by history and numbers is a California seat – to Idaho, which has another seat on the Ninth Circuit. Judge Trott's personal decision to establish his chambers in Idaho there certainly does not provide one.

- John Owens is an outstanding nominee with a record of excellence and service to his country of which we should all be proud. His nomination should be applauded and swiftly confirmed.

NOMINATIONS OF MICHELLE T. FRIEDLAND, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT; CHRISTOPHER REID COOPER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; GERALD AUSTIN McHUGH, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; M. DOUGLAS HARPOOL, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI; AND HON. EDWARD G. SMITH, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WEDNESDAY, NOVEMBER 6, 2013

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:34 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Mazie Hirono, presiding.

Present: Senators Hirono, Coons, and Grassley.

Senator HIRONO. Good afternoon, everyone. I would like to acknowledge the presence of Justice Sandra Day O'Connor. It is a privilege to have you join us for this hearing.

Justice O'CONNOR. It is my privilege to be here, Chairwoman.

Senator HIRONO. As we say in Hawaii, mahalo nui loa. Aloha.

I am pleased to call this nomination hearing of the Senate Committee on the Judiciary to order. I would like to welcome each of the nominees, their families, and friends to the U.S. Senate and congratulate them on their nominations. I would also like to welcome Senators McCaskill and Toomey, who are joining us this afternoon, and perhaps we will be joined by Senator Bennet.

You are here to introduce your nominees, and I know that you have pressing commitments, so please feel free to leave after you have given your introductions.

So I would like to start with Senator McCaskill. Please proceed.

PRESENTATION OF M. DOUGLAS HARPOOL, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI, BY HON. CLAIRE McCASKILL, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator MCCASKILL. Thank you, Madam Chairwoman. I am really excited to be here. As a young lawyer in the courtroom, I had many occasions where sometimes too loudly under my breath, I expressed frustration over judges that were presiding over trials that had never been in the trenches of trial, that had never known the frustrations, the exhilaration, the challenges of doing your very best for your client or for the State, when you do not always know what is going to happen in the courtroom.

I swore as a young lawyer that if I ever had the chance to influence the selection of judges that would sit in trial courts, I would make sure that they had been in the trenches, and I have a trench warrior to present to you today.

My friend Doug Harpool and I met when we served together in the Missouri Legislature, and in the Missouri Legislature, at a time that it was very unfashionable to do so, he was a warrior for ethics legislation. He was marginalized, he was made fun of, he frankly was treated with disdain by many of our colleagues because he was determined to enact ethics legislation, unprecedented ethics legislation in the State of Missouri. He succeeded. In fact, he earned the nickname during our time together in the legislature as "The Bulldog of Ethics."

Doug had had a distinguished career prior to his time in the legislature as a practicing attorney, and he literally is not completely embraced by the plaintiffs' bar and not completely embraced by the defense bar because he has worked so much on both sides of that bar, which means he is perfect for this job.

As a law student, he excelled. This is one smart man—a member of Missouri Law Review, a member of the Order of Barristers, a member of the Board of Advocates, and the recipient of both the Prize in Excellence for Trial Advocacy and Appellate Advocacy even as a law student.

He is respected in his community, the father of six children—three birth children and three adopted children. And I will tell you one of his claims to fame that I must mention to the Committee today because it will tell you how much I trust him and how good I think he will be at this job.

When it came time for me to pick someone to stand in as my opponent in debate preparation, I said, "Go get Doug Harpool," because if there is anybody who can challenge me in a debate, effectively playing my opponent, it will be Doug. So he has had to be a number of different candidates over the years because, in all of my races, Doug Harpool stood and pretended that he was my opponent as we prepared for debates. And I will not disclose to this Committee how many times he bested me in those debates. I will tell you I am very grateful that he was actually never my opponent.

I am very proud of his ethics, his integrity. He has a Midwest work ethic. He will never get "robe-itis." He will always relate to the lawyers and, even more importantly, the litigants in the courtroom who are trying to find their way through a byzantine system

that sometimes feels like a foreign land. He will make sure they feel comfortable, honored, and respected. And I think that is the most we could ask for a Federal judge.

I highly recommend to this Committee the confirmation of Doug Harpool for a trial judge in the Western District of the State of Missouri.

Senator HIRONO. Thank you, Senator McCaskill.

Senator Toomey.

PRESENTATION OF GERALD AUSTIN McHUGH, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND EDWARD G. SMITH, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, BY HON. PATRICK J. TOOMEY, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator TOOMEY. Thank you very much, and good afternoon, Madam Chairman Hirono, Ranking Member Grassley. Thanks for the opportunity and the invitation to come before you today to introduce Judge Ed Smith and Mr. Gerald McHugh to the Committee. Both of these gentlemen were nominated by President Obama on August 1st, and I really appreciate the timely scheduling of this hearing.

I also should point out that Senator Casey regrets that he is not able to be here with us today to join in this introduction, but I want to publicly state my appreciation for Senator Casey and the terrific working relationship that he and I have, for the collaboration that has already led to the successful confirmations of eight new members of the Federal bench in Pennsylvania just in the 2½ years since I have taken office. We are fully committed to continue to work with this Committee to ensure that the remaining vacancies are filled. And I know that my enthusiastic support for these nominees is entirely shared by Senator Casey. So let me just say a couple of words about each of these two gentlemen.

First, Gerald McHugh is a very accomplished authority. He is very, very widely respected by his peers. He has a terrific and keen intellect. He has got the integrity that we simply must demand of any Federal judge. And he has also got a terrific commitment to public service.

He has been a partner in Raynes McCarty. He has been a shareholder in Litvin, Blumberg, Matusow, and Young. He has been very active in his community. In greater Philadelphia, he has worked with the Hospitality House of Philadelphia to help ex-offenders. He does pro bono work to improve neighborhoods and prevent crime in West Philadelphia. He is universally acknowledged as very, very well qualified, and I am very confident that he will be an outstanding judge.

As for Judge Ed Smith, I will disclose to the Committee that I have known Ed Smith for almost 20 years, and I can tell you that he, too, is very, very well respected by his peers on the bench in Northampton County in Pennsylvania, but also by the litigants who have appeared before him in his courtroom. He, too, has the requisite judicial acumen and the temperament to be a great Federal judge. Ed Smith has a distinguished background. He is a captain in the United States Navy. He has been a Judge Advocate

General since 1984. He is currently the commanding officer at the Navy Reserve Naval Justice School. He has served as a military trial judge in the Navy Reserve. He was deployed to Iraq in 2007 and 2008 to serve as a rule of law adviser, and he received a Bronze Star for his service in Iraq.

Judge Ed Smith has been a member of the Northampton County Court of Common Pleas since 2002. Prior to that he, was a partner in the firm DeRaymond and Smith. I should also point out he has agreed to sit in the courthouse in Easton, Pennsylvania, which is a Federal courthouse that has been without an active Federal judge since 2004. So we are very much looking forward to and hopeful that he will be confirmed so that the city of Easton and Northampton County can once again have a district judge in Easton.

Both of these candidates, Madam Chairman, have the crucial qualities necessary to make an outstanding Federal judge. They have got the intellect, they have the integrity, they have the commitment to public service, and they have a respect for the inherently limited role that is appropriate for the judiciary.

So I am very proud to recommend both of these gentlemen. I know that Senator Casey shares my enthusiasm for them, and I thank the Committee very much for its time today and for the expeditious fashion in which they have considered these nominees. Thank you.

Senator HIRONO. I would like to thank both of our Senators.

As we are setting up for the first panel, I would like to introduce Michelle Friedland. Ms. Friedland has been a litigator with the San Francisco firm of Munger, Tolles and Olson since 2004, where she started as an associate before being made partner in 2010. Prior to entering private practice, she was a lecturer in law at Stanford Law School.

Born in Berkeley, California, Ms. Friedland earned her B.S. with honors and distinction from Stanford University and her J.D. with distinction from Stanford Law School. She began her legal career as a law clerk for Judge David Tatel of the U.S. Court of Appeals for the District of Columbia Circuit and Associate Justice Sandra Day O'Connor of the U.S. Supreme Court. Ms. Friedland has experience in both the trial court and appellate levels, including the U.S. Supreme Court. She manages an active pro bono practice and frequently represents the University of California in constitutional litigation.

Ms. Friedland is co-chair of the Bar Association of San Francisco's Amicus Committee and serves on the Board of the Silicon Valley Campaign for Legal Services. She was also a recent recipient of the California State Bar's 2013 President's Pro Bono Service Award.

At this point I would like to ask Ms. Friedland to come to the table, and if you would stand and raise your right hand while I administer the oath. 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?

Ms. FRIEDLAND. I do.

Senator HIRONO. Thank you. Let the record show that the nominee has answered in the affirmative.

I would like to invite you to recognize your family, your loved ones, and your supporters before you proceed.

STATEMENT OF MICHELLE T. FRIEDLAND, NOMINEE TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Ms. FRIEDLAND. Thank you. I would like to begin by thanking Chairman Leahy and Ranking Member Grassley for scheduling this hearing, Senator Hirono for chairing it, and all the Committee Members for their time considering my nomination.

I would also like to thank you, Senator Hirono, for the very kind and generous introduction, Senators Feinstein and Boxer for their support in this process, and President Obama for the enormous honor of this nomination.

I have many dear friends here today. I will not introduce them all individually, but I do want to thank them for their support and for the substantial efforts they have made to be here today.

I would like to introduce my immediate family. Sitting right behind me is my fantastic husband, Dan, without whose love and constant support I could not have had the legal career I have been so fortunate to have. And sitting with him are our 7-year-old twins, Max and Sierra, who bring great joy to our lives every day and are very, very excited to be here, though I fear that this hearing may challenge their abilities to sit still.

My parents are here as well, Tom and Sandy Friedland, as are my father- and mother-in-law, Jim and Marilyn Kelly. And I have the incredible good fortunate to have my grandmother here today as well, Adele Friedland.

My brothers could not be here. David and Ben Friedland are watching by webcast from New Mexico and California, respectively.

And I know that she has already been recognized, but I want to introduce my former boss and mentor, Justice Sandra Day O'Connor. The honor of being nominated and being considered by this Committee was staggering already, but having Justice O'Connor here only magnifies that honor. I cannot express how much it means to me to have her here.

I have no further opening remarks beyond that, and I look forward to answering the Committee's questions.

[The biographical information of Ms. Friedland appears as a submission for the record.]

Senator HIRONO. Thank you very much.

As Ranking Member Grassley is going to be submitting his opening statement for the record, I will do likewise.

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

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

Senator HIRONO. But I would like to have unanimous consent to place in the record letters that the Committee has received in connection with your nomination.

Senator GRASSLEY. Yes.

Senator HIRONO. Thank you.

[The letters appear as submissions for the record.]

Senator HIRONO. We will now proceed to questions of 5 minutes, and of course, if Ranking Member Grassley would like to go longer, by all means.

Ms. Friedland, the Ninth Circuit is a very important circuit—and, by the way, I am sure you know that it covers Hawaii.

Ms. FRIEDLAND. Yes. A beautiful State.

Senator HIRONO. Thank you. Could you briefly describe your judicial philosophy?

Ms. FRIEDLAND. Of course. Thank you, Senator. I have been working hard as a lawyer and have not been theorizing about judicial philosophy, so I do not expect to come to the bench, if I have the honor to be confirmed, with any overriding ideology such as law and economics or any other approach. Rather, my approach as a judge would be to take each case one at a time, to study the relevant text and precedent, and to apply the law to the facts of that case in a neutral manner that is faithful to the law.

Senator HIRONO. You have written about the concept of stare decisis and when appellate judges may depart from precedent, so you have written from both aspects. Can you explain your views on stare decisis and when it would be appropriate to not follow that precedent?

Ms. FRIEDLAND. Thank you, Senator. As a circuit court judge sitting as a member of a panel, I would have no ability to depart from Ninth Circuit precedent and certainly never from Supreme Court precedent. The only way to overturn precedent of the Ninth Circuit would be as a member of the en banc court, and even then it should be done very, very rarely, only when there is a conflict within the Ninth Circuit's decisions already or when a rule has proven entirely unworkable.

Our system depends on predictability in the law. Businesses and individuals need to know that there is stability in the rules that guide their behavior, and it is very, very important that courts uphold precedent.

Senator HIRONO. You mentioned that it may be appropriate when there is conflict within the district courts, Federal district courts. Can you think of an example where that might have been the case?

Ms. FRIEDLAND. Thank you for the opportunity to clarify that. What I actually meant was, as you know, the Ninth Circuit is quite large and has many panels, and so it sometimes occurs that there are decisions of the Ninth Circuit that conflict with each other. And so in that situation where there are two rules of law within the Ninth Circuit, that creates uncertainty for the district courts within the Ninth Circuit, and that is one of the circumstances in which it is appropriate for the court to take the issue en banc to resolve that conflict so that there is only one rule within the Ninth Circuit.

Senator HIRONO. Can you think of an example where that happened in the Ninth Circuit? If you cannot, it is all right.

Ms. FRIEDLAND. I am sorry. I do not have one off the top of my head, but that is one of the circumstances in which en banc review is appropriate.

Senator HIRONO. You have a very extensive pro bono portfolio, so can you discuss how you would approach shifting from the role of

advocate in your pro bono work particularly and your work as an appellate judge, should you be confirmed?

Ms. FRIEDLAND. Thank you, Senator. The role of a judge is very different from that of an advocate. As a judge, the question is always what is the interpretation of text and precedent that is most faithful to both and approaching that question from a neutral perspective.

As an advocate, my role as a lawyer has always been to advocate for my clients, and that has meant arguing for the interpretation of text and precedent that best furthers my client's positions. That is a very different perspective than the neutral perspective as a judge. When I was a law clerk, I approached questions from a neutral perspective, and in my law school teaching, I have always tried to address issues from a neutral perspective for my students. So I feel confident that I can make that switch.

Senator HIRONO. Since Justice O'Connor is sitting here, perhaps you would like to share with us an important lesson you learned from clerking with her.

Ms. FRIEDLAND. Thank you. I learned so many lessons from Justice O'Connor that I could not name them all, but some of them are the importance of very hard work and always being prepared, finishing one's work promptly, treating one's colleagues with respect, always studying the facts of the case very carefully, knowing the facts in the record and considering them very carefully, and always treating one's law clerks very well.

[Laughter.]

Senator HIRONO. That probably went without saying.

Thank you very much. Ranking Member Grassley.

Senator GRASSLEY. Last week, we had a hearing which also included a Ninth Circuit nominee, and I raised the issue with that person but wanted to get your views as well. The Ninth Circuit has a high rate of cases being overturned by the Supreme Court. Why do you think this is? And knowing that, what would be your strategy in approaching cases, if confirmed, to combat this trend? And I have the assumption—maybe it is the wrong assumption—that judges do not like to have the Supreme Court overturn them. But I think in this case of the Ninth Circuit, there is an overwhelming number of cases overturned.

Ms. FRIEDLAND. Thank you, Senator Grassley. I am aware that the Ninth Circuit has been criticized for being overturned more often than some other circuits. I am not actually sure why that is the case, but I can tell you that if I have the honor to be confirmed, I would carefully and faithfully follow all Supreme Court precedent. I would be bound by all precedents of the Supreme Court and would attempt to write my decisions in a way that was so faithful to the Supreme Court's precedent that I would not have my decisions overturned.

Senator GRASSLEY. What do you think is the proper role of a Federal judge in attempting to discern the motives or intent of Congress when we write legislation that you have to interpret?

Ms. FRIEDLAND. If the text of a statute is clear, then a case should be decided based on the text alone. There is no need to consider legislative history. If the text of a statute is not clear, then the Supreme Court has to both apply canons of statutory construc-

tion to try to resolve the ambiguity, but also sometimes look to legislative history to try to determine Congress' intent.

Senator GRASSLEY. You would not follow Scalia and say he does not look at anything beyond the text of the law?

Ms. FRIEDLAND. Most of the Justices of the Supreme Court look to legislative history sometimes when the statutes are ambiguous and they are trying to resolve the ambiguity, so I would follow that Supreme Court precedent.

Senator GRASSLEY. And you would know, as you did for a law clerk.

Your questionnaire indicated that you are an executive board member of the American Constitution Society for Law and Policy. There is nothing wrong with your membership in such groups, but I do have a question about how the stated goals of that organization have influenced your judicial philosophy or might affect your judgments, if confirmed. I will give you an example. Peter Edelman, chair of the board of that society, 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 for the country."

Also, some of the stated goals and missions of the organization are, and these are quotes, "countering right-wing distortions of our Constitution"; another quote, "debunking conservative buzz words such as 'originalism' and 'strict construction' that use neutral-sounding language but all too often lead to conservative policy outcomes."

Now, I do not expect you to be familiar with all of these quotes and everything, but please answer questions I have with the knowledge that you might have about it, and maybe being a board member, I should assume that you have a lot of knowledge about it. But I do not want to put you in a place where you cannot intellectually honestly answer questions.

Can you please explain in your view the idea of what a progressive perspective of the Constitution is?

Ms. FRIEDLAND. Thank you, Senator. I was involved in the American Constitution Society only at the local level. I was on the programming committee for a few years at the local level. I never had any involvement at the national level, and I have actually never met Professor Edelman and am not familiar with the speech from which you are quoting. So I cannot say what he meant by the term "progressive Constitution," and I know that is a term that is used in many different ways by different people.

But what I can say is that, if I have the honor to be confirmed, in interpreting the Constitution I would look to the text of the Constitution, precedents of the Supreme Court and the Ninth Circuit, and sources of original meaning, such as the Federalist Papers. And I would decide cases without regard to whether anyone would label my decisions "progressive" or with any other label.

Senator GRASSLEY. I think you probably answered another couple questions that I have quoting from that.

Is there any way, for instance, following up along the same line, that if you were confirmed as a Federal judge and you believed in what that organization stands for and they used the word "progressive perspective of the Constitution" or to "counter right-wing distortions of the Constitution," if you were a Federal judge and—

well, what is your comment on those goals of that organization, I guess, as a judge now, not as a private citizen?

Ms. FRIEDLAND. Because I am not familiar with the speech, I do not really know what was meant by those terms, but——

Senator GRASSLEY. Maybe we ought to leave it go at that, then. That is okay.

You wrote a letter with several colleagues to the President in support of Goodwin Liu and Edward Chen. The letter stated that, "Obstruction of these nominations is unfair to the nominees and a deterrence to future candidates and a disservice to the Nation's judicial system."

What is your understanding of the Senate's role in advise and consent?

Ms. FRIEDLAND. Thank you, Senator, for the opportunity to clarify that letter. I signed that letter along with many members of the California Bar. What motivated that letter was the fact that the courts in California are so, so busy. The district courts in California are some of the busiest in the country, and the Ninth Circuit is one of the busiest circuits. And the letter was asking the President to try to move along the nominations of now-Justice Liu and now-Judge Chen, then too, to try to fill some of those vacancies which are so important.

I know that the letter said that delaying action on nominations would deter future nominees. Certainly when I signed that letter, I had no idea that I would be sitting here today. And I can say that I am very honored to be here, and that obviously did not deter me.

[Laughter.]

Senator GRASSLEY. I think you probably anticipated a lot of my questions. Did you get them ahead of time?

[Laughter.]

Ms. FRIEDLAND. No.

Senator GRASSLEY. You once wrote that—so I am going on now. I had two other questions along that line, but I will forget them. You once wrote that being in any judicial office may lead a judge to recognize that the judge's duties "may sometimes require a reevaluation of one's longest-held beliefs." What did you mean by that?

Ms. FRIEDLAND. Thank you, Senator, for the opportunity to clarify that column. The column you are quoting from was written by some of my colleagues and me for a local bar magazine. My law firm had a long tradition of writing columns about the Supreme Court in that bar magazine from before I joined. And when I joined the firm, I became one of the authors.

The practice was always to list all authors on any column, regardless of the role any particular lawyer played in the column. And the one you are asking about is actually not one that I authored, but I did have my name on it, and it was discussing Justice Stevens' concurrence in the *Baze v. Rees* case in which he argued that he did not believe in the death penalty anymore. He ultimately concurred in the case and thus agreed with applying the death penalty in that case, so he was just expressing his own view. And what that column was trying to describe was what he said in his concurrence, not any statement that all judges should change their minds about things. And certainly the majority of the Su-

preme Court has repeatedly upheld the constitutionality of the death penalty.

Senator GRASSLEY. Okay. Then also going on in that same article, what role should personal beliefs play in judicial decisionmaking?

Ms. FRIEDLAND. Personal beliefs should play no role whatsoever in judicial decisionmaking.

Senator GRASSLEY. Let me ask you, if you have some of your own long-held beliefs that may have to be reevaluated if confirmed.

Ms. FRIEDLAND. Senator, thank you for the question. If I have the honor to be confirmed, my decisions would be based on text and precedent as applied to the facts of every case at hand. Any views that I might have on an issue would not be a factor in my decisionmaking.

Senator GRASSLEY. Another question along a different line. Is diversity on the bench important? And if so, why do you think it is so, is necessary?

Ms. FRIEDLAND. A judge's job is to apply the law to the facts of every case, and whether a judge is a woman or a judge's race has no effect on what the law is. But I do think that diversity has importance for external reasons. Having a bench that reflects the diversity of our society helps people view the decisions of our courts as fair, and having diversity on the bench also provides role models. I can say that, as a girl growing up, the fact that Justice O'Connor was on the Supreme Court made me feel that I could aspire to anything in my career. So she played a very huge role in my life long before I was her law clerk. And I think having such role models is a very important role that diversity on the bench can play.

Senator GRASSLEY. Are you personally opposed to the death penalty?

Ms. FRIEDLAND. Senator, the Supreme Court has held repeatedly that the death penalty is constitutional, and I would have—I would absolutely apply those precedents, just as I would apply all precedents from the Supreme Court.

Senator GRASSLEY. Thank you. You have been very forthcoming. I appreciate it. Thank you.

Ms. FRIEDLAND. Thank you very much.

Senator HIRONO. Thank you. I would like to call the second panel. Thank you very much, Ms. Friedland.

Ms. FRIEDLAND. Thank you.

Senator HIRONO. And your family.

Senator HIRONO. I would like to ask all of the nominees to stand. Of course, you are already standing. Raise your right hands as I administer the oath. 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. COOPER. I do.

Mr. MCHUGH. I do.

Mr. HARPOOL. I do.

Judge SMITH. I do.

Senator HIRONO. Thank you. Let the record show that the nominees have answered in the affirmative.

Mr. Cooper, you are going to go first, but I would like to say for the record that Senator Bennet sends his regrets that he is unable to join us today to speak on your behalf, but he will be submitting a statement in support of your nomination for the record.

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

STATEMENT OF CHRISTOPHER REID COOPER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Mr. COOPER. Thank you very much, Senator Hirono, Ranking Member Grassley, and thanks to all of the Members of the Committee for promptly scheduling this hearing and inviting me to attend. I am honored to be here.

I would also like to thank Congresswoman Eleanor Holmes Norton and her judicial nominating commission here in D.C. for recommending me to the President and for all of the hard work that they do on judicial nominations in the District. And, of course, I would like to thank President Obama for nominating me.

And as you said, I would also like to extend thanks to Senator Michael Bennet. I have no Colorado connection, but he is a longtime friend and former colleague at the Justice Department, and I understand that he has an unavoidable commitment that kept him from being here.

Before I introduce the friends and family that I have with me today, I would like to acknowledge three of the judges from the district court here in Washington who have taken time out of their busy schedules to come down to the hearing today.

First and foremost, Judge Royce Lamberth, whose seat and very large shoes I would have the difficult time of filling if I am fortunate enough to be confirmed. Judge Lamberth has served the district court and the country with distinction since his appointment in 1987, and it means a great deal to have you here today, Judge.

I would also like to recognize Judges Paul Friedman and Jeb Boasberg, also from the district court, who are here with us today.

As for family and friends, let me start with my wife of 15 years, Amy Jeffress. Amy is a career Federal prosecutor and hands down the most talented lawyer in the household.

[Laughter.]

Mr. COOPER. I am also pleased to have my two sons, Lincoln, who is 12, and Leo, who is 9, here today. Their only regret in being here is that the hearing was not scheduled during school hours this morning. And my only regret is that they did not stop at the barbershop on their way.

[Laughter.]

Mr. COOPER. My parents are deceased, and I am an only child, but I am proud to be joined here today by my aunt, Peggy Cooper Cafritz, as well as my in-laws, Bill and Judy Jeffress. Also here is my brother-in-law, Jonathan Jeffress, who is an assistant Federal defender here in the District. I am also joined by a number of close friends and colleagues from my various law firms.

So thank you very much, and I stand ready to answer any and all questions that the Committee may have.

[The biographical information of Mr. Cooper appears as a submission for the record.]

Senator HIRONO. Thank you very much.
We will proceed to Mr. McHugh.

STATEMENT OF GERALD AUSTIN McHUGH, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Mr. MCHUGH. Thank you, Senator, and thank you to the Committee for finding time in what I know is a very full calendar to have the hearing today.

I am accompanied today by my date to the high school senior prom, my wife, Maureen Tate, and my inspiration for 40 years; and three of my four children, all of whom I am proud to say work in the nonprofit sector with youth: my oldest daughter, Laura, who works with Philadelphia Youth Network; my third oldest, Colleen McHugh, who works right here in Washington with City Kids; my son, Michael McHugh, who is a youth minister at St. Patrick's Catholic Parish in nearby Rockville. And my second oldest, Amy McHugh, is back at St. Joe's University where she works at the Richard Johnson Anti-Violence Center, and she had commitments today and could not be with us. But I thank them for their support.

And, of course, I thank Senator Toomey for those gracious remarks, and him and Senator Casey for their support.

[The biographical information of Mr. McHugh appears as a submission for the record.]

Senator HIRONO. Thank you.
Mr. Harpool.

STATEMENT OF M. DOUGLAS HARPOOL, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF MISSOURI

Mr. HARPOOL. Thank you. It is a pleasure to be here, and we appreciate the courtesy of this Committee in hearing this nomination. I want to express my appreciation obviously to the President and particularly to Senator McCaskill and to Senator Blunt for their consideration.

My family was not able to travel all the way from Missouri today, but they are on the webcast watching, and I want to recognize Cindy and my adult children, Ashley, Justin, and Tyler, and then our new children, Cyan, Jonathan, and Elizabeth; and then my grandchild, Kennedy. Also, my brothers Dan and Dave and Bill. My other brother, Dennis, has passed away, but I know that all of their families are watching. I had the privilege of having two older twin brothers and two younger twin brothers, and being in the middle, and that made us a very close family, and I know they are watching and they wish they could be here.

Finally, I want to thank all of my law partners I have had over the years and acknowledge that they are back at the office, when they should be billing hours, watching what we are doing here. And I appreciate their support and encouragement and all they have taught me over all of these years.

[The biographical information of Mr. Harpool appears as a submission for the record.]

Senator HIRONO. Thank you.
Judge Smith.

STATEMENT OF HON. EDWARD G. SMITH, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Judge SMITH. Thank you, Senator Hirono. I also want to very much thank the President for this nomination, and I want to thank Senator Toomey and Senator Casey for everything they have done to make this a reality. And, of course, I want to thank you for chairing this Committee today, and to the Committee for convening this hearing.

Today my son, Michael, my oldest son, was able to make it to the Committee and is seated here. My two other sons are at school and were not able to make it, and they are watching by webcast, as is my father.

Also, my niece, Lauren, was able to be here today, and she is in the audience together with some very special friends: Jennifer Ireland, Steve Holzbaur, Shana Restucci, and Marjorie Restucci.

I appreciate the opportunity to answer any questions that the Committee might have.

[The biographical information of Judge Smith appears as a submission for the record.]

Senator HIRONO. Thank you very much. We will proceed to questions.

Just as I asked Ms. Friedland, I would like to ask each of you to just very briefly describe your judicial philosophy, and we will go from my left to my right.

Mr. COOPER. Thank you, Senator. I certainly would not come to the bench with any preset judicial philosophy other than the philosophy of working hard and doing what I believe all district court judges are obligated to do, which is applying relevant precedent of the Supreme Court and my particular circuit to each case that comes before me.

Mr. MCHUGH. Senator, as a lawyer in private practice, it seems presumptuous to say I would take the bench and have a philosophy. But I think the way I would approach the job, if I were to be confirmed, would be to take the hallmark of private practice, which I have tried to show intellectual honesty, to read cases honestly, to recognize what they truly hold, and to apply them in a logical way to the facts that are before me in a case. And I would try to do that as well as a judge, recognizing, of course, the limited role that a judge plays in our system.

Mr. HARPOOL. I do not know that it is a judicial philosophy that my parents, who are deceased—and I should have recognized them a moment ago also, what they meant to me—they taught me to work hard, they taught me to play by the rules, and they taught me to treat people as you expect to be treated. And I think that is a pretty good philosophy for a trial judge, and that is what I would try to do.

Judge SMITH. And, Senator, I interpret the term "judicial philosophy" as to how I would run my courtroom and how I have run my courtroom, and it is always with, first and foremost, patience and courtesy to those who come before me, both the litigants as far as the attorneys, a recognition of how difficult the practice of law is and dealing with attorneys, and also a recognition that the individuals who are appearing before me, to them it is often the most im-

portant case they will ever have, and they are entitled to whatever time and attention that I need to give it to make sure justice is done.

Senator HIRONO. Mr. Cooper, you have been in private practice for your entire career, legal career, correct?

Mr. COOPER. After clerking on the D.C. Circuit for 1 year, I spent 2 years in the Justice Department before joining private practice.

Senator HIRONO. But most of your time has been in private practice, so what are the challenges that you see of serving as a Federal district judge after being in private practice and, of course, being an advocate in private practice?

Mr. COOPER. I think one of the main challenges will be to come up to speed on the wide range of legal areas that Federal judges must confront. While I have had a broad and varied career in private practice thus far, I fully recognize that I will have lots of work to do to get up to speed, and I will rely on my colleagues and all of the educational and training opportunities that are available to Federal judges in order to fill those gaps.

Senator HIRONO. Mr. McHugh, you have demonstrated a commitment to pro bono work throughout your career, but you have also discussed the need for pro bono services in difficult economic times. Can you share your thoughts on this and explain the efforts you have undertaken to encourage others in the legal profession to help pro bono and provide low-cost legal services?

Mr. MCHUGH. Senator, when the Pennsylvania Supreme Court appointed me Chair of the IOLTA Board in Pennsylvania, we launched a pro bono initiative where the chief justice invited every lawyer in the State to participate in pro bono. I moved on to become president of Pennsylvania Legal Aid Network, and what we have tried to do is fund local bar associations to encourage and recruit lawyers for pro bono service. So those have been my principal efforts in that regard.

Senator HIRONO. Thank you.

Mr. Smith, when you ran for Congress in 1996, you stated your opposition to all forms of abortion, including in cases of rape and incest. Is that correct?

Judge SMITH. I believe it is, Senator.

Senator HIRONO. And during your time as judge, have you ruled in any cases pertaining to abortion rights?

Judge SMITH. As a State trial judge I have not, ma'am.

Senator HIRONO. I assume that, if confirmed, you would apply the Supreme Court's precedents that abortion is constitutional?

Judge SMITH. Absolutely, Senator.

Senator HIRONO. *Roe v. Wade* is still the law of the land. So regardless of how you would apply the Supreme Court's precedent, do you believe that a woman has a constitutional right to have an abortion?

Judge SMITH. Senator, I understand the difference between a legislator and a judge, and I understand that my personal views do not come into play in my interpretation of the law, and I can commit to you that I will not allow my personal views to in any way interfere with my ability to view the facts, view the law, and apply the law to the facts in accordance with Supreme Court precedent and Third Circuit Court precedent.

Senator HIRONO. Ms. Friedland was asked by Ranking Member Grassley about an article that she had helped to co-author that being a judge—and I will paraphrase—may require a judge to perhaps give pause regarding one's longest-held personal beliefs. So would you agree that your personal beliefs—I think you reiterated your personal beliefs—are your personal beliefs and that they would not be a factor in your judicial decisionmaking?

Judge SMITH. That is correct, Senator.

Senator HIRONO. I answered the question for you, didn't I?

[Laughter.]

Judge SMITH. Thank you, Senator.

Senator HIRONO. I made it easy for you.

As you can imagine, the issue of abortion rights is one that is very divisive in our country, and I would expect all of our nominees to apply the law, and thank you for confirming that that is exactly what you would do, Mr. Smith.

Judge SMITH. Thank you, Madam Chairman.

Senator HIRONO. Ranking Member Grassley.

Senator GRASSLEY. I am going to do like she did, ask each one of you a couple questions, and I will start with you, Mr. Cooper. I would not have thought about Judge Lamberth, but I hope you are like he is from this standpoint. I do not think I have ever met the judge, but I read enough about him that he seems to be a check, makes the checks and balances of Government work, and the judiciary serving as a role of checking either the legislative branch or judicial branch, and I hope you have that same philosophy.

Mr. COOPER. I can only hope to.

Senator GRASSLEY. Okay. Let us see. Mr. Cooper, in a June 2012 panel on anticorruption, you talked about the internal investigation stage being the time "where there is the most opportunity to engage in creative lawyering to influence the range of outcomes a company can face." I would like to have you elaborate on what you meant by "creative lawyering."

Mr. COOPER. Sure. I frankly do not quite recall the exact context in which that statement was made. What I may have meant is that certainly during an investigative stage before potential misconduct becomes known to the Government, it is the company's obligation and opportunity to go out and find all of the facts surrounding the case and the potential allegations, both those that are incriminating and those that may be exculpatory, and that is where lawyers can influence the outcome of results for their company once the investigation becomes known.

Senator GRASSLEY. As a Federal judge, if confirmed, what signs might you look for to determine whether or not a party before you has engaged in creative lawyering? And if you suspected such activity, what would be your response or approach to such a case?

Mr. COOPER. Well, let me make clear that if I used the term "creative lawyering," it by no means suggested anything unethical. I think that in my career and practice that has not been my intent nor my practice at all. You know, I would welcome creative arguments. I would not countenance whatsoever any unethical conduct that I observe before me.

Senator GRASSLEY. Have you ever had any experience with whistleblower cases?

Mr. COOPER. I have never handled a qui tam case, nor am I familiar with the Whistleblower Protection Act. I have advised companies in setting up policies and procedures that enable and encourage employees to report perceived misconduct, and I have always advised companies to take those allegations seriously, to investigate them thoroughly, and above all else, do nothing to retaliate against whistleblowers for raising credible allegations of wrongdoing to management.

Senator GRASSLEY. Mr. McHugh, you have been very active as a trial lawyer in speaking about tort reform. For example, you stated, "Given the impact that the trial bar has, it is to be expected that powerful and moneyed interests like the U.S. Chamber of Commerce or demagogues like House Speaker Newt Gingrich will trial lawyers with negative ad campaigns."

Does this quote reflect your current views?

Mr. MCHUGH. No, sir. First, some context for that. I believe at the time I made that remark I was president of the Philadelphia Trial Lawyers, and trial lawyers had become a political issue. So it was my job to basically speak up and say we are not all bad. And I think at the end of that article I said one of the reasons we are criticized is not all trial lawyers conduct themselves the way they should, and it was a call for more professionalism.

But I am proud, Senator, to say that in applying for this position, I went to the defense bar in Pennsylvania and asked if the past presidents of that bar would support my nomination, and 18 of them signed a letter and said yes. And I am proud that I have been an arbitrator, sole binding arbitrator in cases against entities that I regularly sue, including the city of Philadelphia and hospital systems. And so as a judge, I will apply things down the middle fair and square.

Senator GRASSLEY. I think you have answered my last question with your last statement—well, no. You answered that question, but let me go on. You testified before the Philadelphia City Council to encourage passage of a strict liability statute for gun manufacturers and dealers unless they incorporated technology that would restrict the use of particular firearms to one who purchases it. You compared this strict liability campaign to other social policy initiatives like asbestos, airbags, tobacco. You said that this would allow individual victims and consumers to step forward and assert their rights.

Question: Please explain your views on the Second Amendment and how the strict liability statute squares with Second Amendment jurisprudence?

Mr. MCHUGH. Certainly, Senator. In context, I was at that time, again, president of the Philadelphia Trial Lawyers, and then Mayor Rendell asked me to testify about product liabilities that might apply, and that was my one touch with that issue. At the time he was trying to promote smart gun technology, which, of course, never proved to be viable. In the meantime, *Heller* has come down and *McDonald*, and it is the law of the land. People have a right to bear arms under the Second Amendment, and as a trial judge, I would enforce that right.

Senator GRASSLEY. Mr. Harpool, you have stated that you were pro-choice because it is not a Government issue. Is it your view that neither the State nor the Federal Government has either the right or duty to regulate abortion?

Mr. HARPOOL. I believe the Supreme Court has ruled on what the parameters are, and it would be my obligation as a district judge to just set aside any personal feelings I had and to follow the precedent of the Supreme Court, and, of course, in the State of Missouri, it would be the Eighth Circuit. My job as a district judge would be to follow that precedent irrespective of personal opinion or past political policy.

Senator GRASSLEY. During your career, you have been actively involved in State politics. There is certainly nothing wrong with that activity. But should you be confirmed, your political history might concern future litigants. For example, you have commented on Republicans having "a facade of moral superiority" and then about Republicans who wear their faith on their sleeve. Could 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. HARPOOL. I would, Senator. I think I appreciate that question, and someone with my background, it should be a concern of this Committee. I absolutely will have no problem setting aside that political thought.

I will tell you that over the last 20 years, including during some of the periods of time I made a couple of the comments you just mentioned, I have been asked by Republican office holders to represent them and serve as their legal counsel. I understand that the political world and the judicial world are separate, and I give you my personal assurance that, as a district court judge, those political beliefs will be set aside, and I will follow the law and precedent as they are presented to me by higher courts.

Senator GRASSLEY. Since it appears from your questionnaire that you have had a practice mostly on civil matters, do you think you will be prepared to do criminal issues?

Mr. HARPOOL. I will. Early in my career, very early, I tried a couple of criminal defense cases, and then in the legislature I served on the Judiciary Committee. I was Chairman for a couple years, then served on the Civil and Criminal Justice Committee—with Senator McCaskill, in fact, and former Senator Talent also was on those committees with us.

Since that time, my practice has gone away from any touching of the criminal area, had been primarily civil, but it has been largely defending governmental entities, including sheriffs, police officers, when they are challenged as to whether they have acted appropriately under the criminal law. So that has kept me at least somewhat in touch with the criminal law.

Then I have had the privilege to have been selected by the judges of the Western District to serve on the Federal Practice Committee, and we occasionally touch criminal law issues. But I certainly will have work to do to bring my level of immediate knowledge in the criminal area up to where it is in the civil area, and I make a commitment I will do that.

Senator GRASSLEY. I just have one question for you, Mr. Smith. You have been a member of the military service since 1984, including active and reserve duty. That includes deployment in Iraq, and I commend you for that service. Would you please explain to the Committee how, if at all, this service has helped prepare you to become a Federal judge?

Judge SMITH. Well, in particular, Senator Grassley, the service as a military judge obviously while I was also sitting as a State trial judge assisted me in seeing the comparative nature of the two systems. It obviously exposed me much more to the Federal system as far as the Federal Rules of Evidence as opposed to the Pennsylvania Rules of Evidence. But I think in general any life experience assists a judge when he takes the bench and has to preside over a case, and certainly my military service I think has been a very important part of my life experience.

Senator GRASSLEY. Thank you very much. Thanks to all of you.

Senator HIRONO. I do have one followup question. A number of you have written and opined on controversial issues of the day, including abortion, firearms laws, et cetera. So, Judge Smith, you have obviously from what I read very strongly held views not only on abortion, but you are an NRA member, and you have articulated a position for welfare, medical reform, term limits for Congressmen, et cetera. Now, you have been on the State court for over a decade. Do you have a reputation as being a fair and impartial arbiter to the people who come before you in State court?

Judge SMITH. Thank you, Senator. I believe and I am very proud to have what I believe is a reputation for being completely fair and with unquestioned integrity as a judge in Northampton County.

Senator HIRONO. Thank you. I thank all the members of the panel.

Mr. COOPER. Thank you, Senator.

Mr. MCHUGH. Thank you, Senator.

Mr. HARPOOL. Thank you, Senator.

Judge SMITH. Thank you, Senator.

Senator HIRONO. The record will remain open for 1 week for submission of written questions for the witnesses or other materials, and with that, this hearing is adjourned.

[Whereupon, at 3:28 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary

On

"Judicial Nominations"

Wednesday, November 6, 2013
Dirksen Senate Office Building, Room 226
2:30 p.m.

Panel I

Michelle T. Friedland, to be United States Circuit Judge for the Ninth Circuit

Panel II

Christopher Reid Cooper, to be United States District Judge for the District of Columbia

Gerald Austin McHugh, Jr., to be United States District Judge for the Eastern District of Pennsylvania

M. Douglas Harpool, of Missouri, to be United States District Judge for the Western District of Missouri

Edward G. Smith, to be United States District Judge for the Eastern District of Pennsylvania

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Michelle Taryn Friedland

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

   United States Circuit Judge for the Ninth Circuit

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

   Office: Munger, Tolles & Olson LLP
   560 Mission Street, 27th Floor
   San Francisco, California 94105

   Residence: Mountain View, California

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

   1972; Berkeley, 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.

   1997 – 2000, Stanford Law School; J.D. (with distinction), 2000

   1995 – 1996, Oxford University; no degree

   1990 – 1994, Stanford University; B.S. (with honors and distinction), 1995

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.

2004 – present
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
Partner (2010 – present)
Associate (2004 – 2009)

April 2012
University of Virginia School of Law
580 Massie Road
Charlottesville, Virginia 22903
Adjunct Faculty

2002 – 2004, 1999 – 2000, 1998 – 1999, September 1998 – December 1998
Stanford Law School
Crown Quadrangle
559 Nathan Abbott Way
Stanford, California 94305
Lecturer in Law (2002 – 2004)
Research Assistant for Professor Kathleen Sullivan (approximately 1999 – 2000)
Research Assistant for Professor Barbara Fried (approximately 1998 – 1999)
Research Assistant for Professor Barton Thompson (approximately September 1998 – December 1998)

2001 – 2002
United States Supreme Court
One First Street, NE
Washington, D.C. 20543
Law Clerk for the Honorable Sandra Day O'Connor

2000 – 2001
United States Court of Appeals for the District of Columbia Circuit
333 Constitution Avenue, NW
Washington, D.C. 20001
Law Clerk for the Honorable David Tatel

Summer 1999
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 94108
Summer Associate

Summer 1998
United States District Court for the Northern District of California

450 Golden Gate Avenue
San Francisco, California 94102
Judicial Extern for the Honorable Fern Smith

1996 – 1997
Stanford University, Office of Undergraduate Admission
Montag Hall
355 Galvez Street
Stanford, California 94305
Admission Counselor

Spring 1995
Janet Cox
(worked out of home office)
Project Assistant

January 1995 – March 1995, June 1994 – August 1994
Professor Peter Vitousek
Stanford University, Department of Biology
Yang and Yamazaki Environment and Energy Building, Room B61
Stanford, California 94305
Teaching Assistant (January 1995 – March 1995)
Research Assistant (June 1994 – August 1994)

Other Affiliations (uncompensated except as otherwise indicated):

2010 – present
Silicon Valley Campaign for Legal Services
31 North Second Street, Fourth Floor
San Jose, California 95113
Board Member

2007 – 2009
American Constitution Society for Law and Policy
1333 H Street, NW, 11th Floor
Washington, D.C. 20005
Executive Board Member for the Bay Area Lawyer Chapter

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

I have never served in the military. I was not required to register for selective service.

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

   President's Pro Bono Service Award, State Bar of California (2013)

   LGBT Award, American Civil Liberties Union of Southern California (2009)

   Wiley W. Manuel Award for Pro Bono Legal Services, State Bar of California (2006)

   Urban A. Sontheimer Award, Stanford Law School (2000)

   Order of the Coif, Stanford Law School (2000)

   Award for Outstanding Student Note Published in the Stanford Law Review (2000)

   Burton Award for Legal Writing (2000)

   Associate Editor and Article Review Board, Stanford Environmental Law Journal (1999)

   Editor, Stanford Environmental Law Journal (1998)

   First-Year Honor, Stanford Law School (1998)

   Fulbright Scholarship (1995 – 1996)

   Cook Award for Best Undergraduate Thesis in Ethics in Society Honors Program, Stanford University (1994)

   Phi Beta Kappa (1993)

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

   American Bar Association (2005 – 2011, 2013 – present)

   Bar Association of San Francisco (2004 – present)
   Co-Chair of Amicus Committee (2009 – present)

   National Association of College and University Attorneys (2010 – present)
   Committee Planning Annual Conference (2012 – present)

   State Bar of California (2004 – 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, 2004

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, 2008
United States Court of Appeals for the Ninth Circuit, 2005
United States Court of Appeals for the Eleventh Circuit, 2012
United States District Court, Northern District of California, 2005
United States District Court, Central District of California, 2005
United States District Court, Eastern District of California, 2005
United States District Court, Southern District of California, 2005

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 Constitution Society for Law and Policy
Bay Area Lawyer Chapter, Executive Board Member (2007 – 2009)

Harper Industries, Inc. (family business) (approximately 1972 – January 2013)

Harcrest International, Inc. (family business) (sometime in 1990s – 2000)

Silicon Valley Campaign for Legal Services
Board Member (2010 – present)

Stanford Law School Reunion Committee (2010)

William A. Ingram American Inn of Court (2002 – 2004)

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

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

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

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

A Wise Justice, and a Great Boss, STANFORD MAGAZINE (January/February 2006), reprinted at 58 STANFORD LAW REVIEW 1717 (2006). Copy Supplied.

You Call That *Organic? – The FDA's Misleading Food Regulations*, 13 NYU ENVIRONMENTAL LAW JOURNAL 379 (2005). Copy Supplied.

Disqualification or Suppression: Due Process and the Response to Judicial Campaign Speech, 104 COLUMBIA LAW REVIEW 563 (2004). Copy Supplied.

Since before I joined Munger, Tolles & Olson LLP, members of our San Francisco office who are former Supreme Court clerks have been writing a column about the Supreme Court in the Bar Association of San Francisco's SAN FRANCISCO ATTORNEY MAGAZINE. The group of authors has changed over time as former clerks have joined and left the firm, but I have been part of the group since I began working at the firm. My level of involvement in particular columns has varied, ranging from not seeing a column before it is submitted for publication to doing most of the drafting. Until 2011, primary responsibility for drafting the columns tended to rotate, whereas now the authors usually divide the drafting of each column. To the best of my recollection after reviewing my records, I was primarily responsible for drafting the following columns: *Supreme Court Watch: So-Called Retirement*, *Supreme Court Watch: Very Special Masters – Handling the Supreme Court's Original Jurisdiction Cases*, *Supreme Court Watch: A New Cardinal Rule – The West Coast Insurgence of the Supreme Court's Docket*, *Supreme Court Watch: A Court Without Cameras*, and *Supreme Court Watch:*

The Supreme Court on Dope. The practice has been to list the names of everyone in the group of authors on each column, even if one or more of us played little to no role in the drafting. Consistent with this practice, my name appears on each of the columns listed below. Several of the articles were reprinted in the Oregon State Bar's BULLETIN, or other local bar association publications, sometimes with modified titles or in edited form. In an abundance of caution, I have listed all of the columns below:

Kristin Myles, Michael Mongan & Michelle Friedland, *Supreme Court Watch: Scotus Notis*, SAN FRANCISCO ATTORNEY MAGAZINE (Spring 2013). Copy supplied.

Kristin Myles, Michael Mongan, Michelle Friedland & Miriam Seifter, *Supreme Court Watch: Freedom to Lie?*, SAN FRANCISCO ATTORNEY MAGAZINE (Fall 2012). Copy supplied.

Kristin Linsley Myles, Michael Mongan, Michelle Friedland & Miriam Seifter, *Supreme Court Watch: Cameras in the Courtroom*, SAN FRANCISCO ATTORNEY MAGAZINE (Summer 2012). Copy supplied.

Kristin Linsley Myles, Michelle Friedland, Aimee Feinberg, Miriam Seifter & Michael Mongan, *Supreme Court Watch: Hail to the Chief*, SAN FRANCISCO ATTORNEY MAGAZINE (Spring 2012). Copy supplied.

Kristin Linsley Myles, Michelle Friedland, Aimee Feinberg, Miriam Seifter & Michael Mongan, *Supreme Court Watch: Rookie Justice*, SAN FRANCISCO ATTORNEY MAGAZINE (Fall 2011). Copy supplied.

Kristin Linsley Myles, Michelle Friedland, Miriam Seifter & Michael Mongan, *Supreme Court Watch: Establishment Clause Déjà Vu All Over Again*, SAN FRANCISCO ATTORNEY MAGAZINE (Summer 2011). Copy supplied.

Kristin Linsley Myles, Michelle Friedland, Miriam Seifter & Michael Mongan, *Supreme Court Watch: So-Called Retirement*, SAN FRANCISCO ATTORNEY MAGAZINE (Spring 2011). Copy supplied.

Kristin Myles, Michelle Friedland, Aimee Feinberg & Miriam Seifter, *Supreme Court Watch: Guns, Incorporated*, SAN FRANCISCO ATTORNEY MAGAZINE (Fall 2010). Copy supplied.

Kristin Myles, Michelle Friedland, Aimee Feinberg & Miriam Seifter, *Supreme Court Watch: Notable Notes*, SAN FRANCISCO ATTORNEY MAGAZINE (Summer 2010). Copy supplied.

Jerry Roth, Kristin Myles, Michelle Friedland, Aimee Feinberg & David Han, *Supreme Court Watch: Vive La Difference*, SAN FRANCISCO ATTORNEY MAGAZINE (Spring 2010). Copy supplied.

Jeff Bleich, Michelle Friedland, David Han & Aimee Feinberg, *Supreme Court Watch: Very Special Masters – Handling the Supreme Court's Original Jurisdiction Cases*, SAN FRANCISCO ATTORNEY MAGAZINE (Winter 2009). Copy supplied.

Michelle Friedland, David Han & Aimee Feinberg, *Supreme Court Watch: A Shift in Constitutional Tort Jurisprudence*, SAN FRANCISCO ATTORNEY MAGAZINE (Summer 2009). Copy supplied.

Jeffrey Bleich, Aimee Feinberg, Michelle Friedland & David Han, *Supreme Court Watch: The Federal Circuit – Supreme Court Reverses a Growing Number of Cases*, SAN FRANCISCO ATTORNEY MAGAZINE (Spring 2009). Copy supplied.

Jeffrey Bleich, Aimee Feinberg, Michelle Friedland & David Han, *Supreme Court Watch: A New Cardinal Rule – The West Coast Insurgence of the Supreme Court's Docket*, SAN FRANCISCO ATTORNEY MAGAZINE (Winter 2008). Copy supplied.

Jeffrey Bleich, Aimee Feinberg, Michelle Friedland, Daniel Bress & David Han, *Supreme Court Watch: Change of Heart – Justice Stevens Reassesses the Death Penalty*, SAN FRANCISCO ATTORNEY MAGAZINE (Fall 2008). Copy supplied.

Michelle Friedland, David Han, Jeffrey Bleich, Dan Bress & Aimee Feinberg, *Supreme Court Watch: Opinions of the Court by ... Anonymous*, SAN FRANCISCO ATTORNEY MAGAZINE (Summer 2008). Copy supplied.

Jeff Bleich, Michelle Friedland, Aimee Feinberg & Dan Bress, *Supreme Court Watch: Dissenting from the Bench*, SAN FRANCISCO ATTORNEY MAGAZINE (Spring 2008). Copy supplied.

Jeff Bleich, Michelle Friedland, Aimee Feinberg & Daniel Powell, *Supreme Court Watch: A Court Without Cameras*, SAN FRANCISCO ATTORNEY MAGAZINE (Winter 2007). Copy supplied.

Jeff Bleich, Michelle Friedland, Aimee Feinberg & Daniel Powell, *Supreme Court Watch: Stealth Overrulings – Overturning Precedent Without Saying So,* SAN FRANCISCO ATTORNEY MAGAZINE (Fall 2007). Copy supplied.

Jeff Bleich, Michelle Friedland, Aimee Feinberg & Daniel Powell, *Supreme Court Watch: Punitive Damages – The Saga Continues,* SAN FRANCISCO ATTORNEY MAGAZINE (Summer 2007). Copy supplied.

Jeff Bleich, Michelle Friedland, Aimee Feinberg & Daniel Powell, *Supreme Court Watch: Justice John Paul Stevens – an Independent Voice,* SAN FRANCISCO ATTORNEY MAGAZINE (Spring 2007). Copy supplied.

Jeff Bleich, Michelle Friedland, Aimee Feinberg & Daniel Powell, *Supreme Court Watch: The Supremes' Lighter Moments,* SAN FRANCISCO ATTORNEY MAGAZINE (Winter 2006). Copy supplied.

Jeff Bleich, Aimee Feinberg, Michelle Friedland & Dan Powell, *Supreme Court Watch: Life Tenure Without the Possibility of Parole*, SAN FRANCISCO ATTORNEY MAGAZINE (Summer 2006). Copy supplied.

Jeff Bleich, Aimee Feinberg, Michelle Friedland & Dan Powell, *Supreme Court Watch: Advice and Consent on Supreme Court Justices*, SAN FRANCISCO ATTORNEY MAGAZINE (Spring 2006). Copy supplied.

Jeff Bleich, Michelle Friedland & Daniel Powell, *Supreme Court Watch: The New Chief*, SAN FRANCISCO ATTORNEY MAGAZINE (Winter 2005). Copy Supplied.

Jeff Bleich, Anne M. Voigts & Michelle Friedland, *Supreme Court Watch: OT 2004 – The Beginning (Or The End) of Pragmatism*, SAN FRANCISCO ATTORNEY MAGAZINE (Summer – Fall 2005). Copy supplied.

Jeff Bleich, Anne Voigts & Michelle Friedland, *Supreme Court Watch: Never Say Never: The Supreme Court and Jurisprudential Groundhog Days,* SAN FRANCISCO ATTORNEY MAGAZINE (Winter – Spring 2005). Copy Supplied.

Jeff Bleich & Michelle Friedland, *Supreme Court Watch: The Supreme Court on Dope,* SAN FRANCISCO ATTORNEY MAGAZINE (Fall 2004). Copy supplied.

Not Disabled Enough: The ADA's "Major Life Activity" Definition of Disability, 52 STANFORD LAW REVIEW 171 (1999). Copy Supplied.

With Mark W. Denny, *Surviving Hydrodynamic Forces in a Wave-Swept Environment: Consequences of Morphology in the Feather Boa Kelp,* Egregia Menziesii *(Turner)*, 190 JOURNAL OF EXPERIMENTAL MARINE BIOLOGY AND ECOLOGY 109 (1995). 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 any reports, memoranda, or policy statements on behalf of any bar association, committee, conference, or organization of which I was or am a member.

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

I have not testified before or given or provided to public bodies or public officials any official statements or communications relating, in whole or in part, to matters of public policy or legal interpretation.

Along with my fellow clerks from the Supreme Court's October 2001 Term, I joined a letter to Senators Leahy and Grassley in support of Alison J. Nathan's nomination to the United States District Court for the Southern District of New York. Copy supplied.

Along with numerous members of the California legal community, I joined a letter to President Obama in support of efforts to obtain confirmation of Professor Goodwin Liu and the Honorable Edward M. Chen to the Ninth Circuit Court of Appeals and the Northern District of California, respectively. 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.

April 16, 2013: Panelist, "Oral Argument Tactics," California Attorney General's Office, San Francisco, California. Notes supplied.

February 27, 2013: Panelist, "Being a Litigator and a Parent: Bay Area Attorneys Discuss Balancing Their Legal Careers and Family Lives," Stanford Law School, Stanford, California. I have no notes, transcript, or recording. The address of

Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

November 28, 2012: Panelist, "Writing Effective Amicus Briefs," co-sponsored by the Impact Fund and the University of California-Davis California Supreme Court Clinic, San Francisco, California. Video supplied.

January 17, 2012: Panelist, "Are There Real Opportunities to Do Pro Bono Work at Law Firms? Munger, Tolles & Olson LLP Discusses Its Groundbreaking Pro Bono Work," Stanford Law School, Stanford, California. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on November 1, 2011, for which notes have been provided. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

November 1, 2011: Panelist, "Are There Real Opportunities to Do Pro Bono Work at Law Firms? Munger, Tolles & Olson LLP Discusses Its Groundbreaking Pro Bono Work," Berkeley Law School, Berkeley, California. Notes supplied.

October 14, 2010: Panelist, "Judicial Elections After *Republican Party of Minnesota v. White*," National Association of Women Judges Annual Conference, San Francisco, California. Notes supplied.

February 25, 2010: Panelist, "Strategies for Success at Big Law: First-Hand Experiences of Women and People of Color," Stanford Law School, Stanford, California. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

November 6, 2009: Moderator, "Cap and Trade and Social Justice: Can We Have Both?" Bay Area Lawyer Chapter of the American Constitution Society, San Francisco, California. Notes supplied.

November 3, 2009: Panelist, "The Nuts and Bolts of Appeals," Queen's Bench Bar Association of the San Francisco Bay Area, San Francisco, California. I have no notes, transcript, or recording. The address of the Queen's Bench Bar Association of the San Francisco Bay Area is 816 East Fourth Avenue, San Mateo, California 94401.

October 9, 2009: Speaker, "From Ethics in Society to Law Practice," Stanford University Center for Ethics in Society, Stanford, California. I have no notes, transcript, or recording. The address of the Center for Ethics in Society is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

June 16, 2009: Moderator, panel discussion related to applying for judicial clerkships, American Constitution Society Bay Area Lawyer Chapter, San Francisco, California. I have no notes, transcript, or recording. The address of the American Constitution Society is 1333 H Street, Northwest, 11th Floor, Washington, D.C. 20005.

February 25, 2009: Panelist, "Strategies for Success at Big Law: First-Hand Experiences of Women and People of Color," Stanford Law School, Stanford, California. I have no notes, transcript, or recording. The address of Stanford Law School is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

May 9, 2003: Speaker, "Speech Restrictions on Candidates in State Judicial Elections: Protecting Judicial Impartiality or Impeding Democracy," Stanford University Center for Ethics in Society, Stanford, California. I have no notes, transcript, or recording. The address of the Center for Ethics in Society is Crown Quadrangle, 559 Nathan Abbott Way, Stanford, California 94305.

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.

David G. Savage, *Supreme Court Upholds State Laws on Floating Homes*, LOS ANGELES TIMES (Jan. 15, 2013). Copy supplied. (Reprinted in multiple outlets).

Erik Cummins, *Behind the Scenes with Young Lawyers Working on the Same-Sex Marriage Cases*, SAN FRANCISCO ATTORNEY MAGAZINE (Summer 2011). Copy supplied.

Erik Cummins, *Amicus Brief Advances Bar's Mission in Same-Sex Marriage Case*, SAN FRANCISCO ATTORNEY MAGAZINE (Winter 2011). Copy supplied.

Alumni Updates, CENTER FOR ETHICS IN SOCIETY AT STANFORD (Spring 2009). Copy supplied.

Personal and Professional News from Alumni Classmates, Stanford Lawyer (Fall 2007). Copy supplied.

Randee Fenner, *Clerking at the Supreme Court*, STANFORD LAWYER (Fall 2007). Copy supplied.

Drake Bennet, *Orphans of the Court*, BOSTON GLOBE (July 24, 2005). Copy supplied.

Ben Friedland, *Above All Else: Marty Hoffinger Is an Industry Legend, Helping Launch Aboveground Pools in the 50's. Today, He Faces Some of His Toughest Challenges Yet*, POOL & SPA NEWS (June 18, 2004). Copy Supplied.

Profiling ENRLP's New Faculty: Michelle Friedland '00 (BS '94), David Victor, and Cary Coglianese, THE NATURAL RESOURCE (Fall 2003). Copy supplied.

Diane Manuel, Stanford News Service News Release: *Ethics in Society Program Encourages Moral Reflection* (Jan. 28, 1998). Copy supplied.

Scotch Plains Resident Named Fulbright Scholar, THE TIMES (April 27, 1995). Copy supplied.

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

I have not held any judicial office.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

I have not served as a judge.

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

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

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

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

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

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

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office. I have not held any elective office or any appointed office.

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

In 2012, I did several hours of volunteer legal research on behalf of the Obama for America campaign, the respondents in *Husted v. Obama for America*, No. 12A338, involving an application for a stay filed in the United States Supreme Court.

To the best of my recollection, in 2004, I participated as a volunteer in one day of get-out-the-vote phone banking for the Kerry-Edwards 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 2000 to 2001, I served as a law clerk to Judge David Tatel, Circuit Judge for the United States Court of Appeals for the District of Columbia Circuit.

From 2001 to 2002, I served as a law clerk to Justice Sandra Day O'Connor, Associate Justice for the United States Supreme Court.

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.

2004 – present
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, California 94105

Partner (2010 – present)
Associate (2004 – 2009)

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

I have never served as a mediator or arbitrator.

b. Describe:

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

After completing my clerkships and two years of teaching at Stanford Law School, I began private practice in October 2004 at Munger, Tolles & Olson LLP in San Francisco. As a member of the Litigation Department, I have worked on a mix of trial and appellate matters. Most of the matters I handle are civil, and most involve business or constitutional disputes. In my initial years as an associate, I worked on business litigation matters across a range of subject areas, including white collar criminal defense, tax, patent, and copyright. While I participated in discovery and related tasks as well as on a trial team, my role typically focused on dispositive brief-writing in trial courts or on appeal. As a more senior associate and now as a partner, my practice has focused primarily on representing pharmaceutical companies in antitrust litigation; representing the University of California in constitutional litigation and class action defense; and representing primarily non-profits in appeals involving constitutional issues. The fraction of my work that is at the appellate level has increased over time, though I also have remained involved in substantial litigation at the trial court level, including an antitrust jury trial, taking and defending depositions and other discovery, and briefing and arguing many motions in state and federal courts.

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

Over the course of my career, I have developed an expertise in trial-level and appellate litigation, across a broad range of legal issues. In my initial years as an associate, I worked on cases primarily for Boeing, Northrop Grumman, Verizon Wireless, and Berkshire Hathaway. More recently, my clients have included pharmaceutical companies and the University of California. Through my pro bono work, I also have represented individual clients.

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

Approximately 90% of my practice has been in litigation. I did not argue in court frequently in my first few years as an associate from 2004 to 2006. As a more senior associate and now as a partner, I typically have argued in court four or more times a year and have appeared in court many times per year. I have argued motions to dismiss, for summary judgment, to compel, to intervene, and against preliminary injunctive relief in federal district courts; I have presented demurrer, declaratory judgment, and settlement approval arguments in state trial courts; and I have presented appellate arguments in federal courts of appeals.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 10%
   3. other courts: 0%
   4. administrative agencies: 0%

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

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

I have tried two civil cases to verdict, both as associate counsel.

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 argued before the United States Supreme Court, but I have appeared as counsel in the following cases:

Hollingsworth v. Perry, 133 S. Ct. 2652 (2013) (amicus brief on behalf of Bay Area Lawyers for Individual Freedom, *et al.*, in support of respondent, 2013 WL 769311).

Federal Trade Commission v. Actavis, Inc., 133 S. Ct. 2223 (2013) (brief in response to petition for certiorari for respondent Solvay Pharmaceuticals, 2012 WL 5769670; merits brief for respondent Solvay Pharmaceuticals, 2013 WL 648743).

Fisher v. University of Texas at Austin, 133 S. Ct. 2411 (2013) (amicus brief on behalf of the Lawyers' Committee for Civil Rights Under Law, *et al.*, in support of respondent, 2012 WL 3527856).

Lozman v. City of Riviera Beach, 133 S. Ct. 735 (2013) (amicus brief on behalf of the Seattle Floating Homes Association and the Floating Homes Association of Sausalito in support of petitioner, 2012 WL 1773029).

Association of Christian Schools International v. Stearns, No. 09-1461 (2010) (brief in opposition to petition for certiorari, 2010 WL 3555955).

Board of Trustees of the Leland Stanford Junior University v. Roche Molecular Systems, Inc., 131 S. Ct. 2188 (2011) (amicus brief on behalf of Massachusetts Institute of Technology in support of petitioner, 2010 WL 5535743).

Palmer v. Valdez, No. 09-6429 (2010) (reply brief in support of petition for certiorari). Copy provided.

Perfect 10, Inc. v. Visa International Service Association, No. 07-1026 (2008) (amicus brief on behalf of Motion Picture Association of America, *et al.*, in support of petitioner, 2008 WL 877880).

Medellin v. Texas, 128 S. Ct. 1346 (2008) (amicus brief on behalf of the American Bar Association in support of petitioner, 2007 WL 1886208).

Sanchez-Llamas v. Oregon; *Bustillo v. Johnson*, 126 S. Ct. 2669 (2006) (amicus brief on behalf of the American Bar Association in support of petitioner Bustillo, 2005 WL 3597819).

Medellin v. Dretke, 125 S. Ct. 2088 (2005) (amicus brief on behalf of the American Bar Association in support of petitioner, 2005 WL 176451).

United States v. Georgia; *Goodman v. Georgia*, 126 S. Ct. 877 (2006) (amicus brief on behalf of the Honorable Dick Thornburgh and the National Organization on Disability in support of petitioners, 2005 WL 1826317).

Doe v. Mann, No. 05-815 (2006) (petition for certiorari, 2005 WL 3551182); *Mann v. Doe*, No. 05-951 (opposition to conditional cross-petition for certiorari, 2006 WL 897026).

I also have served as co-chair of the Bar Association of San Francisco's Amicus Committee since 2009. Typically, this is not part of my practice, as the briefs considered by this Committee are drafted by outside counsel and Committee members' names are not listed on the briefs. The Committee's role is limited to an initial screen to determine whether a case presents a question of law and then presenting amicus requests to the Bar Association's Board of Directors. The Committee's recommendations to the Board are non-binding, and decisions regarding whether to participate as an amicus are made by the Board; members of the Committee do not vote on participation. The Committee also reviews briefs joined by the Bar Association of San Francisco to ensure that they are consistent with the Bar Association's policies and positions. As listed above, however, my firm did draft an amicus brief in *Hollingsworth v. Perry* on behalf of the Bar Association and other organizations.

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

    a. the date of representation;

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

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

I have listed the cases below in reverse chronological order.

1. *Federal Trade Commission v. Actavis, Inc.*, 133 S. Ct. 2223 (2013) (2012 – 2013).

We represent the respondent, Solvay Pharmaceuticals, a brand drug manufacturer, in an antitrust action brought by the Federal Trade Commission ("FTC") challenging a settlement of patent litigation between Solvay and two proposed manufacturers of generic versions of Solvay's patented drug AndroGel. The district court, following precedent from the Eleventh, Second, and Federal Circuits, held that the settlement did not violate the antitrust laws because any restraint on competition imposed by the settlement did not exceed the scope of Solvay's patent in question, and it dismissed the FTC's complaint. The Eleventh Circuit affirmed in an opinion written by Judge Carnes and joined by Judges Kravitch and Farris (sitting by designation from the Ninth Circuit). The Supreme Court granted certiorari and reversed and remanded, holding that a rule-of-reason analysis should apply. Justice Breyer authored the opinion for the Court, and

Chief Justice Roberts filed a dissent, in which Justices Scalia and Thomas joined. Justice Alito did not participate. I played a lead role in preparing the briefs to the Supreme Court on behalf of Solvay. In the months before the Supreme Court argument, I also briefed and argued an expedited appeal to the Eleventh Circuit of a district court order unsealing a confidential Solvay document that had been attached as an exhibit to the FTC's complaint. The Eleventh Circuit affirmed the district court's order allowing the exhibit to become part of the public record in the Supreme Court. Judge Marcus wrote the opinion, which Judges Black and Siler (sitting by designation from the Sixth Circuit) joined. *Federal Trade Commission v. AbbVie Products LLC*, 713 F.3d. 54 (2013).

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2. *In re Androgel Antitrust Litigation (No. II)*, 888 F. Supp. 2d 1336 (N.D. Ga. 2012) (2010 – present).

We represent the defendant, Solvay Pharmaceuticals, in class actions and individual suits brought by purchasers of the drug AndroGel, which the Judicial Panel on Multidistrict Litigation consolidated for pre-trial purposes before Judge Thrash in the United States District Court for the Northern District of Georgia. Plaintiffs argued that Solvay had engaged in sham patent litigation in violation of the antitrust laws when it brought patent infringement claims against two proposed manufacturers of generic versions of its patented drug AndroGel. After approximately two years of discovery, the district court granted summary judgment for the defendants, holding that there had been a reasonable basis for each of Solvay's claims in the patent litigation. Plaintiffs' appeal was stayed pending the decision in *Federal Trade Commission v. Actavis, Inc.* The parties recently submitted briefs to the Eleventh Circuit discussing whether the appeal should proceed in the Eleventh Circuit or whether the case should be remanded to the district court. I helped draft Solvay's summary judgment briefs and also helped with all aspects of discovery on the antitrust issues, including taking and defending depositions and briefing and arguing motions to compel. I also played a substantial role in drafting Solvay's recent brief to the Eleventh Circuit arguing that the appeal should proceed without a remand.

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3. *Safeway, Inc. v. Abbott Laboratories*; *Meijer, Inc. v. Abbott Laboratories*; *Rite Aid Corp. v. Abbott Laboratories*; *Smith Kline Beecham Corp. d/b/a Glaxosmithkline v. Abbott Laboratories*, 761 F. Supp. 2d 874 (N.D. Cal. 2011). *Smith Kline Beecham Corp. d/b/a Glaxosmithkline v. Abbott Laboratories*, Ninth Circuit Case Nos. 11-17357, 11-17373 (pending) (2008 – present).

Direct purchasers of Abbott Laboratories' patented drugs Norvir and Kaletra, and GlaxoSmithKline (GSK), which makes a drug that is taken with Norvir and that competes with Kaletra, filed antitrust suits alleging that Abbott's pricing practices violated the antitrust laws. Abbott argued that plaintiffs' antitrust theory was equivalent to the "price squeeze" theory the Supreme Court rejected in *Pacific Bell Telephone, Co. v. linkLine Communications, Inc.*, and, in any event, that plaintiffs had not demonstrated that Kaletra had monopoly power in any properly defined product market. The case proceeded to a three-week jury trial before Judge Wilken in the United States District Court for the Northern District of California. After the first day of trial, Abbott entered into settlements with the Direct Purchaser plaintiffs, but the trial against GSK continued. The jury ultimately found in Abbott's favor on the antitrust claims and awarded less than 1% of the damages GSK had sought on breach-of-contract claims. The parties' cross-appeals are now pending before the Ninth Circuit. I played a lead role in preparing Abbott's motions to dismiss and for summary judgment on the antitrust claims, and in drafting our motions *in limine* and jury instruction briefs for trial. I was also an active member of the trial team.

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4. *Felber v. Yudof*, 851 F. Supp. 2d 1182 (N.D. Cal. 2011) (2011 – 2012).

Two students from the University of California Berkeley ("UC") sued the University and several of its officials, alleging that student protests on campus against Israeli checkpoint policies created a hostile environment for Jewish students in violation of their rights under Title VI of the Civil Rights Act, as well as their rights under the First Amendment and Equal Protection Clause. The case presented an issue of first impression as to a university's obligations under Title VI in such circumstances. I briefed and argued UC's motion to dismiss, which took the position that UC could not be required by Title VI to prohibit the protest activity because it was protected by the First Amendment; that plaintiffs' own allegations showed that UC had responded to incidents involving threats or violence rather than protected speech; and that plaintiffs had not sufficiently alleged a violation of their constitutional rights. Judge Seeborg of the United States District Court for the Northern District of California granted the motion to dismiss, with leave to amend. After plaintiffs amended their complaint, I briefed and argued a motion to dismiss their amended complaint. While that motion was pending, Judge Seeborg ordered the parties to mediate, and the case settled in mediation.

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5. *Powell v. Regents of the University of California,* San Diego County Superior Court Case No. 37-2009-00100856-CU-BT-CTL (2009 – 2011).

After the University of California ("UC") notified certain patients at one of its medical centers that a hacker appeared to have obtained access to a database containing information about those patients, the plaintiff filed a putative class action in San Diego County Superior Court asserting claims under California's Confidentiality of Medical Information Act, the Privacy Clause of the California Constitution, and California Business and Professions Code section 17200. The case presented a novel question of whether nominal damages are available under California's Confidentiality of Medical Information Act if there has been no affirmative release or disclosure by the defendant. Judge Prager sustained UC's demurrer on the privacy and section 17200 claims and granted UC's motion to strike the claim for nominal damages under the Confidentiality of Medical Information Act. The parties then reached a settlement. I briefed and argued UC's demurrer and played a substantial role in briefing UC's motion to strike and in negotiating the settlement.

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6. *Association of Christian Schools International v. Stearns*, 679 F. Supp. 2d 1083 (C.D. Cal. 2008); 678 F. Supp. 2d 980 (C.D. Cal. 2008); 362 Fed. Appx. 640, 2010 WL 107035 (9th Cir. Jan. 12, 2010) (unpublished), cert denied, 131 S. Ct. 456 (2010) (2005 – 2010).

One way California high school students may gain admission to the University of California ("UC") is to earn sufficiently high grades, in combination with their SAT scores. In order to ensure that students who are admitted in this manner are adequately prepared for study at UC, UC reviews the curricula of high school courses and approves only those courses that are sufficiently rigorous and comprehensive for use toward admission. Plaintiff objected to the criteria UC uses to evaluate courses and brought constitutional challenges to UC's admission

policies. UC moved for summary judgment on the plaintiffs' facial challenges, arguing that when the government provides a service that by its nature requires distinctions based on the content of speech, those distinctions are constitutional as long as they are rationally related to the government's purpose in providing the service in question. UC argued that all of its course review criteria were academically reasonable and that there were adequate alternative avenues to admission to accommodate all students' religious beliefs, such as taking standardized tests to prove subject matter knowledge instead of using one's high school grade in a particular subject. Judge Otero of the United States District Court for the Central District of California granted that motion. UC then moved for summary judgment on plaintiffs' as-applied challenges, arguing that plaintiffs lacked evidence that any of UC's course decisions were academically unreasonable or motivated by animus. The district court granted that motion as well. The Ninth Circuit affirmed in a per curiam decision by Judges Hall, Thompson, and Silverman. The Supreme Court then denied certiorari. I played a lead role in drafting the UC's briefs in the district court, Ninth Circuit, and Supreme Court; played an active role in discovery; and argued the summary judgment motion on the as-applied challenges.

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7. *Palmer v. Valdez*, 560 F.3d 965 (9th Cir. 2009) (2008-2010).

On assignment from the Ninth Circuit through the Court's pro bono program, I represented a prisoner plaintiff who had unsuccessfully represented himself in the bench trial of a section 1983 action in which he claimed that he had been subject to excessive force by prison guards. On appeal, I argued on plaintiff's behalf that the district court had imposed an unconstitutional condition on his right to a jury trial when the court required him to choose between proceeding with a jury trial without the testimony of certain key witnesses who were not present in the courtroom or waiving the right to a jury trial and proceeding with a bench trial in which those witnesses could testify by telephone. In an opinion authored by Judge Callahan and joined by Judge Siler (sitting by designation from the Sixth Circuit), the Ninth Circuit affirmed the district court's judgment in favor of defendants. Judge McKeown dissented, arguing that my client had been subject to an unconstitutional condition. The Supreme Court denied certiorari. I played the lead role in the briefing and presented the argument in the Ninth Circuit.

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8. *John Doe 1 v. Abbott Laboratories*, 571 F.3d 930 (9th Cir. 2009) (2007 – 2009).

Indirect purchasers of Abbott Laboratories' patented drugs Norvir and Kaletra filed suits against Abbott alleging that its pricing practices had violated the antitrust laws. The case presented an issue of first impression as to whether the type of "monopoly leveraging" plaintiffs alleged is anticompetitive conduct under the Sherman Act. Abbott argued that it is not, as well as that plaintiffs had failed to show antitrust injury or that Abbott had monopoly power in any relevant market. After the district court denied Abbott's motions to dismiss and for summary judgment, Abbott filed an interlocutory appeal. The Ninth Circuit reversed, in a decision written by Judge Rymer and joined by Judges Schroeder and Reinhardt. I played a leading role in drafting Abbott's Ninth Circuit briefs.

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9. *Strauss v. Horton*, 46 Cal. 4th 364 (2009) (2008 – 2009).

On May 15, 2008, the California Supreme Court held that the California Constitution guaranteed same-sex couples the right to marry. In the November 2008 election, California voters approved Proposition 8, which amended the California Constitution to define marriage as between a man and a woman. We represented several same-sex couples and nonprofit organization Equality California as Petitioners in challenging Proposition 8 in the California Supreme Court on state constitutional grounds. The California Supreme Court upheld Proposition 8 but held that existing same-sex marriages must continue to be recognized. The opinion for the majority was written by Chief Justice George. Justice Moreno filed an opinion dissenting in part. I played a substantial role in drafting Petitioners' briefs to the California Supreme Court.

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10. *OBH, Inc. v. United States of America*, 397 F. Supp. 2d 1148 (D. Neb. 2005) (2005).

OBH (f/k/a Berkshire Hathaway) filed tax suits seeking a refund of income taxes it argued had been erroneously assessed by the IRS. We represented OBH in a bench trial before Judge Strom in the United States District Court for the District of Nebraska. OBH argued that the methodology the IRS had used to "trace" funds from debt proceeds to dividend-paying stocks was arbitrary, and resulted in higher taxes than was justified under the relevant provisions of the tax code. The district court ruled in OBH's favor on all claims. I helped prepare OBH's trial briefs, witness examinations, and opening and closing statements.

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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.)

My legal activities have focused almost entirely on litigation. Occasionally, however, I have pursued legal activities that did not involve litigation. For example, I provided advice to an entertainment company considering entering new types of agreements with

artists about how to minimize the litigation risks posed by the agreements. I also have worked on internal investigations for corporations looking into alleged wrongdoing by employees. I also helped with a review of the University of California's policies for responding to civil disobedience, which led to a 2012 report by Dean Christopher Edley of the University of California, Berkeley Law School and General Counsel Charles Robinson of the University of California entitled "Response to Protests on UC Campuses."

I have performed no lobbying activities on behalf of any client or organization and have never been registered as a lobbyist.

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

    During April 2012, I taught a two-week intensive seminar entitled "Constitutional Issues in Higher Education" at the University of Virginia School of Law. The course explored constitutional issues presented by recent litigation involving public universities, including topics related to affirmative action, non-discrimination policies for student organizations, and campus speech codes. A copy of the syllabus is supplied.

    During the fall semesters of 2002 and 2003, I taught Federal Jurisdiction at Stanford Law School. This doctrinal course focused on the scope of federal courts' jurisdiction, the development of federal common law, suits challenging official action, official immunity, sovereign immunity, and federal habeas corpus. I have been unable to locate a copy of the syllabus.

    During the spring semesters of 2003 and 2004, I taught Environmental Law at Stanford Law School. The course focused on the Resource Conservation and Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); and the Clean Air Act. The course also covered general principles of administrative law and Article III standing doctrine. I have been unable to locate 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.

    Munger, Tolles & Olson does not provide pension or retirement benefits. Upon withdrawal from the partnership, a partner is entitled to receive a "fair share" of firm net income for the current year, reflecting the partner's contributions to date, less amounts previously drawn. In addition, a partner withdrawing from the partnership is entitled to a

return of the partner's capital contributions. The current value of my capital contributions to the firm is reflected in the attached Net Worth Statement.

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

    I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, if 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).

    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 likely to be presented by my family members. I would recuse myself, at least for some initial period, from any case being handled by Munger, Tolles & Olson. I also would recuse myself from any case on which I worked while at Munger, Tolles & Olson, as well as any case where, due to a current or past professional or personal relationship with a party or attorney involved, my impartiality might reasonably be questioned.

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

       I would handle all matters involving actual or potential conflicts of interest by applying the Code of Conduct for United States Judges, as well as any other relevant ethical canons or statutory provisions.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of

professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have served for the past three years as a board member of the Silicon Valley Campaign for Legal Services, a non-profit organization devoted to raising funds to help provide free legal assistance to low-income persons residing in Silicon Valley.

I also have devoted a significant portion of my time in private practice to serving pro bono clients. Those activities have taken a variety of forms. For example, I have filed amicus briefs in the United States Supreme Court in pro bono matters on behalf of non-profit organizations, such as a brief on behalf of associations of floating home owners in *Lozman v. City of Riviera Beach*, a case concerning whether floating homes are vessels for purposes of maritime jurisdiction. I also have assisted in trial court and appellate litigation involving the interests of disadvantaged groups, such as the currently pending litigation seeking a preliminary injunction against enforcement of California's SB 1172 law, which prohibits licensed mental health providers from engaging in sexual orientation change efforts on minors—work for which I recently was named a recipient of the 2013 President's Pro Bono Service Award from the State Bar of California. I also accepted an assignment through the Ninth Circuit's pro bono program in a case about whether a prisoner had been denied the right to a jury in a trial regarding alleged mistreatment in prison.

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 March 1, 2013, I received an email from a lawyer in the White House Counsel's Office, asking if I would be interested in being considered to fill a vacancy on the Ninth Circuit, and I spoke with him on March 4, 2013. Since March 13, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 29, 2013, I met with Senator Dianne Feinstein's judicial advisory committee in San Francisco, California. On April 24, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On August 1, 2013, 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. 1/2013

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
Friedland, Michelle T.	Ninth Circuit	08/01/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination Date 08/01/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	01/01/2012 to 07/18/2013
7. Chambers or Office Address		
Munger, Tolles & Olson LLP 560 Mission Street, 27th Floor San Fancisco, CA 94105		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Munger, Tolles & Olson LLP
2.	Trustee	Trust #1
3.	Director	Silicon Valley Campaign for Legal Services
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 11	Name of Person Reporting Friedland, Michelle T.	Date of Report 08/01/2013

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. 2013	Munger, Tolls & Olson LLP	$252,500.00
2. 2012	Munger, Tolls & Olson LLP	$765,942.00
3. 2012	University of Virginia School of Law - teaching	$10,000.00
4. 2011	Munger, Tolls & Olson LLP	$630,438.00

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. 2013	Tarana Wireless Inc. - salary
2. 2012	Tarana Wireless 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 11	Name of Person Reporting Friedland, Michelle T.	Date of Report 08/01/2013

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 11	Name of Person Reporting Friedland, Michelle T.	Date of Report 08/01/2013

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. Investment Account #1:					Exempt				
2. - Vanguard International Value Fund	A	Dividend	J	T					
3. - Vanguard Total Intl Stock Index Fund Admiral Shares	A	Dividend	K	T					
4. Investment Account #2:									
5. - Vanguard 500 Index Fund Admiral Shares	D	Dividend	N	T					
6. - Vanguard European Stock Index Fund Admiral Shares	B	Dividend	L	T					
7. - Vanguard International Value Fund	A	Dividend	K	T					
8. - Vanguard Prime Money Market Fund - Sweep Account	A	Dividend	J	T					
9. - Vanguard Total Intl Stock Index Fund Admiral Shares	D	Dividend	M	T					
10. Investment Account #3:									
11. - Berkshire Hathaway Inc- Delaware Class A		None	M	T					
12. - California State Bond	A	Interest	J	T					
13. Investment Account #4:									
14. - Vanguard 500 Index Fund Admiral Shares	D	Dividend	N	T					
15. - Vanguard Emerging Markets Stock Ind Fund Admiral Shares	D	Dividend	M	T					
16. - Vanguard International Growth Fund Admiral Shares	B	Dividend	M	T					
17. - Vanguard International Value Fund	B	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Friedland, Michelle T.	08/01/2013

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 Prime Money Market Fund	A	Int./Div.	O	T					
19. - Vanguard Tax-Managed Intl Fund Admiral Shares	B	Dividend	K	T					
20. - Vanguard Total Intl Stock Index Fund Admiral Shares	D	Dividend	N	T					
21. - Vanguard Total Stock Market Index Fund Admiral Shares	D	Dividend	N	T					
22. - Vanguard US Growth Fund Investor Shares	A	Dividend	K	T					
23. Investment Account #5:									
24. - Vanguard Prime Money Market Fund		None	J	T					
25. - Ishares S&P California	A	Dividend	K	T					
26. - Revenue Shares Small Cap EFT	A	Dividend	L	T					
27. Investment Account #6:									
28. - Vanguard 500 Index Fund Admiral Shares	C	Dividend	M	T					
29. - Vanguard Prime Money Market Fund		None	J	T					
30. - Vanguard Total Intl Stock Index Fund Admiral Shares	C	Dividend	M	T					
31. Investment Account #7:									
32. - Vanguard 500 Index Fund Admiral Shares	C	Dividend	M	T					
33. - Vanguard Prime Money Market Fund		None	J	T					
34. - Vanguard Total Intl Stock Index Fund Admiral Shares	C	Dividend	M	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 11	Name of Person Reporting Friedland, Michelle T.	Date of Report 08/01/2013

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. Investment Account #8:									
36. - Vanguard 500 Index Fund Admiral Shares	B	Dividend	L	T					
37. IRA Account #1:	A	Dividend	K	T					
38. - Vanguard Prime Money Market Fund									
39. - Ishares IBOXX Investment Grade Corp Bond Fund									
40. - Revenue Shares Small Cap EFT									
41. IRA Account #2:	A	Dividend	L	T					
42. - Vanguard 500 Index Fund Admiral Shares									
43. IRA Account #3:	A	Dividend	K	T					
44. - Vanguard Prime Money Market Fund									
45. - Vanguard Value Index Fund Admiral Shares									
46. IRA Account #4:	A	Dividend	K	T					
47. - Ishares IBOXX Investment Grade Corp Bond Fund									
48. - Revenue Shares Small Cap EFT									
49. Investment Account #9:									
50. - Cash Account	A	Interest	N	T					
51. - California State Bond	B	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
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Friedland, Michelle T.	08/01/2013

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

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. - Chino Basin, CA Bond	B	Interest	K	T					
53. - Los Angeles Department of Water and Power Bond	B	Interest	K	T					
54. - Los Angeles Unified School District Bond	B	Interest	K	T					
55. - San Joaquin Hills, CA Transp. Corridor Agency Bond	A	Interest	K	T					
56. - Santa Clara, CA Bond	B	Interest	K	T					
57. IRA Account #5:	B	Dividend	L	T					
58. - Northern Trust S&P 500 Index Fund									
59. - T Rowe Price Institutional Small-Cap Stock Fund									
60. IRA Account #6:	B	Dividend	K	T					
61. - Fidelity Spartan Total Market Index Fund									
62. - Fidelity Spartan Extended Market Index Fund									
63. Retirement Account #1:									
64. - Fidelity Instl MM Funds	A	Dividend	J	T					
65. - Invesco Charter Strategy		None	K	T					
66. Retirement Account #2:									
67. - Vanguard Target Retirement 2030	B	Dividend	L	T					
68. - Vanguard Index 500 Signal	D	Dividend	M	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
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G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
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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
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FINANCIAL DISCLOSURE REPORT Page 8 of 11	Name of Person Reporting Friedland, Michelle T.	Date of Report 08/01/2013

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. Retirement Account #3:									
70. - SSgA S&P Mid Cap Index Fund		None	J	T					
71. - Vanguard Small Cap Index Retirement Acc		None	J	T					
72. College Savings Plan #1:									
73. - Scholar Share Passive Growth Portfolio		None	K	T					
74. College Savings Plan #2:									
75. - Scholar Share Passive Growth Portfolio		None	K	T					
76. Retirement Account #4:									
77. - Northrop Grumman Large U.S. Equity Fund		None	L	T					
78.									
79. Rental Property, Boca Raton, Florida	C	Rent	L	W					
80. Bank of America - Cash Account	A	Interest	M	T					
81. Stanford Federal Credit Union - Cash Account	A	Interest	K	T					
82. State of California Bonds	A	Interest							
83. Cisco Systems (Common)	A	Dividend							
84. Johnson & Johnson (Common)	C	Dividend							
85. Texas Instruments (Common)	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Friedland, Michelle T.	08/01/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. 3M Company (Common)	B	Dividend							
87. Verizon Communications (Common)	A	Dividend							
88. Wal-Mart Stores Inc (Common)	A	Dividend							
89. Invesco Growth Fd Cl A	A	Dividend							
90. Invesco Asia Pacific Growth A	A	Dividend							
91. American Greetings Corp (Common)	A	Dividend							
92. Boston Properties Inc Com	A	Dividend							
93. ING Funds Intl Value Fd Cl C	A	Dividend							
94. Kimberly Clark Corp (Common)	B	Dividend							
95. WisdomTree Emerging Markets Equity Inc	A	Dividend							
96. Suntrust Bank Note	A	Interest							
97. Harper Industries, Inc	E	Distribution							
98. Munger Tolles & Olson LLP Capital Account		None	L	T					
99. Trust #1									
100. - Personal Residence, Mountain View, California		None	P1	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
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FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting Friedland, Michelle T.	Date of Report 08/01/2013

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

Trust #1 has no assets other than our personal residence.

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Friedland, Michelle T.	Date of Report 08/01/2013

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/ **Michelle T. Friedland**

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		476	943	Notes payable to banks-secured (auto)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	4	821	463	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		326	352
Real estate owned – see schedule	1	245	333	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		31	800				
Cash value-life insurance							
Other assets itemize:							
Munger, Tolles & Olson capital account		65	680				
				Total liabilities		326	352
				Net Worth	6	314	867
Total Assets	6	641	219	Total liabilities and net worth	6	641	219
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	
California municipal bonds	$ 32,321
Chino Basin Regional Financing Authority municipal bond	21,099
Los Angeles Department of Water & Power municipal bond	15,765
Los Angeles Unified School District municipal bond	33,001
San Joaquin Hills Transportation Corridor Agency municipal bond	18,965
Santa Clara Water Utilities System municipal bond	21,251
Berkshire Hathaway Inc. stock	177,345
Fidelity Institutional Money Market Fund	12,268
Fidelity Spartan Extended Market Index Fund	16,826
Fidelity Spartan Total Market Index Fund	15,031
Invesco Charter Fund	16,047
iShares IBoxx $ Investment Grade Corporate Bond Fund	23,969
iShares S&P California AMT-Free Municipal Bond Fund	31,744
Northern Trust S&P 500 Index Fund	32,138
Northrop Grumman Large U.S. Equity Fund	90,124
RevenueShares Small Cap ETF Fund	101,102
ScholarShare Passive Growth Investment Portfolio	62,275
SSgA S&P Mid Cap Index Fund	6,833
T. Rowe Price Institutional Small-Cap Stock Fund	46,707
Vanguard 500 Index Fund	1,490,586
Vanguard Emerging Markets Stock Index Fund	163,455
Vanguard European Stock Index Fund	55,725
Vanguard International Growth Fund	104,390
Vanguard International Value Fund	101,111
Vanguard Prime Money Market Fund	864,831
Vanguard Small-Cap Index Fund	6,964
Vanguard Target Retirement 2030 Fund	91,471
Vanguard Tax-Managed International Fund	34,987
Vanguard Total International Stock Index Fund	762,471
Vanguard Total Stock Market Index Fund	314,309
Vanguard U.S. Growth Fund	26,508
Vanguard Value Index Fund	29,844
Total Listed Securities	$ 4,821,463
Real Estate Owned	
Personal residence	$ 1,192,000
Rental property (1/12 ownership)	53,333
Total Real Estate Owned	$ 1,245,333

AFFIDAVIT

I, Michelle Taryn Friedland, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8/2/2013
(DATE)

Michelle T. Friedland
(NAME)

(NOTARY), See attached page

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE § 1189

State of California
County of San Francisco }

On August 2, 2013 (Date) before me, Steven G. Ulrich Notary Public (Here Insert Name and Title of the Officer)

personally appeared Michelle Taryn Friedland (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

STEVEN G. ULRICH
Commission # 2014429
Notary Public - California
San Francisco County
My Comm. Expires Mar 24, 2017

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Affidavit

Document Date: August 2, 2013 Number of Pages: 1

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michelle Taryn Friedland	Signer's Name:
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☑ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing: Herself	Signer Is Representing:

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Christopher Reid Cooper (generally known as Casey Cooper)

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

   United States District Judge for the District of Columbia

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

   Covington & Burling LLP
   1201 Pennsylvania Avenue, NW
   Washington, DC 20004

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

   1966; Mobile, Alabama

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

   1990 – 1993, Stanford Law School; J.D. (with distinction), 1993

   1984 – 1988, Yale University; B.A. (*summa cum laude*), 1988

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

   September 2013 – present
   Covington & Burling LLP
   1201 Pennsylvania Avenue, NW
   Washington, DC 20004
   Partner

2012 – 2013
Covington & Burling LLP (UK)
265 Strand
London WC2R 1BH
United Kingdom
Partner

2010 – 2012
Baker Botts LLP (UK)
41 Lothbury
London EC2R 7HF
United Kingdom
Partner

2001 – 2010
Baker Botts LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
Partner

1996 – 2000, June – July 1992
Miller, Cassidy, Larroca & Lewin (defunct, merged with Baker Botts)
2400 M Street, NW
Washington, DC 20037
Partner (2000)
Associate (1996 – 2000)
Summer Associate (June – July 1992)

1994 – 1996
United States Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Special Assistant to the Deputy Attorney General

1993 – 1994
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, DC 20001
Law clerk to Chief Judge Abner J. Mikva (now retired)

July 1992, June – July 1991
Heller, Ehrman, White & McAuliffe LLP (defunct)
333 Bush Street

San Francisco, CA 94104
Summer Associate

July – August 1991
NAACP Legal Defense and Educational Fund, Inc.
1444 I Street, NW
Washington, DC 20005
Summer Intern

1988 – 1990
Strategic Planning Associates (now Oliver Wyman Company)
2400 N Street, NW
Washington, DC 20036
Research Analyst

Other affiliations:

1988 – present
Christian Benevolent Funeral Home, Inc.
201 North Hamilton Street
Mobile, AL 36603
Director (1988 – present)
Chairman (1994 – present)
President (1994 – 2006)

2004 – present
1208 Broad Street LLC
617 Majorca Avenue
Altamonte Springs, FL 32714
Partner

2001 – 2006
Cultural Tourism DC
(uncompensated)
1250 H Street, NW
Washington, DC 20005
Advisory Board

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

I have not served in the military. I timely 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.

   Recognized in Legal 500 UK for Fraud – Corporate Crime (2012)

   Recognized as a Washington, DC "Super Lawyer" (2007 – 2010)

   Washingtonian Magazine, 40 Top Lawyers Under 40 (2006)

   Stanford Law Review, President (1992 – 1993)

   Yale University, Roosevelt R. Chapman Award for community service (1988)

   Phi Beta Kappa (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
   Criminal Justice Committee
   District of Columbia Bar
   National Association of Criminal Defense Attorneys

   I have not held any offices in the organizations listed above.

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, 1994 (inactive)
       District of Columbia, 1997
       England and Wales, 2010 (Registered Foreign Lawyer)

       There have been no lapses in membership, although as indicated, my membership in California is inactive.

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

       United States District Court for the District of Columbia, 2003
       United States District Court for the District of Maryland, 2002

I applied to practice in the District Court of Maryland in order to handle a litigated matter in that court. I allowed my admission to lapse after that matter concluded.

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 Constitution Society for Law and Policy (approximately 1996 – 2006)

Cultural Tourism DC (2001 – 2006)
Advisory Board

Duke Ellington School of the Arts (approximately 1996 – 2010)
Ellington Fund Council (fundraising committee) (1996 – 2001)

Francis Scott Key Elementary School Parents Association (2006 – 2010)

Fraud Advisory Panel (UK) (2010 – 2011)

Jelleff Boys & Girls Club (1996 – 1997)
Youth basketball coach

LondonSports (youth sports league) (2011 – 2013)
Basketball coach

Palisades Citizens Association (1998 – 2010)

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

To the best of my knowledge, none of the organizations listed above discriminates, or has 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 Robert Amaee, *What Indian Firms Should Know About U.S. and U.K. Corruption Laws*, N. Y. Times, May 29, 2013. Copy supplied.

With Ashley M. Sprague, *How to Avoid the Dirty Side of Clean Energy*, Law360 (published by Portfolio Media, Inc.), May 23, 2013. Copy supplied.

With multiple co-authors, Covington & Burling Client Advisory, *Anti–Corruption Year in Review: 2012*, Feb. 2013. Copy supplied.

With multiple co-authors, Covington & Burling Client Advisory, *An Analysis of the FCPA Resource Guide*, Nov. 2012. Copy supplied.

With multiple co-authors, Covington & Burling Client Alert, *Anti–Corruption Mid–Year Review*, July 2012. Copy supplied.

With Robert Amaee and John P. Rupp, Covington & Burling Client Alert, *New Director Takes Helm at UK Serious Fraud Office*, Apr. 25, 2012. Copy supplied.

With multiple co-authors, Covington & Burling Client Alert, *Trends and Developments in Anti–Corruption Enforcement*, Feb. 2012. Copy supplied.

With Mark Miller and Robin Preston-Jones, Baker Botts Client Alert, *Six Years Jail For First Person Convicted Under U.K. Bribery Act*, Nov. 18, 2011. Copy supplied.

With Robin Preston-Jones, Baker Botts Client Alert, *UK Government Issues Draft Bribery Act Guidance*, Sept. 22, 2010. Copy supplied.

With Robin Preston-Jones, Randy Turk and Mike Barta, Baker Botts Client Alert, *UK Delays Implementation of New Bribery Act*, Feb. 2, 2011. Copy supplied.

President's Page, 45 Stan. L. Rev. (1992–1993). Copy supplied.

The Trial of Salieri, Script for Mock Trial Performed at San Francisco Symphony Orchestra Benefit Concert (Summer 1991). I do not have a copy of the script.

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

None.

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

None.

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

March 26, 2013: Speaker, TRACE International London Workshop, London, UK. Notes and PowerPoint supplied.

June 25, 2012: Panelist, C5 Sixth Advanced Forum on Anti-Corruption, London, UK. Notes supplied.

June 10, 2011: Panelist, International Bar Association, 14th Annual Transnational Crime Conference, *Hot Topics in International Complex Criminal Investigations*, Amsterdam, Netherlands. PowerPoint supplied.

May 27, 2011: Speaker, Lex Mundi Summit, *Compliance Challenges Facing General Counsel*, Amsterdam, Netherlands. I delivered a speech on managing internal investigations. I have no notes, transcript, or recording. The address of Lex Mundi is 2100 West Loop South, Suite 1000, Houston, TX 77027.

September 30, 2010: Panelist, C5 European Forum on Fraud, Asset Tracing & Recovery, London, UK. PowerPoint supplied.

May 2008: Panel Moderator, National Association of Criminal Defense Lawyers (NACDL) Spring Meeting, New York City, NY. I moderated a panel discussion

on defending multi-jurisdictional investigations. I have no notes, transcript, or recording. The address of NACDL is 1660 L Street NW, Washington DC 20036.

April 2002: Speaker, District of Columbia Bar Trial Practice Series, Washington, D.C. I spoke on the introduction and use of demonstrative evidence and the handling of expert witnesses. I have no notes, transcript, or recording. The address of the DC Bar is 1101 K Street NW, Suite 200, Washington DC 20005.

1996: Speaker, U.S. Department of Justice Conference for Child Support Enforcement Coordinators, San Diego, CA. I addressed a group of Assistant United States Attorneys and other personnel from various United States Attorney Offices on the Department's child support enforcement initiatives. I do not have any recordings or notes of my remarks. As I recall, the conference was organized by the Department of Justice, Executive Office of United States Attorneys, 950 Pennsylvania Avenue NW, Washington DC, 20530.

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.

Covington & Burling Press Release, *Casey Cooper Joins Covington, Expands Global Anti-Corruption Practice*, Feb. 2, 2012. Copy supplied.

Jonathan Russell & Katherine Rushton, *Criminal Action Risk for Murdoch*, Daily Telegraph (UK), Jan. 21, 2012. Copy supplied.

Jonathan Russell & Katherine Rushton, *News Corp Executives Could Face US Legal Action*, The Telegraph (UK), Jan. 20, 2012. Copy supplied.

Trinity Preparatory School Alumni Magazine, *Class Notes*, Spring 2011. Copy supplied.

Emma L. Carew, *After the Fire Comes the Adjuster*, Wash. Post, Aug. 22, 2009. Copy supplied (reprinted in multiple outlets).

Ian Thoms, *Northwest Blaze Renews D.C. Water Worries*, The Current, Aug. 5, 2009. Copy supplied (reprinted in multiple outlets).

David Montgomery & DeNeen Brown, *Fire Scorches the City's Cultural Landscape, Too*, Wash. Post, July 31, 2009. Copy supplied (reprinted in multiple outlets).

Debbi Wilgoren, Theola Labbe-Debose & Clarence Williams, *Blaze Guts Arts Patron's Mansion*, Express, July 31-August 2, 2009. Copy supplied.

Kim Isaac Eisler, *Young Guns, 40 Lawyers Under 40*, Washingtonian, July 2006. Copy supplied.

Jared Mueller, *Noted Lawyer Represents Lacrosse Families, Boosters*, The Chronicle, Apr. 26, 2006. Copy supplied.

Craig Unger, *Saving the Saudis*, Vanity Fair, Oct. 2003. Copy supplied (reprinted in multiple outlets).

Saudra Torry, *Too Often, Women Don't Go to the Head of the Class*, Wash. Post, Feb. 27, 1995. Copy supplied.

Allison Becker, *Stanford Law Students Face 12% Tuition Jump*, The Recorder, May 19, 1992. Copy supplied.

Stanford News Service Press Release, *Christopher Cooper Elected President of Stanford Law Review*, Apr. 20, 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.

I have not held judicial office.

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

i. Of these, approximately what percent were:

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

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that

were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

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

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

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

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

I have not been a judge.

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

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

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

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

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

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

I have not held public office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

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

Volunteer for Obama For America: I was a co-host of a Lawyers for Obama breakfast at the Woolly Mammoth Theater in Washington, DC in the Spring of 2007. I served as a member of a Vice–Presidential candidate vetting team in the Summer of 2008. I canvassed in Pennsylvania and Virginia in the Fall of 2008. I served on the President-Elect's Transition Team from November 2008 to January 2009 as a member of the Department of Justice Agency Review Team.

Volunteer and informal advisor to campaign of Peggy Cooper Cafritz for Chairman, District of Columbia Board of Education, 2000.

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

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

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

From 1993 to 1994, I clerked for then Chief Judge Abner J. Mikva, Circuit Judge of the United States Court of Appeals for the D.C. Circuit.

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

I have never practiced law alone.

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

1994 – 1996
United States Department of Justice
Office of the Deputy Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Special Assistant to the Deputy Attorney General

1996 – 2000
Miller, Cassidy, Larroca & Lewin LLC (merged with Baker Botts in 2001)
2400 M Street, NW
Washington, DC 20037
Associate (1996 – 2000)
Partner (2000)

2001 – 2010
Baker Botts LLP
1299 Pennsylvania Avenue NW
Washington, DC 20004
Partner

2010 – 2012
Baker Botts LLP (UK)
41 Lothbury
London EC2R 7HF
United Kingdom
Partner

2012 – 2013
Covington & Burling LLP
265 Strand
London WC2R 1BH
United Kingdom
Partner

2013 – present
Covington & Burling LLP
1201 Pennsylvania Avenue NW
Washington, DC 20004
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.

Following my judicial clerkship in 1994, I served for two years in the United States Department of Justice as a Special Assistant to the Deputy Attorney General. My responsibilities in that position included supporting the Deputy Attorney General and other members of the Department's leadership in a range of areas, including legislative affairs, judicial candidate vetting, and professional responsibility.

From 1996 to 2000, I was an associate and partner in the Washington, DC law firm Miller, Cassidy, Larroca & Lewin LLC and, following the January 1, 2001 merger of Miller Cassidy with Baker Botts LLP, a partner in the Washington office of Baker Botts. My practice during that period involved a fairly even mix of civil and white-collar criminal litigation; grand jury and other government investigations; and internal corporate investigations. The matters that I handled during this period involved a wide range of substantive legal areas, including mail and wire fraud, securities fraud, money laundering, conspiracy, arms export controls, trade secrets, bribery and corruption, embezzlement, false advertising, insurance defense, real estate, employment law, breach of contract, international torts, and foreign sovereign immunity.

In August 2010, I transferred to Baker Botts' London office and, in February 2012, I joined the London office of Covington & Burling, where I practiced until September 2013. Upon relocating to London, I was not in a position to appear in court in the United States. While I remained involved in white-collar criminal defense matters, my practice in London focused primarily on representing clients in matters related to the Foreign Corrupt Practices Act and other international anti-corruption statutes. In that regard, I helped clients develop anti–corruption compliance policies and programs, advised clients on specific compliance issues, and conducted internal investigations of foreign bribery allegations. Over my career, I have conducted FCPA-related internal investigations in or involving some 20 foreign countries. In early September 2013, I joined Covington's DC office.

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

During my years of private practice, I have represented a combination of individual and organizational clients. My organizational clients have included corporations in a wide range of industries, non-profit entities, and

a trade association. My individual clients have included corporate executives, small business owners, foreign government officials, attorneys, labor union leaders, a state court judge, a former Congressional staff member and a former professional athlete.

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 would estimate that approximately 90% of my practice has been in litigation, including cases involving government and internal investigations. I have appeared in court occasionally.

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: 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 two cases to verdict as associate counsel.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

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

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

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

case. Also state as to each case:

a. the date of representation;

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

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

(1) *United States v. Singer et al.*, 05–cr–928 (D.S.C.) (Blatt, J.; Norton, C.J.; Carr, M.J.)

This case involved the investigation and indictment of ten former executives of a subsidiary of WebMD Corporation on federal fraud and money laundering charges. I represented the lead defendant from the beginning of the investigation in 2004 until 2010. During the investigation phase of the case, I was responsible for various areas of factual development and legal analysis. During the pre-trial phase of the case, I drafted and argued numerous substantive law and evidentiary motions, supervised the defense's accounting experts, and helped prepare the case for trial. Soon before trial, the government dismissed my client from the indictment pursuant to a deferred prosecution agreement that I helped negotiate. Thereafter, I was retained by one of the remaining defendants to assist his lead counsel at trial. Although a jury convicted the remaining defendants after a four-week trial in 2010, the court acquitted the defendants notwithstanding the jury's verdicts based on post-trial pleadings that I helped draft.

Judge Blatt and Magistrate Judge Carr handled the pre-trial phase of the case. Chief Judge Norton presided over the trial and post-trial proceedings.

Co–counsel

Randall J. Turk
R. Stan Mortensen
Baker Botts LLP
1299 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 639–7700

Alexandra Walsh (formerly at Baker Botts)
Paul, Weiss, Rifkind, Wharton & Garrison
1201 K Street, NW
Washington, DC 20006
(202) 223–7300

John Simmons
Simmons Law Firm
1711 Pickens Street

Columbia, SC 29202
(803) 779–4600

Principal counsel for co–defendants

John Lauro
Lauro Law Firm
737 Third Avenue, 32nd Floor
New York, NY 10017
(646) 746–8659
(813) 222–8990 (Tampa office)

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707 North Franklin Street
Tampa, FL 33601
(813) 229–7918

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(813) 229–4312

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Dale R. Sisco, P.A.
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Tampa, FL 33602
(813) 221–9763

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Jung & Sisco
Bank Of America Plaza
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(213) 629–7400

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The Law Offices of John M. Fitzgibbons
707 North Franklin Street, Suite 700

Tampa, FL 33602
(813) 221–8800

Timothy Broas
Winston & Strawn
1700 K Street, NW
Washington, DC 20006
(202) 282–5000

James Robinson (deceased)
Cadwalader, Wickersham & Taft
700 Sixth Street, NW
Washington, DC 20001
(202) 862-2200

Government counsel

Former AUSA Kevin F. McDonald
United States Magistrate Judge
300 East Washington Street, Suite 300
Greenville, SC 29601
(864) 241-2740

AUSA Eric Klumb
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 305–9200

AUSA Jason Cowley
U.S. Attorney's Office for the Southern District of New York
One Saint Andrews Plaza
New York City, NY 10007
(212) 637–2200

Former AUSA Jennifer Taylor
McDermott, Will & Emery
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(2) *Burnett et al. v. Al Baraka Dev. Corp. et al.*, 02–civ–1616 (D.D.C.) (Robertson, J.); *In re Terrorist Attacks of Sept. 11, 2001*, 03–md–1570 (SDNY) (Casey, J.; Daniels, J.)

From 2002 to 2010, I successfully represented three senior officials of the government of Saudi Arabia in civil lawsuits brought by families and estates of victims of the September 11th terrorist attacks and numerous insurance companies. The first of these suits, *Burnett v. Al Baraka Dev. Corp. et al.*, was brought in the United States District Court for the District of Columbia. The *Burnett* case was later consolidated with more than ten other cases for pre-trial proceedings in the Southern District of New York under the federal multidistrict litigation rules. The cases were brought against over 200 separate defendants. My responsibilities in the case included developing factual and legal arguments; drafting and arguing pre-trial motions; helping coordinate the proceedings as a member of the defendants' executive committee; and assisting in the drafting of appellate briefs urging the affirmance of my clients' dismissals from the case.

Judge James Robertson, who presided over the *Burnett* case, granted a motion to dismiss one of my clients (the former Saudi Defense Minister) while the case was pending in the District of Columbia. *See Burnett et al. v. Al Baraka Dev. Corp. et al.*, 292 F.Supp.2d 9 (D.D.C. 2003). Judge Richard Conway Casey (now deceased) subsequently dismissed *Burnett* and the remaining cases against all three clients. See *In Re Terrorist Attacks on September 11, 2001*, 349 F.Supp.2d 765 (S.D.N.Y. 2005). Judge Casey's dismissals were upheld by the Second Circuit in *In re Terrorist Attacks on September 11, 2001*, 538 F.3d 71 (2d. Cir. 2008).

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(3) *United States v. Adams*, Cr. No. 03605 (E.D.La.) (Lemelle, J.)

From 1996 to 1998, while an associate at Miller, Cassidy, Larroca & Lewin, I represented Mr. Adams, a transactional attorney who stood trial on federal fraud and conspiracy charges in the Spring of 1998. The charges stemmed from Mr. Adams' representation of a group of insurance companies that had been placed in receivership by the State of Louisiana. I assisted with factual development, prepared witnesses, and drafted and argued pre-trial motions. I served as co-counsel at trial and conducted direct and cross examinations of several witnesses. Mr. Adams was convicted of one of the 16 counts against him. I subsequently prepared Mr. Adams' sentencing memorandum. Mr. Adams was sentenced to 48 months, rather than the 60 months sought by the government.

Co–counsel

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(4) *WestRM–West Risk Markets, Ltd. v. XL Reinsurance America*, 02–cv–7344 (S.D.N.Y.) (Cedarbaum, J.)

The defendant in this case issued over $13 million worth of surety bonds to guarantee payment of premiums under a group of property and casualty insurance policies. After the premium payments were embezzled by a secondary broker of the policies, the defendant was sued for payment under the surety bonds that it had issued. The defendant subsequently filed third-party fraud claims against the holder of the policies and its primary insurance consultant and his company, whom I represented. I led the clients' overall case strategy and supervised discovery and the pre-trial motions practice. The case concluded after the court granted our clients' motion for summary judgment.

Co-counsel

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(5) *Angelo Gordon & Co., et al. v. Liberty TWSTY Bonds, et al.*, 02–cv–5146 (S.D.N.Y.) (Daniels, J.)

In 2002, I represented Liberty Media Corporation and its Chairman against efforts by bondholders of a British cable television company to enjoin a tender offer by Liberty for

equity securities of the company. I drafted Liberty's successful opposition to the plaintiffs' preliminary injunction application and defended the depositions of several Liberty officers and directors. The plaintiffs dismissed the case after Liberty postponed the planned tender offer.

Co-counsel

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(6) *Estate of Lesane v. Moore et al.*, 2004 CA 3361 R (D.C. Sup. Ct.) (Kravitz, J.)

This case involved a dispute between two sets of heirs over ownership of an office building in Washington DC. I represented the widow of one of the former owners of the building. I handled all aspects of the case along with a Baker Botts associate. The case settled during discovery and after mediation.

Co-counsel

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(7) *Menotte, Trustee in Bankruptcy for Air Safety International LC v. Lockheed Martin Corp.*, No. CIO 99–10105 (9th Jud. Cir., Orange Co., FL) (Stroker, J.); *GMGRSST v. Lockheed Martin Corp.*, 02–cv–1442 (M.D.Fl.) (Presnell, J.)

From 2000 to 2002, I represented Lockheed Martin in a Florida case brought by the trustee in bankruptcy of a company that claimed that a Lockheed subsidiary had misappropriated its trade secrets in connection with a potential business relationship. I handled various aspects of the pre-trial proceedings and discovery, including taking and defending fact and expert depositions. The case concluded in 2002 after confidential mediation. After the conclusion of the initial lawsuit, an investor of the Utah company filed the federal lawsuit cited above based on similar facts. The plaintiff in that case dismissed the suit after we filed motions to dismiss on grounds of res judicata and collateral estoppel.

Co-counsel

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(8) *DAG Enterprises v. ExxonMobil Corp.*, 00–cv–182 (D.D.C.) (Walton, J.)

From approximately 2003 to 2006, I represented ExxonMobil Corp. in litigation brought by a District of Columbia–based business alleging that ExxonMobil improperly denied it an opportunity to submit a bid to purchase a package of gas stations that the Federal Trade Commission required Exxon to sell as a condition for approving Exxon's 1999 merger with Mobil. My role in the case primarily involved taking and defending the depositions of the parties' economic experts. The case settled after discovery.

Co-counsel

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(9) *Cananwill v. Apartment Invstm't. & Mngm't. Co. et al.*, MRS–L–3549–02 (Sup. Ct. N.J., Morris Cnty.) (Harper, J.)

The plaintiff in this case financed premiums for property and casualty insurance policies issued to one of the largest real estate investment trusts in the country. After the premium payments under the policies were embezzled by a secondary broker of the policies, the plaintiff sought payment under the finance agreements against the policy holder and its primary insurance consultant and his company, whom I represented. I handled discovery and the mediation of the case before a former federal district judge. The case settled after mediation and further discovery.

Co-counsel

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Mediator

Hon. Stephen Orlofsky
Blank Rome
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(609) 750–7700

(10) *United States v. Thermo King Ireland, Ltd.*, 07cr296 (D.D.C.) (Leon, J.); *U.S. Sec. & Exch. Comm'n. v. Ingersoll Rand*, 07cv1955 (D.D.C.) (Bates, J.)

These cases stemmed from a joint investigation by the Department of Justice and the SEC of Ingersoll Rand for alleged violations of the U.S. Foreign Corrupt Practices Act in the course of its participation in the United Nations Oil for Food Program in Iraq. The cases resulted in a deferred prosecution agreement ("DPA") between Ingersoll Rand and the Justice Department under which the government agreed not to bring criminal charges against the company upon the expiration of the agreement in October 2010.

Although I was not involved in the underlying investigation or the negotiation of the DPA, I led a number of internal investigations for Ingersoll Rand during the pendency of the DPA and worked cooperatively with attorneys from the SEC to ensure that the company complied with its obligations under the agreement. The DPA expired in 2010 without further proceedings against the company.

Co–counsel

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

A significant portion of my practice over the years has involved representing clients in confidential, non–public grand jury and other governmental investigations, and conducting legally–privileged internal investigations into potential violations of law. Very few of these matters have resulted in publicly–filed litigation.

An example of this aspect of my practice – which I am at liberty to disclose because it was publicly disclosed in securities filings by my client's parent corporation – is my

representation of Hughes Space & Communications Inc. ("Hughes") in connection with a federal grand jury investigation in Washington, DC. The investigation centered on the work of an expert scientific panel – which included two Hughes engineers – that met on two occasions with Chinese engineers who were investigating the recent failure of a commercial satellite launch failure in China. The question under investigation was whether the work of the panel constituted an unlicensed "defense service" to the Chinese engineers under the applicable federal statute. Following a lengthy written submission to the U.S. Attorney's Office for the District of Columbia and several meetings with prosecutors, the government declined to seek criminal charges against Hughes.

Many of the confidential internal investigations that I have conducted involve the Foreign Corrupt Practices Act or other international anti–corruption statutes. I have conducted investigations in or involving approximately 20 countries. I have also advised scores of companies on anti–corruption compliance in a range of settings.

I have also been actively involved in law firm management over my years of practice. From 2007 to 2009, I served on the nine-member executive committee of my former law firm, Baker Botts LLP, which is responsible for overseeing the management of all aspects of the firm. I also served on the firm's strategic planning committee. From approximately 2004 to 2008, I served as chair of the hiring committee in Baker Botts' Washington office, managing summer associate, associate, and lateral hiring.

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 or about 2003, I helped teach a "street law" class at Wilson High School in Washington, DC, over the course of approximately six weeks. My duties involved helping the students prepare for a mock trial exercise that took place in D.C. Superior Court. I do not have a syllabus for the 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.

    My law firm typically distributes a portion of its current year income to partners on a deferred basis. As a partner in the firm, I would be entitled to receive such deferred payments. I would expect to receive any such payments from the firm's current fiscal year, which ends on September 30, by March 2014, and any payments for the following fiscal year by March 2015. Otherwise, I have no arrangements or expectations concerning future income or compensation.

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

    No.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I would recuse myself from any litigation in which I participated as an attorney if confirmed. I also would recuse myself from any matters in which family members are directly involved. In particularly, my wife is an attorney with U.S. Department of Justice's Office of International Affairs. My father-in-law is an attorney in private practice in Washington, DC, and has handled matters before the District Court. My brother-in-law is an Assistant Federal Public Defender in Washington and also handles matters before the District Court. I do not anticipate having any other potential conflicts of interest.

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

       If confirmed, I would handle any matter presenting actual or potential conflicts of interest by applying the Code of Conduct for United States Judges and any other relevant ethical canons or rules.

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 participated over the years in a number of community service and pro bono legal activities that have benefited the disadvantaged.

I have done considerable volunteer and pro bono work over the years for the Duke Ellington School of the Arts, which serves a largely low–income student body. My work for Duke Ellington has included serving on an Advisory Board of the school's fundraising arm; providing tutoring and college prep to students; and representing one of its students in a criminal juvenile action in D.C. Superior Court. I have also volunteered and served on benefit committees for See Forever, which operates the Maya Angelou Charter Schools in Washington and helped prepare students in a "street law" class at Wilson High School for a mock trial competition in D.C. Superior Court.

I have provided pro bono counsel to two non–profits that serve disadvantaged communities: College Summit, which offers programs to prepare low–income high school students for college, and Management Leadership for Tomorrow, which provides skills training to minority college students who are interested in careers in business.

I supervised two Baker Botts associates in their pro bono representation, as co–counsel with the D.C. Federal Defender's Office, of a defendant charged with fraud in federal court in Washington. The case resulted in a trial before Judge Walton. *See United States v. Davis*, 06–cr–196–1 (Walton, J.). I also supervised a Baker Botts associate's pro bono representation of domestic violence victims in Fairfax County (Virginia) Court.

When practicing in London, I provided reduced–fee representation to the American Jewish Joint Distribution Committee – a leading Jewish international humanitarian assistance organization. That work primarily entailed litigating an application to the European Commission for Human Rights challenging the illegal confiscation of a community center serving low–income Jewish residents in Moldova.

Finally, I recently provided pro bono representation to the Public International Law & Policy Group (PILPG) in connection with its work advising the Libyan National Assembly on drafting the country's new constitution.

26. **Selection Process**:

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

On April 10, 2013, I submitted an application to the District of Columbia Federal Law Enforcement Nominating Commission and was interviewed by the Commission on April 19, 2013. I was subsequently contacted by the office of Congresswoman Eleanor Holmes Norton, and I met with the Congresswoman on May 21, 2013 in Washington, D.C. On May 29, 2013, I was informed by the White House Counsel's Office that I was under consideration. Since that time, I have been in communication with officials from the Justice Department's Office of Legal Policy. On July 1, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On August 1, 2013, 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. 1/2013

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
Cooper, Christopher R.	U.S. District Court for the District of Columbia	08/01/2013
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 08/01/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 07/22/2013
7. Chambers or Office Address		
Covington & Burling 265 Strand London WC2R 1BH United Kingdom		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Baker Botts LLP
2.	Partner	Covington & Burling LLP
3.	Partner	1208 Broad Street LLC
4.	Director	Christian Benevolent Funeral Home, Inc.
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 22	Name of Person Reporting Cooper, Christopher R.	Date of Report 08/01/2013

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	Baker Botts LLP (partnership income)	$1,239,147.00
2. 2012	Baker Botts LLP (partnership income)	$25,035.00
3. 2012	Covington & Burling LLP (partnership income)	$847,156.00
4. 2013	Covington & Burling LLP (partnership income)	$702,786.00

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

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 22	Name of Person Reporting Cooper, Christopher R.	Date of Report 08/01/2013

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. Wells Fargo	Mortgage on Rental Property 1 -- Washington DC	O
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 22

Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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. ASG Diversified Stock Income Portfolio (Managed Acct)									
2. -- 3M	A	Dividend	J	T					
3. -- Aflac	A	Dividend	J	T					
4. -- Air Products & Chemicals	A	Dividend	J	T					
5. -- Analog Devices	A	Dividend	J	T					
6. -- AT&T	A	Dividend	J	T					
7. -- ADP	A	Dividend	J	T					
8. -- Baxter	A	Dividend	J	T					
9. -- Becton Dickinson	A	Dividend	J	T					
10. -- Chevron	A	Dividend	J	T					
11. -- Chubb	A	Dividend	J	T					
12. -- Clorox	A	Dividend	J	T					
13. -- Colgate Palmolive	A	Dividend	J	T					
14. -- Conoco Phillips	A	Dividend	J	T					
15. -- Eaton Vance	A	Dividend	J	T					
16. -- Emerson Electric	A	Dividend	J	T					
17. -- ExxonMobil	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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. -- Factset Research Sys Inc.	A	Dividend	J	T					
19. -- General Dynamics	A	Dividend	J	T					
20. -- General Mills	A	Dividend	J	T					
21. -- Grainger	A	Dividend	J	T					
22. -- Harris Corp.	A	Dividend	J	T					
23. -- Illinois Tool Works	A	Dividend	J	T					
24. -- IBM	A	Dividend	J	T					
25. -- JM Smucker	A	Dividend	J	T					
26. -- Johnson & Johnson	A	Dividend	J	T					
27. -- Kellogg	A	Dividend	J	T					
28. -- Lowes Companies	A	Dividend	J	T					
29. -- McDonalds	A	Dividend	J	T					
30. -- Medtronic	A	Dividend	J	T					
31. -- Microsoft	A	Dividend	J	T					
32. -- Nextera Energy	A	Dividend	J	T					
33. -- Nordstrom	A	Dividend	J	T					
34. -- Norfolk Southern	A	Dividend	J	T					

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L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
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Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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

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35. -- Northeast Utilities	A	Dividend	J	T					
36. -- Novartis	A	Dividend	J	T					
37. -- Paychex Inc.	A	Dividend	J	T					
38. -- PepsiCo	A	Dividend	J	T					
39. -- Phillips 66	A	Dividend	J	T					
40. -- Polaris Indus.	A	Dividend	J	T					
41. -- Praxair Inc.	A	Dividend	J	T					
42. -- P&G	A	Dividend	J	T					
43. -- Scana Corp.	A	Dividend	J	T					
44. -- Sigma Aldrich Corp.	A	Dividend	J	T					
45. -- Southern Company	A	Dividend	J	T					
46. -- Sysco Corp.	A	Dividend	J	T					
47. -- Target	A	Dividend	J	T					
48. -- United Technologies	A	Dividend	J	T					
49. -- VF Corp.	A	Dividend	J	T					
50. -- Wal-Mart	A	Dividend	J	T					
51. -- Wisconsin Energy	A	Dividend	J	T					

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52. Kayne Anderson Small/Mid Cap Core (Managed Acct)									
53. -- Advanced Auto Parts	A	Dividend	J	T					
54. -- Ansys Inc.		None	J	T					
55. -- Chuch & Dwight	A	Dividend	J	T					
56. -- Clarcor	A	Dividend	J	T					
57. -- Cohen & Steers	A	Dividend	J	T					
58. -- Copart		None	J	T					
59. -- Core Labs	A	Dividend	J	T					
60. -- Donaldson Company	A	Dividend	J	T					
61. -- Dresser Rand Group		None	J	T					
62. -- Eaton Vance	A	Dividend	J	T					
63. -- Equifax	A	Dividend	J	T					
64. -- Expeditors Intl.	A	Dividend	J	T					
65. -- Factset Research	A	Dividend	J	T					
66. -- Heico Corp.	A	Dividend	J	T					
67. -- Hittite Microwave		None	J	T					
68. -- Jack Henry & Assoc.	A	Dividend	J	T					

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FINANCIAL DISCLOSURE REPORT Page 8 of 22	Name of Person Reporting Cooper, Christopher R.	Date of Report 08/01/2013

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

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69. -- John Wiley & Sons	A	Dividend	J	T					
70. -- Landstar Systems	A	Dividend	J	T					
71. -- Micros Systems		None	J	T					
72. -- MSC Industrial Dir. Co.	A	Dividend	J	T					
73. -- MSCI Inc.	A	Dividend	J	T					
74. -- National Instruments Corp.	A	Dividend	J	T					
75. -- Nordson Corp.	A	Dividend	J	T					
76. -- Pricesmart Inc.	A	Dividend	J	T					
77. -- RBC Bearings		None	J	T					
78. -- Ross Stores	A	Dividend	J	T					
79. -- Silgan Holdings Inc.	A	Dividend	J	T					
80. -- Sirona Dental Systems		None	J	T					
81. -- Techne Corp.	A	Dividend	J	T					
82. -- Wolverine Worldwide	A	Dividend	J	T					
83. -- World Fuel Service Corp.	A	Dividend	J	T					
84. Amazon		None	K	T					
85. American Express	A	Dividend	K	T					

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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.)*

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86. Ameriprise	A	Dividend	J	T					
87. BP	A	Dividend	J	T					
88. Cisco	A	Dividend	K	T					
89. Coke	A	Dividend	K	T					
90. Eli Lilly	A	Dividend	J	T					
91. F5 Networks		None	J	T					
92. GE	A	Dividend	J	T					
93. Intel	B	Dividend	K	T					
94. IShares MSCI Brazil ETF	A	Dividend	J	T					
95. IShares MSCI Emrg Mrkts ETF	A	Dividend	K	T					
96. IShares MSCI Japan ETF	A	Dividend	K	T					
97. IShares MSCI Korea ETF	A	Dividend	J	T					
98. IShares MSCI Russell 2000 ETF	B	Dividend	K	T					
99. IShares MSCI Russell MidCap ETF	A	Dividend	L	T					
100. Microsoft	B	Dividend	K	T					
101. Powershares QQQ Ser1 ETF	B	Dividend	L	T					
102. Sarepta Therapeutics		None	K	T					

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Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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

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103. SPDR Barclay High Yeild Bond ETF	B	Dividend	K	T					
104. SPDR Dow Jones Ind. ETF	A	Dividend	K	T					
105. SPDR S&P 500 ETF	B	Dividend	N	T					
106. Tesoro Corp	A	Dividend	K	T					
107. Waste Management	A	Dividend	K	T					
108. Walker & Dunlop	A	Dividend	K	T					
109. AIM Liquid Assets Port. Fund	A	Dividend	K	T					
110. Arrow Inv Tactical Cl. C Fund	A	Dividend	K	T					
111. Baron Sm. Cap Fund	C	Dividend	M	T					
112. Blackrock Equity Dividend Fund	C	Dividend	M	T					
113. MFS International Value R5 Fund	A	Dividend	K	T					
114. MFS Mass Inv. Gr Stock A Fund	B	Dividend	M	T					
115. Philadelphia Intl. Fund	A	Dividend							
116. Vanguard Inst. Index Fund	C	Dividend	M	T					
117. Vanguard Sm. Cap Index Signal Fund	A	Dividend	K	T					
118. Dodge & Cox Stock Fund	A	Dividend	K	T					
119. Columbia Small Cap Growth I Fund	A	Dividend	J	T					

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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.)*

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120. Virtus Real Estate Sec. Fund	A	Dividend	J	T					
121. Credit Suisse Fl. Rate High Income Fund		None	L	T					
122. Credit Suisse Mid Term Senior Notes	A	Int./Div.	M	T					
123. Cullen International. High Dividend Fund		None	M	T					
124. DWS Managed Muni Bond Fund		None	M	T					
125. iShares US Oil & Gas Exploration & Prod. ETF		None	K	T					
126. Ishares Core Tot US Bond Mrkt ETF	A	Dividend	J	T					
127. Ishares High Div. Equity Fund	A	Dividend	L	T					
128. Jo Hambro Intl. Fund		None	M	T					
129. Market Vectors Emrg. Mrkts. Loc. Curr. Bd ETF		None	K	T					
130. Market Vectors Inter. Muni. Index ETF	B	Dividend	L	T					
131. Metropolitan West Tot. Return Bond Fund		None	L	T					
132. Oppenheimer Developing Mrkts. Fund		None	M	T					
133. Powershares Sen. Loan Portfolio ETF		None	J	T					
134. Powershares International Dividend Acheivers ETF		None	M	T					
135. Schooner Fund		None	M	T					
136. Select Sector Consumer Discretionary SPDR Fund		None	K	T					

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137. SPDR S&P Emerging Markets Asia Pacific ETF		None	J	T					
138. UBS E-TRACS Alerian MLP Infrastructure ETN		None	L	T					
139. Vanguard Reit ETF		None	K	T					
140. Vanguard Small Cap ETF		None	L	T					
141. Vanguard Int. Term Corp. Bond ETF		None	J	T					
142. Vanguard FTSE Developed Markets ETF		None	M	T					
143. Virtus Small Cap Core Fund		None	M	T					
144. Wells Fargo Emerging Mrkt. Eqty Fund		None	L	T					
145. Wisdom Tree Emerging Mrkts. Eq. Inc. Fund		None	J	T					
146. AllianceBernstein CBF-Age-Based Agg Grth 1999-2001		None	L	T					
147. DC College Savings Plan – Calvert Equity Portfolio		None	K	T					
148. DC College Savings Plan – Calvert Balanced Portfolio		None	J	T					
149. DC College Savings Plan – State Street Equity 500 Index		None	K	T					
150. Christian Benevolent Funeral Home stock	D	Distribution	O	W					
151. Commonwealth National Bank stock		None	L	W					
152. 1208 Broad Street LLC (LLC interest)	D	Distribution	L	W					
153. Career Core, Inc.		None	L	W					

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154. TriPoint Capital Partners (partnership interest)	C	Distribution	K	W					
155. Rental property #1 -- Washington DC	E	Rent	P1	W					
156. Covington & Burling Pension Plan		None	M	T					
157. ABB Ltd. ADR	B	Dividend							
158. Abbott Labs	A	Dividend							
159. Abbvie Inc.	A	Dividend							
160. Alps Alerian MLP ETF	A	Dividend							
161. Altria Group	B	Dividend							
162. American Capital Agy Corp	A	Dividend							
163. Annaly Cap. Mngmnt. Inc.	A	Dividend							
164. Apple	B	Dividend							
165. Astrazeneca	B	Dividend							
166. AT&T	A	Dividend							
167. BAE Systems ADR	A	Dividend							
168. BASF ADR	A	Dividend							
169. Bayer ADR	A	Dividend							
170. Bemis Co.	A	Dividend							

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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)
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V =Other
W =Estimated

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Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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. BHP Billiton ADR	A	Dividend							
172. BOC Hong Kong Hldgs. ADR	A	Dividend							
173. BP ADR	A	Dividend							
174. Brit. Amer. Tobacco	A	Dividend							
175. CA Inc.	A	Dividend							
176. Canadia Oil Sands Ltd.	A	Dividend							
177. Century Link Inc.	A	Dividend							
178. Chevron	A	Dividend							
179. China Mobile ADR	C	Dividend							
180. Comcast	A	Dividend							
181. Comp. Siderurgica Nacional	A	Dividend							
182. Conagra Foods	A	Dividend							
183. Cullen Emerging Markets High Dividend Fund	A	Dividend							
184. Deutsche Post ADR	A	Dividend							
185. Diageo ADR	A	Dividend							
186. Disney	A	Dividend							
187. Eaton Vance Buy Write Opport. Fund	B	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)
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B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
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G =$100,001 - $1,000,000
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2. Value Codes (See Columns C1 and D3)
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3. Value Method Codes (See Column C2)
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Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
188. Ecopetrol ADS	B	Dividend							
189. Eli Lilly	A	Dividend							
190. Emerson Elec. Co.	A	Dividend							
191. Foschini Ltd. SHS	B	Dividend							
192. France Telecom ADR	A	Dividend							
193. GDF Suez	A	Dividend							
194. Genuine Parts Co.	A	Dividend							
195. GSK ADR	B	Dividend							
196. Harris Corp	A	Dividend							
197. Hasbro Inc.	A	Dividend							
198. Hercules Technology Inc.	A	Dividend							
199. Hospitality Properties REIT	A	Dividend							
200. HSBC Holdings ADR	A	Dividend							
201. Intel Corp.	A	Dividend							
202. Ishares MSCI Australia ETF	A	Dividend							
203. Ishares MSCI Germany ETF	A	Dividend							
204. Ishares MSCI UK ETF	B	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

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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 "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
205. Ishares MSCI CDA ETF	A	Dividend							
206. Ishares MSCI EM ETF	A	Dividend							
207. Ishares Brcly 3-7 US Treasury Fund	A	Int./Div.							
208. Ishares Brcly Aggregate Bond Fund	A	Int./Div.							
209. Ishares Core S&P 500 ETF	A	Dividend							
210. Ishares Cor S&P Mid Cap ETF	A	Dividend							
211. Ishares Iboxx High Yd. Corp. Bond Fund	A	Int./Div.							
212. Ishares Iboxx Inv. Gr. Corp. Bond Fund	A	Int./Div.							
213. Ishares Russ 2000 Indx Fd	A	Dividend							
214. Ishares S&P Mid Cap 400 Indx Fd	A	Dividend							
215. Ishares S&P 500 Growth Indx Fd	B	Dividend							
216. Ishares S&P 500 Indx Fd	A	Dividend							
217. Ishares S&P 500 Value Indx Fd	A	Dividend							
218. Ishares S&P US Pfd St Indx Fd	A	Dividend							
219. JPM Alerian MLP Index Fd	A	Dividend							
220. Kimberly Clark	A	Dividend							
221. Lorillard Inc.	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

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Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
222. Marathon Petroleum Corp.	A	Dividend							
223. Market Vectors Russia ETF	A	Dividend							
224. Market Vectors Emg. Mrkts ETF	A	Dividend							
225. Mattel Inc.	A	Dividend							
226. Merck	A	Dividend							
227. MTN Group.	A	Dividend							
228. Munich Re ADR	A	Dividend							
229. Nestle SA ADR	A	Dividend							
230. Noble Energy Inc.	A	Dividend							
231. Novartis AG ADR	A	Dividend							
232. Omega Healthcare Invst. Inc	A	Dividend							
233. TELKOM PT ADR	A	Dividend							
234. PetroChina ADR	A	Dividend							
235. Pfizer Inc.	A	Dividend							
236. PG&E Corp	A	Dividend							
237. PIMCO High Yeild Corp Bond Indx Fund ETF	A	Int./Div.							
238. Powershares Natl Muni Bd Porfolio ETF	C	Int./Div.							

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Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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.)*

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239. Powershares Tr Preferred ETF	A	Dividend							
240. PPL Corp	A	Dividend							
241. Roche Holdings ADR	A	Dividend							
242. Royal Dutch Shell ADR	A	Dividend							
243. Sanofi ADR	B	Dividend							
244. Schlumberger Ltd.	A	Dividend							
245. Seagate Technology	A	Dividend							
246. Siemans AG ADR	B	Dividend							
247. Singapore Telecom ADR	A	Dividend							
248. Smiths Group ADR	A	Dividend							
249. SPDR Dow Jones Global Real Estate Indx ETF	A	Dividend							
250. SPDR S&P China Indx ETF	A	Dividend							
251. SPDR S&P World Ex-US Indx ETF	B	Dividend							
252. Starbucks	A	Dividend							
253. Statoil ADR	A	Dividend							
254. Sysco Corp.	A	Dividend							
255. Taiwan Semiconductor ADR	A	Dividend							

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Name of Person Reporting	Date of Report
Cooper, Christopher R.	08/01/2013

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

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	(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)
256. Telefonica Brasil ADR	A	Dividend							
257. Telefonica SA ADR	A	Dividend							
258. Thompson Reuters Corp.	A	Dividend							
259. Tiger Brands Ltd.	A	Dividend							
260. Time Warner	A	Dividend							
261. Tortoise Energy Infra. Corp.	A	Dividend							
262. Total SA ADR	B	Dividend							
263. Transocean Ltd.	A	Dividend							
264. Treasury Wine Est. Ltd. ADR	A	Dividend							
265. Unilever NV	A	Dividend							
266. United Overseas Bk. Ltd. ADR	A	Dividend							
267. Vale SA ADR	B	Dividend							
268. Vanguard Intl. Eq. Indx. ETF	B	Dividend							
269. Vanguard Div. Appreciation Indx. ETF	A	Dividend							
270. Vanguard Ealth Care ETF	A	Dividend							
271. Vodaphone Grp. ADR	A	Dividend							
272. Wisdom Tree Emg. Mrkt. Loc. Debt Fund	A	Int./Div.							

1. Income Gain Codes: (See Columns B1 and D4)
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FINANCIAL DISCLOSURE REPORT Page 20 of 22	**Name of Person Reporting** **Cooper, Christopher R.**	**Date of Report** 08/01/2013

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

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273. Wisdom Tree Japan Hedged Eq. Fund	A	Dividend							
274. NatWest Bank Current Account		None	J	T					
275. Wells Fargo Cash Management & Sweep Accounts	A	Interest	O	T					
276. Dreyfus Cash Management Accounts	A	Interest	N	T					
277. Pershing Money Market Account	A	Interest	J	T					

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

Part VII, Line 153 -- The Covington & Burling Pension Plan is a widely-held account over which I have no investment control.

FINANCIAL DISCLOSURE REPORT Page 22 of 22	Name of Person Reporting Cooper, Christopher R.	Date of Report 08/01/2013

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/ **Christopher R. Cooper**

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	1	025	900	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	4	696	029	Notes payable to relatives			
Unlisted securities – see schedule		975	000	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	2	063	180
Real estate owned – see schedule	3	150	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		545	680				
Covington & Burling Pension Plan		100	400				
				Total liabilities	2	063	180
				Net Worth	8	504	829
Total Assets	10	568	009	Total liabilities and net worth	10	568	009
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	
AIM Liquid Assets Portfolio	62,262
Arrow DWA Tactical Fund	28,134
ASG Diversified Stock Income Portfolio	400,191
Baron Small Cap Fund	127,505
BlackRock Equity Dividend Fund	129,542
Columbia Small Cap Growth Fund	14,078
Consumer Discretionary Select Sector SPDR Fund	27,740
Credit Suisse Floating Rate High Income Fund	81,624
Credit Suisse Mid Term Senior Note	198,200
Cullen International High Dividend Fund	132,901
Dodge & Cox Stock Fund	27,852
DWS Managed Municipal Bond Fund	177,760
ETRACS Alerian MLP Infrastructure Index ETN	50,755
iShares Core Total U.S. Bond Market ETF	13,995
iShares High Dividend ETF	51,557
iShares MSCI Brazil Index ETF	11,132
iShares MSCI Emerging Markets Index ETF	29,725
iShares MSCI Japan Index ETF	17,371
iShares MSCI South Korea Index ETF	11,872
iShares Russell 2000 Index ETF	50,697
iShares Russell MidCap ETF	50,912
iShares U.S. Oil & Gas Exploration & Production ETF	24,801
J.O. Hambro International Select Fund	100,240
Kayne Anderson Small-Mid Cap Core Strategy	251,673
Market Vectors Emerging Markets Local Currency Bond ETF	23,848
Market Vectors Intermediate Municipal Index ETF	59,197
Metropolitan West Total Return Bond Fund	64,095
MFS International Value Fund	45,064
MFS Massachusetts Investors Growth Stock Fund	168,496
Oppenheimer Developing Markets Fund	148,240
PowerShares International Dividend Achievers Portfolio	131,481
PowerShares QQQ ETF	63,588
PowerShares Senior Loan Portfolio	13,497
Schooner Fund	218,982
SPDR Barclays High Yield Bond ETF	13,872
SPDR Barclays Short Term High Yield Bond ETF	35,904
SPDR Dow Jones Industrial Average ETF	15,511
SPDR S&P 500 ETF	475,956
SPDR S&P Emerging Asia Pacific ETF	14,511
Vanguard FTSE Developed Markets ETF	120,003
Vanguard Institutional Index Fund	164,101
Vanguard Intermediate-Term Corporate Bond ETF	13,305
Vanguard REIT ETF	49,043
Vanguard Small Cap Index Fund	47,458

Vanguard Small-Cap ETF	54,655
Virtus Real Estate Securities Fund	12,636
Virtus Small Cap Core Fund	158,322
Wells Fargo Emerging Markets Equity Fund	95,104
WisdomTree Emerging Markets Equity Income Fund	13,608
Amazon stock	30,348
American Express stock	22,416
Ameriprise stock	5,241
BP plc (ADR)	8,640
Cisco Systems stock	23,148
Coca-Cola stock	16,581
Eli Lilly & Co. stock	5,214
F5 Networks stock	10,444
General Electronic stock	15,587
Intel Corp. stock	34,155
Microsoft Corp. stock	25,608
Sarepta Therapeutics stock	17,752
Tesoro Corp. stock	21,296
Walker & Dunlop stock	28,545
Waste Management stock	16,944
AllianceBernstein CBF-Age-Based Aggressive Growth 1999-2001	64,412
DC College Savings Plan – Calvert Equity Portfolio	15,251
DC College Savings Plan – Calvert Balanced Portfolio	13,465
DC College Savings Plan – State Street Equity 500 Index	27,986
Total Listed Securities	$ 4,696,029

Unlisted Securities	
1208 Broad Street LLC	$ 50,000
Career Core, Inc.	75,000
Christian Benevolent Funeral Home, Inc.	700,000
Commonwealth National Bank, Inc.	100,000
Tri-Point Capital Partners II, LLP	50,000
Total Unlisted Securities	$ 975,000

Real Estate Owned	
Primary residence	$ 1,900,000
Rental property	1,200,000
Undeveloped land	50,000
Total Real Estate Owned	$ 3,150,000

Real Estate Mortgages Payable	
Personal residence	$ 1,232,359
Rental property	830,821
Total Real Estate Mortgages Payable	$ 2,063,180

Great Britain and Northern Ireland
London, England
Embassy of the United States of America } SC

AFFIDAVIT

I, CHRISTOPHER R. COOPER, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

August 5, 2013
(DATE)

Christopher R. Cooper
(NAME)

05 AUG 2013

Subscribed and sworn before me

(NOTARY)
Erin O'Connor
Consul

UNITED STATES OF AMERICA
LONDON, ENGLAND
COMMISSION INDEFINITE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Gerald Austin McHugh, Jr.

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

   United States District Judge for the Eastern 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.

   Raynes McCarty
   1845 Walnut Street, Suite 2000
   Philadelphia, Pennsylvania 19103

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

   1954; Philadelphia, Pennsylvania

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, University of Pennsylvania Law School; J.D. (*cum laude*), 1979

   1972 – 1976, St. Joseph's University; A.B. (*summa 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.

   2004 – present
   Raynes McCarty
   1845 Walnut Street
   Suite 2000

Philadelphia, Pennsylvania 19103
Partner

1981 – 2004
Litvin, Blumberg, Matusow & Young (firm dissolved)
1339 Chestnut Street, 18th Floor
Philadelphia, Pennsylvania 19107
Shareholder

1979 – 1981
United States District Court for the Eastern District of Pennsylvania
601 Market Street
Room 2609
Philadelphia, Pennsylvania 19106
Law Clerk to the Honorable Alfred L. Luongo

January 1979 – July 1979
Superior Court of Pennsylvania
530 Walnut Street
Suite 315
Philadelphia, Pennsylvania 19106
Law Clerk to the Honorable Edmund B. Spaeth, Jr.

Summer 1978
Schnader, Harrison, Segal & Lewis
1600 Market Street
Suite 3600
Philadelphia, Pennsylvania 19103
Summer Associate

Summer 1977
222 North 17th Street
Philadelphia, Pennsylvania 19103
Criminal Justice Ministry – Catholic Social Services
Planning Consultant

Summer 1976
Jesuit Council for Theological Reflection
Woodstock Theological Center
Georgetown University
P.O. Box 571137
Washington, DC 20057
Grant Recipient

Other Affiliations (Uncompensated):

2004 – present
Pennsylvania Legal Aid Network, Inc.
118 Locust Street
Harrisburg, Pennsylvania 17101
President Emeritus (2012 – present)
President (2010 – 2012)
Board of Directors (2004 – present)

1986 – 2004
Hospitality House of Philadelphia (program dissolved)
2130 North Hancock Street
Philadelphia, Pennsylvania 19122
President (1986 – 2004)
Chairman, Board of Directors (1986 – 2004)

2002 – 2003
Philadelphia Bar Association
1101 Market Street
11th Floor
Philadelphia, Pennsylvania 19107
Board of Governors

1999 – 2001, 2002 – 2003
Philadelphia Bar Foundation
1101 Market Street
11th Floor
Philadelphia, Pennsylvania 19107
President (2002 – 2003)
Officer (1999 – 2001)

1996 – 2003
Pennsylvania Interest on Lawyers Trust Account Board
P.O. Box 62445
Harrisburg, Pennsylvania 17120
Chairman

1992 – 1999
Philadelphia Trial Lawyers Association
121 South Broad Street
Suite 600
Philadelphia, Pennsylvania 19107
President (1998 – 1999)
Board of Directors (1992 – 1998)

1991 – 1996
West Philadelphia Fire House Project, Inc. (project sold)
The Fire House
50th Street and Baltimore Avenue
Philadelphia, Pennsylvania 19143
Secretary, Board of Directors

1980 – 1987
Pernet Family Health Service (agency dissolved)
1001 South 47th Street
Philadelphia, Pennsylvania 19143
Vice President, Board of Directors

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

I did not serve in the military. I registered for selective service upon turning 18.

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

Philadelphia Lawyer of the Year, Product Liability, *Best Lawyers in America* (2014)
Philadelphia Lawyer of the Year, Personal Injury, *Best Lawyers in America* (2013)
Philadelphia Lawyer of the Year, Medical Malpractice, *Best Lawyers in America* (2011)
Pennsylvania "Superlawyer," Top Ten Statewide Ranking (2004 – present)
Listed in *Best Lawyers in America* (2003 – present)
Fellow, American College of Trial Lawyers (2003 – present)
Fellow, International Academy of Trial Lawyers (2002 – present)
Lesnick Pro Bono Award, University of Pennsylvania Law Alumni Association (2010)
St. Joseph's University Law Alumni McLanaghan Award for Professional Achievement (2009)
Tribute Medallion Award, Friends for Effective Education (2008)
Outstanding Child Advocate, Support Center for Child Advocates (2004)
Citation for Public Service, Supreme Court of Pennsylvania (2003)
Ambassador for Justice, Pennsylvania Legal Services (2003)
Justice Michael Musmanno Award, Philadelphia Trial Lawyers Association (2002)
Gem Award, St. Joseph's University Law Alumni Association (2002)
Presented Governor's Ceremonial Pen used to sign the Access to Justice Act (2002)
Presented Governor's Ceremonial Pen used to sign Physician Volunteer Act (2002)
Presented Governor's Ceremonial Pen used to sign the MCARE Act (2002)
Leadership Award, Pennsylvania Legal Services (2001)
Leadership Award, Friends of Farmworkers (2001)
First Annual Community Service Award, Pennsylvania Trial Lawyers Association (2002)

Pro Bono Service Award, Pittsburgh Neighborhood Legal Services (1999)
Fidelity Award, Philadelphia Bar Association (1997)
Presented Governor's Ceremonial Pen used to sign the Malpractice Reform Act (1996)
Presented Governor's Ceremonial Pen used to amend the Wrongful Death Act (1995)
Equal Justice Award, Community Legal Services (1994)
Milton Rosenberg Memorial Award, Pennsylvania Trial Lawyers Association (1993)
President's Award, Philadelphia Trial Lawyers Association (1992)
Fifth Annual Young Lawyers Community Service Award, Philadelphia Bar Association (1987)
Presented Governor's Ceremonial Pen used to sign Minors' Tolling Act (1984)
Wiley Rutledge Award for Individual Rights, University of Pennsylvania Law School (1979)
Benjamin R. Jones Award for Public Interest Service, University of Pennsylvania Law School (1979)
Class Valedictorian, St. Joseph's University (1976)
Alumni award as graduate best exemplifying the qualities of an alumnus, St. Joseph's University (1976)
Law alumni award as outstanding graduate pursuing a career in law, St. Joseph's University (1976)
Principal's Scholarship, St. Joseph's University (1972 – 1976)
Outstanding Volunteer of the Philadelphia Prisons (1975)
Distinguished Community Service Award, Temple University Center for the Administration of Justice (1975)
Finalist, Scott Foundation Award for Leadership (1974)

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

American Association for Justice (1982 – present)
American Bar Association (1982 – present)
American College of Trial Lawyers (2003 – present)
    Pennsylvania State Committee (2010 – present)
        Chair
    Access to Justice Committee (2010 – present)
    Pennsylvania State Committee (2009 – 2010)
        Vice Chair
    United States-Canada Committee (2008 – present)
    Fellow (2003 – present)
American Inns of Court, University of Pennsylvania Chapter (2004 – present)
    Master of the Inn (2004 – present)
American Law Institute (2003 – present)
    Adviser, Restatement of Torts, 3d, Intentional Torts to Persons (2013 – present)
    Consultative Group, Restatement of Torts, 3d, Liability for Physical and Emotional Harm (2008 – 2011)
Disciplinary Board, Supreme Court of Pennsylvania, Committee 1.08 (1993 – 1998)

Chairman (1996 – 1998)
Governor's Task Force on Medical Malpractice (2002 – 2003)
Governor's Nominating Commission, Pennsylvania First Judicial District (1999 – 2000)
Independence Foundation (2004 – present)
Public Interest Fellows Selection Committee (2004 – present)
International Academy of Trial Lawyers (2002 – present)
Long Range Planning Committee (2010-2012)
Pennsylvania Bar Association (1984 – present)
Pennsylvania Trial Lawyers Association (1991 – 2002)
Board of Governors (1992 – 2002)
Executive Committee (1997 – 1999)
Statewide Task Force on Medical Malpractice (1995 – 1996)
Chair
Legislative Policy Committee (1994, 1996)
Chair
Statewide Task Force on Product Liability (1991 – 1992, 1994)
Chair
Philadelphia Bar Association
Civil Gideon Task Force (2010 – present)
Board of Governors (2002 – 2003)
Commission on Judicial Selection and Retention (1999 – 2001)
State Civil Judicial Procedure Committee (1984 – 1986)
Philadelphia Trial Lawyers Association
President (1998 – 1999)
Vice-President (1996 – 1997)
Parliamentarian (1993 – 1995)
Board of Directors (1992 – 1998)
Supreme Court of Pennsylvania (2003– present)
Task Force on Medical Malpractice Mediation (2003– present)
United States District Court for the Eastern District of Pennsylvania (1999 – 2008)
Advisory Committee on Local Civil Rules (1999 – 2008)
University of Pennsylvania Law School (1998 – present)
Public Service Advisory Committee (1998 – present)
Dean's Ad Hoc Committee on Trial Advocacy (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.

Pennsylvania, 1979

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 2004
United States Court of Appeals for the Third Circuit, 1986
United States District Court for the Eastern District of Pennsylvania, 1979

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.

Brehon Law Society (2008 – present)
Cedar Park Against Drugs (1988 – 1992)
Community Legal Services (1998 – present)
    Leadership Council (1998 – present)
    Co-Chair (2004-present)
Florence Garden (1989 – 2006)
Hospitality House of Philadelphia (1982 – 2004)
    President (1986 – 2004)
    Chairman, Board of Directors (1986 – 2004)
Interest on Lawyers' Trust Accounts (IOLTA) Board (1994 – 2003)
    Chairman (1996 – 2003)
Lawyers Club of Philadelphia (2009 – present)
Lawyers Concerned for Kids Foundation (1999 – 2004)
    Officer (1999 – 2004)
Pennsylvania Association for Justice (1985 – present)
Pennsylvania Legal Aid Network (2004 – present)
    President Emeritus (2012 – present)
    Board of Directors (2004 – present)
    President (2010 – 2012)
Pernet Family Health Service (1980 – 1987)
    Vice President (1983 – 1987)
    Board of Directors (1980 – 1987)
Philadelphia Bar Foundation (1999 – 2003)
    President (2002 – 2003)
    Officer (1999 – 2001)
St. Frances de Sales Parish Church
    Parishioner (1954 – present)
    Finance Council (1995 – 2012)

The Legal Club (2012 – present)
Volunteers for the Indigent Program, Philadelphia Bar Association (1986 – 1991; 2010 – 2012)
West Philadelphia Fire House Project, Inc. (1991 – 1996)
Secretary (1992 – 1996)
Board of Directors (1991 – 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.

With James DeAngelo, *Civil Legal Aid Cuts Put an Added Burden on Justice System*, PATRIOT-NEWS, Jan. 12, 2012. Copy supplied.

Legal Services, A Way to Help, PA. BUS. J., Apr. 10 – 16, 2009. Copy supplied.

Bar Foundation Restructuring Complete, PHILA. B. REP., Jan. 2004. Copy supplied.

Foundation Kicks Off New Access to Justice Campaign, PHILA. B. REP., Oct. 2003. Copy supplied.

Weak Economy Threatens Legal Services, PHILA. B. REP., July 2003. Copy supplied.

A Foreign Perspective on Pro Bono, PHILA. B. REP., May 2003. Copy supplied.

Time to Take Stock of Commitment to Funding Equal Justice, PHILA. B. REP., Apr. 2003. Copy supplied.

Lighting the Way – Morris M. Shuster, PHILA. B. REP., Feb. 2003. Copy supplied.

The Deposition Handbook: A New Classic, PA. L. WKLY., Dec. 2, 2002 (book review). Copy supplied.

Moving the Foundation Up to the Next Level, PHILA. B. REP., Dec. 2002. Copy supplied.

Charitable Priorities: The Case for Legal Services, PHILA. B. REP., Oct. 2002. Copy supplied.

Informed Consent – Doors Closed, Doors Opened, LEGAL INTELLIGENCER, Oct. 21, 2002. Copy supplied.

Pro Bono: Do We Mean What We Say? PHILA. B. REP., Aug. 2002. Copy supplied.

Public Interest Lawyers Deserve More Credit, PHILA. B. REP., July 2002. Copy supplied.

Beware of this Legal 'Reform,' PHILA. DAILY NEWS, May 14, 2002. Copy supplied.

Bar Foundation Restructures, PHILA. B. REP., May 2002. Copy supplied.

Legislation Brings Sweeping Changes to Pennsylvania Tort Law: An Interpretative Analysis of Medical Malpractice Reform, PA. L. WKLY., Mar. 25, 2002. Copy supplied.

Forecasting Value in a Plaintiff's Case, PHILA. LAW., Winter 2000. Copy supplied.

Some Parting Thoughts on Professionalism, VERDICT, July 1999. Copy supplied.

"Frye Motions" – A Broader Perspective, VERDICT, Feb. 1999. Copy supplied.

Bench and Bar – The Delicate Balance, VERDICT, Oct. 1998. Copy supplied.

Supreme Court Limits Rights of International Air Crash Victims, PA. L. WKLY, Aug. 24, 1998. Copy supplied.

Preserving the Tradition, VERDICT, May 1998. Copy supplied.

The Credibility Factor, PHILA. LAW., Summer 1997. Copy supplied.

Statutory Changes in Medical Malpractice (1997), reprinted from the Pennsylvania Bar Institute publication, *Health Law Institute*, Vol. III, No. 1225 (2007). Copy supplied.

With S. Gerald Litvin, PENNSYLVANIA TORTS: LAW AND ADVOCACY (West Publishing Co. 1996, supplemented through 2013). Table of contents supplied. Available from publisher, http://legalsolutions.thomsonreuters.com/law-products/Practice-Materials/Pennsylvania-Torts-Law--Advocacy-Vols-3-and-4-Wests-Pennsylvania-Practice/p/100016115.

Of Trials, Forests and Trees, PHILA. LAW., Fall 1996. Copy supplied.

Covering Accident Costs: Insurance, Liability and Tort Reform, PHILA. B. REP., Nov. 1996 (book review). Copy supplied.

Gap in Law Leaves Prescription Consumers Unprotected, PA. L. WKLY., May 2, 1994. Copy supplied.

The Statute of Limitations and the Discovery Rule: Variations on a Theme of Fairness, 64 PA. B. ASS'N Q. 197 (1993). Copy supplied.

Techniques in Taking Depositions, PHILA. LAW., Winter 1992. Copy supplied.

Ransoming the Captive: Some Perspectives on Ministry in Criminal Justice, PROCEEDINGS OF THE THEOLOGY INST. OF VILLANOVA U. (Francis Eigo ed., 1992). Copy supplied.

Joint Tortfeasor Releases: Negotiating the Maze, 62 PA. B. ASS'N Q. 180 (1991). Copy supplied.

Amended Rule 23B: Its Scope and Application, BARRISTER, Spring 1990. Copy supplied.

Protection of the Rights of Pregnant Women in Prisons and Detention Facilities, 6 NEW ENG. J. ON PRISON L. 231 (1980). Copy supplied.

The Child Savers, ST. ANTHONY'S MESSENGER, July 1980 (book review). Copy supplied.

A Theological Perspective on the Problems of Criminal Justice, "SEVENTY TIME SEVEN" PROGRAM, DIOCESE OF KANSAS CITY (1980). I have been unable to obtain a copy.

Penology in America: A Theological Perspective, U. PA. L. ALUMNI J., Spring 1979. I have been unable to obtain a copy.

Parish Involvement in the Prison Ministry, SERVICES, Fall 1978 (reprinted in PARISH MINISTRY RESOURCES (M. Bruck ed., 1979)). Copy supplied.

CHRISTIAN FAITH AND CRIMINAL JUSTICE: TOWARD A CHRISTIAN RESPONSE TO CRIME AND PUNISHMENT (Paulist Press 1978). Table of Contents supplied. Out of print but available through Amazon.com.

Discipline and Punish – The Origin of the Prison, NEW CATHOLIC WORLD, Nov./Dec. 1978 (book review). Copy supplied.

DECISION-MAKING AND SELF AWARENESS SKILLS: A CURRICULUM FOR THE RESIDENTS OF CORRECTIONAL INSTITUTIONS (The Thresholds Program 1977). I have been unable to obtain a copy.

'Smart Money Counseling Style' – Appeal to Power Motivation, IMAGINAL EDUCATION: A TEACHER'S MANUAL (1974). I have been unable to obtain a copy.

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

"Access to Justice Act," legislative proposal prepared for Pennsylvania Legal Services (now Pennsylvania Legal Aid Network), partially enacted into law on Oct. 2, 2002, codified at 42 PA. STAT. ANN. § 3733. Copy supplied.

Pennsylvania Senate Judiciary Committee. I testified on joint liability, on May 13, 2002. I do not have a copy of my statement or a transcript.

"Physician Volunteer Immunity," legislative proposal prepared for Health Link Medical Services, amending Senate Bill 1017, enacted into law on June 19, 2002, codified at 35 PA. STAT. ANN.§ 449.41 *et seq*. Copy supplied.

"Medical Malpractice – An Analysis of House Bill 1802," white paper and legislative amendments prepared for the Pennsylvania Trial Lawyers Association, (now Pennsylvania Association for Justice) partially enacted into law on Mar. 20, 2002, codified at 42 PA. STAT. ANN. § 1301.101 *et seq*. I do not have a copy. The Pennsylvania Trial Lawyers Association is located at 121 South Broad Street, Philadelphia, Pennsylvania 19107.

Pennsylvania Senate Judiciary Committee. I testified concerning joint liability on September 9, 1999. I do not have copy of my statement or transcript.

"Helping Doctors Without Hurting Patients – An Analysis of Malpractice Insurance Reform," white paper and legislative amendments prepared for the Pennsylvania Trial Lawyers Association, partially enacted into law on Nov. 26, 1996, codified at 40 PA. STAT. ANN. § 1301.101 *et seq*. I do not have a copy. The Pennsylvania Trial Lawyers Association (now Pennsylvania Association for Justice) is located at 121 South Broad Street, Philadelphia, Pennsylvania 19107.

"Pennsylvania Wrongful Death Procedure – The Need for Reform," white paper and legislative proposal prepared for the Pennsylvania Trial Lawyers Association (now Pennsylvania Association for Justice), enacted into law on July 6, 1995, codified at 42 PA. CON. STAT. ANN. § 8301. Copy supplied.

"Rights of Minors – Tolling the Statute of Limitations," white paper and legislative proposal prepared for the Pennsylvania Trial Lawyers Association, (now Pennsylvania Association for Justice) enacted into law on May 30, 1984, codified at 42 PA. CON. STAT. ANN. § 5533. Copy supplied.

"Post Judgment Interest," white paper and legislative proposal prepared for the Pennsylvania Trial Lawyers Association, (now Pennsylvania Association for Justice). Copy supplied.

"The Fair Consideration Act – A Proposal to Reduce Nominal Bidding at Judicial Sales," legislative proposal prepared for Community Legal Services of Philadelphia, introduced as Senate Bill No. 329, 1979 session of the Pennsylvania General Assembly. I do not have a copy. The address of Community Legal Services is 1424 Chestnut Street, Philadelphia, Pennsylvania 19102.

"The Church's Role in Socio-Legal Service," Report of the Archdiocesan Conference on Youth (1972). 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 11, 2011, Pennsylvania Senate Judiciary Committee. I testified concerning joint liability. A copy of my statement is supplied.

May 13, 2002, Pennsylvania Senate Judiciary Committee. I testified on joint liability. I do not have a copy of my statement or a transcript.

September 9, 1999, Pennsylvania Senate Judiciary Committee. I testified concerning joint liability. I do not have copy of my statement or transcript.

June 4, 1999, Philadelphia City Council Committee on Public Safety, I testified on product liability. A transcript is supplied.

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

July 11, 2013: Lecturer on American Tort Law, University of Pennsylvania Law School, U.S. Law for International Lawyers and Legal Students, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the University of Pennsylvania Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

March 14, 2013: Lecturer on Best Practices in Written Discovery, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Notes supplied.

November 15, 2012: Master of Ceremonies in honor of Al Azen, Pennsylvania Bar Foundation's Annual Night Out, Harrisburg Pennsylvania. I have no notes, transcripts, or recordings. The address of the Pennsylvania Bar Foundation is 100 South Street, Harrisburg, Pennsylvania, 17101.

September 12, 2012: Lecturer on Ethics in Litigation, Marshall, Dennehey, Warner, Coleman and Goggin Law Firm, Philadelphia, Pennsylvania. Notes supplied.

May 10, 2012: Lecturer on developments in civil law, City of Philadelphia Municipal Judges Conference, Lafayette Hill, Pennsylvania. Notes supplied.

March 27, 2012: Introductory remarks for Judge John E. Jones, III, Pennsylvania Legal Aid Network (PLAN) Excellence Awards Dinner, Harrisburg, Pennsylvania. I described the highlights of the judge's career on the bench. I have no notes, transcripts or recordings. The address of PLAN is 118 Locust Street, Harrisburg, Pennsylvania 17101.

February 29, 2012: Lecturer, "Mastering the Art of Advocacy," Volunteers for the Indigent Program, Philadelphia, Pennsylvania. Notes supplied.

February 23, 2012: Lecturer on developments in civil law, Pennsylvania State Conference of Trial Judges, Philadelphia, Pennsylvania. Materials supplied.

February 23, 2012: Remarks on pro bono representation, Pennsylvania Bar Association (PBA) Conference of County Bar Leaders, Lancaster, Pennsylvania.

I have no notes, transcripts or recordings. The address of the PBA is 100 South Street, Harrisburg, Pennsylvania 17101.

January 26, 2012: Lecturer on joint liability, Philadelphia Court of Common Pleas Judges' Luncheon, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The coordinating judge was the Honorable George Overton, 1402 Criminal Justice Center, 1301 Filbert Street, Philadelphia, Pennsylvania 19107.

October 5, 2011: Lecturer on joint liability, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. Notes supplied.

September 15, 2011: Introductory remarks for Senator Stewart J. Greenleaf, Philadelphia Trial Lawyers Association (PTLA) Musmanno Award Dinner, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

September 27, 2011: Speaker on Senate Bill 1131 (Act 17), discussing the de facto abolition of joint and several liability in Pennsylvania, Philadelphia Bar Association's State Civil Litigation Section meeting. Recording available at: http://www.philabar.org/cgi-bin/WebObjects/PBAReadOnly.woa/wa/iTunesPodcast?galleryName=Podcasts_Speaker_Programs.

August 11, 2011: Lecturer on promoting pro bono representation, Bucks County Bar Foundation, Doylestown, Pennsylvania. I have no notes, transcripts or recordings. The address of the Bucks County Bar Foundation is 135 East State Street, Doylestown, Pennsylvania 18901.

July 26, 2011: Lecturer on joint and several liability, Pennsylvania Association for Justice (PAJ), Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PAJ is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

June 10, 2011: Keynote Speaker, Donor Recognition event, Philadelphia Bar Foundation, Philadelphia, Pennsylvania. I described how the lives of many people who needed access to justice were improved by the generosity of Foundation donors. I have no notes, transcripts or recordings. The address of the Philadelphia Bar Foundation is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

April 25, 2011: Panelist discussing medical malpractice litigation, Main Line Health Systems, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the Coordinating Physician, Peter R. Kowey, M.D., is Lankenau Medical Center, 100 East Lancaster Avenue, Wynnewood, Pennsylvania 19096.

March 22, 2011: Introductory remarks for Senator Jay Costa, Pennsylvania Legal Aid Network Excellence Awards Dinner, Harrisburg, Pennsylvania. I have no notes, transcripts or recordings. The address of PLAN is 118 Locust Street, Harrisburg, Pennsylvania 17101.

February 9, 2011: Lecturer on current issues in medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Chapter on liens and subrogation supplied.

November 13, 2010: Lecturer on effective litigation strategies, Swartz Campbell. I have no notes, transcripts or recordings, Philadelphia, Pennsylvania. The address of Swartz Campbell is 50 South 16th Street, Floor 28, Philadelphia, Pennsylvania 19102.

November 11, 2010: Introductory remarks for Professor Louis Rulli, Rutgers University Law School, Mount Laurel, New Jersey. I have no notes, transcripts or recordings. The address of Rutgers University Law School is 217 North Fifth Street, Camden, New Jersey 08102.

October 29, 2010: Lecturer, "Mastering the Art of Advocacy," Support Center for Child Advocates, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the Support Center is 1900 Cherry Street, Philadelphia, Pennsylvania 19103.

October 26, 2010: Acceptance remarks for the Lesnick Pro Bono Award, University of Pennsylvania Law School Alumni Society, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the University of Pennsylvania Law School is 3501 Sansom Street, Philadelphia, Pennsylvania 19104.

October 15, 2010: Panelist, "Trial Advocacy: The Power of Ideas," Philadelphia Bench Bar Conference, Atlantic City, New Jersey. Audio recording available at: http://www.philadelphiabar.org/cgi-bin/WebObjects/PBAReadOnly.woa/wa/iTunesPodcast?galleryName=Podcasts_Major_Events.

September 30, 2010: Introductory remarks for Bernard Smalley, Philadelphia Trial Lawyers Association Musmanno Award Dinner, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

June 8, 2010: Lecturer on winning litigation strategies, ADR Options, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of ADR Options is 2001 Market Street, Suite 1100, Philadelphia, Pennsylvania 19103.

March 23, 2010: Introductory remarks for Chief Justice Ronald Castille, Pennsylvania Legal Aid Network Excellence Awards Dinner, Harrisburg, Pennsylvania. I have no notes, transcripts or recordings. The address of PLAN is 118 Locust Street, Harrisburg, Pennsylvania 17101.

November 17, 2009: Speaker, "Themes at Trial," Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I addressed the importance of having a unified, coherent theme for effective presentation of a case. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

October 15, 2009: Introductory remarks for Congressman John Conyers, Philadelphia Trial Lawyers Association Musmanno Award Dinner, Philadelphia, Pennsylvania. I reviewed the highlights of Congressman Conyers' legislative career. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

December 5, 2008: Lecturer on the civil justice system, Pennsylvania Association of Neurosurgeons, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The course planner was Daniel Ryan, III, O'Brien & Ryan, 2250 Hickory Road, Suite 300, Plymouth Meeting, Pennsylvania 19462.

October 17, 2008: Featured Speaker for Masters of Civil Trial Advocacy Series, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I shared with the audience the methods I use in preparing and presenting a case. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

September 28, 2008: Keynote speaker, St. Joseph's Prep Mother-Son Communion Breakfast, Philadelphia, Pennsylvania. I discussed the challenge of making religious faith relevant to everyday life. I have no notes, transcripts or recordings. The address of St. Joseph's Preparatory School is 1733 West Girard Avenue, Philadelphia, Pennsylvania 19130.

April 16, 2008: Acceptance remarks for the Medallion Award, Friends for Effective Education, Philadelphia, Pennsylvania. Remarks supplied.

December 13, 2007: Lecturer on current issues in medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. Chapter on Expert Certification supplied.

May 11, 2007: Introductory remarks for Congressman Dennis O'Brien, Community Legal Services Breakfast of Champions, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of CLS is 1424 Chestnut Street, Philadelphia, Pennsylvania 19102.

April 2007: Eulogy for George F. Schoener, Church of the Gesu, Philadelphia, Pennsylvania. Copy supplied.

March 20, 2007: Introductory remarks for President Judge Kate Ford Elliott, Pennsylvania Legal Aid Network Excellence Awards Dinner, Harrisburg, Pennsylvania. I have no notes, transcripts or recordings. The address of PLAN is 118 Locust Street, Harrisburg, Pennsylvania 17101.

December 15, 2006: Lecturer on ethical issues in medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

November 20, 2006: Lecturer on civil litigation techniques, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. Notes supplied.

September 20, 2006: Keynote Speaker, Donor Recognition event, Philadelphia Bar Foundation, Philadelphia, Pennsylvania. I thanked Foundation donors for past generosity, and discussed the importance of building an endowment for long term viability. I have no notes, transcripts or recordings. The address of PBF is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

December 14, 2005: Lecturer on advanced issues in medical malpractice litigation, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

May 19, 2005: Lecturer on expert witnesses, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. Notes supplied.

November 18, 2004: Lecturer on advanced issues in medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

August 25, 2004: Guest lecturer on medical liability, Albert Einstein Medical Center (AEMC), Department of Emergency Medicine, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of AEMC is 5501 Old York Road, Philadelphia, Pennsylvania 19141.

April 28, 2004: Remarks at seminar, "Ethics and Medics: Everything You Wanted to Know About the New Medical Malpractice Act and Its Ethical Implications," the Justinian Society in conjunction with the Brehon Society and the Brandeis Society, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the Justinian Society is 1205 Locust Street, Philadelphia, Pennsylvania 19107.

November 2003: Introductory remarks of Senator John Edwards, Philadelphia Trial Lawyers Association Musmanno Award Dinner, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

November 1, 2003: Acceptance speech for class of 2003 honorees, American College of Trial Lawyers, Philadelphia, Pennsylvania. Remarks supplied.

October 2003: Keynote speaker, "Lawyers on the Fast Track" awards dinner, sponsored by The Legal Intelligencer, Philadelphia, Pennsylvania. I discussed the importance of remembering that law is a profession, where lawyers must exemplify the values that make the American system of justice a beacon worldwide. I have no notes, transcripts or recordings. The address for American Lawyer Media, publisher of The Legal Intelligencer, is 120 Broadway, Fifth Floor, New York, New York 10271.

October 2003: Lecturer on medical malpractice litigation, Philadelphia Court of Common Pleas, Judicial Education Committee, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The coordinating judge was the Honorable Mark Berstein, 532 City Hall, Philadelphia, Pennsylvania 19107.

July 2003: Demonstration of an opening statement in a products liability case, Pennsylvania Bar Institute's 10th Annual Personal Injury Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

June 12, 2003: Speaker at Community Legal Services 14th Annual Breakfast of Champions. I have no notes, transcripts or recordings. The address of CLS is 1424 Chestnut Street, Philadelphia, Pennsylvania 19102.

April 2003: Lecturer on public interest lawyering, United Kingdom National Solicitors' Pro Bono Conference, London, England. I have no notes, transcripts or recordings. The address of The National Pro Bono Centre is 48 Chancery Lane, London, WC2A 1JF.

November 12, 2002: Acceptance remarks for the Justice Musmanno Award, Philadelphia Trial Lawyers Association Musmanno Award Dinner, Philadelphia, Pennsylvania. Remarks supplied.

July 25, 2002: Speaker at Public Interest Opportunities Breakfast, Philadelphia Bar Association's Public Interest Section, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of Philadelphia Bar is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

July 2002: Lecturer on medical malpractice, State Conference of Trial Judges. I have no notes, transcripts or recordings, Hershey, Pennsylvania. The coordinating judge was the Honorable Terrence Nealon, Lackawanna County Courthouse, 200 North Washington Avenue, Scranton, Pennsylvania 18503.

March 2002: Lecturer on medical malpractice litigation, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

January 2002: Panelist discussing board development, National Conference of Bar Foundations, American Bar Association, Chicago, Illinois. I have no notes, transcripts or recordings. The address of the ABA is 740 15th Street, N.W., Washington, DC 20005.

December 2001: Lecturer on trial advocacy, Support Center for Child Advocates, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of for the Support Center is 1900 Cherry Street, Philadelphia, Pennsylvania 19103.

October 30, 2001: Philadelphia Association of Paralegals Annual Education Conference, Philadelphia, Pennsylvania. I have no notes, transcripts, or recordings. The address of the Association is PO BOX 59198 Philadelphia, Pennsylvania 19102-9198.

October 2001: Lecturer on trial advocacy, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

July 2001: Lecturer on developments in the law, Pennsylvania Bar Institute, Eighth Annual Personal Injury Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

May 2001: Lecturer on civil rights liability for police pursuit, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

February 2001: Lecturer on product liability, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

February 2001: Lecturer, "Art of Persuasion," Master Advocate Series, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

November 2000: Lecturer on medical malpractice, Pennsylvania Bar Institute. I have no notes, transcripts or recordings, Philadelphia, Pennsylvania. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

October 2000: Speaker, "The Power of Ideas: Jerry McHugh on Advocacy," Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

June 2000: Lecturer on medical malpractice, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

April 2000: Lecturer on developments in the law, Pennsylvania Bar Institute, Seventh Annual Personal Injury Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

April 2000: Panelist, Top Ten Trial Lawyers in America, "New Techniques for the New Millennium," ATLA New Jersey, Atlantic City, New Jersey. I have no notes, transcripts or recordings. The address of ATLA-New Jersey is 150 West State Street, No. 3, Trenton, New Jersey 08608.

April 2000: Moderator, "A View from the Bench," Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I presented judges with different courtroom scenarios, and asked them to provide their views as to the best way for lawyers to handle them. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

December 1999: Lecturer on medical malpractice, Pennsylvania Bar Institute. I have no notes, transcripts or recordings, Philadelphia, Pennsylvania. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

October 1999: Lecturer on product liability, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

July 1999: Lecturer on medical malpractice, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or

recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

April 1999: Lecturer on developments in the law, Pennsylvania Bar Institute, Sixth Annual Personal Injury Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

April 23, 1999: Lecturer on persuasion in tort cases, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

February 1999: Lecturer on voir dire, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

September 1998: Lecturer on trial advocacy, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

September 1998: Lecturer on product liability, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

July 1998: Lecturer on legal ethics, Pennsylvania Trial Lawyers Association. I have no notes, transcripts or recordings, Philadelphia, Pennsylvania. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

June 1998: Lecturer on medical malpractice, Philadelphia Association of Defense Counsel, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PADC is P.O. Box 697, Camp Hill, Pennsylvania 17001.

April 1998: Lecturer on developments in the law, Pennsylvania Bar Institute, Fifth Annual Personal Injury Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

December 1997: Lecturer on rights of minors and incapacitated parties as plaintiffs, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

November 1997: Lecturer on issues in medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

November 1997: Lecturer on product liability, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

September 1997: Annual update of the law, focusing on evidence, personal injury, and governmental immunity, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

July 1997: Workshop on medical malpractice, Pennsylvania Trial Lawyers Association Annual Convention, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

April 24, 1997: Lecturer on developments in the law of personal injury and product liability, Pennsylvania Bar Institute, Fourth Annual Personal Injury Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

April 1997: Lecturer on changes to Pennsylvania statutes governing malpractice claims, Pennsylvania Bar Institute, Health Law Institute, Philadelphia, Pennsylvania. Copy of paper, *Statutory Changes in Medical Malpractice*, on which lecture was based previously supplied in 12a.

January 1997: Lecturer on medical malpractice, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

December 13, 1996: Lecturer on the fundamentals of joint tortfeasor liability, Philadelphia Trial Lawyers Association. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

November 1996: Panelist on appellate advocacy, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

November 1996: Lecturer on tort law, Basic Legal Practice Course, Philadelphia Bar Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBA is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

October 1996: Lecturer on persuasion in tort cases, Philadelphia Bar Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBA is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

September 1996: Lecturer on advanced issues in medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

June 1996: Address to House of Delegates of the Pennsylvania Bar Association, Hershey, Pennsylvania. I spoke in favor of a proposed Supreme Court of Pennsylvania Rule of Professional Conduct making participation in IOTLA mandatory. I have no notes, transcripts, or recordings. The address of the PBA is 100 South Street, Harrisburg, Pennsylvania 17101.

May 1996: Lecturer on legal ethics, Pennsylvania Trial Lawyers Association. I have no notes, transcripts or recordings, Philadelphia, Pennsylvania. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

April 1996: Lecturer on recent developments in the law of personal injury, Pennsylvania Bar Institute, Third Annual Personal Injury Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

March 1996: Lecturer on civil litigation, focused on trial techniques, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

February 1996: Lecturer on medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

February 1996: Lecturer on medical malpractice, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

May 1995: Lecturer on damage evaluation, Pennsylvania Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

April 1995: Course planner on product liability, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

November 1994: Lecturer on problems in medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

June 1994: Lecturer on joint tortfeasor liability, Philadelphia Bar Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBA is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

April 1994: Lecturer on product liability, Pennsylvania Bar Institute, First Annual Personal Injury Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

January 1994: Lecturer on joint tortfeasor liability, Philadelphia Association of Defense Counsel, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PADC is P.O. Box 697, Camp Hill, Pennsylvania 17001.

April 1993: Lecturer on legal ethics for judicial staff, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

March 1993: Lecturer on advanced issues in medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

January 21, 1993: Lecturer on governmental immunity, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

Dec. 1992: Press Conference Addressing Toy Safety, Offices of Litvin, Blumberg, Matusow and Young, Philadelphia, Pennsylvania. I have no notes transcripts or recordings. The Litvin firm is dissolved.

November 1992: Lecturer on joint tortfeasor liability, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

September 25, 1992: Lecturer on comparative negligence, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

July 1992: Lecturer on medical malpractice, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

June 1992: Featured Speaker, "Case of the Month" Program, Philadelphia Trial Lawyers Association, Philadelphia, Pennsylvania. I presented a product liability case involving an injury to an iron worker caused by a grinding tool. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

February 1992: Lecturer on developments in tort law, State Conference of Trial Judges, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The coordinating judge was the Honorable Albert Shepherd, deceased.

February 1992: Lecturer on governmental immunity, Trial Advocacy Foundation of Pennsylvania, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the Foundation's successor organization, Pennsylvania Association for Justice, is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

November 1991: Lecturer on joint tortfeasor liability, Philadelphia Bar Association Sunrise Seminar, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBA is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

October 1991: Lecturer on product liability legislation, Product Liability Seminar, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

September 1991: Lecturer on tort law and product liability, Pennsylvania Trial Lawyers Association, Annual Civil Litigation Update, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

June 1991: Lecturer on prison ministry, Villanova University Theological Institute, Villanova, Pennsylvania. I have no notes, transcripts or recordings. The address of Villanova University is 800 East Lancaster Avenue, Villanova, Pennsylvania 19085.

May 1991: Lecturer on medical malpractice, Philadelphia College of Osteopathic Medicine (PCOM), Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PCOM is 4170 City Avenue, Philadelphia, Pennsylvania 19131.

May 1991: Lecturer on joint tortfeasor releases, Philadelphia Trial Lawyers Luncheon Lecture Series, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

November 1990: Lecturer on deposition tactics, Professional Education Systems, Inc. (PES), Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. PES is no longer in existence.

November 1990: Lecturer on post-motions and appeals, "Your First Trial," Philadelphia Trial Lawyers Association Seminar, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

February 1990: Lecturer on using evidence and exhibits at trial, Pennsylvania Bar Institute, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBI is 100 Penn Square East, Suite 1010, Philadelphia, Pennsylvania 19107.

June 1989: Lecturer on delay damages, Philadelphia Trial Lawyers Association Luncheon Lecture Series, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

January 1989: Lecturer on statute of limitations, Philadelphia Trial Lawyers Association Luncheon Lecture Series, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PTLA is 121 South Broad Street, Suite 600, Philadelphia, Pennsylvania 19107.

May 1988: Lecturer on joint tortfeasor releases, Philadelphia Association of Defense Counsel Annual Meeting, Philadelphia, Pennsylvania. I have no notes,

transcripts or recordings. The address of PADC is P.O. Box 697, Camp Hill, Pennsylvania 17001.

February 1988: Lecturer on joint tortfeasor releases, Philadelphia Bar Association Continuing Education Committee, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of Philadelphia Bar is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

March 1987: Lecturer on defense of tort cases, Philadelphia Bar Association Seminar for Volunteer Attorneys, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of PBA is 1101 Market Street, 11th Floor, Philadelphia, Pennsylvania 19107.

March 1987: Lecturer on sovereign immunity, Trial Advocacy Foundation of Pennsylvania, Seminar on Governmental Liability, Philadelphia, Pennsylvania. I have no notes, transcripts or recordings. The address of the Foundation's successor organization, Pennsylvania Association for Justice, is 121 South Broad Street, Suite 600, Philadelphia, PA 19107.

March 1987: Lecturer on tort law development, Dickinson School of Law, Advanced Legal Education Seminar, Carlisle, Pennsylvania. I have no notes, transcripts or recordings. The address of The Dickinson School of Law is Lewis Katz Building, University Park, Pennsylvania 16802.

May 8, 1976: Commencement address, St. Joseph's College, Philadelphia, Pennsylvania. 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.

Theodore Schleifer, Obituary: *Gerald A. McHugh Sr., 92, Civic Activist*, PHILA. INQUIRER, July 29, 2013. Copy supplied.

Catherine C. Carr, *American College of Trial Lawyers Leads the Way on Access to Justice*, LEGAL INTELLIGENCER, May 17, 2013. Copy supplied.

Bob Fernandez, *Comcast's Cohen Raised $500,000 for Obama in 2012*, PHILA. INQUIRER, Mar. 5, 2013. Copy supplied.

Anna Zacharias, *Family of US Swimmer Fran Crippen Considers Legal Action for UAE Death*, NATIONAL (UAE), Oct. 19, 2012. Copy supplied.

Bonnie Ford, *Family of Fran Crippen Weighs Action*, ESPN.com, Oct. 17, 2012. Copy supplied.

Bill Reed, *Perkasie Police to Start Probe of Fatal Shooting of Quakertown Man*, PHILA. INQUIRER, Aug. 1, 2012. Copy supplied.

Amaris Elliott-Engel, *Corbett Proposes Flat Judiciary Funding*, PITTSBURGH POST-GAZETTE, Feb. 13, 2012. Copy supplied.

Amaris Elliott-Engle, *Corbett Proposes No Cut for Courts, Reduction for Legal Services*, LEGAL INTELLIGENCER, Feb. 8, 2012. Copy supplied.

Jeff Blumenthal, *Philadelphia Law Firm Donates $200K to Community Legal Services*, PHILA. BUS. J., Feb. 6, 2012. Copy supplied.

Landlord/Tenant Legal Help Center Launched Jan. 30, PHILA. B. REP., Feb. 2012 Copy supplied.

Landlord/Tenant Legal Help Center Opens Jan. 30, PHILA. B. ASS'N, Jan. 23, 2012. Copy supplied.

Amaris Elliott-Engel, *Legal Aid Faces Midyear 10 Percent State Funding Cut; Judiciary Rejects Budget 'Freeze' Plan*, LEGAL INTELLIGENCER, Jan. 17, 2012. Copy supplied.

Ben Present, *Lawyers Say Sovereign Immunity Won't Affect Penn State Abuse Suits*, LEGAL INTELLIGENCER, Nov. 15, 2011. Copy supplied.

Pennsylvania Governor: Change Law After Penn State Scandal, CNN WIRE, Nov. 13, 2011. Copy supplied.

Bill Pennington, *Penn State Officials, Including Paterno, Could Be Subject to Civil Lawsuits*, N.Y. TIMES, Nov. 12, 2011. Copy supplied.

Art Heinz, *Chief Justice Welcomes Recommendation for Legal Aid Funding*, LAW. J., July 1, 2011. Copy supplied.

Joseph N. DiStefano, *PhillyDeals: Will Corbett's Lawsuit Limits Bring Jobs to PA?* PHILA. INQUIRER, June 29, 2011. Copy supplied.

Chief Justice Welcomes Independent Recommendation to Continue Legal Aid Funding, TARGETED NEWS SERVICE, May 31, 2011. Copy supplied.

PLAN eNews, *Chief Justice Welcomes Independent Recommendation to Continue Legal Aid Funding*, May 26, 2011. Copy supplied.

Chris Harris, *2011 Lawyers of the Year*, PHILA.'S BEST LAW., May 2011. Copy supplied.

Chris Mondics, *Pennsylvania Trial Lawyers, Business Groups Square Off Over Lawsuit Reform*, PHILA. INQUIRER. Apr. 19, 2011. Copy supplied.

Toll Public Interest Center at Penn Law Announces 2011 Postgraduate Fellowship Awards, PENN L., Apr. 13, 2011. Copy supplied.

Amaris Elliott-Engel, *Joint and Several Liability on the Chopping Block?* LEGAL INTELLIGENCER, Apr. 12, 2011. Copy supplied.

PLAN eNews , *Legal Aid and Bar Leaders Celebrate and Strategize on Pro Bono*, Jan. 28, 2011. Copy supplied.

Penn Law Honors Six Graduates with Alumni Achievement Awards, PENN L., Oct. 21, 2010. Copy supplied.

PLAN eNews, *Pennsylvania Legal Aid Network Comments on New Federal Poverty Data and Mortgage Foreclosure Data*, Sept. 17, 2010. Copy Supplied.

Leo Strupczewski, *Expert Witness Competence a Fact-Specific Determination, Justices Rule; Justices Grant Trial Courts Deference in Ruling on Admissibility of Those Testifying*, LEGAL INTELLIGENCER, Apr. 6, 2010. Copy supplied.

Peter Cheney, *Lawsuit Claims Sikorsky Knew S-92 Had Fatal Flaw, But Failed to Inform Pilots*, GLOBE & MAIL, June 18, 2009. Copy supplied.

Kevin Amerman, *$3.1 Million Awarded in Death of Woman, 25; Jury Finds Robert E. LaBarre, the Drunk Driver in Allentown Crash, 85 Percent Responsible*, MORNING CALL, May 9, 2009. Copy supplied.

Amaris Elliott-Engel, *High Court's Increase in Fees Will Benefit Legal Services*, LEGAL INTELLIGENCER, Apr. 6, 2009. Copy supplied.

Molly Peckman, *Words of Wisdom from Local 'Lawyers' Lawyers'*, LEGAL INTELLIGENCER, Mar. 17, 2009. Copy supplied.

Featured Donor: Gerald A. McHugh, Jr., PHILA. B. FOUND. NEWS, Spring 2008. Copy supplied.

Nicole Contosta, *Friends for Effective Education Award Ceremony, Jerry McHugh and Maureen Tate Honored*, U. CITY REV., Apr. 24, 2008. Copy supplied.

Peter Hall, *Med Mal Jury Inquiry Added to Rule*, LEGAL INTELLIGENCER, Mar. 24, 2008. Copy supplied.

Jeff Blumenthal, *Medical Malpractice Case Filings Down*, PHILA. BUS. J., May 21, 2007. Copy supplied.

People in the News, LEGAL INTELLIGENCER, Apr. 12, 2007. Copy supplied.

Shannon P. Duffy, *3rd Circuit: Delaware SOL Controls in New Jersey Suit*, LEGAL INTELLIGENCER, Jan. 19, 2007. Copy supplied.

Don Spatz, *Award Not Done Deal for Widow of Officer: Reading's Insurance Company Hasn't Approved a Deal to Pay a $1.75 Million Settlement in the Death of a City Policeman Accidentally Shot by a Colleague*, READING EAGLE, Nov. 30, 2006. Copy supplied.

Gina Passarella and Asher Hawkins, *Raynes McCarty Founder Arthur Raynes Dead at 72*, LEGAL INTELLIGENCER, July 25, 2006. Copy supplied.

Sandi Lynn Brown, *Slain Officer's Wife Files Suit*, LEBANON DAILY NEWS, July 20, 2006. Copy supplied.

Dan Kelly, *Widow Files Suit Over Death of City Officer: Denise L. Wise Blames the Fatal Shooting of Her Husband, Michael, on Reckless Action by a Fellow Officer, Saying He Failed to Receive Proper Training*, READING EAGLE, July 19, 2006. Copy supplied.

Medical-Malpractice Insurance Crisis Abating, Experts Say, BUCKS COUNTY COURIER TIMES, Jan. 3, 2006. Copy supplied.

Josh Goldstein, *Malpractice Insurance 'Crisis' Fading, Number of Lawsuits Filed Declines; Premiums Level*, CENTRE DAILY TIMES, Jan. 3, 2006. Copy supplied.

Medical Liability 'Crisis is Over', PITTSBURGH TRIB. REV., Jan. 3, 2006. Copy supplied.

Josh Goldstein, *Signs of 'Crisis' Fading*, PHILA. INQUIRER, Jan. 2, 2006. Copy supplied.

Todd Mason, *VA Told to Pay $7.5 Million for Killings of 4 Children; A Shelter Had Expelled a Disturbed Veteran, Who Shot the Four, then Himself. Their Mothers Sued*, PHILA. INQUIRER, Sept. 8, 2005. Copy supplied.

G. Patrick Pawling, *The Saint*, PA. SUPER LAW., June 2005. Copy supplied.

Melissa Nann Burke, *Supreme Court Adjusts Rule Requiring Certificate of Merit*, LEGAL INTELLIGENCER, Feb. 21, 2005. Copy supplied.

Christopher Lilienthal, *Is Reform Losing Steam?* LEGAL INTELLIGENCER, Feb. 14, 2005. Copy supplied.

Jeff Blumenthal, *Litvin Blumberg Collapse Tops List of Law Firm Events*, LEGAL INTELLIGENCER, Dec. 22, 2004. Copy supplied.

Nathan Crabbe & Karl Stark, *Effort to Cap Malpractice Awards Appears Dead, A PA Senate Committee Tabled a Constitutional Amendment, Putting Off a Referendum for at Least Three More Years*, PHILA. INQUIRER, July 3, 2004. Copy supplied.

Jeff Blumenthal, *Litvin Reflects on Past, Ponders Future; As Old Firm Breaks Up, Founder Plans to Continue Practicing Law*, LEGAL INTELLIGENCER, June 28, 2004. Copy supplied.

Jo-Ann Verrier, *Jerry McHugh: Neighborhood Roots – Statewide Prominence*, U. CITY REV., June 23, 2004. Copy supplied.

Jeff Blumenthal & Melissa Nann, *Litvin Blumberg Makes Dissolution Official*, LEGAL INTELLIGENCER, June 17, 2004. Copy supplied.

Jeff Blumenthal, *Litvin Blumberg Gets Help from Harmelin*, LEGAL INTELLIGENCER, June 4, 2004. Copy supplied.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

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

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions tha 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 judicial office.

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

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

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

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

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

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

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

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

In February 2012, I was identified by the Obama for President campaign as a bundler of campaign contributions in connection with a fundraising dinner. On Election Day 2008, I worked as a volunteer lawyer for the Obama for President campaign at the Montgomery County Courthouse. In 2004, I raised funds for the Kerry for President campaign. In 2002, I co-chaired the Democratic primary election campaign of U.S. Senate candidate Tom Foley.

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

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

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

From January to July 1979, I served as a law clerk to the Honorable Edmund B. Spaeth, Jr., Judge of the Superior Court of Pennsylvania. From 1979 to 1981, I served as a law clerk to the Honorable Alfred L. Luongo, Judge of the United States District Court for the Eastern District of Pennsylvania.

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;

1981 – 2004
Litvin, Blumberg, Matusow & Young (firm dissolved)
Shareholder
1339 Chestnut Street, 18th Floor
Philadelphia, Pennsylvania 19107

2004 – present
Raynes McCarty
1845 Walnut Street
Suite 2000
Philadelphia, Pennsylvania 19103
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 served as a mediator or arbitrator on a number of occasions over the past several years. In 2002, I completed training sponsored by the Drexel College of Medicine, and I currently serve on the Pennsylvania Supreme Court's Task Force on Medical Malpractice Litigation. The ten most significant matters that I have mediated or arbitrated are:

1. *Rowley v. Sunoco* (mediated settlement of major burn injury case)

2. *Winebrenner v. Glaxo* (mediated settlement between a pharmaceutical manufacturer and patient injured by ingesting a drug)

3. *Myers v. Philadelphia College of Osteopathic Medicine* (served as sole arbitrator; award in favor of defendant physician in a death action)

4. *Coestello v. Phoenixeville Hospital* (served as sole arbitrator; award in favor of plaintiff patient in malpractice action)

5. *Stolle v. Moritz* (mediated settlement of malpractice action)

6. *Perry-Makowski v. University of Pennsylvania Hospital* (served as sole arbitrator; found in favor of defendant physician)

7. *Tucker v. University of Pennsylvania Hospital* (served as sole arbitrator; award of $475,000 to plaintiff-patient)

8. *Bryant v. City of Philadelphia* (served as sole arbitrator; award in favor of defendant police officer in auto accident case)

9. *McCullough v. Williams* (served as co-arbitrator; award in favor of defendant surgeon on hospital claim for contribution)

10. *Samson v. Tenet Health Systems* (mediated settlement of malpractice action)

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 Litvin, Blumberg, Matusow & Young, the majority of my practice was focused on complex civil litigation, with an emphasis on tort, insurance and civil rights matters. A small percentage of my practice was focused on commercial matters. Since joining Raynes McCarty, I have continued to practice the same mix of civil litigation.

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

Throughout the course of my career, I have represented a variety of clients, including professionals, white collar workers, blue collar workers, homemakers, the elderly, the disabled and children. The vast majority of the cases involved tort claims, including aviation disasters, vehicle accidents, medical malpractice, or liability for defective products.

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

From 1981 through 2004, while I was at the law firm of Litvin, Blumberg, Matusow & Young, nearly my entire practice was in litigation and I appeared in court frequently. I have continued to do so since joining the law firm of Raynes McCarty in 2004.

i. Indicate the percentage of your practice in:

1. federal courts: 15%
2. state courts of record: 85%
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 estimate that I have tried 33 cases to verdict, judgment or final decision. I was lead counsel or co-lead counsel in 26 of these cases and assistant to lead counsel in seven of them.

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 filed an amicus brief on behalf of the National Alliance for Model State Drug Laws in *Aetna Health Inc. v. Davila*, 542 U.S. 200 (2004). Copy supplied.

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

a. the date of representation;

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

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

1. *Friter v. IOLAB Corp.*, 607 A.2d 1111 (Pa. Super. Ct. 1992) (Hon. Kate Ford Elliott, Hon. John P. Hester, Hon. Justin M. Johnson) (1991 – 1992).

I served as appellate counsel for plaintiff Friter, with the task of restoring a jury verdict in his favor that was vacated by the trial court. I was responsible for briefing and argument, and presented a unique theory of battery under Pennsylvania's law on informed consent, contending that direct physical contact between the defendant tortfeasor and plaintiff was unnecessary for liability to exist. The court ruled in plaintiff's favor, establishing a new precedent that a hospital conducting a clinical trial had an institutional responsibility to secure the patient's consent to experimental treatment.

Opposing Counsel: Stephen A. Ryan
Marshall, Dennehey, Warner, Coleman, & Goggin, P.C.
620 Freedom Business Center
Suite 300
King of Prussia, Pennsylvania 19406
(610) 354-8254

2. *Schultz v. Dupont*, Case No. 97-003075 (Del. County, Pa. Ct. Com. Pl. 1999) (Hon. James F. Proud) (1997 – 2000).

I served as lead counsel on liability issues, representing the widow of slain Olympic wrestler Schulz in a wrongful death action against her husband's killer. I conducted the discovery in the case, and was responsible for crafting the legal strategy. I argued and won summary judgment in a case of first impression, with the court ruling that a criminal defendant found guilty but mentally ill could nonetheless be liable for punitive damages in a civil action for wrongful death. That ruling resulted in a confidential settlement, reported as the largest single wrongful death recovery from an individual defendant in the United States.

Opposing Counsel: William O'Brien (deceased)

3. *DeJesus v. United States*, 384 F. Supp. 2d 780 (E.D. Pa. 2005) (Hon. Paul Diamond), *aff'd*, 479 F.3d 271 (3d Cir. 2007) (Hon. Michael A. Chagares, Hon. D. Michael Fisher, Hon. Morton Ira Greenberg) (2004 – 2007).

I served as lead counsel in a bench trial securing a recovery for the mothers of children slain by a disturbed veteran wrongfully released from psychiatric care. The trial required plaintiffs to meet the legal standard of proving gross negligence on the part of employees of the Veterans Administration for violations of Pennsylvania's Mental Health Procedures Act. After winning a verdict on liability at trial, I then tried and won a case on damages. The case was appealed, and I then briefed and argued the case in the U.S. Court of Appeals for the Third Circuit, which upheld the verdict.

Co-Counsel: Regina Foley
Raynes McCarty
1845 Walnut Street
20th Floor
Philadelphia, Pennsylvania 19103
(215) 568-6190

Opposing Counsel: Joel M. Sweet
Assistant United States Attorney
United States Attorney's Office
Eastern District of Pennsylvania
615 Chestnut Street

Suite 1250
Philadelphia, Pennsylvania 19106
(215) 861-8581

4. *Breen v. Keystone Helicopter Corp.*, Case No. 09-0601841 (Phila. County Ct. Com. Pl. 2010) (Mediator: Jonathan Marks) (2009 – 2010).

I served as co-counsel responsible for legal strategy and argument on behalf of 16 Canadian families with claims arising out of a March 2009 air disaster. The case involved issues of product liability, federal jurisdiction, international jurisdiction, choice of law, and maritime law, and particularly the measure of damages under the Death on the High Seas Act. I was responsible for briefing and arguing all of the legal points in contention during a mediation conducted over seven days in Washington and Toronto. The legal arguments advanced convinced the defendants that there was a substantial likelihood of their being subject to jurisdiction in the United States, and a substantial likelihood of being found liable. This resulted in a confidential settlement within nine months of the accident.

Co-Counsel:
Martin K. Brigham
Raynes McCarty
1845 Walnut Street
20th Floor
Philadelphia, Pennsylvania 19103
(215) 568-6190

Opposing Counsel:
James C. Stroud
Rawle & Henderson LLP
1339 Chestnut Street
One South Penn Square
The Widener Building, 16th Floor
Philadelphia, Pennsylvania 19107
(215) 575-4305

5. *Wise v. City of Reading*, Case No. 06-cv-02181 (E.D. Pa. 2007) (Hon. Stewart Dalzell, Hon. Jacob P. Hart) (2004 – 2007).

I represented the widow of a Reading police officer killed by "friendly fire" from a fellow officer's weapon during an altercation with a suspect. I was lead counsel responsible for prosecution of the case, including discovery and legal strategy. Plaintiff proceeded under a civil rights theory, arguing that civil rights remedies extended to government officers injured by co-employees. Based on the strength of the argument advanced, the Court ordered mediation before a federal magistrate. This resulted in a settlement including tender of the limits of available insurance coverage, direct contribution from the city, and preservation of workers compensation benefits, securing the family's future.

Opposing Counsel: David J. MacMain
Lamb McErlane P.C.
24 East Market Street
P.O. Box 565
West Chester, Pennsylvania 19381
(610) 701-3263

6. *Jaoude v. Aeroports de Paris*, Case No. 06-cv-02465 (E.D.N.Y. 2008) (Hon. Robert M. Levy, Mediator: Harold I. Abramson) (2004 – 2009).

This was a wrongful death action arising out of the collapse of Terminal 2 at De Gaulle Airport in 2004. I litigated on behalf of a surviving spouse under the Warsaw Convention and Foreign Sovereign Immunities Act. The case involved an issue of first impression as to the scope of the United States' jurisdiction over foreign governmental entities engaged in commercial activities abroad but earning revenue from fees paid by American citizens and collected here. I was lead counsel responsible for crafting the legal theory of recovery, discovery, and presentation of the case. Specifically, I argued that payment of a fee by American citizens for use of the Paris airport, collected by booking agents in the United States, constituted economic activity sufficient to create jurisdiction in American courts. The case presented novel evidentiary issues as to the admissibility of a formal investigation conducted by a foreign government under the Federal Rules of Evidence. The case was directed by the court to a series of mediation sessions before Professor Harold Abramson of Touro Law School, ultimately resulting in a confidential settlement on terms favorable to my client.

Co-Counsel: Aaron S. Podhurst
Podhurst Orseck, P.A.
City National Bank Building
25 West Flagler Street
Suite 800
Miami, Florida 33130
(305) 358-2800

Opposing Counsel: Lisa J. Savitt
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 624-2761

7. *Quinn v. Abiomed Inc.*, Case No. 02-1001524 (Phila. County Ct. Com. Pl. 2002) (2002 – 2003).

I was retained as special counsel to defend Drexel College of Medicine in a suit brought by the widow of a recipient of an Abiomed artificial heart. The patient had his life prolonged by the surgery but his widow sued after his death, arguing that Drexel failed to secure lawful consent to placement of the device. Plaintiff proceeded under the precedent

established in *Friter v. Iolab*, 607 A.2d 1111 (Pa. Super. Ct. 1992), which I had litigated. I had complete responsibility for Drexel's defense. I denied that Drexel had liability, took the position that Drexel would try the case to verdict rather than acknowledge any wrongdoing, and persuaded opposing counsel to dismiss Drexel without participation in settlement.

Co-Counsel:

David H. Pittinsky
Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, Pennsylvania 19103
(215) 864-8117

Denise H. Houghton
Vice-President
Synthes, Inc.
1302 Wrights Lane East
West Chester, Pennsylvania 19380
(610)-719-5000

Opposing Counsel:

Alan C. Milstein
Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.
East Gate Corporate Center
308 Harper Drive
Suite 200
Moorestown, New Jersey 08057
(856) 661-2078

8. *Christy v. SmithKline Beecham Corp.*, Case No. 02-0903780 (Phila. County Ct. Com. Pl. 2004) (2000 – 2004).

This was a wrongful death action arising out of ingesting the medication Lotronex in which I represented a surviving widower. The decedent's presentation of symptoms was unique among patients in the United States, in that the medication was associated with ischemic colitis, and this patient presented with mesenteric ischemia. I was lead counsel responsible for prosecution of every aspect of the case. In lieu of formal discovery, I arranged for unrestricted meetings with the patient's treating physician at Johns Hopkins, allowing opposing counsel unrestricted discussion of the medical and scientific issues involved. I also allowed defense counsel the opportunity to pursue follow-up inquiries informally. This unique and cooperative approach to discovery of the case led to a favorable settlement of the claim early in the litigation. Based on my knowledge of the medical and scientific issues, I was subsequently asked by the defendant manufacturer to serve as a mediator in a case involving the same medication.

Opposing Counsel:

Thomas M. Moore
Moore Labriola LLP

4695 MacArthur Court
Suite 370
Newport Beach, California 92660
(949) 209-9820

9. *McCormac v. Charles*, Case No. 01-6187 (Lackawanna County Ct. Com. Pl. 2008) (Hon. Terrence Nealon, Mediator: Hon. Robert Mazzoni) (2001 – 2008).

This was a wrongful death action arising out of an I-81 Highway reconstruction project claiming the life of a prominent public servant. I represented his surviving widow as lead counsel responsible for prosecution of the case. The litigation required more than 60 depositions, involving multiple parties, including the Commonwealth of Pennsylvania. This pre-trial litigation resulted in a confidential settlement close to trial. The accident, and discovery into the surrounding circumstances, led to legislative hearings into trucking safety on state highways.

Co-Counsel:

Regina Foley
Raynes McCarty
1845 Walnut Street
20th Floor
Philadelphia, Pennsylvania 19103
(215) 568-6190

Counsel for Co-Plaintiff:

James R. Ronca
Anapol Schwartz
252 Boas Street
Harrisburg, Pennsylvania 17102
(717) 901-3500

Opposing Counsel:

Donald M. Davis
Margolis Edelstein
The Curtis Center
170 South Independence Mall West
Suite 400E
Philadelphia, Pennsylvania 19106
(215) 931-5813

Joseph Goldberg
Weber, Gallagher, Simpson, Stapleton, Fires & Newby LLP
2000 Market Street
Suite 1300
Philadelphia, Pennsylvania 19106
(215) 825-7225

10. *Thomas v. City of Philadelphia*, Case No. 11-19981847 (Phila County Ct. Com. Pl. 1998) (Honorable Victor DiNubile) (1998 – 2001)

I served as lead counsel in a civil rights case, representing a motorist who suffered brain injury when he was struck head-on by a teenage driver being pursued by police against the flow of traffic. The teenager had stolen a briefcase from a police car, leading to a full scale manhunt and high speed pursuit onto Interstate-95, despite the fact that the contents of the briefcase were inconsequential, and the police knew the identity of the offender and could have apprehended him at any time. At issue in the case was the scope of municipal liability after the Supreme Court's decision in *Lewis v. City of Sacramento* introduced an element of police motive to pursuit cases. As lead counsel, I conducted the discovery, defeated summary judgment, rebuffed an interlocutory appeal, and presented the entire case on liability, resulting in a confidential settlement from the City before presentation of damages.

Counsel for the City:	Jeffrey M. Scott Archer and Greiner One Liberty Place 32nd Floor 1650 Market Street Philadelphia, Pennsylvania 19103 (215) 963-3300
Counsel for co-plaintiff:	John Dodig Feldman Shepherd 1845 Walnut Street 25th Floor Philadelphia, Pennsylvania 19103 (215) 567-8300
Counsel for co-plaintiff:	Rubin Honik Golomb & Honik 1515 Market Street Suite 1100 Philadelphia, Pennsylvania 19102 (215) 985-9177

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

As a lawyer, I have served as counsel in numerous complex civil tort actions, and have, in the role of lead or co-lead counsel, secured a verdict or settlement for one million dollars or more on over 70 occasions. My research and writing has enabled me to contribute to the passage of six statutes in Pennsylvania, protecting the rights of children, eliminating unfairness in claims for wrongful death, improving access to the courts, and reducing frivolous claims without impacting the substantive rights of genuine victims.

As chair of Pennsylvania's IOLTA Board and President of Pennsylvania Legal Aid Network, I have strengthened the ability of indigent litigants to get representation in important civil matters. As a lifelong resident of the West Philadelphia neighborhood where I was born and raised, I have used my advocacy skills to promote economic development through projects like the Firehouse Farmers Market, and improve public safety by using nuisance laws to target sites where drug dealing and crime are allowed to lurk.

I have never performed lobbying or registered as a lobbyist.

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

University of Pennsylvania Law School, Instructor on Evidence (2007): The course covered the entire field, taught through the Federal Rules of Evidence. I could not locate a syllabus.

University of Pennsylvania Law School, Instructor on Appellate Advocacy (2008 – 2010): The course focused on effective legal argument on appeal, with special attention to brief-writing and effective oral advocacy. The syllabi for 2009 and 2010 have been supplied.

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

None.

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

If confirmed, I hope that I will be able to continue to teach a law school class on occasion. I have no commitments or agreements to do so, and no plans to pursue any

other outside employment. I hope that I will still be able to write the annual supplement for my treatise, PENNSYLVANIA TORTS: LAW & ADVOCACY, first published in 1996 and updated annually by me ever since.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

If confirmed, I will recuse myself from any litigation where I played a role. For a sustained period of time, I anticipate recusing in all cases where my current law firm, Raynes McCarty, represents a party. I will evaluate and determine the appropriate action for any potential or apparent conflict of interest on a case by case basis.

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 carefully review and address any real or potential conflicts of interest by reference to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and to all other laws, rules, and practices governing such circumstances.

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.

My pro bono work has on average occupied at least 15% of my time annually. My principal areas of focus have been in support of civil legal services, working with ex-

offenders through Hospitality House of Philadelphia, and neighborhood improvement and crime prevention in West Philadelphia. In addition to these systemic efforts, I have handled numerous individual cases upon referral without compensation. In a relatively recent case referred to me by the Support Center for Child Advocates, I was retained to defend an abandoned teenager from deportation. Because we were unable to secure a foster placement necessary to satisfy the court's requirements, I resigned as counsel and became the teenager's guardian for a year, which allowed him to secure protected immigrant status. In another recent endeavor, I persuaded the American College of Trial Lawyers to help fund a help desk for unrepresented litigants in Philadelphia Small Claims Court, by making a commitment to match its commitment with local contributions. Since beginning operation in February 2012, 175 families have been assisted.

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 July 2011, I submitted an application to the judicial advisory committee established by Senators Casey and Toomey. In December 2011, I appeared before the committee in Philadelphia, Pennsylvania, and was one of several recommended candidates. On March 6, 2012, I was interviewed by Senator Casey in Washington, D.C. On April 16, 2012, I was interviewed by Senator Toomey in Allentown, Pennsylvania. Since June 22, 2012, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 25, 2012, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On August 1, 2013, 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. 1/2013

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
McHugh Jr., Gerald A.	Eastern District of Pennsylvania	08/01/2013
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, Nominee	☑ Nomination Date 08/01/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 07/16/2013
7. Chambers or Office Address		
1845 Walnut Street - Suite 2000 Philadelphia, PA 19103		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Board Member, President Emeritus	Pennsylvania Legal Aid Network
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 McHugh Jr., Gerald A.	Date of Report 08/01/2013

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	Salary and Bonus - Raynes McCarty	$404,601.00
2. 2011	Author Fees - Thompson West Publishing	$4,500.00
3. 2012	Salary and Bonus - Raynes McCarty	$179,318.00
4. 2012	Author Fees - Thompson West Publishing	$4500.00
5. 2013	Salary - Raynes McCarty	$44,248.00

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

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting McHugh Jr., Gerald A.	Date of Report 08/01/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
McHugh Jr., Gerald A.	08/01/2013

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. Dodge & Cox Stock Fund	C	Dividend			Exempt				
2. Dodge & Cox International Stock Fund	B	Dividend			Exempt				
3. Vanguard Capital Opportunity Fund	D	Dividend	O	U	Exempt				
4. Vanguard GNMA Fund	E	Dividend	O	U	Exempt				
5. Vanguard Health Care Fund	E	Dividend	O	U	Exempt				
6. Vanguard High Yield Tax Exempt Fund	B	Dividend	N	U	Exempt				
7. Vanguard Intermediate Term Tax-Exempt Fund	E	Dividend	O	U	Exempt				
8. Vanguard International Explorer Fund	D	Dividend			Exempt				
9. Vanguard Prime Money Market Fund	D	Dividend	N	U	Exempt				
10. Vanguard Wellington Fund	E	Dividend	P1	U	Exempt				
11. PNC Bank cash accounts	A	Interest	J	U	Exempt				
12. T Rowe Price Target Retirement 2020 401k Fund	D	Dividend	N	U	Exempt				
13. T. Rowe Price Small Cap Value 401k Fund	A	Dividend	J	U	Exempt				
14. T. Rowe Price Growth Stock 401k Fund	A	Dividend	K	U	Exempt				
15. T. Rowe Price Equity Income 401k Fund	A	Dividend	K	U	Exempt				
16. Vanguard Select Value Fund	B	Dividend	N	U	Exempt				
17. Vanguard Emerging Markets Stock Index Fund	A	Dividend	M	U	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)

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

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting McHugh Jr., Gerald A.	Date of Report 08/01/2013

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 Equity Income Fund	C	Dividend	N	U	Exempt				
19. Vanguard Global Equity Fund	B	Dividend			Exempt				
20. Vanguard Primecap Core Fund	D	Dividend	N	U	Exempt				
21. Vanguard STAR Fund	C	Dividend	M	U	Exempt				
22. T. Rowe Price Spectrum International Fund	A	Dividend	J	U	Exempt				
23. Vanguard Dividend Growth Fund	E	Dividend	M	U	Exempt				
24. Vanguard Small Cap Growth Index	A	Dividend	M	U	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting McHugh Jr., Gerald A.	Date of Report 08/01/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting McHugh Jr., Gerald A.	Date of Report 08/01/2013

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/ Gerald A. McHugh Jr.**

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		12	448	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	6	543	354	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	2	425	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		137	643				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities			0
				Net Worth	9	118	445
Total Assets	9	118	445	Total liabilities and net worth	9	118	445
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	
T. Rowe Price Equity Income Fund	$ 16,036
T. Rowe Price Growth Stock Fund	18,293
T. Rowe Price Small-Cap Value Fund	11,017
T. Rowe Price Spectrum International Fund	12,025
T. Rowe Price Target Retirement 2020 Fund	349,323
Vanguard Capital Opportunity Fund	583,970
Vanguard Dividend Growth Fund	175,926
Vanguard Emerging Markets Stock Index Fund	140,970
Vanguard Equity Income Fund	252,115
Vanguard GNMA Fund	989,592
Vanguard Heath Care Fund	603,994
Vanguard High-Yield Tax-Exempt Fund	395,692
Vanguard Intermediate-Term Tax-Exempt Fund	533,850
Vanguard Prime Money Market Fund	401,070
Vanguard PRIMECAP Core Fund	387,811
Vanguard Selected Value Fund	360,199
Vanguard Small-Cap Growth Index	112,675
Vanguard STAR Fund	190,554
Vanguard Wellington Fund	1,008,242
Total Listed Securities	$ 6,543,354

Real Estate Owned	
Primary residence	$ 450,000
Vacation home	1,975,000
Total Real Estate Owned	$ 2,425,000

AFFIDAVIT

I, Gerald Austin McHugh, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8/7/13
(DATE)

(NAME)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Esther J. Schuetz, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires Feb. 4, 2014
Member, Pennsylvania Association of Notaries

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Mark Douglas Harpool

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

   United States District Judge for the Western District of Missouri

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

   Baird, Lightner, Millsap & Harpool, P.C.
   1901-C South Ventura Avenue
   Springfield, Missouri 65804

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

   1956; Springfield, Missouri

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

   1977 – 1980, University of Missouri – Columbia School of Law; J.D., 1980

   1974 – 1977, Missouri State University; B.S. (*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.

   2006 – present
   Baird, Lightner, Millsap & Harpool, P.C.
   1901-C South Ventura Avenue
   Springfield, Missouri 65804
   Shareholder/Attorney

2010 – present
BLMH Properties, LLC
(Entity which owns the law office building)
1901-C S. Ventura Ave.
Springfield, Missouri 65804
Member/Owner

2004 – 2006
Lathrop & Gage, LLP
(current address)
910 East St. Louis Street, Suite 100
Springfield, Missouri 65806
Partner

2002 – 2003
Cunningham, Harpool & Cordonnier, LLC
3171 East Sunshine Street
Springfield, Missouri 65804
Partner

1980 – 2001
Daniel, Clampett, Lilly, Dalton, Powell & Cunningham
3171 East Sunshine Street
Springfield, Missouri 65804
Managing Partner (1997 – 2001)
Partner (1985 – 1996)
Associate (1980 – 1985)

1983 – 1992
State of Missouri – Missouri House of Representatives
State Capitol
Jefferson City, Missouri 65101
Member of the Missouri House of Representatives District 134

1987 – 1990
Evangel University
1111 North Glenstone Avenue
Springfield, Missouri 65802
Part-time Instructor

1976 – 1980
Daniel, Clampett, Rittershouse, Lilley, Dalton & Powell
1949 East Sunshine Street
Springfield, Missouri 65804
Law Clerk/Runner

1979 – 1980
University of Missouri – Columbia
School of Law
203 Hulston Hall
Columbia, Missouri 65211
Research Assistant to Larry Lawrence (Visiting Professor)

1978 – 1979
First Baptist Church
1112 East Broadway
Columbia, Missouri 65201
Part-time Youth Recreation Director

Other Affiliations (uncompensated):

2013 – present
Springfield Metropolitan Bar Association (SMBA)
1615 South Ingram Mill Road, Building D
Springfield, Missouri 65804
Director

2006
Springfield Baseball Park Association
Busch Municipal Building
Springfield, Missouri 65802
President

Approximately 2004 – 2005
Kickapoo Baseball Booster Club
P.O. Box 14053
Springfield, Missouri 65814
President

1995 – 1996
Springfield Area Baseball Authority
(no physical address)
President of the Board

Approximately 1988 – 1992
NOVA Center of the Ozarks
524 South Union Ave.
Springfield, Missouri 65802
Board of Directors

Approximately 1987 – 1988
Visiting Nurse Association
(no longer in existence)
Board of Directors

Approximately 1986 – 1988
Family Violence Center, Inc.
519 East Cherry Street
P.O. Box 5972
Springfield, Missouri 65801
Board of Directors

Approximately 1985 – 1988
South Haven Baptist Church
2353 South Campbell Ave.
Springfield, Missouri 65807
Deacon

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 timely register for the selective service.

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

   AV Preeminent Rating Martindale-Hubbell (2006 – present)
   Best Lawyers in America – Personal Injury Law (2013)
   Best Lawyers in America – Employment Law (2010 – 2013)
   417 Magazine Top Lawyers 2012 – law firm of Baird, Lightner, Millsap & Harpool, P.C. named as top lawyers (December 2011)
   Meadowbrook Insurance Group "For the Defense" award (2011)
   AM Best Directory of Insurance Professionals-Directory of Recommended Insurance Attorneys (2011)
   Legislative Service Award, Missouri Judicial Conference (1992)
   Developmental Disability Awareness Award, Missouri Planning Council for Developmental Disabilities (1987)
   Legislative Service Award, Missouri Architect's Association (1986)
   Legislative Service Award, Missouri Court Reporter's Association (1986)
   Horace Mann Friend of Education Award, NEA (1986)
   Outstanding Young Springfieldian – Springfield Jaycees (1986)
   President's Award: Missouri Bar Association (approximately 1986)
   Legislative Service Award, Missouri Medical Association (1985)

Legislative Service Award, Association for the Education of Young Children (1985)
Legislative Service Award, Missouri Association of Osteopathic Physicians (1985)
Legislative Service Award, Missouri Hospital Association (1985)
Legislative Service Award, Missouri Healthcare Association (1985)
Academic Achievement Award-Creditor's Remedies, University of Missouri School of Law (Spring 1980)
First Place, ABA Appellate Advocacy Competition, Eighth Circuit (1980)
Roscoe Anderson Award for Appellate Advocacy (1980)
Thomas Deacy Prize for Trial Advocacy (1980)
Member of the Missouri Board of Advocates (1979 – 1980)
Academic Achievement Award-Law & Medicine Seminar, University of Missouri School of Law (Fall 1979)
Member of the Missouri Law Review (1978 – 1980)

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

United States District Court for the Western District of Missouri
Member Western District of Missouri Federal Practice Committee (January 2011- term expires December 2013)

Missouri Association of Trial Attorneys

Missouri Bar Association

Missouri Organization of Defense Lawyers

Springfield Metropolitan Bar Association (SMBA)
Board of Directors (2013 – present)
Federal Practice Committee (2011 – present)
Chairman

10. **Bar and Court Admission**:

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

Missouri; 1980

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 District Court for the Western District of Missouri, 1980
United States District Court for the Eastern District of Missouri, 2006
United States Court of Appeals for the Eighth Circuit, 2003

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.

Claims and Litigation Management Alliance (2011 – present)

Family Violence Center, Inc. (approximately 1986 – 1988)
Board of Directors

Kickapoo Baseball Booster Club (approximately 2004 – 2005)
President

Missouri Bipartisan Senate Redistricting Commission (2011 – 2012)
Chairman

Missouri Task Force on Liability Insurance (1986)

NOVA Center of the Ozarks (approximately 1988 – 1992)
Board of Directors

Southeast Lions Club (1981 – 1985)

South Haven Baptist Church (1964 – present)
Deacon (approximately 1985 – 1988)

Springfield Area Baseball Association (2004 – 2006)
President of the Board (2006)

Springfield Baseball Park Authority (1995 – 1996)
President

Springfield Stadium Task Force (1995)

Visiting Nurse Association (approximately 1987 – 1988)
Board of Directors

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

The Lions Club International, founded in 1917, is a community service organization that aids the blind, with local chapters throughout the country, and it did not admit female members until 1986. I was a member of the Southeast Lions Club for several years in the early 1980s – I was interested in its work because I had lost my eyesight in one eye as a teenager – but left the organization in 1985. To the best of my knowledge none of the other organizations with which I am affiliated 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.

Letter to the Editor, *SMS Open Possibilities for Myself, my Daughter*, Springfield News-Leader, unknown date (2010 est.). Copy supplied.

Letter to the Editor, *Nixon Plan to End Cloud of Patronage*, Springfield News-Leader, December 18, 2008. Copy supplied.

Letter to the Editor, *Only Candidate to Bring Change*, Springfield News-Leader, January 31, 2008. Copy supplied.

Letter to the Editor, *Politicians Should Explain Themselves,* Springfield News-Leader, September 22, 2007. Copy supplied.

Letter to the Editor, *Republicans Fail to Reform,* Springfield News-Leader, June 1, 2007. Copy supplied.

Letter to the Editor, *Choose Children over Political Contributions,* Springfield News-Leader, unknown date (2002 est.) Copy supplied.

Letter to the Editor, *Inauguration: Where is the Outrage from Republicans?* Springfield News-Leader, unknown date, 2001 (est.). Copy supplied.

Chapter Four: Membership in the General Assembly, Reinventing Missouri Government, Harcourt Brace 1994. Copy supplied.

Letter to the Editor, *Reintroducing Ethics*, St. Louis Post-Dispatch, December 13, 1989. Copy supplied.

Letter to the Editor, *Play's Criticism Founded on False Pretenses, Fear*, Springfield News-Leader, November 5, 1989. Copy supplied.

1986 Professional Corporation Law of Missouri: Expanded Flexibility, Journal of the Missouri Bar, December 1986. Copy supplied.

Comment, *Limitations on the Use of Expert Testimony in Missouri*, Missouri Law Review, volume 45, fall 1980. Copy supplied.

Employment Discrimination-Sex Discrimination under Title VII, Includes Differential Treatment of Pregnancy Related Disabilities, 45 Missouri Law Review 145, 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.

In 1986, I was appointed by the Speaker of the Missouri House of Representatives to serve on the Governor's Task Force on Liability Insurance. At the conclusion of its work that task force issued a report. Copy supplied.

The Bipartisan Senate Redistricting Commission of 2012, which I chaired, unanimously adopted a map redistricting the boundaries of Missouri Senate Districts. Our report is comprised of the map we adopted, which is available at http://content.oa.mo.gov/budget-planning/redistricting-office/archived-2010-2012-process-information.

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 January 2011, I have served as a member of the United States District Court for the Western District of Missouri's Federal Practice Committee. My term will expire December 2013. I have provided the meeting minutes where available.

As the Chairman of the Missouri Bipartisan Senate Redistricting Commission in 2011 and 2012, I participated in public forums throughout the state. Upon the failure of the Bipartisan Senate Redistricting Commission of 2011 to agree upon a Senate redistricting map, on August 12, 2011, I made comments at a Commission meeting in Jefferson City. On October 13, 2011, I testified as Chairman of the Commission at the hearing of the Appellate Judicial Commission on Redistricting. I did not testify from written text, but testified extemporaneously. Video clip of August 12, 2011 meeting supplied; transcripts of the hearings, minutes of the Commission meetings, and a transcript of my testimony before the Appellate Judicial Panel are available at http://content.oa.mo.gov/budget-planning/redistricting-office/archived-2010-2012-process-information.

When I sponsored legislation as a member of the House of Representatives from 1983 to 1992, I would testify in front of committees of the Missouri General Assembly explaining the legislation and urging its passage. The testimony was provided extemporaneously and not from written text. During my ten years in the Missouri House, this legislation included, but was not limited to, efforts to create legislation to establish a Missouri Ethics Commission, require financial disclosures by elected officials and appointees, revise conflict of interest rules, require lobbyists to report expenditures on behalf of public officials, enact the recommendations of the Governor's task force on liability insurance, increase training requirements for police officers, protect the records of peer review committees from discovery in civil litigation, revise Missouri's dead man evidentiary statute, encourage school districts to make health insurance accessible to retired educators, restrict the rental of violent videos to underage children, make Greene County eligible for Planned Industrial Expansion Authorities, make Greene County eligible for state storm water control grants, and prohibit the operation of water craft while intoxicated. These statements and testimony occurred at the Missouri House of Representatives, which is located at 201 West Capitol Avenue, Jefferson City, Missouri 65101.

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

April 3, 2013: I spoke on the topic "Missouri's Sunshine Law – Open Meetings" at a seminar sponsored by Lorman Educational Services. The presentation was in Springfield, MO. Outline supplied.

October 2, 2012: I spoke to employees of the Meadowbrook Insurance Group on the topic "Public Entity Liability in Missouri with an Update in Recent Developments in Missouri Tort and Insurance Law." The presentation was at the regional office of the Meadowbrook Insurance Group in Overland Park, Kansas. Outline and charts supplied.

August 1, 2012: I spoke to employees and elected officials of the city of St. Roberts, Missouri on the topic "Recent Developments in Missouri Employment Law." Notes supplied.

June 2, 2011: I spoke on the topic, "Workplace Harassment and Retaliation Claims" at a seminar sponsored by Sterling Educational Services, Inc. The seminar was held in Springfield, Missouri. Copy supplied.

May 16, 2011: I spoke to employees of the Meadowbrook Insurance Group on the topic "Public Official and Public Entity Immunities in Missouri." The presentation was at the regional office of Meadowbrook Insurance Group in Overland Park Kansas. Outline and charts supplied.

November 9, 2009: I spoke on the topic "Reducing Law Enforcement Liability" in a seminar sponsored by the Meadowbrook Insurance Group hosted by the Lebanon, Missouri Police Department. This seminar was in Lebanon, MO. Notes supplied.

January 26, 2009: I spoke on the topic "How to Recognize, Handle and Prevent Everyday Employment Problems" at a seminar sponsored by the Meadowbrook Insurance Group hosted by the Joplin Special Road District. The seminar was in Joplin, Missouri. Notes and PowerPoint supplied.

October 23, 2008: I spoke on the topic "Civil Liability Issues Facing Prosecutors" in a seminar sponsored by the Missouri Office of Prosecutorial Services. The presentation was in Columbia, MO. Outline supplied.

November 2, 2006: I attended a town hall meeting at the Cornerstone Church in Springfield in support of my candidacy for State Senate for Missouri's 30th Senate District. I have no notes, transcript or recording. The address of Cornerstone Church is 1701 South Fort, Springfield, Missouri 65807.

October 31, 2006: I attended a forum sponsored by Student Government Association of Missouri State University in support of my candidacy for State Senate for Missouri's 30th Senate District. I have no notes, transcript or

recording, but press coverage is supplied. The address of Missouri State University is 901 South National Avenue, Springfield, Missouri 65897.

October 30, 2006: I attended a forum on higher education sponsored by Missouri State University faculty in support of my candidacy for State Senate for Missouri's 30th Senate District. I have no notes, transcript or recording. The address of Missouri State University is 901 South National Avenue, Springfield, Missouri 65897.

October 26, 2006: I attended a forum sponsored by the governmental affairs committee of the Springfield Area Chamber of Commerce in support of my candidacy for State Senate for Missouri's 30th Senate District. I have no notes, transcript or recording. The address of the Springfield Area Chamber of Commerce is 202 South John Q. Hammons Parkway, Springfield, Missouri 65806.

October 26, 2006: I debated my opponent at a forum sponsored by the Glendale High School Student Government. I have no notes, transcript or recording, but press coverage is supplied. The address of Glendale High School is 2727 South Ingram Mill Road, Springfield, Missouri 65804.

October 24, 2006: I attended a forum sponsored by the League of Women Voters in support of my candidacy for State Senate for Missouri's 30th Senate District. I have no notes, transcript or recording. The address of the League of Women Voters is League of Women Voters of Southwest Missouri, P.O. Box 3036, Springfield, Missouri 65808.

October 3, 2006: I attended a forum sponsored by the Greene County Medical Society as part of my support for my campaign for State Senate for Missouri's 30th District. I spoke on health care issues facing the Missouri legislature. I have no notes, transcript or recording. The address of the Greene County Medical Society is 1200 East Woodhurst, Suite D200, Springfield, Missouri 65804.

September 12, 2006: I gave a speech to the Senior Democrats of Southwest Missouri in support of my candidacy for State Senate for Missouri's 30th District. I have no notes, transcript or recording. The Senior Democrats of Southwest Missouri do not have a physical address.

September 11, 2006: I gave a speech to the Greene County Democratic Women's Club in support of my candidacy for State Senate for Missouri's 30th District. I have no notes, transcript or recording. The Greene County Democratic Women's Club does not have a physical address.

September 6, 2006: I spoke at the Springfield Labor Day Council's Labor Day Rally in Springfield, Missouri in support of my candidacy for Missouri State Senate from the 30th Senatorial District. I spoke briefly about my background,

expressed support for an increase in Missouri's minimum wage, and my candidacy for State Senate. I have no notes, transcript or recording, but press coverage is supplied. The address of the Springfield Labor Day Council is Springfield Labor Counsel, Chair Art Kessler, 642 North Boonville Ave., Springfield, Missouri 65806.

July 27, 2006: I attended a breakfast of the National Alliance on Mental Illness as part of my candidacy for State Senate for Missouri's 30th District. I spoke on my position on issues concerning services to the mentally ill. I have no notes, transcript or recording. The address of the National Alliance on Mental Illness is 1701 South Campbell Avenue, Springfield, Missouri 75807.

July 10, 2006: I spoke to the Franklin Eleanor Roosevelt Democratic Women's Club of Greene County, MO regarding my candidacy for State Senate for Missouri's 30th District. No written remarks were prepared. I spoke of my qualifications and platform in seeking the office. I have no notes, transcript or recording. The Franklin Eleanor Roosevelt Democratic Women's Club of Greene County does not have a physical address.

April 20, 2006: I spoke on the topic "Sex, Race and Other Harassment Issues in the Work Place" in a seminar sponsored by Sterling Educational Services. The presentation was in Springfield, MO. Outline supplied.

November 30, 2005: I spoke on the topics "Police Liability Arising Out of the Use of Force" and "Use of Tasers by Police Officers in the State of Missouri" in a seminar sponsored by Lorman Educational Services. The presentation was in Saint Louis, MO. Notes supplied.

August 30, 2005: I spoke on the topics "Police Liability Arising Out of the Use of Force" and "Claims Arising Out of the Use of Tasers" in a program sponsored by Lorman Educational Services. The presentation was in Springfield, MO. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one on November 30, 2005, for which notes have been provided.

March 27, 2005: I spoke to the Missouri Rural Water Association in a seminar in Springfield, MO on recent developments in Employment Law. I have no notes, transcript or recording, but the topic would have been substantially similar to the topic of the March 24, 2005 event, for which a presentation has been supplied.

March 24, 2005: I spoke at a seminar on the topic "Employee Discipline and Termination" at a seminar sponsored by the Meadowbrook Insurance Group. PowerPoints supplied.

June 22, 2004: I spoke at a risk management seminar sponsored by the Risk Management Office of St. Johns Hospital on the topic "How to Avoid Medical

Malpractice Claims and Defend Medical Malpractice Lawsuits." The seminar was held at St. Johns Hospital in Springfield, MO. I have no notes, transcript or recording. The address of St. Johns Hospital is 1235 E. Cherokee St., Springfield, Missouri 65804.

November 1994: I appeared with other candidates for State Senate from the 30th Senatorial District in a television presentation titled "Ozark Roundtable" which aired on Ozark Public Television, Channel 21, sponsored by the Society of Professional Journalists. In the forum I discussed several issues relevant to my campaign for State Senate. Video supplied.

Between 1988 and 1990 I spoke twice at the Missouri Judiciary College. I do not recall which years or have copies of any syllabus or records regarding topics. I believe I spoke once in 1988 regarding the Governor's Task Force on Liability Insurance which issued its report in 1987, and its recommendations I believe were enacted in 1988. The address for the Missouri Judiciary College is through the Missouri Office of State Courts Administrator is 2112 Industrial Drive, P.O. Box 104480, Jefferson City, Missouri 65110.

1989 – 1990: I spoke at a series of continuing education programs sponsored by the Missouri Bar relating to legislation enacted based on the recommendation of the Governor's Task Force on Liability Insurance, on which I served. I introduced legislation based on the Task Force recommendations which was ultimately approved by the General Assembly and signed by the Governor. I cannot locate a copy of the materials I used in those presentations. The topics of my presentation included comparative fault, product liability, prejudgment interest awards and punitive damages. I have no notes, transcript, or recording. The address of the Missouri Bar is P.O. Box 119, 326 Monroe, Jefferson City, Missouri 65102.

July 1, 1990, while a Missouri State Representative, I participated in a debate "Ethics in Government" with Richard Hardy, a University of Missouri Political Science Professor, which was a debate on the Ethics Initiative Petition. I believe the debate may have been held in Columbia, Missouri, and I do not recall the sponsorship organization.

September 21, 1989: I spoke to Kansas City area employees of Aetna Insurance Company on the topic "Politics and the Legislative Process." Video 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.

April 23, 2013: I was interviewed by Debbie Woodin of The Joplin Globe. Copy supplied.

January 11, 2013: Press release by firm Baird, Lightner, Millsap & Harpool, P.C. Copy supplied.

September 8, 2012: I was interviewed by Rusty Murry of the Nevada Daily Mail. Copy supplied.

March 15, 2012: Press release by Firm Baird, Millsap, Lightner, and Harpool PC. Copy supplied.

March 14, 2012: I was interviewed by Chris Blank of the Associated Press. Copy supplied.

March 13, 2012: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

March 12, 2012: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

March 12, 2012: I was interviewed by Chris Blank of the Associated Press. Copy supplied.

March 12, 2012: I was interviewed by Jo Mannies of the St. Louis Beacon. Copy supplied.

March 6, 2012: I was interviewed by Dolin Media Newswires. Copy supplied.

February 26, 2012: I was interviewed by Bob Watson of the Jefferson City News-Tribune. Copy supplied.

February 24, 2012: I was interviewed by Virginia Young of the St. Louis-Post Dispatch. Copy supplied.

February 23, 2012: I was interviewed by Josh Nelson, reporter for the Springfield News-Leader. Copy supplied.

February 23, 2012: I was interviewed by Josh Nelson, reporter for the Springfield News-Leader. Copy supplied.

February 23, 2012: I was interviewed by Chris Blank of the Associated Press. Copy supplied.

February 23, 2012: I was interviewed by Chris Blank of Associated Press. Copy supplied.

February 23, 2012: Article was published in the Columbia Daily Tribune from staff and wire reports. Copy supplied.

February 23, 2012: I was interviewed by Marshall Griffin from the KBIA. Copy supplied.

February 21, 2012: I was interviewed by Joseph Leahy of St. Louis Public Radio. Copy supplied.

February 20, 2012: I was interviewed by Matt Evans of KMOX Radio. Copy supplied.

February 18, 2012: I was interviewed by Rudi Keller of the Columbia Tribune. Copy supplied.

February 6, 2012: I was interviewed by a reporter from Missouri Lawyers Media. Copy supplied.

January 18, 2012: I was interviewed by Mark Schlinkman of St. Louis-Post Dispatch. Copy supplied.

January 7, 2012: Questions were submitted to me by Amos Bridges, reporter for the Springfield News-Leader. Copy supplied.

December 1, 2011: I was interviewed by Virginia Young of the S St. Louis-Post Dispatch. Copy supplied.

November 30, 2011: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

October 17, 2011: I was interviewed by Scott Lauck of the Missouri Lawyers Media . Copy supplied.

October 14, 2011: I was interviewed by Virginia Young of the St. Louis-Post Dispatch. Copy supplied.

October 13, 2011: I was interviewed by Virginia Young of the St. Louis-Post Dispatch. Copy supplied.

September 26, 2011: Press release by firm Baird, Lightner, Millsap & Harpool, P.C. Copy supplied.

September 21, 2011: I was interviewed by the Springfield News-Leader. Copy supplied.

September 21, 2011: I was interviewed by Tara Muck, a reporter for the Springfield News-Leader. Copy supplied.

August 29, 2011: I was interviewed by Chris Blank of the Associated Press. Copy supplied.

August 26, 2011: I was interviewed by Tara Muck, a reporter for the Springfield News-Leader. Copy supplied.

August 17, 2011: I was interviewed by William Browning of the Yahoo! Contributor Network. Copy supplied.

August 8, 2011: I was interviewed by the Associated Press. Copy supplied.

June 2, 2011: I was interviewed by Roseann Moring, a reporter for the Springfield News-Leader. Copy supplied.

May 25, 2011: I was interviewed by Jo Mannies of the St. Louis Beacon. Copy supplied.

April 29, 2011: I was interviewed by Bob Watson of the Jefferson City News-Tribune. Copy supplied.

January 18, 2011: I was interviewed by Jeff Lehr of The Joplin Globe. Copy supplied.

December 12, 2010: I was interviewed by Rebecca Boyle of the Missouri Lawyers Media. Copy supplied.

September 13, 2010: I was interviewed by Wordpress.com. Copy supplied.

August 3, 2010: I was interviewed by Susan Redden of The Joplin Globe. Copy supplied.

July 30, 2010: I was interviewed by The Joplin Globe for an article written by Susan Redden and Andy Ostmeyer. Copy supplied.

December 27, 2009: I was interviewed by Tony Messenger of the St. Louis-Post Dispatch. Copy supplied.

December 9, 2008: I was interviewed by the Springfield News-Leader. Copy supplied.

May 24, 2008: I was interviewed by Susan Redden of The Joplin Globe. Copy supplied.

November 3, 2007: I was interviewed by Justin Messner of the Fort Scott Tribune. Copy supplied.

November 4, 2006: I was interviewed by the Springfield News-Leader. Copy supplied.

November 2, 2006: I was interviewed by Tracy Schwartz of the Springfield News-Leader. Copy supplied.

November 2006: I was interviewed by Tony Messenger of the Springfield News-Leader. Copy supplied.

November 2006: I was interviewed by Juliana Goodwin of the Springfield News-Leader. Copy supplied.

October 31, 2006: I was interviewed by Steve Koehler of the Springfield News-Leader. Copy supplied.

October 31, 2006: I was interviewed by Elizabeth Thurmond of the Missouri State University Standard. Copy supplied.

October 31, 2006: I was interviewed by Missy Shelton from radio station KSMU concerning my candidacy for State Senate for Missouri's 30th Senate District. I have no notes, transcript or recordings of the interview.

October 28, 2006: I was interviewed by the Springfield News-Leader. Copy supplied.

October 23, 2006: I was interviewed by Dave Catanese of KY3 television regarding my candidacy for State Senate for Missouri's 30th Senate District. I have no notes, transcript or recording of the interview.

October 21, 2006: My political campaign issued a press release noting that my opponent's campaign was misrepresenting me in media ads by using an actor's impersonation of me inferring the actor was actually me making statements I did not make. I could not locate the press release.

October 20, 2006: I was interviewed by the Springfield News-Leader. Copy supplied.

October 17, 2006: I was interviewed by the KSPR television news team regarding my candidacy for State Senate for Missouri's 30th District. I have no notes, transcript or recording of the interview.

October 14, 2006: I was interviewed by the Springfield News-Leader. Copy supplied.

May 22, 2006: Press Release by my campaign for State Senate. Copy supplied.

May 22, 2006: Press Release by my campaign for State Senate. Copy supplied.

May 22, 2006: Press Release by my campaign for State Senate. Copy supplied.

March 3, 2006: Press Release by my campaign for State Senate. Copy supplied.

During my 2006 campaign for Missouri State Senate my campaign released a series of Youtube.com video clips of me addressing specific issues in the campaign, as well as campaign advertisement. Videos available at: http://www.youtube.com/user/harpool2006.

2006: I was interviewed by Missouri's Lawyers Weekly. Copy supplied.

December 9, 2005: I was interviewed by James Goodwin of the Springfield News-Leader. Copy supplied.

February 26, 2005: I was interviewed by Didi Tang of the Springfield News-Leader. Copy supplied.

November 3, 2004: I was interviewed by James Goodwin and Karen E. Culp of the Springfield News-Leader. Copy supplied.

October 24, 2004: I was interviewed by Josh Flory of the Columbia Daily Tribune. Copy supplied.

August 30, 2004: I was interviewed by Didi Tang of the Springfield News-Leader. Copy supplied.

August 4, 2004: I was interviewed by Matt Wagner of the Springfield News-Leader. Copy supplied.

July 23, 2004: I was interviewed by James Goodwin of the Springfield News-Leader. Copy supplied.

June 29, 2004: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

June 27, 2004: I was interviewed by Josh Flory of the Columbia Daily Tribune. Copy supplied.

June 27, 2004: I was interviewed by the Associated Press. Copy supplied.

June 26, 2004: I was interviewed by James Goodwin of the Springfield News-Leader. Copy supplied.

December 8, 2003: I was interviewed by Eric Olson of the Springfield Business Journal. Copy supplied.

December 3, 2003: I was interviewed by Ryan Slight of the Springfield News-Leader. Copy supplied.

October 18, 2003: I was interviewed by Steve Kraske of the Kansas City Star. Copy supplied.

September 16, 2003: I was interviewed by Aaron Deslatte of the Springfield News-Leader. Copy supplied.

August 10, 2003: I was interviewed by Aaron Deslatte of the Springfield News-Leader. Copy supplied.

June 22, 2003: I was interviewed by Shashank Bengali of the Kansas City Star. Copy supplied.

May 26, 2003: I was interviewed by Steve Kraske of the Kansas City Star. Copy supplied.

May 10, 2001: I was interviewed by Joe Menard, a reporter with the Springfield News-Leader. Copy supplied.

June 30, 1999: I was interviewed by Traci Shurley, a reporter with the Springfield News-Leader. Copy supplied.

December 18, 1997: I was interviewed by Mike Penprase of the Springfield News-Leader. Copy supplied.

October 25, 1996: I was interviewed by Traci Bauer of the Springfield News-Leader. Copy supplied.

April 14, 1996: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

January 7, 1996: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

September 23, 1995: I was interviewed by Robert Keys, a reporter with the Springfield News-Leader. Copy supplied.

June 7, 1995: I was interviewed by Francis Skalicky, a reporter with the Springfield News-Leader. Copy supplied.

June 1, 1995: I was interviewed by Traci Bauer and Francis Skalicky, reporters with the Springfield News-Leader. Copy supplied.

June 1, 1995: I was interviewed by Francis Skalicky, a reporter with the Springfield News-Leader. Copy supplied.

May 31, 1995: I was interviewed by Francis Skalicky, a reporter with the Springfield News-Leader. Copy supplied.

May 12, 1995: I was interviewed by Francis Skalicky of the Springfield News-Leader. Copy supplied.

May 2, 1995: I was interviewed by Deborah Barnes, a reporter with the Springfield News-Leader. Copy supplied.

April 18, 1995: I was interviewed by Francis Skalicky of the Springfield News-Leader. Copy supplied.

April 12, 1995: I was interviewed by Christopher Clark, a reporter with the Springfield News-Leader,. Copy supplied.

April 11, 1995: I was interviewed by Francis Skalicky, a reporter with the Springfield News-Leader. Copy supplied.

April 8, 1995: I was interviewed by Francis Skalicky, of the Springfield News-Leader. Copy supplied.

April 7, 1995: I was interviewed by Francis Skalicky, a reporter with the Springfield News-Leader . Copy supplied.

April 6, 1995: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

November 8, 1994: I was interviewed by Christopher Clark, a reporter with the Springfield News-Leader. Copy supplied.

November 8, 1994: I was interviewed by Robert Keys, a reporter with the Springfield News-Leader. Copy supplied.

October 14, 1994: I was interviewed by Christopher Clark, a reporter for the Springfield News-Leader. Copy supplied.

October 13, 1994: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

July 29, 1994: I was interviewed by Terry Gleich and Robert Edwards of the Springfield News-Leader. Copy supplied.

July 18, 1994: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

July 1994: I was interviewed for an editorial in the Springfield News-Leader. Copy supplied.

March 27, 1994: I was interviewed by Phyllis Brasch Librach of the St. Louis Post-Dispatch. Copy supplied.

February 17, 1994: I was interviewed by the Associated Press. Copy supplied.

December 16, 1992: I was interviewed by Jo Mannies of the St. Louis Post-Dispatch. Copy supplied.

August 5, 1992: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

July 22, 1992: I was interviewed by Keith White of the Springfield News-Leader. Copy supplied.

July 22, 1992: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

July 1992: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

July 1992: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

July 1992: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

May 16, 1992: I was interviewed by Jim Mosley of the St. Louis Post-Dispatch. Copy supplied.

May 1992: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

May 1992: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

May 1992: I was interviewed for an editorial in the Springfield News-Leader. Copy supplied.

April 27, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

April 16, 1992: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

April 2, 1992: I was interviewed by Kim Bell and Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

March 5, 1992: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

March 1992: I was interviewed by Deborah Barnes of The News-Leader. Copy supplied.

February 25, 1992: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

February 1, 1992: I was interviewed by Mark Schlinkmann of the St. Louis Post-Dispatch. Copy supplied.

January 12, 1992: I was interviewed by a correspondent of the St. Louis Post-Dispatch. Copy supplied.

January 1992: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

January 1992: I was interviewed by officers of the House Information Office of the Missouri House of Representatives for a video production titled "The Capitol Report Card." Video supplied.

December 4, 1991: I was interviewed by a correspondent of the St. Louis Post-Dispatch. Copy supplied.

November 12, 1991: I was interviewed by Robert Edwards, a reporter for the Springfield News-Leader. Copy supplied.

October 3, 1991: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

October 1, 1991: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

September 29, 1991: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

September 11, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

August 14, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

July 12, 1991: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

July 10, 1991: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

June 21, 1991: I was interviewed by Mark Schlinkmann of the St. Louis Post-Dispatch. Copy supplied.

May 18, 1991: I was interviewed by Terry Ganey and Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

May 18, 1991: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

May 17, 1991: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

May 17, 1991: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

May 8, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

April 25, 1991: I was interviewed by Virginia Young and David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

April 19, 1991: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

April 19, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

April 12, 1991: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

April 8, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

April 3, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

March 29, 1991: I was interviewed by Ralph Dummit of the St. Charles Post. Copy supplied.

March 28, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

March 6, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

March 5, 1991: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

March 5, 1991: I was interviewed by a correspondent of the St. Louis Post-Dispatch. Copy supplied.

February 15, 1991: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

February 15, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

February 6, 1991: I was interviewed by Virginia Young and David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

February 3, 1991: I was interviewed by Fred W. Lindecke of the St. Louis Post-Dispatch. Copy supplied.

January 20, 1991: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

January 18, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

January 12, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch. Copy supplied.

January 8, 1991: I was interviewed by the Associated Press and was published in the Southeast Missourian. Copy supplied.

January 5, 1991: I was interviewed by David Aguillard of the St. Louis Post-Dispatch in an article "Ethics Committee Ends Inquiry on Crump, Cantrell." Copy supplied.

January 1, 1991: I was interviewed by the Associated Press in an article in the St. Louis Post-Dispatch. Copy supplied.

Unknown Date, 1990: I was interviewed by Dan Shelly of KTTS Radio for a television interview program that periodically aired on Ozarks Public Television, Channel 21. Video supplied.

November 17, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

November 16, 1990: I was interviewed by Scott Charlton of the Associated Press. Copy supplied.

October 22, 1990: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

October 22, 1990: I was interviewed by of the St. Louis Post-Dispatch. Copy supplied.

October 21, 1990: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

October 12, 1990: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

October 4, 1990: I was interviewed by Terry Ganey and Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

September 27, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

September 22, 1990: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

September 22, 1990: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

September 18, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

September 15, 1990: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

September 14, 1990: I was interviewed by Terry Ganey and Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

August 23, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

August 15, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

August 5, 1990: I was interviewed by Fred W. Lindecke of the St. Louis Post-Dispatch. Copy supplied.

July 29, 1990: I was interviewed by John M. Maguire of the St. Louis Post-Dispatch. Copy supplied.

July 27, 1990: I was interviewed by Tim Bryant and Jo Mannies of the St. Louis Post-Dispatch. Copy supplied.

July 27, 1990: I was interviewed by Fred Lindecke of the St. Louis Post-Dispatch. Copy supplied.

July 27, 1990: I was interviewed by Mark Schlinkmann of the St. Louis Post-Dispatch. Copy supplied.

July 26, 1990: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

July 26, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

July 24, 1990: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

July 24, 1990: I was interviewed by Fred Lindecke of the St. Louis Post-Dispatch. Copy supplied.

July 19, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

July 17, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

July 15, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

July 14, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

July 12, 1990 (Thursday): I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

July 7, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

July 1, 1990: I was interviewed by Fred Lindecke of the St. Louis Post-Dispatch. Copy supplied.

July 1, 1990: I was interviewed by the Albany Times Union. Copy supplied.

June 29, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

June 28, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

June 15, 1990: I was interviewed by Phillip Dine of the St. Louis Post-Dispatch. Copy supplied.

June 14, 1990: I was interviewed by Jim Mosley of the St. Louis Post-Dispatch. Copy supplied.

May 23, 1990: I was interviewed by Jim Mosley of the St. Louis Post-Dispatch. Copy supplied.

May 22, 1990: I was interviewed by Fred Lindecke of the St. Louis Post-Dispatch. Copy supplied.

May 21, 1990: I was interviewed by USA Today. Copy supplied.

May 19, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

May 18, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

May 13, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

May 9, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

April 26, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

April 6, 1990: I was interviewed by Jim Mosley of the St. Louis Post-Dispatch. Copy supplied.

March 26, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

March 14, 1990: I was interviewed by a Jefferson City correspondent of the St. Louis Post-Dispatch. Copy supplied.

March 9, 1990: I was interviewed by a reporter with the St. Louis Post-Dispatch. Copy supplied.

March 8, 1990: I was interviewed by a reporter with the St. Louis Post-Dispatch. Copy supplied.

March 6, 1990: I was interviewed by Jim Mosely of the St. Louis Post-Dispatch. Copy supplied.

February 28, 1990: I was interviewed by a reporter from the St. Louis Post-Dispatch. Copy supplied.

February 25, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

February 9, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

February 7, 1990: I was interviewed by Jim Mosely reporter for the St. Louis Post-Dispatch. Copy supplied.

January 31, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

January 10, 1990: I was interviewed by Virginia Young of the St. Louis Post-Dispatch. Copy supplied.

Unknown Date, 1990: I was interviewed by the Springfield News-Leader. Copy supplied.

Unknown Date, 1989: I was interviewed by the Springfield News-Leader. Copy supplied.

December 3, 1989: I was interviewed by the Los Angeles Times. Copy supplied.

November 5, 1989: I was interviewed by Rudi Keller of the Columbia Tribune concerning the amount of money lobbyist spend entertaining legislators and legislation I proposed mandating lobbyist disclosures of such expenditures. Copies supplied.

August 27, 1989: I was interviewed by a reporter from the St. Louis Post-Dispatch. Copy supplied.

August 22, 1989: I was interviewed by the Associated Press in an article published in the St. Louis Post-Dispatch. Copy supplied.

July 11, 1989: I was interviewed by a reporter from the St. Louis Post-Dispatch. Copy supplied.

June 21, 1989: I was interviewed by a reporter from the St. Louis Post-Dispatch. Copy supplied.

May 13, 1989: I was interviewed by Margaret Gillerman of the St. Louis Post-Dispatch. Copy supplied.

May 3, 1989: I was interviewed by Kathryn Rogers of the St. Louis Post-Dispatch. Copy supplied.

April 24, 1989: I was interviewed by Kathryn Rogers of the St. Louis Post-Dispatch. Copy supplied.

April 20, 1989: I was interviewed by Kathryn Rogers and Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

April 11, 1989: I was interviewed by Jim Mosley of the St. Louis Post-Dispatch. Copy supplied.

April 7, 1989: I was interviewed by Wayne Beissert of USA Today. Copy supplied.

April 6, 1989: I was interviewed by a reporter for the St. Louis Post-Dispatch. Copy supplied.

April 5, 1989: I was interviewed by Jim Mosley of the St. Louis Post-Dispatch. Copy supplied.

April 3, 1989: I was interviewed by Fred W. Lindecke of the St. Louis Post-Dispatch. Copy supplied.

March 25, 1989: I was interviewed by the United Press International in the San Francisco Chronicle. Copy supplied.

March 22, 1989: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

March 22, 1989: I was interviewed by the Associated Press for an article that was published in the St. Louis Post-Dispatch. Copy supplied.

March 5, 1989: I was interviewed by Jim Mosley of the St. Louis Post-Dispatch. Copy supplied.

January 28, 1989: I was interviewed by an employee of the Associated Press in an article that was reprinted in the St. Louis Post-Dispatch. Copy supplied.

Unknown Date, 1988: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

Unknown date 1988: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

Unknown date 1988: I was interviewed by Mike Schilling of the Springfield News-Leader. Copy supplied.

Unknown date 1988: I was interviewed Laurie Glenn Frink of the Springfield News-Leader. Copy supplied.

Unknown date 1988: I was interviewed by Ron Davis of the Springfield News-Leader. Copy supplied.

Unknown Date, approximately 1988: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

Unknown Date, 1988: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

October 26, 1988: I was interviewed by Terry Ganey of the St. Louis Post-Dispatch. Copy supplied.

July 31, 1988: I was interviewed by the St. Louis Post-Dispatch. Copy supplied.

July 15, 1988: I was interviewed by Jim Mosley of the St. Louis Post-Dispatch. Copy supplied.

April 9, 1988: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

Unknown Date, 1987: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

Unknown Date, 1987: I was interviewed by Robert Edwards and Roger Snell of the Springfield News-Leader. Copy supplied.

June 11, 1987: I was interviewed by a reporter from the Springfield News-Leader. Copy supplied.

June 4, 1987: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

June 1987: I was interviewed by interviewed by Roger Snell for the Springfield News-Leader. Copy supplied.

May 1987: I was interviewed by Robert Edwards and Roger Snell of the Springfield News-Leader. Copy supplied.

April 25, 1987: I was interviewed by Robert Edwards of the Springfield News-Leader.

January 7, 1987: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Roger Snell and Chris Whitley of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Lori Glenn Frink of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Ron Davis of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Louise Whall of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Roger Snell of the Springfield News-Leader. Copy supplied.

Unknown Date, 1986: I was interviewed by Robert Edwards of the Springfield News-Leader. Copy supplied.

Unknown Date, 1985: I was interviewed by Terry Gleich of the Springfield News-Leader. Copy supplied.

February 14, 1985: I was interviewed by Peter F. Daniel for his article in the Missouri Law Review. Copy supplied.

Unknown Date, 1984: I was interviewed by Dean Kahn of the United Press International. Copy supplied.

Unknown Date, 1984: I was interviewed by Lori Glenn of the Springfield News-Leader. Copy supplied.

Unknown Date, 1984: I was interviewed by a reporter for the Springfield News-Leader. Copy supplied.

Unknown Date, 1984: I was interviewed by a reporter for the Springfield News-Leader. Copy supplied.

January 30, 1984: I was interviewed by a reporter for the Springfield News-Leader. Copy supplied.

Unknown Date, 1983: I was interviewed by Keith White of the Springfield News-Leader. Copy supplied.

July 24, 1983: I was interviewed by Keith White, a reporter with the Springfield News-Leader. Copy supplied.

June 17, 1983: I was interviewed by Keith White, a reporter with the Springfield News-Leader. Copy supplied.

June 17, 1983: I was interviewed by Mike Shilling, a reporter with the Springfield News-Leader. Copy supplied.

Unknown Date, 1982: I was interviewed by Robert Edwards, a reporter with the Springfield News-Leader. Copy supplied.

Unknown Date, 1982: I was interviewed by a reporter for the Springfield Daily News. 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 served in 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 served in 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.

1983 – 1992: I served five two-year terms as an elected Member of the Missouri House of Representatives for District 134.

1992: I explored seeking the Democratic nomination for Attorney General, including creating a campaign committee. Ultimately, I decided not to file and instead ran for Congress. I then was defeated in the Democratic primary to be the Representative for the Seventh District of Missouri in the United States Congress.

1994: I was defeated in the general election for District 30 of the Missouri State Senate.

2006: I was defeated in the general election for District 30 of the Missouri State Senate.

I have had no 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 served on the Finance Committee of the Greene County Democratic Central Committee from Fall 2012 to Spring 2013. I chaired the Nominating Committee for the 2012 Missouri Democratic Convention. I have never received any compensation for work on or behalf of these committees. I also have volunteered for political campaigns, but have never held any official position or received any compensation. My volunteer efforts included working on phone banks and door to door literature drops, putting up signs, and helping candidates prepare for debates. Candidates I have volunteered for include Jerry Litton's campaign for U.S. Senate, Mel Carnahan's campaign for Treasurer and Governor, Claire McCaskill's campaign for Auditor, Governor and U.S. Senate, and Jay Nixon's campaign for Attorney General and Governor.

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.

1980 – 2001
Daniel, Clampett, Lilly, Dalton, Powell & Cunningham
3171 East Sunshine Street
Springfield, Missouri 65804
Associate (1980 – 1985)
Partner (1985 – 1996)
Managing Partner (1997 – 2001)

2002 – 2003
Cunningham, Harpool & Cordonnier, LLC
3171 East Sunshine Street

Springfield, Missouri 65804
Partner

2004 – 2006
Lathrop & Gage, LLP
1845 South National Avenue
Springfield, Missouri 65804
Partner

2006 – present
Baird, Lightner, Millsap & Harpool, P.C.
1901-C South Ventura Avenue
Springfield, Missouri 65804
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.

From 1980 to 1985 I was an associate attorney working primarily in civil litigation in the field of personal injury, including car accidents and product liability. I occasionally handled family law matters and business litigation. My practice gradually expanded to include civil litigation defending governmental liability claims and medical negligence claims. I also began to handle occasional plaintiff's cases. In the early to mid-1990s, my practice continued to shift toward more complex litigation in the field of civil rights, medical negligence, employment and product liability claims. In the late 1990s, my practice included fewer product liability cases, but more employment law cases. Since 2000, my practice in the fields of employment law and government liability (civil rights) continued to grow and my work in the field of medical negligence has become more infrequent. Since 2005, my work has been primarily in the fields of civil rights litigation, employment law, governmental liability and personal injury. I currently handle both plaintiff's cases (in the same fields of my general practice) and defense cases. I have handled more defense cases than plaintiff cases. My practice still occasionally involves cases in the fields of business litigation, probate litigation and family law.

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

Early in my career my firm's typical clients were property and casualty insurance carriers. I then transitioned to work directly on behalf of local hospitals, medical facilities and national manufacturers. In more recent years, my repeat clients have included governmental entities and insurance companies for governmental entities.

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

The overwhelming majority of my practice has been in civil litigation. I have appeared in court frequently throughout my legal career.

i. Indicate the percentage of your practice in:
   1. federal courts: 70%
   2. state courts of record: 30%
   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 do not know the exact number of cases I have tried to verdict, judgment or final decision, but my best estimate would be I averaged at least three trials per year for a total of approximately 100. This would include cases tried by court as well as jury. Of this number, I was associate counsel in approximately 10, sole counsel in approximately 30, and chief counsel in the remainder.

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 had no cases 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) *Kuyper v. Loe, et al.*, Transferred from Circuit Court of Barry County into the Circuit Court of Lawrence County, Missouri, case number 39V030300430. The Honorable George C. Baldridge presided.

This lawsuit was filed in September of 2003. My client, defendant Sheriff's Deputy Loe, shot and killed plaintiff's son when dispatched to plaintiff's home in response to a domestic violence call. Plaintiff Kuyper claimed Deputy Loe used excessive force and that Sheriff Hill, also my client, failed to train and/or supervise Deputy Loe. Summary judgment was granted for Sheriff Hill prior to trial. A jury trial was held in April 2008. The verdict was for defendant Loe. Plaintiff was represented by Richard L. Anderson, Anderson Law Office, P.O. Box 2145, Branson West, Missouri 65737, telephone (417) 272-5266.

(2) *Akins v. Epperly*, United States District Court for the Western District of Missouri, case number 3:06-cv-05125-RED. The Honorable Richard E. Dorr presided.

B. Akins was injured when he was shot by Sheriff Deputies as they attempted to execute a warrant for his arrest. Plaintiff B. Akins, by Next Friend, Do. Larson, claimed wrongful arrest and excessive force. Plaintiff C. Akins, by Next Friend, Da. Larson, claimed illegal seizure. I represented defendants Sheriff Epperly; Crouch; Younger; Henry; Stockton, Jr.; the Barry County Sheriff's Department; the Board of County Commissioners for Barry County, Missouri; and Barry County, Missouri. Some defendants I represented prevailed on summary judgment motions. In 2010, the case was

tried against the remaining defendants, which resulted in a jury verdict for defendants. Plaintiffs were represented at trial by Mark H. Zoole, 1200 South Big Bend Road, St. Louis, Missouri 63117, telephone (314) 647-1200 and Rita K. Sanders, 215 East Sunshine Street, Springfield, Missouri 65807, telephone (417) 766-6144. Defendants Missouri State Board of Probation and Parole; Vaughan; Trammell; Wolters; Stevens; the Missouri State Highway Patrol; and the State of Missouri were represented by David James Hansen, Missouri Attorney General's Office-JC, P.O. Box 899, Jefferson City, Missouri 65102, telephone (573) 751-0716. Defendants McCullough, the City of Cassville, Missouri and the City of Cassville Police Department were represented by Patricia A. Keck and Jason Coatney, 3140 East Division Street, Springfield, Missouri 65802, telephone (417) 890-8989.

(3) *Hall v. Jasper County, et al.*, United States District Court for the Western District of Missouri, case number 3:03-cv-05097-RED. The Honorable Richard E. Dorr presided.

This lawsuit was removed from the Circuit Court of Jasper County, Missouri, case number 03CV683051, to the United States District Court for the Western District of Missouri on August 27, 2003. Inmates of the Jasper County Jail claimed excessive force was used against them by my clients – jailers at the Jasper County Jail. I represented defendants Jasper County Sheriff's Department; Blanket; Broers; Carr; Smith; Moback; Riley; Rufton; Terry; Preacher; Douglas; and Jasper County. Several defendants prevailed on summary judgment. In 2003 a jury trial was held resulting in a jury verdict for the remaining defendants. Plaintiffs Hall, L. Johnson; P. Johnson; and Mitchell were represented by Brian A. Jackson, Charles Eblen, Mark Christopher Tatum, and Michael L. Walden of the law firm of Shook, Hardy & Bacon, 2555 Grand Boulevard, Kansas City, Missouri 64108, telephone (816) 474-6550.

(4) *Murray v. Southwest Missouri Drug Task Force*, 335 S.W.3d 566, (Mo. App. 2011).

This lawsuit was filed on December 18, 2006, in Barry County, Missouri, case number 6BR-CC00163. Plaintiff Murray claimed she was a victim of sexual discrimination by my client, the Southwest Missouri Drug Task Force, as well as by Barry County, Missouri and the Barry County Sheriff. A jury trial was held in the Circuit Court of Barry County, Missouri, in August 2009 with The Honorable Charles David Darnold presiding. A jury verdict was reached on behalf of defendants. Plaintiff later filed a Motion for New Trial, a Motion to Set Aside Judgment and a Notice of Appeal. The Missouri Court of Appeals affirmed the verdict. Plaintiff was represented by Wesley Allen Barnum, 122 South Main, Suite B, Webb City, Missouri 64870, telephone (417) 624-1155, and by John O. Russo, 728 Harlin Drive, P.O. Box 946, Gainesville, Missouri 65655, telephone (417) 679-0155.

(5) *Forste v. Hunter*, Circuit Court of Jasper County, Missouri, case number 09AP-C00056. The Honorable David C. Dally presided.

This lawsuit was filed on May 12, 2009, by D. Forste and her husband, S. Forste against the Jasper County Public Administrator, Hunter, and her assistant Kelly. Plaintiff D. Forste claimed her civil rights were violated when she was arrested for removing her mother from the State of Missouri and taking her to the state of Arizona at a time in which her mother was under guardianship and conservatorship of the Public Administrator of Jasper County, Missouri. I represented both defendants. A jury trial was held in September 2010. The jury rendered a verdict for both defendants. Plaintiffs were represented by Ronald Lynn Myers 1909 East Bennett, Suite 107, Springfield, Missouri 65804, telephone (417) 887-7408.

(6) *Burns v. Elk River Ambulance, Inc., et al.,* Circuit Court of Jasper County, Missouri, case number 29V019601792. The Honorable William C. Crawford presided.

This lawsuit was filed in November 1996 by Burns. This was a medical negligence action against Elk River Ambulance Company, Jasper County Emergency Medical Services, and St. John's Regional Medical Center of Joplin, alleging that improper treatment of plaintiff's son during an asthma attack resulted in his death. A jury trial was held in January 2000. A jury verdict was rendered in favor of my client, Elk River Ambulance Company, and co-defendant St. John's Hospital, but a verdict was entered in favor of the plaintiff against Joplin Emergency Medical Services. Plaintiff appealed and the Missouri Court of Appeals, Southern District, upheld the judgment in October 2001. Plaintiff was represented by Edward J. Hershewe, of the Hershewe & Gulick, P.C. law firm, now at The Hershewe Law Firm, P.C., 431 South Virginia Avenue, Joplin, Missouri 64801, telephone (417) 782-3790. Joplin Emergency Medical Services was represented by William J. Lasley, P.O. Box 272, Carthage, Missouri 64836, telephone (417) 358-2127. St. John's Regional Medical Center was represented by Timothy M. Aylward, 2600 Grand Boulevard, Suite 1100, Kansas City, Missouri 64108, telephone (816) 421-0700. My partner, Michael J. Cordonnier, assisted me in this lawsuit. He is now a Circuit Judge for Greene County, Missouri, and can be contacted at the Judicial Center, 1010 North Boonville Avenue, Springfield, Missouri 65802, telephone (417) 868-4078.

(7) *Davis v. City of Springfield,* Missouri Court of Appeals, Southern District, case number SD31933, opinion dated March 28, 2013.

This personnel matter was initially brought before the Springfield, Missouri Personnel Board, and then subsequently filed as a lawsuit in the Circuit Court of Greene County, Missouri, in June 2008. I represented defendants the City of Springfield and its City Manager, Cumley. Plaintiff Davis claimed he was wrongfully demoted by the Springfield Police Department and City Manager. The decision of the Personnel Board of the City of Springfield was appealed to the Circuit Court of Greene County, Missouri, the Honorable Michael J. Cordonnier, presiding, and ultimately appealed to the Missouri Court of Appeals. The decision of the Personnel Board was in favor of the City and City

Manager and was upheld in both the Circuit Court and then by the Court of Appeals. Plaintiff was represented by Richard D. Crites, 1736 East Sunshine Street, Suite 700, Springfield, Missouri 65804, telephone (417) 887-8351.

(8) *McJunkins v. Windham Powerless, Inc.*, 767 S.W.2d 95 (Mo. App. 1989).

This lawsuit was filed in January 1983 in the Circuit Court of Greene County, Missouri. I represented plaintiff McJunkins, a pedestrian who was struck by a forklift in a product liability suit. The alleged product defect was the limited visibility the design afforded the forklift driver. The jury trial resulted in a verdict for defendant; however, the trial judge, Honorable Donald E. Bonacker, granted a new trial based on improper arguments made by defense counsel in closing arguments. The case was significant in Missouri law in that it was the first case to rule on whether the absence of other accidents involving the product was admissible. The case settled before retrial. Counsel for defendant Windham Power Liftsinc was Jeffrey Harrison, who is now retired, and counsel for defendant E. A. Martin Machinery Company was Glenn Burkart, who is now deceased.

(9) *Clutter, Bettinger & Cross v. City of Springfield,* 158 S.W.2d 814, 158 S.W.2d 821, and 158 S.W.2d 822 (Mo. App. 2005).

These were companion cases where plaintiffs sued the City of Springfield in October and November 2000 under a theory of inverse condemnation for flooding of their property due to runoff from heavy rains (Greene County cases numbers 31100CC4276, 31100CC4219 and 31100CC4220). The City of Springfield hired me to represent them in these cases in 2001 and the three cases were consolidated. The Honorable Calvin R. Holden entered summary judgment on behalf of the City of Springfield in all these cases. The Court ruled storm water flooding about which plaintiffs complained resulted from natural forces and that no specific affirmative act of defendant was demonstrated to have contributed to the flooding. The trial court's decision was upheld on appeal by the Missouri Court of Appeals, Southern District. Plaintiff was represented by Rick Muenks, 3041 South Kimbrough Avenue, Suite K106, Springfield, Missouri 65807, telephone (417) 866-6503.

(10) *Hargrave v. City of Springfield*, United States District Court for the Western District of Missouri, case number 6:92-cv-03405-JCE. The Honorable James C. England presided.

Plaintiff Hargrave claimed that she was the victim of gender discrimination by the City of Springfield in its employment decisions. She filed suit in the United States District Court for the Western District of Missouri in November 1992. I represented the defendant, City of Springfield. A jury entered a verdict on behalf of the city finding that it had not discriminated on the basis of gender. Plaintiff was represented by Rana Lynn Faaborg, 300 South Jefferson, Suite 600, P.O. Box 1245, Springfield, Missouri 65801, telephone (417) 869-0581.

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

    Most of my significant legal activities relate to litigation involving public entities under 42 U.S.C. 1983, Title VII, Title IX and employment law provisions of state and federal statutes. The overwhelming majority of these cases were either resolved by summary judgment or by settlement prior to trial. In two of the more significant cases I represented plaintiffs suing school districts under Title IX. In one, I represented a student who reported a sexual assault by a fellow student. Her allegations were disbelieved by school district officials. We filed suit after my client suffered a second sexual assault by the same student. This case was captioned *E.R. v. Republic School District* case number 11-3228-cv-s-ods. The case was settled. In the second suit my client, 13 years of age, had engaged in a sexual relationship with a coach at her middle school. She alleged responsible persons at the school district knew of the relationship but failed to intervene and stop it. This case is captioned *Trent v. Exeter School District,* case number 3:12-cv-05114-dpr. The case was settled.

    Some of my activities earlier in my career significantly influenced the practice of law through my service in the Missouri House of Representatives. During my ten years in the Missouri House, I served on both the Civil and Criminal Justice Committee and also the Judiciary Committee, which I chaired from 1990 to 1992. As part of that service I was selected by the Speaker of the House to serve on the Governor's Task Force on Liability Insurance in 1988. That Task Force recommended multiple changes to Missouri Law. Among the changes included in the Task Force recommendations were amendments to Missouri Law pertaining to comparative fault, punitive damages, pre-judgment interest and product liability law. More recently I have been privileged to serve on the Federal Practice Committee for the United States District Court for the Western District of Missouri and as the Chairman of the Federal Courts Committee of the Springfield Metropolitan Bar Association.

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.

    Between 1987 and 1990 I served as a part-time instructor at Evangel University teaching one class per semester alternating between two different courses, "Introduction to the Judicial Process," and "Introduction to Legal Research." "Introduction to the Judicial Process" taught federal and state court organization, an introduction to pre-trial proceedings, the stages of a trial, and appellate review. "Introduction to Legal Research"

taught about the sources of legal research, the West key number system, and the Digest system, among other sources. I do not have any copies of the 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.

    Upon termination of my employment with my current firm, I would be entitled to payment for my percentage compensation (19%) of revenues received by the firm for accounts receivable and work in progress as of my last day at the firm as these funds are collected.

    I own a one-sixth interest in BLMH Properties, LLC which owns the building which offices my law practice. My partners would have the option of buying out my interest in the LLC. At the present, 100% of the rent that the building partnership is charging the law office is being used to reduce debt and/or pay operating expenses such as utilities, cleaning, maintenance, taxes, condominium fees. We have not made any income distribution to BLMH Properties, LLC members as a result of any rent paid and do not anticipate doing so until indebtedness on the building is satisfied. The best estimate is that will be in approximately ten years. The decision to buy out my interest in the LLC in the event of my departure from this firm is vested in the remaining members of the LLC.

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 would recuse myself in any case in which I had participated as a lawyer. In addition, for a reasonable time, I would expect to recuse myself in any litigation involving any lawyer in my current firm or the several public entities and employers located within the Western District of Missouri that I have represented.

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 follow the Code of Conduct for United States Judges, as well as any other applicable ethical rules and statutes. I believe it is important for judges to avoid the appearance of impropriety. Even if I believe no actual conflict of interest occurred, if I believed a conflict of interest might appear to exist to a party, litigant or lawyer, I would err on the side of recusing.

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.

Early in my legal career, I participated in the Legal Aid of Southwest Missouri program and accepted assignments of cases through the program as a young attorney. I received a couple of assignments for pro bono work directly from judges. I have often made fee accommodations with clients facing financial challenges. In more recent years, our firm has encouraged the young lawyers we employ to participate in the legal aid program. I encouraged these lawyers by providing supervision for their pro bono activities.

26. **Selection Process**:

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

In 2011, I spoke to Senator McCaskill about my interest in serving as a federal judge if the opportunity ever presented itself. In May 2013, I was advised by the Senator's Office that my name was being submitted to the President for consideration. Since May 20, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. In June 2013 , I spoke to Senator Blunt over the telephone, informing him of my interest in the position and asking for his support. On July 11, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On August 1, 2013, 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. 1/2013

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
Harpool, Mark D.	United States District Court for the Western District of Mo	08/01/2013
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-Active	☑ Nomination Date 08/01/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2012 to 7/30/2013
7. Chambers or Office Address		
1901-C S. Ventura Springfield, Missouri 65804		

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.*

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Shareholder/Director	Baird, Lightner, Millsap and Harpool P.C.
2.	Member	BLMH Properties LLC
3.	Member- Board of Directors	Springfield Metropolitan Bar Association.
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 Harpool, Mark D.	Date of Report 08/01/2013

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	Baird, Lightner, Millsap and Harpool P.C. - compensation	$450,548.00
2.	2012	Baird Lightner Millsap and Harpool P.C.-- compensation	$371,293.00
3.	2013	Baird, Lightner Millsap and Harpool P.C. -- compensaiton	$262,200.00
4.	2011	State of Missouri --retirement	$6,420.00
5.	2012	State of Missouri- retirement	$12,840.00
6.	2013	State of Missouri- retirement	$7,490.00

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	Self employed- babysitting
2.	2013	Self employed- babysitting
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 Harpool, Mark D.	Date of Report 08/01/2013

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	Credit card	J
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Harpool, Mark D.	08/01/2013

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. Apple - common stock	C	Dividend	M	T	Exempt				
2. Bank of America common stock	A	Dividend	K	T	Exempt				
3. Core Mark - common stock	A	Dividend	J	T	Exempt				
4. American Capital Guaranty --common stock	C	Dividend	J	T	Exempt				
5. General Electric- common stock	B	Dividend	K	T	Exempt				
6. Google - common stock	A	Dividend	L	T	Exempt				
7. IBM - common stock	A	Dividend	K	T	Exempt				
8. JP Morgan common stock	B	Dividend	L	T	Exempt				
9. O'Reilly Automotive - common stock	A	Dividend	K	T	Exempt				
10. Sirius - common stock	A	Dividend	J	T	Exempt				
11. DFA Emerging Markets Portfolio	A	Dividend	J	T	Exempt				
12. DFA Emerging Markets Value Portfolio	A	Dividend	J	T	Exempt				
13. DFA Interenational Small Cap Value Fund	A	Dividend	J	T	Exempt				
14. DFA International Small Company Portfolio	A	Dividend	J	T	Exempt				
15. DFA International value Portfolio	A	Dividend	K	T	Exempt				
16. DFA U.S. Large Cap Value Portfolio	A	Dividend	K	T	Exempt				
17. DFA U.S. Micro Cap Portfolio	A	Dividend	J	T	Exempt				

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

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Name of Person Reporting	Date of Report
Harpool, Mark D.	08/01/2013

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. DFA U.S. Small Cap Portfolio	A	Dividend	J	T	Exempt				
19. DFA U.S. Small Cap Value Portfolio	A	Dividend	J	T	Exempt				
20. Dreyfus Greater China Fund	A	Dividend	J	T	Exempt				
21. Federated Intistutional High Yield Bond Fund	A	Dividend	J	T	Exempt				
22. Federated Total Return Bond Fund	A	Dividend	J	T	Exempt				
23. Hartford Capital Appreciation Fund	A	Dividend	L	T	Exempt				
24. Hartford Dividend and Growth Fund	A	Dividend	K	T	Exempt				
25. Hartford Healthcare Fund	A	Dividend	K	T	Exempt				
26. Hartford Midcap Fund	A	Dividend	K	T	Exempt				
27. Invesco Developing Markets Fund	A	Dividend	K	T	Exempt				
28. Invesco Energy Fund	A	Dividend	K	T	Exempt				
29. Invesco Small Cap Equity Fund	A	Dividend	J	T	Exempt				
30. PIMCO Commodity Real Return Strategy Fund	A	Dividend	J	T	Exempt				
31. PIMCO Foreign Bond (unhedged) Fund	A	Dividend	J	T	Exempt				
32. SPDR Dow Jones Global Real Estate (etf)	A	Dividend	J	T	Exempt				
33. Vanguard Developed Markets Index Fund	A	Dividend	K	T	Exempt				
34. Vanguard Growth Index Fund\	A	Dividend	K	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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 =$1,000,901 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 6 of 8	Name of Person Reporting Harpool, Mark D.	Date of Report 08/01/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
35. Vanguasrd S&P 500 Index ETF	A	Dividend	K	T	Exempt				
36. Vanguard Short Term Inflation -Protected Securities ETF	A	Dividend	J	T	Exempt				
37. Vanguard Short Term Investment Grade Fund	B	Dividend	K	T	Exempt				
38. Federated Ultra Short Bond Fund	A	Dividend	J	T	Exempt				
39. Dreyfus General 696 MMKT Fund	A	Interest	J	T	Exempt				
40. Fidelity Cash Reserve Fund	A	Interest	J	T	Exempt				
41. Baird, Lightner Millsap and Harpool P.C.		None	N	W	Exempt				
42. BLMH Properties LLC	D	Distribution	L	U	Exempt				
43. Bank of America Accounts- cash	A	Interest	K	T	Exempt				
44. Great Southern Bank account-cash	A	Interest	J	T	Exempt				
45. MOST 529 Plan- Moderate Age-Based Option Vanguard Growth	A	Dividend	J	T	Exempt				

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 7 of 8	Name of Person Reporting Harpool, Mark D.	Date of Report 08/01/2013

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Harpool, Mark D.	Date of Report 08/01/2013

IX. CERTIFICATION.

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

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

Signature: s/ **Mark D. Harpool**

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		49	765	Notes payable to banks-secured (auto)		6	200
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		911	526	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		15	709
Due from relatives and friends		1	250	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		434	522
Real estate owned – see schedule		630	600	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance							
Other assets itemize:							
BLMH Properties, LLC (1/6 interest)		90	000				
Baird, Lightner, Milsap & Harpool P.C.		300	000				
				Total liabilities		456	431
				Net Worth	1	576	710
Total Assets	2	033	141	Total liabilities and net worth	2	033	141
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		155	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Capital Guaranty stock	$ 11,545
Apple stock	113,330
Bank of America stock	29,040
Core-Mark Holding Company stock	189
General Electric stock	24,480
Google stock	53,455
IBM Corp. stock	19,601
JPMorgan stock	55,330
O'Reilly Automotive stock	24,912
Sirius Radio stock	7,400
DFA Emerging Markets Portfolio	8,250
DFA Emerging Markets Value Portfolio	8,246
DFA International Small Cap Value Portfolio	8,581
DFA International Small Company Portfolio	8,195
DFA International Value Portfolio	28,425
DFA U.S. Large Cap Value Portfolio	29,830
DFA U.S. Micro Cap Portfolio	9,045
DFA U.S. Small Cap Portfolio	8,966
DFA U.S. Small Cap Value Portfolio	12,228
Dreyfus Greater China Fund	14,293
Dreyfus Money Market Fund	8,486
Federated Institutional High Yield Bond Fund	8,240
Federated Total Return Bond Fund	10,841
Federated Ultrashort Bond Fond	6,003
Fidelity Cash Reserves	4,463
Hartford Capital Appreciation Fund	81,343
Hartford Dividend and Growth Fund	39,648
Hartford Healthcare Fund	28,532
Hartford Midcap Fund	29,638
Invesco Developing Markets Fund	26,798
Invesco Energy Fund	29,992
Invesco Small Cap Equity Fund	15,359
MOST 529 – Vanguard Moderate Age-Based Option	4,523
PIMCO CommodityRealReturn Strategy Fund	5,885
PIMCO Foreign Bond (Unhedged) Fund	5,188
SPDR Dow Jones Global Real Estate (ETF)	8,168
Vanguard Developed Markets Index Fund	29,254
Vanguard Growth Index Fund	18,062
Vanguard S&P 500 Index ETF	39,608
Vanguard Short-Term Inflation-Protected Securities ETF	13,582
Vanguard Short-Term Investment-Grade Fund	22,572
Total Listed Securities	$ 911,526

Real Estate Owned	
Personal residence	$ 129,000
Secondary residence (for sale)	382,600
Family residence	119,000
Total Real Estate Owned	$ 630,600

Real Estate Mortgages Payable	
Personal residence	$ 69,831
Secondary residence -- mortgage	209,367
Secondary residence – home equity line of credit	75,408
Family residence	79,916
Total Real Estate Mortgages Payable	$ 434,522

AFFIDAVIT

I, M. Douglas Harpool, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8-5-13
(DATE)

(NAME)

PATRICIA VIEW
Notary Public – Notary Seal
STATE OF MISSOURI
Christian County
My Commission Expires Aug. 26, 2014
Commission #10430139

(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Edward George Smith

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

   United States District Judge for the Eastern 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.

   Northampton County Courthouse
   669 Washington Street
   Easton, Pennsylvania 18042

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

   1961; Fort Knox, Kentucky

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.

   April 2004, United States Army Judge Advocate General's Legal Center and School, Charlottesville, Virginia, three-week inter-service Military Judge Course; certified and sworn in as a General Court-Martial Military Judge

   January 1987 – March 1987, Naval Justice School; Certification to Practice Before Military Courts-Martial, 1987

   1983 – 1986, Dickinson School of Law (now known as Dickinson School of Law of the Pennsylvania State University); J.D., (*cum laude*), 1986

   1979 – 1983, Franklin and Marshall College; B.A., 1983

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

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

2002 – present
Judge, Court of Common Pleas of Northampton County
Third Judicial District of Pennsylvania
669 Washington Street
Easton, Pennsylvania 18042
Presiding Judge, Asbestos Division (2004 – present)
Supervising Judge of the Grand Jury (2012 – present)

1990 – present
United States Navy Reserve, Judge Advocate General's Corps
1322 Patterson Avenue, SE, Suite 3000
Washington, D.C. 20374
Counsel (1990 – 2004)
Military Judge (2004 – 2007, 2008 – 2009, 2011 – 2012)
Rule of Law Advisor (2007 – 2008)
Commanding Officer (2009 – 2011, 2012 – present)

1990 – 2001
DeRaymond & Smith
717 Washington Street
Easton, Pennsylvania 18042
Partner

1997 – 2001
Northampton County Industrial Development Authority
669 Washington Street
Easton, Pennsylvania 18042
Solicitor

1990 – 2001
Upper Nazareth Township
100 Newport Avenue
Nazareth, Pennsylvania 18064
Solicitor

1991 – 1999
Pennsylvania Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120
Special Deputy Attorney General

1996 – 1998
County of Northampton

669 Washington Street
Easton, Pennsylvania 18042
Assistant Solicitor

1984 – 1990
United States Navy, Judge Advocate General's Corps
1322 Patterson Avenue, SE, Suite 3000
Washington, D.C. 20374
Senior Trial/Defense Counsel, NLSO, Philadelphia, Pennsylvania (1988 – 1990)
Assistant Force Judge Advocate, Commander Naval Air Force, U.S. Atlantic Fleet, Norfolk, Virginia (1987 – 1988)
Assistant Federal Tort Claims Officer, Naval Legal Service Office, Naval Base, Philadelphia, Pennsylvania (Summer 1985)

July 1986 – January 1987, May 1983 – August 1983
Widow Brown's Inn
200 Main Street
Stockertown, Pennsylvania 18083
Busboy/Kitchen Help

Other affiliations (uncompensated except as otherwise noted)

March 2009 – present
Smith Gas Lease Investors, LP (compensated)
467 Apple Blossom Road
Easton, Pennsylvania 18040
Limited Partner

2009 – 2012
Northampton Community College Paralegal Advisory Committee
Northampton Community College
3835 Green Pond Road
Bethlehem, Pennsylvania 18020
Board Member

1996 – 2001
YMCA of Easton, Phillipsburg and Vicinity
1225 West Lafayette Street
Easton, Pennsylvania 18042
Director

1996 – 2001
Brown & Lynch American Legion Post
2260 Corriere Drive
Easton, Pennsylvania 18042
Judge Advocate

2001
Boys & Girls Club of Easton
210 Jones Houston Way
Easton, Pennsylvania 18044
President of Board of Directors

1998 – 1999
Easton Fire Civil Service Commission
City Hall
One South Third Street
Easton, Pennsylvania 18042
Chairman

1994 – 1995
Northampton County Drug and Alcohol Commission
Governor Wolf Building
45 North Second Street
Easton, Pennsylvania 18042
Former Chairman

1995 – 1996
Kiwanis Club of Palmer Township
106 Brynwood Drive
Easton, Pennsylvania 18045
Former President

1991 – 2001
Nazareth Area Chamber of Commerce
201 North Main Street
Nazareth, Pennsylvania 18064
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.

1984 – 1990
United States Navy, Judge Advocate General's Corps
Commissioning date: November 5, 1984

1990 – present
United States Navy Reserve, Judge Advocate General's Corps
Current rank: Captain (O-6)

Current billet: Commanding Officer, NR Naval Justice School 0101 (December 2012 – present)

Billet history:

March 2012 – November 2012, Military Trial Judge (Navy-Marine Corps Trial Judiciary), Naval Reserve Trial Judiciary Activity, Washington Navy Yard, District of Columbia

December 2011 – February 2012, Appellate Military Judge (Navy-Marine Corps Court of Criminal Appeals (NMCCA)), Naval Reserve Appellate Judiciary Activity, Washington Navy Yard, District of Columbia

December 2009 – November 2011, Commanding Officer, Naval Reserve Navy and Marine Corps Appellate Review Activity (Appellate Review), Washington Navy Yard, District of Columbia

July 2008 – November 2009, Appellate Military Judge (NMCCA), Naval Reserve Judiciary Activity, Washington Navy Yard, District of Columbia

November 2007 – June 2008, Rule of Law Advisor, Task Force 134, Multi-National Force-Iraq (Deployed to Baghdad, Iraq in support of Operation Iraqi Freedom)

October 2004 – October 2007, Military Trial Judge (Navy-Marine Corps Trial Judiciary), Naval Reserve Judiciary Activity, Washington Navy Yard, District of Columbia

October 2001 – September 2004, Executive Officer, Naval Reserve Legal Service Office North Central 104, Naval Weapons Station Earle, Colts Neck, New Jersey

October 2000 – September 2001, International and Operational Lawyer, Naval Reserve Naval War College (LAW) 104, Naval War College, Newport, Rhode Island

October 1998 – March 2000, Trial Counsel, Naval Reserve Legal Service Office North Central 104, Naval Weapons Station Earle, Colts Neck, New Jersey

October 1994 – September 1998, International Law Attorney, Naval Reserve Civil Law Support Activity 104, Naval Weapons Station Earle, Colts Neck, New Jersey

October 1992 – September 1994, Operations Officer/Staff Judge Advocate, Naval Reserve Personnel Mobilization Team 504, Naval Base, Philadelphia, Pennsylvania

May 1990 – September 1992, Defense Counsel, Naval Reserve Legal Service Office 104, Naval Base, Philadelphia, Pennsylvania

March 1988 – April 1990, Senior Trial/Defense Counsel, Naval Legal Service Office, Naval Base, Philadelphia, Pennsylvania

March 1987 – March 1988, Assistant Force Judge Advocate, Commander Naval Air Force, United States Atlantic Fleet, Norfolk, Virginia

January 1987 – March 1987, Student, Naval Justice School, Newport, Rhode Island (honor graduate)

Summer 1985, Assistant Federal Tort Claims Officer, Naval Legal Service Office, Naval Base, Philadelphia, Pennsylvania

Summer 1985, Candidate, Officer Indoctrination School, Naval Station, Newport, Rhode Island (graduated with academic distinction)

I registered for selective service upon my eighteenth birthday.

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.

Military Awards:

Bronze Star Medal (2008)
Meritorious Service Medal (2004)
Navy and Marine Corps Commendation Medal (1990)
Joint Meritorious Unit Commendation (2009)
National Defense Service Medal (2) (approximately 1990 and 2001)
Iraq Campaign Medal (2008)
Navy Meritorious Unit Commendation (1993)
Armed Forces Reserve Medal with "M" Device and Silver Hourglass (2008)
Global War on Terrorism Service Medal (2003)
Sea Service Deployment Ribbon (2008)
Overseas Service Ribbon (2006)
USCG Special Operations Ribbon (2000)
Expert Rifleman Medal (1991)
Expert Pistol Medal (1989)

Professional/Civic Recognition:

Northampton Community College, 2011 Award of Excellence for Community Service (2011)
Boy Scouts of America, 2011 Good Scout Award in recognition of service to the community and to youth in scouting (2011)
Easton Area High School Day Honoree (2009)
Easton Area Veterans Memorial Day Council, Certificate of Appreciation (2009)
Pen Argyl Area High School – Veterans Day Ceremony, Certificate of Appreciation (2008)

United States Marine Corps League, Bethlehem Detachment, Distinguished Citizen Award (2006)
American Legion, Eckley E. Patch, Post 470, Bath, Pennsylvania, Certificate of Appreciation (2004)
Forks Township Police Department Civilian Academy, Certificate of Appreciation (2003)
Domestic Relations Association of Pennsylvania, Certificate of Appreciation (2002)
Lehigh Valley Twelve Club #493, Certificate of Appreciation (2002)
New York Naval Militia, State of New York Service Medal (1999)
Lehigh Valley Business/Education Partnership, Certificate of Appreciation (1996)
Kiwanis Club of Palmer Township, Certificate of Appreciation (1993)
American Bar Association, Award for Professional Merit (for having attained highest score upon graduation from Naval Justice School) (1987)

Academic Honors:

Woolsack Honor Society, Dickinson School of Law (1986)
Prentice-Hall Federal Tax Award, Dickinson School of Law (1986)
Irving J. Kaufman Securities Law Moot Court Team, Dickinson School of Law (1985 – 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.

American Bar Association, Judicial Division

American Judicature Society

Northampton County Bar Association
Bench Bar Committee, f/k/a Bench Bar Steering Committee (2002 – 2003, 2009 – 2010)
American Citizenship Committee, Chairman (1996 – 1998)

Pennsylvania Bar Association
Civil and Equal Rights Committee (1996 – 1997)
Judicial Administration Committee, f/k/a Judicial Selection and Administration Committee, f/k/a Judicial Selection Commission (1994 – 2008, 2013 – present)
Legislative Subcommittee (1998 – 2000)
Merit Selection Subcommittee (1998 – 2000)
Military & Veterans Affairs Committee (2006 – 2008, 2013 – present)

Pennsylvania Conference of State Trial Judges

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, 1986

New Jersey, 1987

Upon becoming a judge in Pennsylvania in 2002, I terminated my membership in the New Jersey Bar.

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 Supreme Court, 1992
United States Court of Appeals for the Third Circuit, 1997
United States District Court for the Eastern District of Pennsylvania, 1992
United States District Court for the District of New Jersey, 1987
United States Court of Military Appeals, 1987
United States Court of International Trade, 1994
Court of Common Pleas of Northampton County, Pennsylvania, 1986

There have been no lapses in membership.

11. **Memberships**:

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

Association of the United States Navy (1990 – 2009)

Boys & Girls Club of Easton (1993 – 2001)
President of Board of Directors (2001)

Brown & Lynch American Legion Post (1996 – present)
Judge Advocate (1996 – 2001)

Easton Fire Civil Service Commission (1995 – 1999)
Chairman (1998 – 1999)

Honorary First Defenders (2001 – present)

Kiwanis Club of Palmer Township (1992 – 2001)
President (1995 – 1996)
Advisor, Notre Dame Key Club (1995 – 1999)

Marine Corps League, Detachment 298 (2001 – present)

Northampton Community College Paralegal Advisory Committee
Board Member (2009 – 2012)

Northampton County Drug and Alcohol Commission (1990 – 1996)
Chairman (1994 – 1995)

Pomfret Club (1992 – present)

Supreme Court Historical Society (2011 – present)

The Pennsylvania Society (2012 – present)

Two Rivers Area Chamber of Commerce (1991 – 2001)

U.S. Naval Institute (1989 – present)

YMCA of Easton, Phillipsburg and Vicinity
Director (1996 – 2001)

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

I have been a member of the Pomfret Club since 1992, and I was a member of the Kiwanis Club of Palmer Township from 1992 until 2001. During my periods of membership, neither organization discriminated on the basis of race, sex, religion, or national origin. The Pomfret Club is a social club that required all members to be male until permitting women as members in approximately 1985 or 1986. The Kiwanis Club is a service organization that required all members to be male until approximately 1987; prior to 1987, the Kiwanis Club had distinct clubs comprised of the wives of Kiwanis members. To the best of my knowledge, none of the other organizations listed in my response to Question 11a discriminate or have formally discriminated on the basis of race, sex, religion, or national origin.

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

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

None.

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

None.

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

None.

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

I have searched my files and electronic databases in an effort to locate all information related to this question. When I speak, I do not speak from prepared text and I generally do not rely upon outlines or notes. Listed below are all of the speaking engagements that I have been able to recall or locate. There may be additional speeches for which I have no record or recollection.

Throughout my career, I have spoken as a guest lecturer at various colleges, including DeSales University, Moravian College, Cedar Crest College, and Northampton Community College, in which I have spoken about many different issues, including military law, civil and criminal practice and procedure, and criminal law. I do not have any notes from any of those lectures. Additionally, as

a judge on the Court of Common Pleas of Northampton County since 2002, classes from a number of local schools regularly attend trial proceedings in my courtroom. As part of their visit, I will often engage the students in discussions about various topics of law and procedure and answer any questions they might pose. Some of the schools that often send classes to my courtroom include:

Bangor Area High School, 187 Five Points Richmond Road, Bangor, Pennsylvania 18013

Easton Area High School, 2601 William Penn Highway, Easton, Pennsylvania 18045

Johns Hopkins Center for Talented Youth, McAuley Hall, 5801 Smith Avenue, Suite 400, Baltimore, Maryland 21209

Lafayette College, Quad Drive, Easton, Pennsylvania 18042

Nazareth Area High School, 501 East Center Street, Nazareth, Pennsylvania 18064

Northampton Community College, 3835 Green Pond Road, Bethlehem, Pennsylvania 18020

Pen Argyl High School, 501 West Laurel Avenue, Pen Argyl, Pennsylvania 18072

Saucon Valley High School and Saucon Valley Middle School, 2100 and 2095 Polk Valley Road, Hellertown, Pennsylvania 18055

Wilson Area School District, 424 Warrior Lane, Easton, Pennsylvania 18042.

May 27, 2013: Easton Area Memorial Day Exercises. I spoke about Memorial Day. I have no notes, transcripts, or recording, but press coverage is supplied. The address of the Veterans Memorial Day Council of Easton is 2161 Gateway Terrace, Easton, Pennsylvania 18042.

May 15, 2013: I gave a presentation about exercising good judgment to the fourth grade class at Avona Elementary School. I have no notes, transcripts, or recording. The address of the Avona Elementary School in the Wilson School District is 424 Warrior Lane, Easton, Pennsylvania 18042.

April 29, 2013: I gave a presentation about Law Day to the Wilson Area Intermediate School Gifted Program. I have no notes, transcripts, or recording. The address of the Wilson Area Intermediate School is 2400 Firmstone Street, Easton, Pennsylvania 18042.

April 25, 2013: I spoke about exercising good judgment and decision-making at the Easton Area Middle School's Medici Luncheon for Emerging Leaders. I have no notes, transcripts, or recording. The address of the Easton Area Middle School is 21 North 11th Street, Easton, Pennsylvania 18042.

March 14, 2013: Quarterly Association Meeting of the Northampton County Bar Association. I gave a CLE presentation on "The Rule of Law in a War Zone." I have no notes, transcripts, or recording. The address of the Northampton County Bar Association is 155 South Ninth Street, Easton, Pennsylvania 18042.

February 26, 2013: Opening Ceremony, Special Session of the Superior Court of Pennsylvania. I briefly spoke about honoring those who have served in the military. I have no notes, transcripts, or recording, but press coverage is supplied. The address of the Superior Court of Pennsylvania is 601 Commonwealth Avenue, Suite 1500, Harrisburg, Pennsylvania 17120.

February 20, 2013: Graduation Speaker for the Community Education Centers (CEC) Program. I spoke to prisoners graduating from the CEC program about learning from the past and embracing the future. I have no notes, transcripts, or recording. The address of the Northampton County Prison is 666 Walnut Street, Easton, Pennsylvania 18042.

November 13, 2012: Presiding Judge, Naturalization Court. I spoke to the individuals seeking to become naturalized citizens and their families about becoming citizens of the United States. I have no notes, transcripts, or recording. The address of the Northampton County Courthouse is 669 Washington Street, Easton, Pennsylvania 18042.

November 9, 2012: I gave a presentation about Veterans Day to the sixth grade class at the Wilson Area Intermediate School. I have no notes, transcripts, or recording. The address of the Wilson Area Intermediate School is 2400 Firmstone Street, Easton, Pennsylvania 18042.

September 4, 2012: I gave a presentation to the Lehigh Valley High Twelve Club about various aspects of constitutional law. I have no notes, transcripts, or recording. The address of the Lehigh Valley High Twelve Club is 323 Lone Lane, Allentown, Pennsylvania 18104.

May 28, 2012: West Bangor Memorial Day Services. I spoke about Memorial Day. I have no notes, transcripts, or recording. The address of the Bangor American Legion is 11 South Main Street, Bangor, Pennsylvania 18013.

May 19, 2012: Armed Forces Day Ceremony. I gave a speech to citizens of Hanover Township about recognizing members of the armed services for their

service to this country. I have no notes, transcripts, or recording. The address of Hanover Township is 3630 Jacksonville Road, Bethlehem, Pennsylvania 18017.

April 26, 2012: I gave a presentation about Northampton County's court system. I have no notes, transcripts, or recording. The address of the Rotary Club of Easton is 2886 Hope Ridge Drive, Easton, Pennsylvania 18045.

March 19, 2012: I gave a presentation on government and the law to the 12th grade government class at the Easton Area High School. I have no notes, transcripts, or recording. The address of the Easton Area High School is 2601 William Penn Highway, Easton, Pennsylvania 18045.

January 4, 2012: Graduation Speaker for the Community Education Centers (CEC) Program. I spoke to prisoners graduating from the CEC program about learning from the past and embracing the future. I have no notes, transcripts, or recording. The address of the Northampton County Prison is 666 Walnut Street, Easton, Pennsylvania 18042.

November 9, 2011: I participated in a panel discussion about President Abraham Lincoln and the Civil War at Northampton Community College. I have no notes, transcripts, or recording. The address of the Northampton Community College is 3835 Green Pond Road, Bethlehem, Pennsylvania 18020.

October 26, 2011: I gave a presentation on the Northampton County court system to the Rotary Club of Nazareth. I have no notes, transcripts, or recording. The address of the Rotary Club of Nazareth is 118 North Chew Street, Nazareth, Pennsylvania 18064.

October 11, 2011: I gave a presentation on the Constitution of the United States to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

May 17, 2011: I gave a presentation on the Constitution of the United States to the Sons of the American Revolution. I have no notes, transcripts, or recording. The address of the Sons of the American Revolution is 252 East Fifth Street, Bernville, Pennsylvania 19506.

May 6, 2011: I gave a presentation about service to our country and to the community to the Boy Scouts of America, Minsi Trail Council. I have no notes, transcripts, or recording. The address of the Boy Scouts of America, Minsi Trail Council is 991 Postal Road, Allentown, Pennsylvania 18109.

April 10, 2011: I gave a presentation about the state of justice in Northampton County to the Rotary Club of Easton. I have no notes, transcripts, or recording.

The address of the Rotary Club of Easton is 2886 Hope Ridge Drive, Easton, Pennsylvania 18045.

December 14, 2010: People's Law School, sponsored by the Northampton County Bar Association and Northampton Community College. I gave a presentation on various aspects of law from my perspective as a judge. I have no notes, transcripts, or recording. The address of the Northampton Community College is 3835 Green Pond Road, Bethlehem, Pennsylvania 18020.

November 11, 2010: I gave a presentation concerning my active-duty service in Iraq as part of a Veterans Day ceremony at Northampton Community College. I have no notes, transcripts, or recording, but press coverage is supplied. The address of the Northampton Community College is 3835 Green Pond Road, Bethlehem, Pennsylvania 18020.

September 29, 2010: I gave a presentation about my experiences on active duty in Iraq to the Kiwanis Club of Easton. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Easton is P.O. Box 3165, Palmer, Pennsylvania 18043.

June 30, 2010: I gave a presentation about the Northampton County court system to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

May 31, 2010: Nazareth Memorial Day Services and Parade. I spoke to the citizens of Nazareth about Memorial Day. I have no notes, transcripts, or recording. The address of the Harold V. Knecht Post 415 American Legion is 158 South Main Street, Nazareth, Pennsylvania 18064.

May 6, 2010: I gave a presentation to the Law Explorer Post of the Northampton County Bar Association in which I compared certain aspects of military law with Pennsylvania law. I have no notes, transcripts, or recording. The address of the Northampton County Bar Association is 155 South Ninth Street, Easton, Pennsylvania 18042.

February 19, 2010: Annual Conference of the Pennsylvania Conference of State Trial Judges. I gave a presentation on the Servicemembers Civil Relief Act. I have no notes, transcripts, or recording. The address of the Pennsylvania Conference of State Trial Judges is 606 City Hall, Philadelphia, Pennsylvania 19107.

May 29, 2009: Easton Area Memorial Day Exercises. I spoke about Memorial Day. I have no notes, transcripts, or recording. The address of the Veterans Memorial Day Council of Easton is 2161 Gateway Terrace, Easton, Pennsylvania 18042.

May 8, 2009: Easton Area High School Day Honoree. I gave a presentation on service to our country and the community. I have no notes, transcripts, or recording. The address of the Easton Area High School is 2601William Penn Highway, Easton, Pennsylvania 18045.

May 5, 2009: I gave a presentation on exercising good judgment and making good choices at the Bangor Middle School. I have no notes, transcripts, or recording. The address of the Bangor Middle School is 401 Points Richmond Road, Bangor, Pennsylvania 18013.

March 10, 2009: I gave a presentation on the justice system in Northampton County to Leadership Lehigh Valley. I have no notes, transcripts, or recording. The address of Leadership Lehigh Valley is Northampton County Community College, 3835 Green Pond Road, Bethlehem, Pennsylvania 18020.

November 13, 2008: I gave a presentation on government and the law to the twelfth grade government class at the Easton Area High School. I have no notes, transcripts, or recording. The address of the Easton Area High School is 2601 William Penn Highway, Easton, Pennsylvania 18045.

November 11, 2008: I gave a presentation as part of the Veterans' Day assembly at the Pen Argyl Area High School. I have no notes, transcripts, or recording. The address of Pen Argyl Area High School is 501 West Laurel Avenue, Pen Argyl, Pennsylvania 18072.

November 6, 2008: I gave a presentation about my observations after serving in Iraq to the Rotary Club of Easton. I have no notes, transcripts, or recording. The address of the Rotary Club of Easton is 2886 Hope Ridge Drive, Easton, Pennsylvania 18045.

October 27, 2008: I gave a presentation on constitutional law at Cedar Crest College. I have no notes, transcripts, or recording. The address of Cedar Crest College is 100 College Drive, Allentown, Pennsylvania 18103.

October 24, 2008: Bench-Bar Conference of the Northampton County Bar Association. I gave a presentation on detention operations in Iraq. I have no notes, transcripts, or recording. The address of the Northampton County Bar Association is 155 South Ninth Street, Easton, Pennsylvania 18042.

September 3, 2008: I gave a presentation about detention operations in Iraq to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

June 6, 2007: I gave a presentation about the Northampton County court system to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

February 1, 2006: I gave a presentation about the Northampton County court system to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

October 21, 2005: "Qualifications for Defense Counsel in Capital Cases 2." I participated in a presentation discussing current issues in capital case litigation. I have no notes, transcripts, or recording. The address of the Bar Association of Lehigh County is 1114 West Walnut Street, Allentown, Pennsylvania 18102.

May 30, 2004: Memorial Day Ceremony. I spoke about Memorial Day. I have no notes, transcripts, or recording. The address of the American Legion, Eckley E. Patch, Post 470 is 278 Race Street, Bangor, Pennsylvania 18014.

April 24, 2004: I gave a presentation to various county and court employees and their children discussing aspects of the courtroom as part of "Take our Daughters and Sons to Work Day." I have no notes, transcripts, or recording. The address of the Northampton County Courthouse is 669 Washington Street, Easton, Pennsylvania 18042.

February 26, 2003: I gave a presentation about the Northampton County court system to the Forks Township Police Department Civilian Academy. I have no notes, transcripts, or recording. The address of the Forks Township Police Department Civilian Academy is 1604 Sullivan Trail, Easton, Pennsylvania 18040.

February 19, 2003: I gave a presentation about the Northampton County court system to the Kiwanis Club of Palmer Township. I have no notes, transcripts, or recording. The address of the Kiwanis Club of Palmer Township is 106 Brynwood Drive, Easton, Pennsylvania 18045.

December 10, 2002: Annual Training Conference, Domestic Relations Association of Pennsylvania. I gave a presentation on child and spousal support issues unique to military personnel. I have no notes, transcripts, or recording. The address of the Domestic Relations Association of Pennsylvania is Philadelphia Family Court, 46 South 11th Street, Suite 400, Philadelphia, Pennsylvania 19107.

November 13, 2002: I gave a presentation about due process considerations to the Easton Police Department, Weed and Seed Civilian Criminal Academy. I have no notes, transcripts, or recording. The address of the Easton Police Department,

Weed and Seed Civilian Criminal Academy is One South Third Street, Easton, Pennsylvania 18042.

November 8, 2002: Bench-Bar Conference of the Northampton County Bar Association. I gave a presentation on effective trial presentation. I have no notes, transcripts, or recording. The address of the Northampton County Bar Association is 155 South Ninth Street, Easton, Pennsylvania 18042.

January 22, 2002: I spoke at the ceremony for my swearing-in as a judge of the Court of Common Pleas of Northampton County. The address of the Court of Common Pleas of Northampton County is 669 Washington Street, Easton, Pennsylvania 18042. I have no notes, transcripts or recording of this event, but press coverage is supplied.

January 2001 – November 2001: I participated in several forums with other candidates running for Common Pleas judge in Northampton County between the time that I filed my candidacy for election in January 2001 and the election in November 2001. Business groups, social organizations, and political organizations generally sponsored these forums. I have no notes, transcripts or recording of these events.

January 1997 – November 1997: I participated in several forums with other candidates running for Common Pleas judge in Northampton County between the time that I filed my candidacy for election in January 1997 and the election in November 1997. Business groups, social organizations, and political organizations generally sponsored these forums. I have no notes, transcripts or recording of these events, but press coverage is supplied where available.

August 1995 – April 1996: I participated in several forums with other candidates running for Congress in the 15th Congressional District between the time that I filed my candidacy for election in August 1995 and the primary election in April 1996. Business groups, social organizations, and political organizations generally sponsored these forums. I have no notes, transcripts or recording of these events, but press coverage is supplied where available.

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 Peters, *Northampton County Judge Edward Smith 'Humbled' by Nomination to Federal Bench*, THE EXPRESS TIMES, Aug. 1, 2013. Copy supplied.

Jill Colford Schoeniger, *The Hon. Edward G. Smith '83*, FRANKLIN & MARSHALL MAG., Apr. 29, 2009. Copy supplied.

Riley Yates, *Jurist Named Appellate Military Judge*, THE MORNING CALL, Nov. 26, 2008. Copy supplied.

Tyra Braden, *Northampton Judge Returns from 6-Month Stint in Iraq*, THE MORNING CALL, June 30, 2008. Copy supplied.

Joe Nixon, *Northampton Judge Trades Bench for Baghdad Post*, THE MORNING CALL, Oct. 16, 2007. Copy supplied.

Tyra Braden, *Review Finds Smith Erred on Expense Report*, THE MORNING CALL, Feb. 21, 2002. Copy supplied.

Tyra Braden, *Barbs, Funds Fly in Judgeship Race*, THE MORNING CALL, Nov. 1, 2001. Copy supplied.

Tom Coombe, *Upper Nazareth Apartments Now on Supervisors' Agenda*, THE MORNING CALL, July 11, 2001. Copy supplied.

Tyra Braden, *Judge Candidates Look Forward to Rest, Relaxation*, THE MORNING CALL, May 20, 2001. Copy supplied.

Scott Kraus, *County Seeks Approval for 300-Foot Radio Tower*, THE MORNING CALL, May 15, 2001. Copy supplied.

Tyra Braden, *County Judicial Candidates Vary in Age, Court Experience, Outlook*, THE MORNING CALL, May 11, 2001. Copy supplied.

Tyra Braden, *Ridge's Judge Choice Asks for Quick Confirmation*, THE MORNING CALL, Mar. 29, 2001. Copy supplied.

Scott Kraus, *Ridge Picks GOP Attorney to Fill County Judgeship*, THE MORNING CALL, Mar. 28, 2001. Copy supplied.

Madeleine Mathias, *Furniture Caper Had No Bad Guys, A Good One*, THE MORNING CALL, Mar. 16, 2001. Copy supplied.

Tom Davis, *Smith Runs for Judge for 2nd Time*, THE MORNING CALL, Jan. 16, 2001. Copy supplied.

Tracy Jordan, *Smith to Run Again for County Judge*, THE MORNING CALL, Jan. 10, 2001. Copy supplied.

Scott Kraus, *County Officials Think Marakovits Smeared Them*, THE MORNING CALL, Aug. 11, 2000. Copy supplied.

Lauri Rice-Maue, *Baratta Wins Judge Race*, THE MORNING CALL, Nov. 5, 1997. Copy supplied.

Lauri Rice-Maue, *Families Matter to Judge Candidates*, THE MORNING CALL, Nov. 1, 1997. Copy supplied.

Lauri Rice-Maue, *Baratta, Smith Chosen to Run in Final Race for County Judge*, THE MORNING CALL, May 21, 1997. Copy supplied.

Lauri Rice-Maue, *Northampton Race for Judge Offers 7 Experienced Choices*, THE MORNING CALL, May 16, 1997. Copy supplied.

Bryan Hay, *Ed Smith Denies Hinting He 's Democrat*, THE MORNING CALL, May 14, 1997. Copy supplied.

County Republicans Endorse Edward Smith for Judge, THE MORNING CALL, Mar. 28, 1997. Copy supplied.

Matt Assad, *Angle Demands Bradl 's Withdrawal*, THE MORNING CALL, Mar. 14, 1997. Copy supplied.

Matt Assad, *Life Behind Bars*, THE MORNING CALL, Feb. 20, 1997. Copy supplied.

Lauri Rice-Maue, *Third Man Joins Race for Judge*, THE MORNING CALL, Feb. 19, 1997. Copy supplied.

Lauri Rice-Maue, *Attorneys Are Lining Up for Proposed County Judgeship*, THE MORNING CALL, Jan. 30, 1997. Copy supplied (reprinted in multiple outlets).

Matt Assad, *Man Gets $7,000 for False Imprisonment*, THE MORNING CALL, Jan. 23, 1997. Copy supplied.

John P. Martin & David Herzog, *Many Factors Helped Kilbanks*, THE MORNING CALL, Apr. 25, 1996. Copy supplied.

John P. Martin, *Race for GOP Hopefuls Has Variety*, THE MORNING CALL, Apr. 14, 1996. Copy supplied.

Martin Pflieger & John P. Martin, *Kilbanks is on Hot Seat*, THE MORNING CALL, Apr. 11, 1996. Copy supplied.

Martin Pflieger, *Hopefuls Create Environment for Debate*, THE MORNING CALL, Apr. 10, 1996. Copy supplied.

John P. Martin, *Edward Smith, McHale Jab over PAC Money*, THE MORNING CALL, Apr. 4, 1996. Copy supplied.

John P. Martin, *NRA Announces It Will Back Bob Kilbanks*, THE MORNING CALL, Mar. 30, 1996. Copy supplied.

John P. Martin, *Kilbanks Loses Easton GOP Endorsement by Minutes*, THE MORNING CALL, Mar. 23, 1996. Copy previously supplied in 12d.

Kathleen Parrish, *Edward Smith Faults Addition Funding*, THE MORNING CALL, Mar. 17, 1996. Copy supplied.

John P. Martin, *Dueling Campaign Events are Held*, THE MORNING CALL, Mar. 15, 1996. Copy supplied.

Martin Pflieger and Pete Leffler, *Ex-McHale Aide Hopes He Won't Hurt Campaign*, THE MORNING CALL, Mar. 11, 1996. Copy supplied.

Bryan Hay, *Edward Smith Predicts Focus on Him, Mayor Candidate Says GOP Nod for 15th District Will Come Down to Him and Ken*, THE MORNING CALL, Mar. 2, 1996. Copy supplied.

Mario F. Cattabiani, *Smith Got Your Vote?*, THE MORNING CALL, Feb. 22, 1996. Copy supplied.

John P. Martin, *15th District GOP Candidates Woo Voters*, THE MORNING CALL, Feb. 18, 1996. Copy supplied.

Martin Pflieger, *Republican Says Unified Party Can Defeat McHale*, THE MORNING CALL, Nov. 30, 1995. Copy supplied.

Pete Leffler, *Smith Seeking GOP Nod for McHale Seat*, THE MORNING CALL, Sept. 14, 1995. Copy supplied.

Bryan Hay, *Easton Lawyer Announces Bid for Congressional Seat*, THE MORNING CALL, Aug. 26, 1995. 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 served as a judge on the Court of Common Pleas of Northampton County since January 2002 after being elected by the citizens of Northampton County to serve a ten-year term in November 2001. I was retained in November 2011 to serve an additional ten-year term. I have also served as the Presiding Judge of the Asbestos Division since 2004 and as the supervising judge of the Northampton County Grand Jury since 2012.

The Courts of Common Pleas are the trial courts of the Commonwealth of Pennsylvania, and they have jurisdiction over a wide variety of civil and criminal matters.

While in the Navy Reserve, I have served in three different judicial capacities. I served as a military trial judge for the Navy-Marine Corps Trial Judiciary from March 2012 until November 2012 and from October 2004 until October 2007. On both occasions, the Judge Advocate General of the Navy appointed me as a military trial judge. As a military trial judge, I presided over general and special Navy and Marine Corps courts-martial at military bases throughout the world.

I also served as an appellate military judge for the Navy-Marine Corps Court of Criminal Appeals (NMCCA) from December 2011 until February 2012 and from July 2008 until November 2009. On both occasions, the Judge Advocate General of the Navy appointed me as an appellate military judge. The NMCCA is the intermediate appellate court for most Navy and Marine Corps court-martials.

I further served as the Commanding Officer for the Navy-Marine Corps Appellate Review Activity (NAMARA) from December 2009 until November 2011. The Navy Apply Board selected me for this position. NAMARA is responsible for conducting appellate review of courts-martial pursuant to Articles 69(a) and (b) of the Uniform Code of Military Justice (UCMJ) and petitions for new trial under Article 73 of the UCMJ.

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

   Between my service as a civilian and a military judge, I have presided over approximately 300 cases that have gone to verdict or judgment.

   i. Of these, approximately what percent were:

jury trials:	50%
bench trials:	50%
civil proceedings:	30%
criminal proceedings:	70%

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

   As a state trial judge, almost all of my opinions are unreported decisions that are disseminated only to the parties involved in the case and lodged as part of the court record. Thus, there are very few citations to my opinions. The following cases are the only opinions on a publicly-accessible database for which I located citations:

   Taverna v. Atlantic Van Buren Road, LLC, No. C-48-CV-2008-10465, 2012 WL 7659259 (C.P. Northampton May 1, 2012).

Lititz Ins. Co. v. Jenkins, No. C-48-CV-2009-9069, 2011 WL 8897942 (C.P. Northampton June 30, 2011).

Stone v. Langen, No. C-48-PF-2007-0592, 2007 WL 5479863 (C.P. Northampton Oct. 24, 2007).

Thornton v. Tax Claim Bureau of Northampton County, No. C-48-CV-2004-5700, 2005 WL 4927630 (C.P. Northampton Aug. 31, 2005).

Professional Site Mgmt., Inc. v. Pektor, No. C-48-CV-1999-8900, 2004 WL 5149830 (C.P. Northampton Mar. 15, 2004).

Nowak v. Napa Dev. Corp., No. C-48-CV-2001-2849, 2004 WL 5149832 (C.P. Northampton Nov. 1, 2004).

As a military trial judge, my rulings on pretrial motions were filed locally in the case file and, thus, there are no citations to these decisions. Further, military practice does not include the opportunity to file post-trial opinions to explain rulings during trial. As a military appellate judge, I could not locate any cited decisions other than the following:

United States v. Jones, No. NMCCA 200602320, 2009 WL 3435920 (N-M. Ct. Crim. App. Oct. 27, 2009).

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Commonwealth v. Ballard*, No. CP-48-CR-3058-2010 (C.P. Northampton). Copies of my opinions are supplied.

The Commonwealth charged the defendant with four counts of criminal homicide after he killed four people, including his former girlfriend, her father, her grandfather, and a good Samaritan that attempted to help them. The Commonwealth sought the death penalty for each homicide. The defendant filed omnibus pretrial motions seeking to exclude various statements he made to the police based on asserted constitutional violations. I denied the omnibus motions finding that no constitutional violations occurred. The defendant pleaded guilty to first-degree murder and, after a sentencing proceeding, the jury sentenced him to death for each murder. The defendant's direct appeal, which raises approximately 25 issues, is still pending before the Supreme Court of Pennsylvania.

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Counsel for the defendant:
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First Assistant Public Defender James M. Connell
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2. *Commonwealth v. Xander*, No. CP-48-CR-1052-2009 (C.P. Northampton June 29, 2010), *aff'd* 14 A.3d 174 (Pa. Super. 2011). A copy of my opinion is supplied.

The police arrested the defendant for suspicion of Driving Under the Influence ("DUI"). The defendant resisted during transportation to the DUI Center for a blood test. At the DUI Center, the defendant repeatedly stated her belief that she was entitled to counsel. The police determined that she refused to consent to the blood test and charged her with DUI. A jury found the defendant guilty of DUI. Under the DUI law, a convicted defendant may be subjected to enhanced penalties if the defendant refuses to submit to chemical testing and is properly warned about the consequences of refusing before actually refusing. The defense moved for a judgment of acquittal as to the enhanced penalties on the ground that the police did not appropriately warn the defendant of the enhanced penalties if she refused chemical testing. I granted the motion after determining that I could not sentence the defendant to the enhanced penalties because the police did not read the required warnings to her. I also rejected the Commonwealth's contention that the defendant's conduct created the police's inability to read the warnings to her. The Commonwealth appealed from my ruling, and the Superior Court affirmed my decision.

Counsel for the Commonwealth:
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(610) 559-3020

Counsel for the defendant:
Philip Lauer, Esquire
Lauer & Sletvold
701 Washington Street
Easton, Pennsylvania 18042
(610) 258-5329

Gregory W. Paglianite, Esquire (retired)

3. *Commonwealth v. Andre*, No. CP-48-CR-2244-2008 (C.P. Northampton Apr. 30, 2010), *aff'd* 17 A.3d 951 (Pa. Super. 2011). A copy of my opinion is supplied.

The police charged the defendant with various crimes for allegedly setting her house on fire. The defendant filed a notice of defense of insanity or mental infirmity, and I granted a defense motion to bifurcate the trial pursuant to section 404(c) of the Mental Health Procedures Act, 50 P.S. § 7404(c). The first jury found the defendant guilty of causing the fire, but the second jury could not reach a unanimous verdict on the issue of the defendant's criminal responsibility. After I declared a mistrial, the Commonwealth claimed that I should either schedule sentencing or mold the verdict to reflect a guilty but mentally ill verdict. I denied the Commonwealth's requests and scheduled a new trial on the issue of the defendant's criminal responsibility. Prior to the time of the defendant's re-trial, the Commonwealth appealed to the Superior Court of Pennsylvania. On appeal to the Superior Court, the court affirmed my decision. After the Superior Court remitted the record, the defendant eventually entered *nolo contendere* pleas to lesser included offenses and the case concluded.

Counsel for the Commonwealth:
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Counsel for the defendant:
Dennis G. Charles, Esquire
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4. *United States v. Jones III*, No. NMCCA 200602320, 2009 WL 3435920 (N-M. Ct. Crim. App. Oct. 27, 2009), *aff'd*, 69 M.J. 294 (C.A.A.F. 2011).

The appellant wrongfully used government computer equipment to view child pornography. Although the Navy-Marine Court of Criminal Appeals ("N-M Ct. Crim. App.") affirmed the appellant's conviction, the Court of Appeals for the

Armed Forces ("CAAF") granted a petition for grant of review and remanded the matter to the N-M Ct. Crim. App. to determine whether the military judge erred by denying the appellant the opportunity to review the child pornography at issue before pleading guilty and, thus, whether the appellant's plea was provident. We concluded that the military judge violated the appellant's rights under the Sixth Amendment and Rule for Courts Martial 701 in denying the appellant's request to review the evidence. Also, even though the military judge denied the appellant's request to view the child pornography, we determined that the plea was provident. On appeal to CAAF, the court affirmed the decision.

Counsel for the government/appellee:
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Lieutenant Brian Korn, JAGC, USN
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5. *United States v. Garcia* (N-M. Corps Trial Judiciary Nov. 15, 2012). A copy of my opinion is supplied.

The accused was charged with various sexual offenses arising from his sexual encounter with the victim in May 2011. The accused raised a motion in *limine* to request a *Daubert* hearing to litigate the anticipated expert testimony concerning typical sexual assault victim behavior. After a *Daubert* hearing, the accused moved to exclude the testimony of the expert. After conducting the required analysis under the Rules for Courts Martial, I determined that the proposed expert testimony was admissible in this case. The accused was eventually tried before a panel of members and acquitted of the charges.

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6. *Commonwealth v. Collazo*, No. CP-48-CR-1202-2012 (C.P. Northampton). A copy of my opinion is supplied.

The defendant was charged with criminal homicide arising out of the killing of her former paramour as he slept. The defendant filed omnibus pretrial motions seeking to suppress the evidence the police obtained during consensual telephone intercepts made after the police were notified that the defendant was represented by counsel, but before she was charged with a crime. I denied the defendant's pretrial motions. In doing so, I concluded that the defendant's Sixth Amendment right to counsel was not violated when the police conducted the intercepts outside the presence of her counsel. After disposing of the defendant's pretrial motions, the defendant pleaded guilty to first-degree murder, and I sentenced her to a mandatory term of life imprisonment.

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Counsel for the defendant:
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7. *Commonwealth v. Ratushny*, No. CP-48-CR-1847-2008 (C.P. Northampton Apr. 5, 2010), *aff'd*, 17 A.3d 1269 (Pa. Super. 2011). A copy of my opinion is supplied.

The defendant was charged with various sex crimes based on his actions with his then-girlfriend's minor daughters. Just prior to trial before another judge, the

defendant raised various motions eventually resulting in the Commonwealth *nolle prossing* the charges without prejudice to re-file them. The Commonwealth then re-filed charges against the defendant. The defendant again filed pretrial motions, which I denied. After a trial, the jury found the defendant guilty of various sexual offenses, including aggravated indecent assault, related to the older daughter, but acquitted him of the charges involving the younger daughter. I conducted a sexually violent predator hearing and found that the defendant satisfied the definition of a sexually violent predator under Megan's Law. After his sentencing, the defendant appealed to the Superior Court, asserting that the sexually violent predator determination was against the weight of the evidence. The Superior Court affirmed the conviction and the sexually violent predator determination. The defendant filed a petition for post-conviction relief that I recently denied. The defendant appealed from the denial of post-conviction collateral relief and this appeal is pending disposition by the Superior Court.

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8. *Lititz Insurance Co. v. Jenkins, et al.*, No. C-48-CV-2009-9069 (C.P. Northampton June 30, 2011), *aff'd* No. 2020 EDA 2011 (Pa. Super. May 21, 2012) (unpublished). Opinions supplied.

An insurance company brought a declaratory judgment action seeking a determination that it did not have a duty to defend or indemnify its insured in an action by the estate of a store clerk that was killed by the insured and another individual during an attempted robbery. The insured was covered under his father's homeowner's insurance policy at the time of the shooting. The insurance company moved for summary judgment with the issue involving whether the decedent's death was caused by an accident so that the incident would be covered under the policy. After reviewing the allegations in the complaint, I determined that the insured's conduct did not qualify as an accident under the policy. Even though the insured was only a look-out and not the actual shooter, his accomplice's conduct in shooting the decedent was the natural and expected result of the insured's conduct. I also noted that it was against public policy in Pennsylvania for an insurance company to indemnify an insured against his own criminal acts. Thus, I granted the motion and entered judgment in favor of the plaintiff. The defendant appealed from my decision, which was affirmed on appeal in an unpublished decision by the Superior Court of Pennsylvania.

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9. *Commonwealth v. Pascal*, No. CP-48-CR-1976-2006 (C.P. Northampton June 30, 2008), *aff'd*, No. 630 EDA 2008 (Pa. Super. June 8, 2009). Opinions supplied.

The Commonwealth charged the defendant with criminal homicide based on his actions in a drive-by shooting, which resulted in the victim's death. The Commonwealth sought the death penalty. I denied a motion by the Commonwealth to join the defendant's case with his co-conspirator's case. After a trial, a jury found the defendant guilty of first-degree murder but could not reach a unanimous verdict in favor of the death penalty. As such, I imposed a

mandatory term of life imprisonment without the possibility of parole. The defendant appealed from his judgment of sentence, and the Superior Court affirmed the conviction and judgment of sentence. *See Commonwealth v. Pascal*, No. 630 EDA 2008 (Pa. Super. June 8, 2009). The Supreme Court of Pennsylvania denied the defendant's petition for allowance of appeal. *See Commonwealth v. Pascal*, No. 470 MAL 2009 (Dec. 17, 2009). After exhausting his direct appeal rights, the defendant filed a petition for post-conviction collateral relief, which I denied after a hearing. The Superior Court affirmed the denial in an unpublished memorandum opinion, *see Commonwealth v. Pascal*, No. 1991 EDA 2011 (Aug. 24, 2012), and the Supreme Court of Pennsylvania denied the defendant's petition for allowance of appeal, *see Commonwealth v. Pascal*, No. 743 MAL 2012 (Feb. 14, 2013).

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(610) 332-9585

10. *Commonwealth v. Hetzel*, No. CP-48-CR-3255-2000 (C.P. Northampton Sept. 13, 2012), *aff'd* No. 2664 EDA 2012 (Pa. Super. July 3, 2013) (Gantman, J.). Opinions supplied.

A jury found the defendant and her former boyfriend guilty of first-degree murder in the death of her female lover, and the judge that formerly presided over the case imposed a mandatory life sentence without the possibility of parole. The defendant's conviction was affirmed on appeal, and her first post-conviction relief petition was denied. The defendant filed a second post-conviction relief petition claiming that the fact that she was eighteen-years-old at the time of the murder

entitled her to a new trial under the Supreme Court of the United States' decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012). I denied the second post-conviction petition because the defendant was not entitled to post-conviction relief based upon *Miller*. In particular, *Miller* determined that a state's sentencing scheme that required the imposition of a mandatory term of life imprisonment for individuals *under* the age of eighteen at the time of the commission of a homicide offense was unconstitutional. Since the defendant was not under eighteen at the time of the killing, I determined that *Miller* did not apply to her claim. The Superior Court of Pennsylvania affirmed my decision in an unpublished memorandum opinion.

Counsel for the Commonwealth:
Assistant District Attorney William Blake
669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Counsel for the defendant:
Pro se.

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

1. *Commonwealth v. Ballard*, No. CP-48-CR-3058-2010 (C.P. Northampton). Opinions are supplied in response to Question 13(c).

Counsel for the Commonwealth:
District Attorney John M. Morganelli
Assistant District Attorney Kelly Lewis Fallenstein
669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Counsel for the defendant:
Chief Public Defender Michael F. Corriere
433 East Broad Street
P.O. Box 1217
Bethlehem, Pennsylvania 18016
(610) 865-5566

First Assistant Public Defender James M. Connell
251 East Broad Street
Bethlehem, Pennsylvania 18018
(610) 868-8371

2. *Commonwealth v. Xander, No. CP-48-CR-1052-2009* (C.P. Northampton June 29, 2010), *aff'd* 14 A.3d 174 (Pa. Super. 2011). A copy of my opinion is supplied in response to Question 13(c).

Counsel for the Commonwealth:
Assistant District Attorney Sandra F. McClure
669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Counsel for the defendant:
Philip Lauer, Esquire
Lauer & Sletvold
701 Washington Street
Easton, Pennsylvania 18042
(610) 258-5329

Gregory W. Paglianite, Esquire (retired)

3. *Commonwealth v. Andre*, No. CP-48-CR-2244-2008 (C.P. Northampton Apr. 30, 2010), *aff'd* 17 A.3d 951 (Pa. Super. 2011). A copy of my opinion is supplied in response to Question 13(c).

Counsel for the Commonwealth:
Assistant District Attorney Richard Pepper
669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Counsel for the defendant:
Dennis G. Charles, Esquire
441 West Linden Street
Allentown, Pennsylvania 18102
(610) 437-7064

4. *United States v. Jones III*, No. NMCCA 200602320, 2009 WL 3435920 (N-M. Ct. Crim. App. Oct. 27, 2009), *aff'd*, 69 M.J. 294 (C.A.A.F. 2011).

Counsel for the government/appellee:
Lieutenant Richard McWilliams, JAGC, USN
Lieutenant Brian Korn, JAGC, USN
Appellate Government (Code 46)
1254 Charles Morris Street, SE
Building 58, Suite B01

Washington, D.C. 20374
(202) 685-7680

Counsel for the defendant/appellant:
Major Wilbur Lee, USMC
Major Elizabeth Harvey, USMC
Appellate Defense (Code 45)
1254 Charles Morris Street, SE
Building 58, Suite B01
Washington, D.C. 20374
(202) 685-7290

5. *United States v. Garcia* (N-M. Corps Trial Judiciary Nov. 15, 2012). My opinion is supplied in response to Question 13(c).

Counsel for the government:
Jaime M. Giarraputo, LCDR, JAGC, USN
OIC, RLSO SE Det Mayport
1868 Baltimore Street
Mayport, Florida 32228
(904) 270-5445

Counsel for the accused:
Dan Sullivan, LT, JAGC, USN
Region Legal Service Office Southeast
P.O. Box 116, Building 4, Ranger Street
Jacksonville, Florida 32212
(904) 542-2565

6. *Commonwealth v. Collazo*, No. CP-48-CR-1202-2012 (C.P. Northampton). My opinion is supplied in response to Question 13(c).

Counsel for the Commonwealth:
First Deputy Assistant District Attorney Terrence Houck
Assistant District Attorney Lara Mammana Kash
669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Counsel for the defendant:
First Assistant Public Defender James M. Connell
251 East Broad Street
Bethlehem, Pennsylvania 18018
(610) 868-8371

Public Defender Vanessa M. Nenni
622 Linden Street
Bethlehem, Pennsylvania 18018
(610) 861-5100

7. *Commonwealth v. Ratushny*, No. CP-48-CR-1847-2008 (C.P. Northampton Apr. 5, 2010), *aff'd*, 17 A.3d 1269 (Pa. Super. 2011). A copy of my opinion is supplied in response to Question 13(c).

Counsel for the Commonwealth:
Assistant District Attorney Patricia Broscius
669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Trial counsel for the defendant:
Erv McLain, Esquire
Dodson Building, Second Floor
561 Main Street, Suite 275
Bethlehem, Pennsylvania 18018
(610) 866-9700

Post-conviction collateral relief counsel for the defendant:
Stuart Wilder, Esquire
Pratt, Brett & Luce, P.C.
68 East Court Street
P.O. Box 659
Doylestown, Pennsylvania 18901
(215) 345-1600

Robert E. Goldman, Esquire
Law Office of Robert E. Goldman, LLC
P.O. Box 239
Fountainville, Pennsylvania 18923
(215) 348-2605

8. *Lititz Insurance Co. v. Jenkins, et al.*, No. C-48-CV-2009-9069 (C.P. Northampton June 30, 2011), *aff'd*, No. 2020 EDA 2011 (Pa. Super. May 21, 2012) (unpublished). Opinions supplied in response to Question 13(c).

Counsel for the plaintiff:
Mark J. Conner, Esquire
Law Office of Mark J. Connor
535 North Church Street
West Chester, Pennsylvania 19380
(610) 719-1941

Counsel for the defendant:
James M. Turner, Jr., Esquire
Furia and Turner
1719 Rittenhouse Square
Philadelphia, Pennsylvania 19103
(800) 203-2725

Annette Ferrara, Esquire
920 McKean Street
Philadelphia, Pennsylvania 19148
(267) 879-6512

9. *Commonwealth v. Pascal*, No. CP-48-CR-1976-2006 (C.P. Northampton June 30, 2008), *aff'd*, No. 630 EDA 2008 (Pa. Super. June 8, 2009). Opinions supplied in response to Question 13(c).

Counsel for the Commonwealth:
First Deputy Assistant District Attorney Terrence Houck
Assistant District Attorney Michele Kluk
669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Trial counsel for the defendant:
Mark S. Refowich, Esquire (deceased)

Victor E. Scomillio, Esquire
Boyer, Holzinger, Harak & Scomillio
1216 Linden Street
P.O. Box 1409
Bethlehem, Pennsylvania 18016
(610) 867-5023

Post-conviction collateral relief counsel for the defendant:
Robert E. Sletvold, Esquire
29 South Law Street
Allentown, Pennsylvania 18101
(610) 332-9585

10. *Commonwealth v. Hetzel*, No. CP-48-CR-3255-2000 (C.P. Northampton Sept. 13, 2012), *aff'd*, No. 2664 EDA 2012 (Pa. Super. July 3, 2013). Opinions supplied in response to Question 13(c).

Counsel for the Commonwealth:
Assistant District Attorney William Blake

669 Washington Street
Easton, Pennsylvania 18042
(610) 559-3020

Counsel for the defendant:
Pro se.

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

I am unaware of any cases in which a party requested *certiorari* from the United States Supreme Court.

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

Commonwealth v. Austin, No. CP-48-CR-2008-2008 (C.P. Northampton Aug. 24, 2010), *rev'd*, No. 1092 EDA 2011 (Pa. Super. Mar. 11, 2011). Opinions supplied.

A jury convicted the defendant of 96 counts of possession of child pornography. After the convictions, but prior to sentencing, another jury convicted the defendant of a number of other offenses, including raping a child. At sentencing in this matter, I sentenced the defendant to an aggregate sentence of a period of state confinement for a minimum of 72 years to a maximum of 192 years. The defendant appealed from the judgment of sentence. On appeal, the Superior Court affirmed the defendant's convictions, but the court vacated the judgment of sentence as excessive because the sentences for possession of child pornography were run consecutively, rather than concurrently. On remand for resentencing, I resentenced the defendant to a period of incarceration for a minimum of 35 years to a maximum of 70 years, and I ran that sentence consecutive to the defendant's sentence in the child rape matter (in which, after also determining that the defendant was a sexually violent predator ("SVP"), I sentenced him to a minimum of 15 years to a maximum of 40 years; the SVP determination, the sentence, and the defendant's convictions in that case were upheld on appeal). The Superior Court affirmed the new judgment of sentence. *See Commonwealth v. Austin*, 66 A.3d 798 (Pa. Super. May 13, 2013).

Commonwealth v. Watterson, CP-48-CR-2077-2007 (C.P. Northampton Dec. 29, 2009, *rev'd*, 2640 EDA 2009 (Pa. Super. Nov. 23, 2010). Opinions supplied.

A jury convicted the defendant of statutory sexual assault and other offenses, and the defendant appealed from his judgment of sentence to the Superior Court. On appeal, the Superior Court vacated the judgment of sentence and remanded the case for a retrial. The Superior Court determined that a mistrial should have been

granted based on the prosecutor's comments in her opening statement that the victim was a virgin at the time of the alleged sexual assault. The court found that the prosecutor's comments violated the rape shield law and my curative instruction to the jury was insufficient to eliminate any prejudice to the defendant. The Commonwealth filed a petition for allowance of appeal with the Supreme Court of Pennsylvania, which the Court denied. *See Commonwealth v. Watterson*, No. 960 MAL 2010 (Pa. Oct. 25, 2011).

Commonwealth v. Alvin, No. CP-48-CR-1226-2002 (C.P. Northampton Feb. 27, 2003), *rev'd*, No. 236 EDA 2003 (Pa. Super. Oct. 14, 2003). Opinions supplied.

The police subjected the defendant to an investigative detention after determining that he and another individual met the description of individuals involved in a strong-armed robbery. The defendant provided the police with his identification, and the police discovered that there was an outstanding arrest warrant. During a subsequent search of the defendant, the police found cocaine in his possession and charged him with possession of cocaine and possession of cocaine with the intent to deliver. The defendant filed a pretrial motion seeking to suppress the results of the search because the police lacked the requisite reasonable suspicion to conduct an investigative detention. I denied the motion, and a jury eventually convicted him of the two charges. The defendant appealed. The Superior Court vacated the judgment of sentence and remanded the case for a new trial after concluding that the police pressured the defendant into giving his identification and, as such, the results of the investigative detention should have been suppressed.

In Re: Nomination Pet. of Mellert, No. C-48-CV-2003-1696 (C.P. Northampton Apr. 7, 2003), *rev'd* No. 713 CD 2003 (Pa. Cmwlth. Apr. 17, 2003). Opinions supplied.

I struck the incumbent candidate for township supervisor from the ballot after she failed to timely file her financial interests statement in the proper manner with the local governing authority. On appeal, the Commonwealth Court reversed my decision, finding that the challenger to the candidate's nomination petition lacked standing to file the challenge.

Commonwealth v. Watley, No. CP-48-CR-1701-2009 (C.P. Northampton Sept. 28, 2011), *rev'd*, No. 1480 EDA 2011 (Pa. Super. May 18, 2012), *withdrawn*, No. 1480 EDA 2011 (Pa. Super. July 19, 2012).

A jury convicted the defendant of possessing ecstasy with the intent to deliver. The defendant appealed from his judgment of sentence and claimed that the evidence presented at trial was insufficient to sustain his conviction because the Commonwealth did not introduce an expert to testify that he possessed the ecstasy with the intent to deliver. The Superior Court, in a 2-1 unpublished decision filed on May 18, 2012, reversed the conviction, finding that the Commonwealth should have had an expert testify during the trial. However, based in part on the

dissenting opinion by the Honorable Gene Strassburger, the Superior Court withdrew the prior decision and granted argument *en banc*. The case is still pending final disposition by the Superior Court.

United States v. DiPaola, *aff'd*, No. 200602442 (N-M. Ct. Crim. App. Oct. 16, 2007), *rev'd*, No. 08-200/NA (C.A.A.F. Dec. 18, 2008). Opinions attached.

At a general court-martial, the officer members convicted the defendant of making a false official statement and two specifications of indecent assault. The members then determined the sentence, which the convening authority approved. On appeal to the Navy-Marine Court of Criminal Appeals, the defendant claimed that I erred by not instructing the members on the mistake of fact defense pertaining to the specifications of indecent assault. The court affirmed the guilty findings and the sentence approved by the convening authority and, in doing so, concluded that I did not abuse my discretion in not instructing the members on mistake of fact. On appeal to the United States Court of Appeals for the Armed Forces, the court, by a 2-1 decision, concluded that I erred in not instructing the members on the affirmative defense of mistake of fact because there was "some evidence" to support the defense.

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

In my role as a judge of the Court of Common Pleas of Northampton County, approximately 95% of my opinions are unpublished. All of those opinions are stored in court files maintained by the Clerks of Court for our Civil Division, Criminal Division, and Orphan's Court. In addition, some of the more recent opinions are stored on a local database, which is available to the public on the court's website.

As a military trial judge, my rulings on pretrial motions were filed locally in the case file and, thus, there are no citations to these decisions. Also, unlike the procedure in Pennsylvania, there is no procedure for me to file written opinions justifying my trial rulings when cases proceed on appeal.

In my role as a military appellate judge, approximately 95% of my decisions were unpublished *per curiam* decisions. Those decisions are stored in the case file with the Office of the Judge Advocate General of the Navy.

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

Commonwealth v. Ballard, No. CP-48-CR-3058-2010 (C.P. Northampton Dec. 14, 2011). Opinion supplied in response to Question 13(c).

Commonwealth v. Collazo, No. CP-48-CR-1202-2012 (C.P. Northampton Dec. 13, 2012). Opinion supplied in response to Question 13(c).

Commonwealth v. Comstock, No. CP-48-CR-2006-648 (C.P. Northampton Oct. 31, 2007). Opinion supplied.

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

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.

As a military judge (both trial and appellate), there were no instances in which a party moved for my recusal.

As a state trial judge, I assess the necessity or propriety of a recusal by thoroughly considering Canon 3(c) of the Pennsylvania Code of Judicial Conduct, which delineates the grounds by which a judge should disqualify himself or herself from a particular case. Although there have been instances where I have recused myself from a case *sua sponte*, I do not maintain a list of such cases and cannot provide one.

As far as I can recall, the only instances where parties or litigants sought my recusal are the following:

Commonwealth v. Austin, No. CP-48-CR-2007-2008 (C.P. Northampton).
Prior to an evidentiary hearing on a petition for post-conviction collateral relief filed by the defendant, he orally moved for my recusal. The defendant essentially claimed that I was biased against him based on the sentences that I imposed in his two cases and comments that I made as part of my sentences in the cases. I carefully considered the defendant's request under the Code of Judicial Conduct and Pennsylvania Rule of Criminal Procedure 903(C) and denied the request. I determined that the interests of justice did not warrant my recusal because I was able to fairly and impartially analyze the defendant's claims raised in his petition.

Commonwealth v. Davis, No. CP-48-CR-1933-2004 (C.P. Northampton).
The defendant moved for my recusal as part of a petition for post-conviction collateral relief; however, he withdrew the motion before I had to address or dispose of the motion.

Commonwealth v. Alvin, No. CP-48-CR-1323-2003 (C.P. Northampton).
A jury found the defendant guilty of first-degree murder, and the appellate courts affirmed his conviction and sentence on appeal. After the defendant exhausted his direct appeal rights, he filed two petitions for post-conviction collateral relief, which I denied. The defendant then filed a third petition for post-conviction collateral relief, and I appointed counsel to assist the defendant in prosecuting the petition. The defendant followed my order appointing counsel by filing a *pro se* document titled, "My Will and Holographic Testament." In this document, he bequeathed me his radio, a television, and his body. He also named me as the executor of his will. Despite the defendant apparently intending that this document serve as his will, he ended the document with a motion to recuse me as the judge to review his petition because I was now a beneficiary and executor of his estate. Since this was a blatant attempt to manipulate the court, I denied the defendant's request for my recusal since he failed to establish bias, prejudice or unfairness that would raise a substantial doubt as to my ability to preside impartially.

Taverna v. Atlantic Equity Van Buren Road, LLC, et al., Nos. C-48-CV-2004-7183, 2005-3971, 2005-6147, 2005-6599, 2005-8045, 2005-9063, 2006-5035, 2008-4720, 2008-10465.
Throughout the approximately eight years of this litigation, the *pro se* plaintiffs filed numerous motions seeking my recusal, most of which I believe were filed after a non-jury trial in which I entered judgment against them. In one instance, the plaintiffs moved for my recusal, and I held a hearing in open court. After hearing argument from the parties, I determined that I had no doubt that I could preside impartially over the proceedings and did not believe that my impartiality could be reasonably questioned. The plaintiffs filed an appeal from my decision, which was later quashed *sua sponte* by the Superior Court. *See Taverna v. Atlantic Equity Van Buren Road, LLC, et al.*, No. 2781 EDA 2008 (Pa. Super. Dec. 12, 2008).

Commonwealth v. Collazo, No. CP-48-CR-1202-2012 (C.P. Northampton). The defendant filed a motion seeking my recusal as the presiding judge in the death penalty matter because I previously presided over a protection from abuse proceeding between the defendant and the victim. The defendant withdrew the motion before I had the chance to rule on the motion.

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

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

Public offices (other than judicial offices):

1990 – 2001
Upper Nazareth Township
100 Newport Avenue
Nazareth, Pennsylvania 18064
Solicitor
Appointed by the Board of Supervisors of Upper Nazareth Township

1991 – 1999
Pennsylvania Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120
Special Deputy Attorney General
Appointed by then-Attorney General of Pennsylvania, Ernest D. Preate, Jr.

1996 – 1998
County of Northampton
669 Washington Street
Easton, Pennsylvania 18042
Assistant Solicitor
Appointed by former Northampton County Executive, William Brackbill

1997 – 2001
Northampton County Industrial Development Authority
669 Washington Street
Easton, Pennsylvania 18042
Solicitor
Appointed by the Board of the Northampton County Industrial Development Authority

Unsuccessful campaigns:

1996, Campaign for United States House of Representatives
1997, Campaign for Judge of the Court of Common Pleas of Northampton County

Unsuccessful nomination:

After I was recommended by a judicial advisory committee, former-Pennsylvania Governor Thomas Ridge nominated me to fill a vacancy on the Court of Common Pleas of Northampton County on March 27, 2001. The nomination was never considered by the Senate Judiciary Committee, and I was ultimately elected to the position in November 2001.

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

I have not held office in or rendered services to any political party or election committee. I have not held a position or played a role in a political campaign other than the two listed in my response to 15(a).

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 judicial clerk.

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

I never had a solo practice.

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

1984 – 1990
United States Navy, Judge Advocate General's Corps
1322 Patterson Avenue, SE, Suite 3000
Washington, D.C. 20374

Senior Trial/Defense Counsel, NLSO, Philadelphia, Pennsylvania (1988 – 1990)
Assistant Force Judge Advocate, Commander Naval Air Force U.S. Atlantic Fleet, Norfolk, Virginia (1987 – 1988)

1990 – present
United States Navy Reserve, Judge Advocate General's Corps
1322 Patterson Avenue, SE, Suite 3000
Washington, D.C. 20374
Counsel (1990 – 2004)
Military Judge (2004 – 2007, 2008 – 2009, 2011 – 2012)
Rule of Law Advisor (2007 – 2008)
Commanding Officer (2009 – 2011, 2012 – present)

1990 – 2001
DeRaymond & Smith
717 Washington Street
Easton, Pennsylvania 18042
Partner

1990 – 2001
Upper Nazareth Township
100 Newport Avenue
Nazareth, Pennsylvania 18064
Solicitor

1991 – 1999
Pennsylvania Office of Attorney General
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120
Special Deputy Attorney General

1996 – 1998
County of Northampton
669 Washington Street
Easton, Pennsylvania 18042
Assistant Solicitor

1997 – 2001
Northampton County Industrial Development Authority
669 Washington Street
Easton, Pennsylvania 18042
Solicitor

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant

matters with which you were involved in that capacity.

While I was in private practice, I occasionally served as an arbitrator as part of Northampton County's arbitration procedure. This procedure calls for mandatory arbitration in any case where the amount in controversy is less than $50,000. When called to serve as an arbitrator, I would sit on a panel with two other attorneys. I do not recall the particular matters in which I sat as an arbitrator.

b. Describe:

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

My civilian law practice was a two-attorney general practice that terminated in January 2002 when I assumed the bench. As a general practitioner, I handled many different types of civil matters including, among other subjects, divorce and custody cases, wills and estates, real estate transactions, and general civil litigation.

While I was in private practice, I also served as a solicitor for Upper Nazareth Township, the Northampton County Industrial Development Authority, and Northampton County. From 1990 until 2001, I served as solicitor to the Upper Nazareth Township Board of Supervisors and the Planning Commission. From 1996 until 1998, I served as an assistant solicitor to Northampton County and represented various county departments including, among others, the prison, the Sheriff's department, the civil division, the criminal division, the orphan's court, and the recorder of deeds. From 1997 until 2001, I served as solicitor for the Northampton County Industrial Development Authority and assisted with processing economic development loans and related legal matters.

While I was on active-duty with the U.S. Navy Judge Advocate General's Corps, my first assignment after completing the Basic Lawyer Course at the Naval Justice School was as an assistant force judge advocate for the Commander Naval Air Force, U.S. Atlantic Fleet in Norfolk, Virginia. My duties included handling disciplinary matters, reviewing disciplinary actions of subordinate commanders, conducting and reviewing investigations, and generally providing legal advice to the Admiral and his staff.

My second assignment on active duty was as defense counsel (and ultimately senior defense counsel) at Naval Legal Service Office, Naval Base, Philadelphia, Pennsylvania. In this role I represented Navy and Marine Corps personnel at courts-martial, administrative discharge boards, non-judicial punishment hearings, medical boards and review boards.

Later in this tour I was reassigned as senior trial counsel, and I was responsible for prosecuting cases at courts-martial, providing legal advice to commanders, and supervising the trial (prosecution) department.

After leaving active duty, I affiliated with the Navy Reserve and have been in a drilling capacity for the past 23 years. I started as defense counsel and as I moved up in rank I assumed positions of greater responsibility, including positions as a military trial judge, military appellate judge, executive officer, and two tours as a commanding officer. I was also recalled to active duty in 2007 and deployed to Iraq as the Rule of Law Advisor for Task Force 134, Multinational Force Iraq.

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

During my time as a private practitioner, my practice was properly characterized as a general practice and my typical clients were individuals and businesses located in the Lehigh Valley. I also performed municipal work in my role as solicitor to Upper Nazareth Township, and I assisted Northampton County in my roles as solicitor for the Northampton County Industrial Development Authority and assistant solicitor for Northampton County. I also represented the state of Pennsylvania in my role as a special deputy attorney general for the post-trial work on a murder case.

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.

While on active duty in the military and assigned as an assistant force judge advocate, I often advised the command regarding litigation, but I was not a litigator. As trial defense counsel, I was primarily a litigator and I handled approximately 17 general courts-martial, 204 special courts-martial, and 37 article 32 investigations.

While in private practice, although I appeared in court on a relatively frequent basis for various types of court proceedings, including oral arguments, miscellaneous hearings, and child custody and divorce proceedings, I did not have a practice that involved significant amounts of trial litigation. Thus, trial litigation was a very small part of my practice.

i. Indicate the percentage of your practice in:
   1. federal courts: 5%
   2. state courts of record: 95%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 80%
2. criminal proceedings: 20%

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

I cannot recall the precise number of cases that I tried to verdict, judgment or final decision. Nonetheless, to the best of my knowledge, I tried at least 25 cases before civilian and military tribunals to verdict, judgment or final decision.

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 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.

The information requested dates back over ten years and, unfortunately, I no longer have access to the records relating to my private practice. In particular, upon becoming a judge, I left my records with my former law firm and that law firm no longer exists. Additionally, I attempted to search for cases through our Prothonotary's Office, but that office upgraded its file retention system in approximately 2000 and the overwhelming majority of cases filed prior to that time were not transferred over to the new system because they were not "active" cases at the time of the system upgrade.

With respect to my non-judicial litigation experience in the Navy, I do not have access to the records of specific cases that I handled while a trial counsel in the Navy. I do have records indicating that I handled 17 general courts-martial (15 for the defense; two for the prosecution), 204 special courts-martial (180 for the defense; 24 for the prosecution), and 37 Article 32 Investigations (34 for the defense; three for the prosecution). Despite the lack of available records, I have attempted to identify significant cases with as much specificity as I can recall and provide the information that I obtained through my investigation.

1. *Senick v. Senick*, No. C-48-CV-1992-9896 (C.P. Northampton); The Honorable James C. Hogan of the Court of Common Pleas of Northampton County (now serving as a senior judge); 1991 – 1998.

Four brothers owned a variety of corporations and partnerships including an excavating business, an oil company, and a number of rental properties. Disagreements arose among the brothers, and I represented two of the brothers who sued under the Pennsylvania Corporation Law for an accounting, the appointment of a receiver and partition. A receiver was appointed and the various properties and corporate assets were sold. During the pendency of this dissolution, one of my clients died, and one of the remaining brothers filed a declaratory judgment action against the brother that I represented and the estate of the deceased brother to have a property owned by the three brothers be deemed owned by just the two surviving brothers, a position my client and the estate opposed. After a non-jury trial, a verdict was entered in the estate's and my client's favor. Although the plaintiff appealed from the verdict to the Superior Court of Pennsylvania, the plaintiff eventually withdrew the appeal.

For J. Senick, Jr.:
Thomas J. Maloney, Esquire
Maloney, Danyi, O'Donnell & Tranter
901 West Lehigh Street
P.O. Box 1279
Bethlehem, Pennsylvania 18016
(610) 691-3450

Court-appointed receiver:
William B. Joachim, Esquire (deceased)

For Timpko, as Executor of the Estate of M. Senick, Jr.
Charles Bruno, Esquire
Pfeiffer, Bruno, Minotti & DeEsch
44 North Second Street
P.O. Box 468
Easton, Pennsylvania 18044
(610) 258-4003

2. *Commonwealth v. DiVentura*, No. CP-48-CR-1787-1976 (C.P. Northampton); The Honorable Richard D. Grifo of the Court of Common Pleas of Northampton County (deceased); January 1991 – December 2001.

The defendant was convicted of first-degree murder for the strangulation death of his estranged wife. On January 2, 1991, the Pennsylvania Attorney General appointed me as a special deputy attorney general for the purpose of representing the Commonwealth in this matter. At the time of my appointment, the defendant had filed a petition for post-conviction collateral relief. To accommodate the defense, the hearing on the petition for post-conviction relief was held in the Luzerne County Courthouse before Judge Grifo. Ultimately, Judge Grifo denied relief and his decision was affirmed on appeal. The defendant continued to file post-conviction petitions, all of which were denied. On one occasion, the Superior Court of Pennsylvania affirmed one of Judge Grifo's orders denying a post-conviction petition, in the nature of a writ for *habeas corpus*, in a published decision. *See Commonwealth v. DiVentura*, 734 A.2d 397 (Pa. Super. 1999).

Counsel for the defendant:
Philip D. Lauer, Esquire
701 Washington Street
Easton, Pennsylvania 18042
(610) 258-5329

3. *Hoffmeister v. Keystone Millwork and Constr. Co., Inc., et al.*, No. C-48-CR-1999-4669 (C.P. Northampton); The Honorable Robert A. Freedberg of the Court of Common Pleas of Northampton County (retired); 1999 – 2001.

One of the defendants, Skepton Construction, Inc., was the general contractor for the construction of a school. Another defendant, United States Fidelity & Guaranty Company, was responsible under a payment bond. When the general contractor encountered problems with the original subcontractor responsible for installing millwork, the general contractor's owner contacted the plaintiff to finish the work. The plaintiff accepted the offer and proceeded to complete the work. While completing the work, the plaintiff regularly submitted invoices for payment; however, the defendant general contractor failed to pay the full amount of the invoices. I filed a civil action on behalf of the plaintiff. I also filed a brief and argued in opposition to preliminary objections filed by the defendant, which the court eventually denied. I engaged in discovery, which included litigating motions to compel. Upon my election as a judge, the case was transferred to substitute counsel. After a non-jury trial in 2006, judgment was eventually entered in favor of the plaintiff and against Skepton Construction, Inc. in the amount of approximately $284,000 and United States Fidelity & Guaranty Company in the amount of approximately $128,000.

Counsel for Saucon Valley School District:
Domenic P. Sbrocchi, Esquire
King, Spry, Herman, Freund & Faul, LLC
One West Broad Street, Suite 700

Bethlehem, Pennsylvania 18018
(610) 332-0390

Counsel for Keystone Millwork and Construction Company, Inc., Kavusak, Skepton Construction, Inc., and United States Fidelity and Guaranty Company:
Joseph F. Leeson, Jr., Esquire
Leeson, Leeson & Leeson
70 East Broad Street
P.O. Box 1426
Bethlehem, Pennsylvania 18016
(610) 691-3320

4. *Kise v. Commonwealth of Pennsylvania, Dep't of Mil. and Veteran's Affairs and the Adjutant Gen. of Pennsylvania*, No. 1205 CD 2000, 784 A.2d 253 (Pa. Cmwlth. 2001) (*en banc*), *rev'd*, 832 A.2d 987 (Pa. 2003); 2000 – 2001.

I represented Kise, who had served as a dually-enlisted member of the United States National Guard and the Pennsylvania Army National Guard on full-time active service as part of the Active Guard/Reserve program. In mid-2000, the Adjutant General of Pennsylvania conducted an investigation of Kise and ordered him separated from the Active Guard/Reserve program for cause because of misconduct. Despite his separation from the program, he continued to serve as an active member of the Pennsylvania Army National Guard. On Kise's behalf, I filed a petition for review in the Commonwealth Court of Pennsylvania. I argued that Kise's due process rights were violated in the investigation and, as such, the court should vacate the separation order. The Commonwealth of Pennsylvania, Department of Military and Veteran's Affairs (the "Department") filed a motion to dismiss claiming the Commonwealth Court lacked jurisdiction over Kise's petition because the case was federal in nature insofar as Kise was separated only from the United States National Guard. The Commonwealth Court initially granted a stay of the separation order, but the Department of Military and Veterans Affairs refused to restore Kise to his full-time position. I then filed a petition to hold the Department in contempt. The Commonwealth Court denied the petition for contempt and vacated the stay because of concerns that the court lacked jurisdiction. The Commonwealth Court, sitting *en banc*, issued a divided opinion in which the majority determined that the court had jurisdiction over the case and the Adjutant General abused his discretion in failing to address certain considerations that were required to be included in a separation inquiry. The Department appealed from the Commonwealth Court's decision to the Supreme Court of Pennsylvania. Shortly after the Department filed the petition, I withdrew my appearance in the case because of my election as judge. On appeal with the Supreme Court, the Court considered an issue of first impression concerning whether judicial review of a military personnel decision by the National Guard is appropriate. Although the Court concluded that the Commonwealth Court had jurisdiction to review the decision of the Adjutant General, the Court also concluded that the Adjutant General acted within his discretion in issuing the separation order.

Additional Counsel for Kise:
Wendy A. Nicolosi, Esquire
Broughal & DeVito LLP
38 West Market Street
Bethlehem, Pennsylvania 18018
(610) 865-3664

Ellen S. Kingsley, Esquire
162 South Union Street
Easton, Pennsylvania 18042
(610) 258-7079

Counsel for the Department of Military and Veteran's Affairs:
Eclemus Wright, Esquire
Michael C. Barrett, Esquire
Pennsylvania Department of Military and Veteran's Affairs
Fort Indiantown Gap
Annville, Pennsylvania 17003
(717) 861-8503

Counsel for the United States Department of Justice:
Mary C. Frye, Esquire
United States Department of Justice
Office of the United States Attorney
228 Walnut Street
Harrisburg, Pennsylvania 17108
(717) 221-4482

Counsel for the Pennsylvania National Guard:
Thomas G. Kane, Esquire
Fort Indiantown Gap
Annville, Pennsylvania 17003
(717) 861-8635

5. *United States v. Raven*; Convening Authority: Naval Weapons Station Earle; Military Judge: Captain Walter J. Landen, Sr., 1988.

The case was referred for a general courts-martial. The defendant and another Marine stole an M-16 rifle from a guard office at the Naval Weapons Station Earle and smuggled out rounds of ammunition. After becoming intoxicated, the defendant fired 30 rounds from the rifle into a neighborhood in Belmar, New Jersey, killing a cat, severing a television cable line, and endangering the lives of the residents within a four-block radius. The defendant was facing a maximum of 25 years in a military prison for the related charges. I was assigned to represent the defendant and was able to negotiate a pretrial agreement for a maximum of 20 months of incarceration. At the sentencing hearing, the prosecution put on a robust case in aggravation. I presented the case in

extenuation and mitigation, which resulted in a sentence of only seven months of incarceration.

Counsel for the prosecution:
Captain Bernard E. Delury
Superior Court of New Jersey, Atlantic County Vicinage I
Criminal Division
Criminal Court Complex
4997 Unami Boulevard
Mays Landing, New Jersey 08330
(609) 909-8217

6. *Administrative Discharge Board for R. Jackson*, United States Naval Reserve, Naval Reserve Center, Kearny, New Jersey, 1998 – 1999.

The respondent reservist tested positive for cocaine after a urinalysis test. As a result of the positive drug test, the command instituted discharge proceedings against him. The respondent denied knowingly using cocaine and demanded an Administrative Discharge Board. I was assigned as the recorder (prosecutor) for the Board. At the Board, the respondent argued that the positive test result was caused by a recent medical procedure involving spinal anesthesia. I countered this argument with expert testing that such a procedure could not cause the positive test result. The Board agreed with my contention and found that the respondent had committed misconduct due to drug abuse. As such, the Board recommended that the respondent receive an other-than-honorable discharge from the Navy.

Members of the Administrative Board:

Captain Jeffrey C. Milanette
(could not locate address or phone number)

Commander Erik A. Tobiason
(could not locate address or phone number)

Lieutenant Commander William R. Greenough
(could not locate address or phone number)

Counsel for the respondent:
Lawrence M. Frangiosa
1220 Valley Forge Road, Suite Three
Phoenixville, Pennsylvania 19460
(610) 935-3373

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.)

Northampton County Court has been inundated with asbestos-related civil filings due in large part to the Bethlehem Steel plant located in Northampton County prior to its closing. The asbestos-related cases are complicated by the numerous named defendants that have filed for bankruptcy, the trust funds established as a result of those bankruptcies, and the common difficulty of product identification due to the long latency period between exposure and disease. As Presiding Judge of the Asbestos Division since 2004, I have had the opportunity to manage this complex process, which involves the grouping of multiple cases for trial before a single jury.

In my capacity as a military trial judge, I was detailed to conduct two separate ethics investigations: one of an active duty judge and the other of an active duty defense counsel. My responsibilities included thoroughly investigating the allegations of professional misconduct, which included interviewing all witnesses and reviewing the relevant transcripts and other documents. In each case, I prepared a report with recommendations to the Rules Counsel.

As part of my service with the United States Navy, I spent six months as the Rule of Law Advisor for Task Force 134, Multi-National Force Iraq, in Baghdad, Iraq, during Operation Iraqi Freedom. In this position, I directly contributed to the effort at implementing the Rule of Law in Iraq and to create the conditions for the reintegration of coalition detainees into Iraqi society.

As solicitor to the Northampton County Industrial Development Authority, I was responsible for reviewing bond applications, advising the Authority's Board, preparing the necessary legal documentation relating to the issuance of the bonds, and ensuring compliance with the terms of the bonds. These bonds were instrumental in attracting and retaining some of the most successful enterprises in the Lehigh Valley.

I have not performed any lobbying activities.

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

Effective December 1, 2012, I assumed command of NR Naval Justice School 0101, which supports the Naval Justice School in Newport, Rhode Island, by providing subject matter experts to serve as instructors of various courses at the school. In addition to serving as commanding officer, my expertise is in military justice.

From October 1, 2000 to September 30, 2001, I was assigned to Naval Reserve Naval War College (LAW) 101 as a reserve instructor at the college in the areas of international and operational law. I have been unable to locate a syllabus.

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

    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 am currently serving as a Captain in the United States Navy Reserve, assigned to a two-year billet as the Commanding Officer of NR Naval Justice School 0101 in Newport, Rhode Island. I am prepared to retire from the Navy if appointed to serve as a judge on the federal bench.

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.

        To the best of my knowledge, the only possible potential conflict-of-interest that could arise is if there are federal habeas corpus proceedings where I presided over the underlying conviction. I would recuse myself from any matter in which I had any prior judicial involvement.

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 as a federal judge, I would adhere to the Code of Conduct for United States Judges and any other relevant canons, statutes or rules in resolving any potential conflicts of interest and in determining whether my recusal is appropriate under the circumstances.

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

As an attorney, I was involved in the Northampton County Bar Association Pro Bono Program. As part of my involvement, the Bar Association would assign various cases to me throughout the year, as needed. I handled numerous matters for various indigent individuals. I also represented the Brown & Lynch American Legion Post No. 9 and assisted with any legal issues that arose.

26. **Selection Process**:

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

In December 2012, I received a letter from the office of Senator Patrick Toomey inviting persons interested in being considered for appointment to the position of United States District Court Judge for the Eastern District of Pennsylvania to submit an application to the Federal Judicial Nominating Committee formed by Senator Toomey and Senator Robert Casey, Jr. On January 4, 2013, I submitted an application, and on April 23, 2013, I was interviewed in Philadelphia by the Committee. On April 30, 2013, I interviewed with Senator Toomey in Allentown, Pennsylvania, and on May 23, 2013, I interviewed with Senator Casey and his staff in Washington, D.C. Since May 31, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 2, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On August 1, 2013, 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. 1/2013

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
Smith, Edward G.	U.S. District Court, Eastern District of Pennsylvania	08/01/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Judge - Nominee	☑ Nomination Date 08/01/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 07/31/2013
7. Chambers or Office Address		
Northampton County Courthouse 669 Washington Street Easton, PA 18042		

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.*

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

☑ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.		
2.		
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2002	Participation in Pennsylvania State Employees Retirement System
2.	1984	U.S. Navy Retirement Benefit
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Smith, Edward G.	Date of Report 08/01/2013

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.	2013	Commonwealth of Pennsylvania, judge's salary	$101,074.75
2.	2012	Commonwealth of Pennsylvania, judge's salary	$169,541.00
3.	2011	Commonwealth of Pennsylvania, judge's salary	$163,792.38
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Smith, Edward G.	Date of Report 08/01/2013

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.	Navy Federal Credit Union	Credit Card	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Smith, Edward G.	08/01/2013

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. Smith Gas Lease Investors, LP	C	Royalty	K	W	Exempt				
2. Alger Capital Appreciation Fund	B	Dividend	J	T					
3. Comcast Corp stock	A	Dividend	J	T					
4. American Funds American High-Income Trust Fund	B	Dividend	K	T					
5. American Funds American Mutual Fund	A	Dividend	J	T					
6. American Funds EuroPacific Growth Fund	A	Dividend	J	T					
7. American Funds Fundamental Investors	B	Dividend	K	T					
8. American Funds New Perspective Funds	A	Dividend	J	T					
9. American Funds SMALLCAP World Fund	A	Dividend	J	T					
10. Santander stock	A	Dividend	J	T					
11. Global X Silver Miners ETF	A	Dividend	J	T					
12. Power Shares QQQ Trust	A	Dividend	J	T					
13. Southwest Airlines stock	A	Dividend	J	T					
14. USAA Money Market Fund	A	Dividend	J	T					
15. Northwestern Mutual Whole Life Insurance Policy	A	Dividend	K	T					
16. USAA Subscriber Savings Account	A	Distribution	J	T					
17. PNC Bank Account	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4) A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000; 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 5 of 6	Name of Person Reporting Smith, Edward G.	Date of Report 08/01/2013

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Smith, Edward G.	Date of Report 08/01/2013

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/ **Edward G. Smith**

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		10	280	Notes payable to banks-secured (auto)		5	330
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		97	044	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		18	325
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		412	300
Real estate owned – see schedule		675	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	000				
Cash value-life insurance		17	170				
Other assets itemize:							
PSERS pension plan		901	734				
Smith Gas Lease Investors LP		50	000				
USAA Subscriber Account		5	940	Total liabilities		435	955
				Net Worth	1	381	213
Total Assets	1	817	168	Total liabilities and net worth	1	817	168
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	
Alger Capital Appreciation Fund	$ 13,749
American Funds American High-Income Trust Fund	16,485
American Funds American Mutual Fund	3,369
American Funds EuroPacific Growth Fund	3,926
American Funds Fundamental Investors	21,529
American Funds New Perspective Fund	9,828
American Funds SMALLCAP World Fund	11,092
Comcast Corp. stock	1,002
Evercel stock	160
Global X Silver Miners ETF	4,334
Panasonic Corp. stock	405
PowerShares QQQ Trust	1,426
Santander stock	7,132
Southwest Airlines stock	1,289
USAA Money Market Fund	1,318
Total Listed Securities	$ 97,044

Real Estate Owned	
Personal residence	$ 575,000
Family home (1/7th share)	100,000
Total Real Estate Owned	$ 675,000

Real Estate Mortgages Payable	
Personal residence – mortgage	$ 374,100
Personal residence – home equity line of credit	38,200
Total Real Estate Mortgages Payable	$ 412,300

AFFIDAVIT

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

8/5/2013
(DATE)

(NAME)

Jill M. Cicero
(NOTARY)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Jill M. Cicero, Notary Public
City of Easton, Northampton County
My Commission Expires Oct. 16, 2016
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary regarding the Nominations of:

Michelle T. Friedland, to be United States Circuit Judge for the Ninth Circuit
Christopher Reid Cooper, to be United States District Judge for the District of Columbia
Gerald Austin McHugh, Jr., to be United States District Judge for the Eastern District of Pennsylvania
M. Douglas Harpool, of Missouri, to be United States District Judge for the Western District of Missouri
Edward G. Smith, to be United States District Judge for the Eastern District of Pennsylvania

November 6, 2013

Madame Chairwoman,

I join you in welcoming the nominees who are here today with their families and friends. Being nominated to the federal judiciary is a significant accomplishment and reflects well on the career of each of our nominees. This is a proud moment for them and their families.

Today's hearing is the 15th judicial nominations hearing this year during which we will have considered a total of 53 judicial nominees. This hearing record is especially remarkable when you compare this pace to the first year of President Bush's second term.

I recognize that many members serving in the Senate today were not here during the Bush presidency, so some may not be fully aware of the history of judicial nominations. But just to compare, at this stage in President Bush's second term, the Committee had held only 5 hearings for 12 nominees. In fact, during 2005, the Judiciary Committee would go on to hold only one more hearing before adjourning. They would close the year having held only 6 hearings for 15 district and circuit nominees. Again, we have greatly exceeded that number – we are now in our 15th hearing, having considered 53 nominees.

How are we doing this year compared to last year? 2012 was a very productive year for judicial nominations. In fact, in the 112th Congress, President Obama had more District Judges confirmed than were confirmed in any of the previous 8 Congresses. Our work last year contributed to that accomplishment when we held 10 hearings for 41 judicial nominees.

So whether you compare this year's record to the way President Bush was treated in his 5th year in office, or compare to last year, our hearing schedule this year clearly is at a much faster pace – 15 hearings and 53 nominees.

I mention this record, because I know it is still fashionable to criticize Republicans for "unprecedented obstruction" of President Obama's judicial nominees. But let me remind everyone that we have now confirmed 38 lower court Article 3 judicial nominees this year. That is more than two and a half times the number confirmed at a similar stage in President Bush's second term, when only 14 judicial nominees had been confirmed.

In total, the Senate has confirmed 209 lower court Article 3 judges. We have voted against three nominees. 209 - 3 is a success rate of 99 percent. I think that is a pretty outstanding record, for any President.

We have before us five judicial nominees. Let me say a word about each of them.

Michelle T. Friedland is nominated to be United States Circuit Judge for the Ninth Circuit. She received her B.S. from Stanford University in 1995, studied at Oxford University as a Fulbright Scholar, and then received her J.D. from Stanford Law School in 2000. After graduation, she served as a law clerk first to the Honorable David Tatel on the United States Court of Appeals for the D.C. Circuit, and then to Justice O'Connor on the Supreme Court of the United States. Ms. Friedland then worked as a Lecturer in Law at Stanford Law School teaching courses entitled "Environmental Law" and "Federal Jurisdiction."

In 2004, Ms. Friedland joined the firm of Munger, Tolles & Olson as an associate. She became a partner in the firm in 2010. Her practice as an associate was focused on litigation, specifically in the areas of business and constitutional disputes. Her role during her time as an associate focused on dispositive brief-writing in trial courts or on appeal. As a senior associate, and now as a partner, her practice is focused primarily on representing pharmaceutical companies in antitrust litigation; representing the University of California in constitutional litigation and class action defense; and representing primarily non-profits in appeals involving constitutional issues.

Most of Ms. Friedland's practice has been in litigation. She has tried two civil cases to verdict, and in both she served as associate counsel. The American Bar Association Standing Committee on the Federal Judiciary unanimously rated her Well Qualified.

Christopher Reid Cooper is nominated to be United States District Judge for the District of Columbia. He received his B.A. from Yale University in 1988, and his J.D. from Stanford Law School in 1993. After graduation, Mr. Cooper clerked for Chief Judge Abner J. Mikva of the United States Court of Appeals for the District of Columbia Circuit. Upon completion of his clerkship, he served for two years as a Special Assistant to the Deputy Attorney General at the United States Department of Justice. His responsibilities included supporting the Deputy Attorney General and other members of the Department's leadership in the areas of legislative affairs, judicial candidate vetting, and professional responsibility.

In 1996 he joined the firm of Miller, Cassidy, Larroca & Lewin as an associate and made partner in 2000. In 2000 Miller Cassidy merged with Baker Botts and he became a partner of the Washington office of Baker Botts. His practice during this time involved a mix of civil and

white-collar criminal litigation; grand jury and other government investigations; and internal corporate investigations.

In 2010, Mr. Cooper transferred to the Baker Bott's London office, and in February 2012 he joined the London office of Covington & Burling. While in London, his practice focused primarily on representing clients in matters related to the Foreign Corrupt Practices Act and other international anti-corruption statutes. In September of 2013, Mr. Cooper joined Covington's D.C. office.

According to his questionnaire, Mr. Cooper has spent approximately 90% of his practice in litigation, including cases involving government and internal investigations. He has tried two cases to verdict as associate counsel. The American Bar Association Standing Committee on the Federal Judiciary gave Mr. Cooper a rating of Majority "Well Qualified"; Minority "Qualified".

Gerald Austin McHugh, Jr. is nominated to be United States District Judge for the Eastern District of Pennsylvania. Mr. McHugh received his A.B. from St. Joseph's University in 1976 and his J.D. from the University of Pennsylvania Law School in 1979. Upon graduation, Mr. McHugh clerked for the Honorable Edmund B. Spaeth Jr. on the Superior Court of Pennsylvania and then for the Honorable Alfred L. Luongo on the United States District Court for the Eastern District of Pennsylvania. In 1981 Mr. McHugh joined Litvin, Blumberg, Matusow & Young where the majority of his practice was focused on complex civil litigation with an emphasis on tort, insurance, and civil rights matters and a small percentage focused on commercial matters. In 2004, Mr. McHugh became a Partner at Raynes McCarty where his practice has largely remained the same. According to his questionnaire, Mr. McHugh has represented a variety of clients including professionals, white and blue collar workers, homemakers, the elderly, the disabled, and children. The majority of the cases Mr. McHugh litigated involved tort claims, including aviation disasters, vehicle accidents, medical malpractice, or liability for defective products.

Although his career has been primarily plaintiff advocacy, he has been active in other areas outside his practice with Raynes McCarty. According to his questionnaire, Mr. McHugh contributed to the passage of six statutes in Pennsylvania as well as the Restatement, 3d, of Torts. In addition to has served as a mediator or arbitrator on a number of occasions. Mr. McHugh chairs a number of committees and organizations including Pennsylvania's Interest on Lawyers Trust Account Board and the Pennsylvania Legal Aid Network.

Mr. McHugh estimates that he has tried 33 cases to verdict, judgment, or final decision. The American Bar Association Standing Committee on the Federal Judiciary unanimously gave Mr. Cooper a rating of "Well Qualified."

M. Douglas Harpool, of Missouri is nominated to be United States District Judge for the Western District of Missouri. Mr. Harpool received his B.S. from Missouri State University in 1977, and his J.D. from the University of Missouri – Columbia School of Law in 1980. After graduating, Mr. Harpool joined the firm of Daniel, Clampett, Lilly, Dalton, Powell & Cunningham as an associate. He worked primarily in civil litigation in the field of personal injury law. In 1985, he became a partner and his practice expanded to include civil litigation defending governmental

liability claims and medical negligence claims as well as employment law cases. In 2002, he joined the firm of Cunningham, Harpool & Cordonnier, LLC as a partner where his practice focused on employment law and government liability cases. In 2004, Mr. Harpool joined the firm of Lathrop & Gage, LLP as a partner where his practice expanded to include civil rights litigation. Since 2006, he has been a partner at Baird, Lightner, Millsap & Harpool, P.C.

Mr. Harpool has spent the overwhelming majority of his career in civil litigation. He estimated that he has averaged at least three trials per year during his practice, totaling around 100 cases, to verdict, judgment or final decision. The American Bar Association Standing Committee on the Federal Judiciary unanimously rated him Well Qualified.

Edward G. Smith is nominated to be United States District Judge for the Eastern District of Pennsylvania. He received his B.A. from Franklin Marshall College in 1983 and earned his J.D. at Dickinson School of Law of the Pennsylvania State University in 1986. After law school he completed the Basic Lawyer Course at the Naval Justice School and became an assistant force judge advocate for the Commander Naval Air Force. There he handled disciplinary matters, conducted investigations, and provided legal advice to the Admiral. Judge Smith then transferred to the Naval Legal Service Office where he represented Navy and Marine Corps in multiple legal settings including courts-martial. After Judge Smith left active duty in 1990, he affiliated with the Navy Reserve and has continued participating with the Reserve to the present.

Returning to private practice, he joined with another attorney to create DeRaymond & Smith, a two-attorney general practice firm. As a general practitioner, he handled civil matters including, among other subjects, divorce and custody cases, wills and estates, real estate transactions, and general civil litigation. While he was in private practice, Judge Smith also served as solicitor for multiple local government bodies and represented them in various legal matters.

According to his questionnaire, while on active military duty, Judge Smith both litigated and advised others on litigation. He handled approximately 17 general courts-martial, 204 special courts-martial, and 37 article 32 investigations.

Judge Smith also has judicial experience. In 2002, after being elected in November 2001, Judge Smith began service as a judge on the Court of Common Pleas of Northampton County. After serving his ten year term, Judge Smith was retained to serve an additional ten year term in 2011. He has served as the Presiding Judge of the Asbestos Division since 2004 and as the supervising judge of Northampton County Grand Jury since 2012. The Courts of Common Pleas are trial courts and have jurisdiction over a variety of civil and criminal matters.

While in the Navy Reserve, Judge Smith has served as a military trial judge, an appellate military judge, and as the Commanding Officer for the Navy-Marine Corps Court of Criminal Appeals. He was appointed to each of these positions.

The American Bar Association Standing Committee on the Federal Judiciary unanimously rated him Well Qualified.

Opening Statement of Senator Mazie K. Hirono
Judicial Nominations Hearing
November 6, 2013

There are currently 92 district and circuit vacancies in the Federal Judiciary. More than 10% of lower federal courts are now or will soon be vacant.

Our federal district and appellate courts hear tens of thousands of cases per year ranging from criminal prosecutions to complex environmental and consumer protection litigation.

In order for Americans to receive swift access to justice, these vacancies must be filled.

Because federal judges are required to give priority to criminal cases over civil ones, and the number of criminal cases has increased 70% in the past decade, judges are forced to delay civil cases, often for years. This means long delays for American individuals and businesses seeking justice.

This hearing is an important step in the process of working to confirm judges in an expeditious manner and ensuring that the courts are able to do the work the American people require of them.

I look forward to the Senate's swift action on the President's nominations.

Questions for the Record
Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Senator Chuck Grassley
Questions for the Record

Christopher Reid Cooper
Nominee, U.S. District Judge for the District of Columbia

1. You have experience working with white collar criminal litigation, grand jury and other government investigations as well as internal corporate investigations. Please explain how this experience might affect your service as a federal judge, if confirmed?

2. Your questionnaire indicates you were a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution." Also, some of the stated goals and missions of the organization are "countering right-wing distortions of our Constitution" and "debunking conservative buzzwords such as 'originalism' and 'strict construction' that use neutral-sounding language but all too often lead to conservative policy outcomes."

    a. What is your view of the role of the courts on improving the lives of everyday citizens?

    b. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered or why concepts such as originalism and strict construction need to be "debunked?"

    c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?

    d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?

    e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"

3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

4. What is the most important attribute of a judge, and do you possess it?

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?

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. 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?

13. If confirmed, how do you intend to manage your caseload?

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?

15. 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 will reach a decision in cases

that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

17. Please describe with particularity the process by which these questions were answered.

18. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Michelle T. Friedland
Nominee, U.S. Circuit Judge for the Ninth Circuit

1. In your view, is there equivalency between the "marriage equality" debate and the struggle for racial equality? Please explain what you see to be the legal similarities or differences.

2. Your questionnaire indicates you were a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution." Also, some of the stated goals and missions of the organization are "countering right-wing distortions of our Constitution" and "debunking conservative buzzwords such as 'originalism' and 'strict construction' that use neutral-sounding language but all too often lead to conservative policy outcomes."

    a. What is your view of the role of the courts on improving the lives of everyday citizens?

    b. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered or why concepts such as originalism and strict construction need to be "debunked?"

    c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?

    d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?

    e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"

3. During you hearing, I asked you about the letter you wrote in support of Goodwin Liu and Edward Chen. I didn't fully understand your answer to when I asked you about your understanding of the Senate's role to "advise and consent".

    a. Please explain your understanding of that here. What power and responsibilities or restrictions does give the Senate?

b. Please elaborate on how blocking a particular nominee is a "disservice to the nation's judicial system".

4. There was a recent decision by the New Mexico Supreme Court[1] where the Court held that a photographer improperly discriminated against a gay couple when she refused to take photos for their commitment ceremony for religious reasons and, as the Court stated in its opinion, the Respondents are, "now are compelled by law to compromise the very religious beliefs that inspire their lives."[2]

    a. How would you respond if a party in a similar case claimed this was a Freedom of Speech violation? Particularly with respect to a creative and expressive art form such as photography?

    b. Do you think the New Mexico state legislature, by requiring companies that advertise publicly to act in this way, compels the company to speak the government's message?

    c. How would you respond if an individual or company in this circumstance raised a Free Exercise claim?

5. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

6. What is the most important attribute of a judge, and do you possess it?

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

8. In general, Supreme Court precedents are binding on all lower federal courts. 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?

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

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[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).

[2] *Id.*, Para. 90.

would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

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?

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

12. Please describe your understanding of the workload of the Ninth Circuit. If confirmed, how do you intend to manage your caseload?

13. 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? Please explain.

14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

15. 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?

16. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

17. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

18. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court, if confirmed?

19. At a speech in 2005, Justice Scalia said, "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says."

    a. Do you agree with Justice Scalia?

b. 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?

20. Do you think judges should consider the "current preferences of the society" when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?

21. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

22. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

23. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

24. Do you believe that the death penalty is an acceptable form of punishment?

25. 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?

26. Do you believe there is a right to privacy in the U.S. Constitution?
    a. Where is it located?
    b. From what does it derive?
    c. What is your understanding, in general terms, of the contours of that right?

27. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

    a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

    b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

28. In *Brown v. Entertainment Merchants Association.*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

29. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

30. What would be your definition of an "activist judge"?

31. What weight should a judge give legislative intent in statutory analysis?

32. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

33. Please describe with particularity the process by which these questions were answered.

34. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

M. Douglas Harpool
Nominee, U.S. District Judge for the Western District of Missouri

1. I asked you about a statement you made in your hearing and I had some follow-up questions on it. You said that you were pro-choice because it's "not a government issue". When I asked you about this you told me that you would follow precedent in deciding cases before you. Abortion and life matters have very much become a "government issue". Would you please explain more specifically to me what rights and duties the state governments and the federal governments have in regulating abortion?

2. Will you please further elaborate on what steps you have taken and will take to get up to speed on criminal law matters?

3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

4. What is the most important attribute of a judge, and do you possess it?

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?

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. 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?

13. If confirmed, how do you intend to manage your caseload?

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?

15. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

17. Please describe with particularity the process by which these questions were answered.

18. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Gerald Austin McHugh, Jr.
Nominee, U.S. District Judge for the Eastern District of Pennsylvania

1. During your hearing, I mentioned that you have been very active as a trial lawyer and in speaking about tort reform. For example, you stated, "Given the impact that the trial bar has, it is to be expected that powerful and monied interests, like the United States Chamber of Commerce, or demagogues like House Speaker Newt Gingrich, will target trial lawyers with negative ad campaigns". Please feel free to explain your comments and/or current views regarding the Chamber of Commerce and Speaker Gingrich. Do you believe this language illustrates the appropriate temperament for a federal judge?

2. In 1997 you were quoted as saying, "[The law] is something that has a profound impact on the people who are affected by it, [McHugh] said. As the common law evolves, the most important question to answer is what is the practical impact of decisions we make on the people who are affected."[1]

    a. Do you believe this is the most important question to answer as a judge?

    b. Would you be inclined let this perspective affect your judicial decision-making process, if confirmed?

3. You list on your personal website that you have been involved in representing victims of the Lockerbie terrorism incident in 1988,[2] yet you made no mention of it in your questionnaire. What involvement, if any, did you have with this case?

4. An author of the Pennsylvania Super Lawyers article in which you are profiled states that you describe yourself "as a product of the 'Catholic left.'"[3] What do you mean by that and what influence would this have on your judicial decision making, if confirmed?

5. What is the most important attribute of a judge, and do you possess it?

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?

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

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[1] *Lawyers Write*, LEGAL INTELLIGENCER, Jan. 21, 1997.
[2] http://www.geraldmchugh.com/bio.htm.
[3] G. Patrick Pawling, *The Saint*, PA. SUPER LAW., June 2005.

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?

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?

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

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? Please explain.

12. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

13. 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?

14. If confirmed, how do you intend to manage your caseload?

15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

16. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the

White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

18. Please describe with particularity the process by which these questions were answered.

19. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Edward G. Smith
Nominee, U.S. District Judge for the Eastern District of Pennsylvania

1. What is the most important attribute of a judge, and do you possess it?

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

4. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

5. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

7. 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? Please explain.

8. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

9. 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?

10. If confirmed, how do you intend to manage your caseload?

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?

12. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

13. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

14. Please describe with particularity the process by which these questions were answered.

15. Do these answers reflect your true and personal views?

Questions for the Record
Senator Ted Cruz

Responses of Michelle T. Friedland
Nominee, United States Circuit Judge for the Ninth Circuit

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed, I would not come to the bench with any overriding judicial philosophy. Instead, my approach to every case would be to apply precedent from the Supreme Court and the Ninth Circuit neutrally and carefully to the facts in front of me. I would treat all counsel and all parties with respect, and I would endeavor to ensure that all parties felt they had a fair hearing even if they did not ultimately prevail. Because I would apply all Supreme Court precedent regardless of which Justice authored the opinion for the Court, I do not expect that my decisions would reflect the approach of any single Justice more than others.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I faithfully would apply Supreme Court and Ninth Circuit precedent when interpreting the Constitution. The Supreme Court has emphasized that evidence of "*the public understanding*" of a constitutional provision "in the period after its . . . ratification" is a "critical tool of constitutional interpretation." *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (emphasis in original).

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, I always would be bound by Supreme Court precedent. Panels of the Ninth Circuit are also bound by prior decisions of the Ninth Circuit unless those decisions are "clearly irreconcilable" with a subsequent *en banc* or Supreme Court decision. *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (*en banc*). Even when sitting *en banc*, the court should depart from one of its prior decisions only in very limited circumstances, such as when doing so "is necessary to secure or maintain uniformity of the court's decisions," Federal Rule of Appellate Procedure 35(a)(1), or when "an opinion of a panel directly conflicts with an existing opinion by another court of appeals and substantially affects a rule of national application in which there is an overriding need for national uniformity," Ninth Circuit Rule 35-1.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: In *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), the Supreme Court held that the San Antonio Metropolitan Transit Authority was not immune from minimum-wage and overtime requirements of the federal Fair Labor Standards Act. In other cases, the Supreme Court has held unconstitutional federal requirements imposed on States. *See Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992). If confirmed, I faithfully would apply these Supreme Court precedents, just as I would all Supreme Court and Ninth Circuit precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court invalidated federal statutes as exceeding Congress's power under the Commerce Clause. In doing so, the Court emphasized the non-economic nature of the conduct that was regulated by the statutes at issue. *See Morrison*, 529 U.S. at 610-11, 613; *Lopez*, 514 U.S. at 560-61, 566-67. The Supreme Court did not hold, however, that non-economic activity never could be regulated pursuant to Congress's Commerce Clause authority. In his opinion concurring in the judgment in *Gonzalez v. Raich*, 545 U.S. 1 (2005), Justice Scalia stated that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Id.* at 37 (Scalia, J., concurring in judgment). If confirmed, I faithfully would apply Supreme Court and Ninth Circuit precedent regarding the Commerce Clause, just as I would all Supreme Court and Ninth Circuit precedent.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the President's ability to issue an executive order "must stem either from an act of Congress or from the Constitution itself." *Id.* at 585. Justice Jackson's concurring opinion in *Youngstown* provided a "tripartite scheme" that the Supreme Court since has recognized "provides the accepted framework for evaluating executive action in this area." *Medellin v. Texas*, 552 U.S. 491, 524 (2008). If confirmed, I faithfully would apply Supreme Court and Ninth Circuit precedent regarding executive orders and actions, just as I would all Supreme Court and Ninth Circuit precedent.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court instructed 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." *Id.* at 720-21 (internal quotation marks and citations omitted). If confirmed, I faithfully would apply Supreme Court and Ninth Circuit precedent regarding fundamental rights, just as I would all Supreme Court and Ninth Circuit precedent.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied strict scrutiny under the Equal Protection Clause to classifications, such as those based on race, that are "so seldom relevant to the achievement of any legitimate state interest" that their use likely reflects discriminatory stereotyping. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). The Supreme Court has applied intermediate scrutiny to classifications, such as those based on gender, that are relevant in some circumstances but "frequently bear[] no relation to ability to perform or contribute to society" so "generally provide[] no sensible ground for differential treatment." *Id.* at 440-41. If confirmed, I faithfully would apply Supreme Court and Ninth Circuit precedent regarding when heightened scrutiny applies, just as I would all Supreme Court and Ninth Circuit precedent.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: The Supreme Court predicted in *Grutter v. Bollinger*, 539 U.S. 306 (2003), that racial preferences would no longer be necessary in public higher education twenty-five years from the time of that decision. *Id.* at 343. In *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), the Supreme Court further articulated standards for evaluating the constitutionality of the use of race as a factor in public university admissions. Regardless of any expectations I may or may not have, if confirmed, I faithfully would apply *Grutter* and *Fisher*, just as I would all Supreme Court and Ninth Circuit precedent.

Senator Chuck Grassley
Questions for the Record

Michelle T. Friedland
Nominee, U.S. Circuit Judge for the Ninth Circuit

1. **In your view, is there equivalency between the "marriage equality" debate and the struggle for racial equality? Please explain what you see to be the legal similarities or differences.**

   Response: Many Supreme Court cases deciding constitutional questions about racial equality have been resolved solely under the Equal Protection Clause. *See, e.g.*, *Brown v. Board of Education*, 347 U.S. 483, 495 (1954) (holding that school segregation was inconsistent with "the equal protection of the laws guaranteed by the Fourteenth Amendment," and noting that "[t]his disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment"); *Batson v. Kentucky*, 476 U.S. 79, 89 (1986) ("[T]he Equal Protection Clause forbids [a] prosecutor to challenge potential jurors solely on account of their race."); *but see, e.g.*, *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (holding that a state law prohibiting interracial marriage violated both the Equal Protection and Due Process Clauses of the Fourteenth Amendment). In contrast, the Supreme Court's recent decision in *United States v. Windsor*, 133 S. Ct. 2675 (2013), held that section 3 of the Defense of Marriage Act "violate[d] basic due process and equal protection principles." *Id.* at 2693. The Supreme Court did not decide the merits of *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013), in which the question presented had been "[w]hether the Equal Protection Clause of the Fourteenth Amendment prohibits the State of California from defining marriage as the union of a man and a woman." Whether the Equal Protection Clause or the Due Process Clause guarantees same-sex couples a right to marry is therefore a question still being litigated actively — as is the issue of what standard of scrutiny should be applied in answering that question — including in litigation currently pending in the Ninth Circuit. If confirmed, I faithfully would apply Supreme Court and Ninth Circuit precedent regarding equal protection and due process, just as I would all Supreme Court and Ninth Circuit precedent.

2. **Your questionnaire indicates you were a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution." Also, some of**

the stated goals and missions of the organization are "countering right-wing distortions of our Constitution" and "debunking conservative buzzwords such as 'originalism' and 'strict construction' that use neutral-sounding language but all too often lead to conservative policy outcomes."

a. What is your view of the role of the courts on improving the lives of everyday citizens?

Response: I am not familiar with the quoted statement, so I cannot comment on what was meant by it. The role of the federal courts is limited by Article III of the Constitution to deciding the actual cases and controversies that come before them. The Constitution gives federal elected officials the authority to make the policy choices necessary to the legislative process, including on questions about how to improve people's lives. It is federal courts' role then to apply the laws as written, without questioning the policy choices made by elected officials.

b. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered or why concepts such as originalism and strict construction need to be "debunked?"

Response: I am not familiar with the quoted statement, so I cannot comment on what was meant by it. I am not aware of any distortions that need to be countered, or any concepts that need to be debunked.

c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?

Response: I am not familiar with the quoted statement, so I cannot comment on what was meant by it, and the term "progressive" has been used in many different ways. If confirmed, my role would be to carefully and faithfully apply the law to the facts of every case that came before me, regardless of how others might characterize my decisions.

d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?

Response: I am not familiar with the quoted statement, so I cannot comment on what was meant by it. I am not aware of any distortions that need to be countered.

e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"

Response: I am not familiar with the quoted statement, so I cannot comment on what was meant by it. If confirmed, my sole goal would be to carefully and faithfully apply the law to the facts of every case that came before me.

3. **During you hearing, I asked you about the letter you wrote in support of Goodwin Liu and Edward Chen. I didn't fully understand your answer to when I asked you about your understanding of the Senate's role to "advise and consent".**

   a. **Please explain your understanding of that here. What power and responsibilities or restrictions does give the Senate?**

      Response: The Appointments Clause of Article II of the Constitution provides that the President's appointments of "Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law" — other than those "inferior Officers" whose appointment Congress vests "in the President alone, in the Courts of Law, or in the Heads of Departments" — require the "Advice and Consent of the Senate." U.S. Const. art. II, § 2, cl. 2.

   b. **Please elaborate on how blocking a particular nominee is a "disservice to the nation's judicial system".**

      Response: The quoted letter to President Obama, which was signed by numerous members of the California legal community including myself, discussed the particular nominations of now-Justice Liu and Judge Chen. The letter explained that the seats for which they were nominated "ha[d] been designated judicial emergencies," as had "other vacancies on those courts" — a designation reflecting the heavy caseloads of both the Ninth Circuit and the District Court for the Northern District of California. The letter stated that "justice suffers increasingly while these positions remain vacant," which I understood to mean that the substantial length of time it takes for many cases in those courts to get resolved due to the large number of cases handled by each judge on those courts is detrimental to the courts' effectiveness, and that filling vacancies would help by providing more judges to share the workload. I joined the letter as a lawyer who practices frequently before both courts and thus had some familiarity with the impact of the courts' workloads.

4. **There was a recent decision by the New Mexico Supreme Court[1] where the Court held that a photographer improperly discriminated against a gay couple when she refused to**

[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).

take photos for their commitment ceremony for religious reasons and, as the Court stated in its opinion, the Respondents are, "now are compelled by law to compromise the very religious beliefs that inspire their lives."[2]

a. **How would you respond if a party in a similar case claimed this was a Freedom of Speech violation? Particularly with respect to a creative and expressive art form such as photography?**

   Response: To respond to such a claim, I would expect to consider issues including whether any neutral and generally applicable antidiscrimination law unambiguously purported to require the service to be provided in such circumstances, and, if so, whether First Amendment doctrines relating to freedom of speech or protections against compelled speech required an exception in the circumstances presented.

b. **Do you think the New Mexico state legislature, by requiring companies that advertise publicly to act in this way, compels the company to speak the government's message?**

   Response: If a case came before me raising such a question, I carefully would consider the specific requirements of the law at issue and precedents regarding the First Amendment and compelled speech, such as *Wooley v. Maynard*, 430 U.S. 705 (1977), and *Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781 (1988).

c. **How would you respond if an individual or company in this circumstance raised a Free Exercise claim?**

   Response: To respond to such a claim, I would expect to consider issues including: (1) whether any neutral and generally applicable antidiscrimination law unambiguously purported to require the service to be provided in such circumstances; (2) whether any applicable statute provided an exemption to individuals with religious objections, such as is provided in some circumstances by the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.*; and (3) relevant Free Exercise Clause precedents such as *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), and *Employment Division v. Smith*, 494 U.S. 872 (1990).

[2] *Id.*, Para. 90.

5. **Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

   Response: No. A judge's job is to apply the law to the facts in every case, and attributes of a judge such as gender and ethnicity do not change what the law is.

6. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attributes of a judge are faithfulness to text and precedent, treating all litigants with respect and carefully considering their arguments, and being hardworking. I possess these attributes.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: The appropriate temperament of a judge is to treat all parties with respect, to work hard, and to have the humility to realize that there may be ideas or arguments one has not thought of and so to always consider carefully the arguments of the parties and the views of one's colleagues. I meet this standard.

8. **In general, Supreme Court precedents are binding on all lower federal courts. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

9. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: If faced with a case of first impression, I would begin by analyzing the text of any relevant constitutional, statutory, or regulatory provision. I also would study decisions of the Supreme Court and the Ninth Circuit interpreting similar provisions or discussing similar issues — even when there is no controlling precedent that conclusively resolves the issue at hand, there always are cases that articulate legal principles that provide guidance. If the issue were one that other circuit courts or state courts had addressed, I also would look to those courts' decisions as persuasive, though not binding, authority.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: If confirmed, I would apply decisions of the Supreme Court and the Ninth Circuit even if I believed them to be erroneous.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Federal statutes are entitled to a presumption of constitutionality. A federal court should only declare a federal statute unconstitutional if the statute directly violates a constitutional provision or if Congress exceeded its authority when it enacted the statute.

12. Please describe your understanding of the workload of the Ninth Circuit. If confirmed, how do you intend to manage your caseload?

Response: During the 12-month period ending June 30, 2013, an average of 566 appeals per active judge were terminated in the Ninth Circuit, of which an average of 190 were accompanied by a written decision. *See* U.S. Court of Appeals – Judicial Caseload Profile, *available at* http://www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2013/appeals-fcms-profiles-june-2013.pdf&page=21. I would manage this extremely heavy caseload by working very hard, setting strict deadlines for myself and my law clerks, and seeking the advice of my colleagues on efficient workflow systems within chambers.

13. 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? Please explain.

Response: The views of the world community are not relevant to interpreting the Constitution. The Constitution is a domestic document that should be interpreted based on domestic sources — text, precedent, and sources of evidence of original meaning such as the Federalist Papers. In very limited circumstances, however, the Supreme Court has considered foreign law in interpreting the Constitution. For example, in interpreting the Seventh Amendment right to a jury trial in civil cases, the Supreme Court has analyzed 18th-century English common law. *See, e.g., Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 565 (1990). If confirmed, I would consider foreign law in interpreting the Constitution only in the very limited circumstances in which Supreme Court or Ninth Circuit precedent required me to do so.

14. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: If confirmed, my duty as a Ninth Circuit judge would be to put aside any personal or political views and to decide cases solely based on text and precedent. The rule of law depends on the ability of judges to do this. I approached cases neutrally as a law clerk at the D.C. Circuit and Supreme Court, and I always have presented issues neutrally when teaching law school classes. In my law practice, I have represented both plaintiffs and defendants, large corporations and not-for-profit organizations, and public institutions and individuals. I believe these experiences have prepared me for the neutral role I would be taking on if confirmed.

15. 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: Please see response to #14 above.

16. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: Panels of the Ninth Circuit are bound by prior decisions of the Ninth Circuit unless those decisions are "clearly irreconcilable" with a subsequent *en banc* or Supreme Court decision. *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (*en banc*). Even when sitting *en banc*, an appellate court should depart from one of its prior decisions only in very limited circumstances, such as when doing so "is necessary to secure or maintain uniformity of the court's decisions," Federal Rule of Appellate Procedure 35(a)(1), or when "an opinion of a panel directly conflicts with an existing opinion by another court of appeals and substantially affects a rule of national application in which there is an overriding need for national uniformity," Ninth Circuit Rule 35-1.

17. You have spent your legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: As a judge, the question would always be how to resolve the case at hand in the manner most faithful to text and to precedent, looking at both from a neutral perspective.

This is very different from what my role has been as an advocate, because my duty as an advocate has been to argue for interpretations of text and precedent that best further my clients' positions and interests. If confirmed, my methodology for deciding cases would be to read the decision being appealed; examine the facts in the record; read the parties' briefs; analyze the text of any constitutional, statutory, or regulatory provision at issue; study the relevant precedents of the Supreme Court and the Ninth Circuit; listen with an open mind to the views of the litigants and my colleagues; and then reach the decision that most faithfully applies the law to the facts.

I approached cases neutrally as a law clerk at the D.C. Circuit and Supreme Court, and I always have presented issues neutrally when teaching law school classes, so I am confident that I could make the transition to the neutral perspective that would be required of me as a judge. Of course, the transition to the bench would bring other challenges, such as establishing a well-functioning chambers and preparing to decide cases in areas of the law in which I have not practiced or taught.

18. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court, if confirmed?

Response: Collegiality is very important to the work of a Circuit Court. I always would treat my colleagues with respect and would consider carefully the views of the other judges with whom I heard cases.

19. At a speech in 2005, Justice Scalia said, "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says."

a. Do you agree with Justice Scalia?

Response: Although I am not familiar with the quoted statement, I do agree that judges should rule as the Constitution directs, without regard to personal views or policy preferences.

b. 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: A judge's own values or policy preferences should play no role in determining what the law means.

20. Do you think judges should consider the "current preferences of the society" when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?

Response: The current preferences of the society should play no role in a judge's decision making.

21. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: If confirmed, I faithfully would follow Supreme Court and Ninth Circuit precedent in applying the Constitution to statutes or regulations — modern or otherwise. I first would analyze the text of any constitutional provision at issue and all Supreme Court and Ninth Circuit precedents interpreting it. If text and precedent did not themselves resolve the issue, I would look to evidence of the original meaning of any constitutional provision at issue. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 581-92 (2008) (analyzing the original public meaning of the phrase "to keep and bear Arms" in the Second Amendment).

22. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

Response: The Supreme Court has held that the phrase "cruel and unusual punishments" in the Eighth Amendment "must draw its meaning from . . . evolving standards of decency." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). I do not understand Supreme Court precedent to call for consideration of evolving norms and traditions in interpreting any other provision of the Constitution.

23. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

Response: The Supreme Court has observed that the Establishment Clause and Free Exercise Clause "are frequently in tension," but that "there is room for play in the joints between them." *Locke v. Davey*, 540 U.S. 712, 718 (2004) (internal quotation marks omitted). The Supreme Court has explained that this means that "there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause." *Id.* at 719.

24. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has held that the death penalty is an acceptable form of punishment when applied in accordance with the Constitution's requirements. *See, e.g.*,

Gregg v. Georgia, 428 U.S. 153 (1976). If confirmed, I faithfully would apply Supreme Court and Ninth Circuit precedent regarding the death penalty, just as I would all Supreme Court and Ninth Circuit precedent.

25. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: I do not believe that the Constitution is constantly evolving, but rather that the Constitution's text expresses core principles that remain constant over time. Some of the Constitution's provisions describe principles that the Framers understood would need to be applied in entirely new circumstances. For example, the Supreme Court has applied the Fourth Amendment's principle forbidding unreasonable searches to the use of GPS tracking devices, *United States v. Jones*, 132 S. Ct. 945 (2012), and thermal-imaging devices, *Kyllo v. United States*, 533 U.S. 27 (2001). The Framers of course could not have imagined these technologies, but the enduring principles embodied in the Fourth Amendment can still be applied to them.

26. Do you believe there is a right to privacy in the U.S. Constitution?

Response: Various provisions in the Bill of Rights have been held by the Supreme Court to protect rights of privacy. For example, the Supreme Court has held that the First Amendment protects rights of privacy in association. *See, e.g.*, *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). The Supreme Court likewise has held that the Fourth Amendment protects privacy in the home, *see, e.g.*, *Johnson v. United States*, 333 U.S. 10, 14 (1948), and in bodily integrity, *see, e.g.*, *Missouri v. McNeely*, 133 S. Ct. 1552, 1558 (2013). The Supreme Court also has held that the "liberty" interest protected by the Due Process Clause includes "the right[] to marry, to have children, [and] to direct the education and upbringing of one's children," as well as rights "to marital privacy, to use contraception, to bodily integrity, and to abortion." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (internal citations omitted). The Supreme Court further has "assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment." *Id.* If confirmed, I faithfully would apply Supreme Court and Ninth Circuit precedent regarding privacy rights, just as I would all Supreme Court and Ninth Circuit precedent.

a. Where is it located?

Response: The Supreme Court has held that several provisions of the Bill of Rights protect privacy rights, as discussed above.

b. From what does it derive?

Response: Please see above.

c. What is your understanding, in general terms, of the contours of that right?

Response: Please see above.

27. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

Response: The Supreme Court more recently has instructed that the proper approach for determining whether an unenumerated right is constitutionally protected is to examine whether the claimed right is "deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotation marks and citations omitted). If confirmed, I would follow the methodology required by *Glucksberg*, just as I would all Supreme Court and Ninth Circuit precedent.

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: If confirmed, I would not search for penumbras or emanations in the Constitution. As discussed above, I would follow the methodology required by *Glucksberg*, just as I would all Supreme Court and Ninth Circuit precedent.

28. In *Brown v. Entertainment Merchants Association*., Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. When, if ever, do you think it is appropriate for appellate judges to conduct research outside the record of the case?

Response: To identify the factual information relevant to an appeal, an appellate judge should rely on the record compiled during the trial court or administrative proceedings that led to the decision being appealed. If confirmed and a question arose in a particular case before me as to whether it might be appropriate to consult a factual source outside the record, I would look to the relevant appellate and evidentiary rules, including Federal Rules of Appellate Procedure 10 and 16, and Federal Rule of Evidence 201, as well as precedent of the Supreme Court and Ninth Circuit interpreting those rules.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: If confirmed and a case came before me in which the parties were citing social science research, I carefully would consider the relevance of such research to the particular issues in the case, as well as relevant Supreme Court and Ninth Circuit precedent. Courts may consider academic research and writings in determining the admissibility of expert testimony. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

29. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: Neither the Supreme Court nor the Ninth Circuit has articulated the precise methodology or standard of scrutiny to be applied to Second Amendment claims. The question of the appropriate standard of scrutiny to apply to Second Amendment claims was left open in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), and *District of Columbia v. Heller*, 554 U.S. 570 (2008), though the Supreme Court stated in *Heller* that rational-basis review would not be the applicable standard. 554 U.S. at 628 n.27. If confirmed and a Second Amendment challenge to a gun law came before me, if there were no intervening Supreme Court or Ninth Circuit precedent on this issue, I would look to post-*McDonald* Second Amendment decisions from other circuits as persuasive, though not binding, authority. *See, e.g.*, *Nat'l Rifle Ass'n of Am. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185 (5th Cir. 2012); *Heller v. Dist. of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011); *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011); *United States v. Chester*, 628 F.3d 673 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792 (10th Cir. 2010).

30. What would be your definition of an "activist judge"?

Response: I would define an "activist judge" as a judge who decides cases based not on what the law requires but on the judge's own moral values or policy preferences. I also would

define an "activist judge" as a judge who decides issues that do not need to be decided to resolve the case at hand.

31. What weight should a judge give legislative intent in statutory analysis?

Response: In interpreting a statute, if the text of a statute is clear, that is the end of the matter, as the statute must be interpreted based on the text alone. When statutory text is ambiguous, the Supreme Court applies canons of statutory construction such as the rule of constitutional avoidance and the rule favoring an interpretation that gives a function to each word in the statute. To resolve remaining ambiguity, the Supreme Court has looked to legislative history to help determine Congress's intent and then has tried to resolve the ambiguity in a manner consistent with the Congress's intent.

32. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

33. Please describe with particularity the process by which these questions were answered.

Response: I reviewed the questions, conducted research, and drafted answers. I then shared my draft answers with the Office of Legal Policy at the Department of Justice. After

receiving feedback from an attorney in the Office of Legal Policy, I made revisions and finalized the answers for submission to the Committee.

34. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Christopher Reid Cooper
Nominee, United States District Court for the District of Columbia

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: If confirmed, I would not come to the bench with any pre-determined judicial philosophy other than to fulfill what I believe is the obligation of all U.S. District Judges, which is to faithfully and impartially apply the law and the precedent of the Supreme Court and their circuit to the facts of the cases that come before them. I have not studied the judicial philosophies of recent Supreme Court justices. There are, however, a number of qualities that I admire in judges before whom I have appeared. Among these qualities are intellectual rigor and integrity, preparation, efficiency, and respect for attorneys and litigants. Two judges whom I have observed demonstrate these qualities are Retired Judge James Robertson of the District Court for the District of Columbia and Chief Judge David Norton of the District of South Carolina.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

The Supreme Court has analyzed the original intent and original public meaning of constitutional provisions in deciding the constitutionality of statutes. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008) (examining the public meaning of the Second Amendment at the time of its passage). If confirmed, I will follow that precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: Under no circumstances would I overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If asked to determine whether a particular Federal statute or regulation unconstitutionally infringed upon State sovereign interests, I would assess the statute or regulation against the text and meaning of the relevant constitutional provision, and apply binding D.C. Circuit and Supreme Court precedent, including *Garcia* and other cases dealing with the relationship between Federal and State powers.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The Supreme Court has placed limits on the types of activities that Congress may regulate under the Commerce Clause. Apart from having the power to regulate and protect the channels and instrumentalities of interstate commerce, the Court has held that Congress has the authority to regulate only those activities that "substantially affect" interstate commerce. *See, e.g.*, *United States v. Lopez*, 514 U.S. 549, 558 (1995). While the Court has considered the non-economic nature of the activity in question as a factor in determining whether the activity "substantially affects" interstate commerce, my understanding is that the Court has not held that Congress may never regulate non-economic pursuant to its Commerce Clause power. *See, e.g., Gonzales v. Raich*, 545 U.S. 1, 37 (1995) (Scalia, J., concurring) (noting that Congress may regulate non-economic activity that is an essential part of a larger economic regulatory scheme). If confirmed, I would apply *Lopez, Raich* and other binding Supreme Court and D.C. Circuit precedent if I were to confront a question in this area.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's ability to issue executive orders or take executive action is constrained by the authority granted to him by the Constitution or an act of Congress. *See Medellin v. Texas*, 552 U.S. 491, 524 (2008) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). These limits are judicially enforceable. In addition, the actions of Executive Branch agencies are limited by principles set forth in *Chevron v. Natural Resources Def. Council, Inc.*, 467 U.S. 837 (1984) and subsequent Supreme Court precedent involving challenges to federal agency action.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In addition to the rights specifically enumerated in the Bill of Rights, the Supreme Court has "regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are objectively, 'deeply rooted in the 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. Glucksburg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted). If confirmed, I would follow that established precedent in deciding any cases involving fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied strict scrutiny to legislative classifications based on race, alienage, and national origin. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). It has applied heightened scrutiny to classifications based on gender and illegitimacy. *Id.* If confirmed, I would apply this established precedent.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I would apply binding Supreme Court precedent concerning the use of racial preferences in university admissions, including *Grutter* and the Court's more recent decision in *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013), regardless of any personal view or expectation I might have about the continued need for such preferences in the future.

Senator Chuck Grassley
Questions for the Record

Christopher Reid Cooper
Nominee, U.S. District Court for the District of Columbia

1. **You have experience working with white collar criminal litigation, grand jury and other government investigations as well as internal corporate investigations. Please explain how this experience might affect your service as a federal judge, if confirmed?**

   If confirmed, my experience practicing in the areas noted above would not affect my ability to be impartial and objective in cases involving corporate or other "white collar" litigants. I believe my practice experience in these areas would positively affect my service as a judge in several respects. First, my experience has exposed me to areas of substantive federal criminal law that arise frequently before the District Court of the District of Columbia. These areas include numerous types of fraud, conspiracy, money laundering, foreign bribery, and regulatory violations, among others. This background should enable me quickly to grasp and understand cases involving these areas of law. Second, through my practice experience I have become familiar with procedures that govern the litigation and trial of federal criminal cases, which I would have to apply as a judge. Third, district court judges have certain supervisory responsibilities over the use and conduct of federal grand juries. I believe my practice experience would enable me to exercise these responsibilities appropriately. Finally, my experience has included advising clients on the application of the Sentencing Guidelines in cases involving various corporate crimes. I believe this experience would serve me well in making sentencing decisions.

2. **Your questionnaire indicates you were a member of the American Constitution Society for Law and Policy. There is nothing wrong with membership in such groups, but I do have a question about how the goals of that organization might affect your judgments, if confirmed. Peter Edelman, as chair of the board of directors for American Constitution Society for Law and Policy, stated he would help to engage a younger audience about how the law can improve the lives of everyday citizens. "What we want to do is promote a conversation — the idea of what a progressive perspective of the constitution is and what it means for the country." He also indicated that a goal of the organization is "countering right-wing distortions of our Constitution." Also, some of the stated goals and missions of the organization are "countering right-wing distortions of our Constitution" and "debunking conservative buzzwords such as 'originalism' and 'strict construction' that use neutral-sounding language but all too often lead to conservative policy outcomes."**

a. What is your view of the role of the courts on improving the lives of everyday citizens?

Response: I am not familiar with the intended meaning of Mr. Edelman's statements. I believe that courts play an important role in promoting public confidence in our justice system. They can fulfill this role by ensuring that laws are applied evenly and impartially and by treating all participants in the system with respect and dignity. Judges, in my view, should also take advantage of appropriate opportunities to educate citizens, particularly young people, about the law and our justice system.

b. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered or why concepts such as originalism and strict construction need to be "debunked?"

Response: I do not know what "distortions" or "concepts" Mr. Edelman might have been referring to. If confirmed as a district judge, my role would not be to counter any perceived distortions of the Constitution or to debunk any particular concepts of Constitutional interpretation.

c. What does the idea of a progressive perspective of the constitution mean for the country, in your view?

Response: I am not familiar with the intended meaning of the quoted passage. If confirmed as a judge, I would faithfully apply the law and controlling precedent without regard to any conceptions of constitutional interpretation that might be labeled "progressive" or "conservative."

d. Can you please identify what "right-wing distortions of the Constitution" you are concerned about or feel need to be countered?

Response: I am not aware of any such "distortions."

e. If you are confirmed as a federal judge how would you seek to promote a "progressive perspective of the Constitution; or counter "right-wing distortions of the Constitution?"

Response: I would not seek to do either.

3. Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

Response: No, a judge should never allow emotions such as empathy to cause him or her to favor one party over another.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is the ability to decide matters impartially based on applicable law and precedent rather than personal opinion or bias. I believe I possess that attribute.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: Judges should treat everyone who appears in their courtroom -- attorneys, litigants, witnesses, jurors, and court staff -- with patience, dignity, and respect. Judges should also comport themselves with decorum outside the courtroom. I believe I have those qualities and I would strive to demonstrate them if confirmed.

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. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: I can assure the Committee that, if confirmed, I would fully and faithfully apply controlling Supreme Court and D.C. Circuit precedents to the cases and legal issues that come before me, without regard to any personal disagreements I might have with those precedents.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a case of first impression, I would begin by examining the text of the statutory or regulatory provision at issue. I would anticipate that, in most cases, applying the plain language of the provision to the facts before me would enable me to resolve the case. If the meaning of the provision were not clear from its text, I would look to precedent from the Supreme Court and D.C. Circuit involving analogous provisions. If there were no such precedent, I would look to relevant cases from other circuits and district courts. Where appropriate, I would also examine the intent and history of the applicable provision.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply all controlling Supreme Court and D.C. Circuit precedent regardless of any opinion I might have about whether it was decided correctly.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed to be constitutional. A federal court should declare a federal statute unconstitutional only in cases where (1) it is necessary to reach the question of whether the statute is constitutional, and (2) the court is convinced that Congress clearly violated a provision of the Constitution or exceeded the authority given to it by the Constitution.

10. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No.

11. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: As a practicing lawyer, I have represented clients who hold a wide range of political views and I have never allowed my own political or personal views to interfere with my role as an advisor or advocate. Similarly, if confirmed, I would not let my political or personal views interfere with my role as a judge. I can assure the Committee that I would base my decisions on law and precedent only, and not on any political ideology or motivation.

12. **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: At times as a practicing lawyer I have represented clients whose personal views were contrary to mine in various respects. However, I have never allowed my personal views to interfere with my zealous representation of those clients. If confirmed, I would likewise not permit any personal views that I might hold interfere with my obligation to treat fairly all parties who appear before me as a judge.

13. **If confirmed, how do you intend to manage your caseload?**

Response: I would promptly schedule a case management conference soon after each case is filed. I would also work with counsel for the parties to develop scheduling orders and permit extension of deadlines in those orders only for good cause. I would decide motions efficiently, including case dispositive motions in civil cases filed under Rules 12 and 56. Finally, I would actively monitor each of my cases at each stage of the proceedings.

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 believe that judges should closely manage their dockets to ensure that cases proceed efficiently and that parties do not incur unnecessary costs associated with delay and judicial inaction. To control my docket, I would take the steps described in Question 13.

15. 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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: While my role as practicing attorney certainly involved advocating particular positions on behalf of clients, it also involved advising clients on the merits of their cases based on an objective assessment of the law and facts. As a judge, I would apply the skills I have developed as an advisor to decide cases based solely on the facts before me and the law and precedent that are applicable to those facts. I anticipate that the most difficult part of the transition from private practice to the bench will be having to master areas of law and procedure that I have not encountered in my practice. To do so, I would dedicate myself to working hard and being prepared; take advantage of the many training and educational opportunities that are available to judges; and draw on the experience and expertise of my fellow judges.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made

the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

17. **Please describe with particularity the process by which these questions were answered.**

Response: I received the questions on November 13, 2013. I personally drafted my responses the following day and provided them to representatives of the Justice Department's Office of Legal Policy for review. After receiving comments from them, I authorized the Department to submit my responses to the Committee on my behalf.

18. **Do these answers reflect your true and personal views?**

Response: Yes.

Response of Gerald Austin McHugh, Jr.
Nominee, United States District Judge for the Eastern District of Pennsylvania
To the Written Questions of Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: As a practicing lawyer, I have not had the occasion to develop a judicial philosophy. In writing my treatise on Pennsylvania tort law, and in teaching judges, other lawyers, and law students at the University of Pennsylvania, I have tried to follow an approach of rigorous intellectual honesty, reading cases accurately, not attempting to strain the bounds of precedent, and focusing on the specific facts of the case. I would expect to bring the same approach to the bench. Given the demands of professional practice I have not had the opportunity to focus upon the judicial philosophy of particular justices.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed as a district court judge, I would consider originalism where guided by appellate precedent to employ that approach. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008) the majority of the Supreme Court employed original public meaning to interpret the Second Amendment. As a district court judge my responsibility would be to consult and follow the appellate authority applicable to the specific issue before me.

If a decision is precedent today while you're going through the confirmation process, under what circumstances would you overrule that precedent as a judge?

Response: As a district court judge, there would be no circumstance I can identify where I would be empowered to overrule an existing precedent.

Explain whether you agree that "State sovereign interests... are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: This statement was part of a majority opinion of the Supreme Court. If I am fortunate enough to be confirmed, I would be bound to apply this and all binding precedent from higher courts.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Lopez*, 514 U.S. 549, 558 (1995), the Supreme Court held that Congress may 1) "regulate the use of the channels of interstate commerce," 2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate

commerce", and 3) "regulate those activities having a substantial relation to interstate commerce." It reiterated those principles in *United States v. Morrison,* 529 U.S. 598 (2000). As a district court judge, I would apply those decisions as well as all other binding Supreme Court precedent concerning the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The power of the Executive Branch is conferred by both the Constitution and by specific acts of Congress. If a President, or his or her Administration, were to exceed the scope of lawful power, a federal court presented with a justiciable case or controversy would be empowered to enjoin such unlawful actions, as established by a series of cases, notably *Youngstown Sheet & Tube Co. v Sawyer,* 343 U.S. 579 (1952).

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that a right is fundamental where it is deeply rooted in our country's history and implicit in the concept of "ordered liberty". *See e.g. Washington v. Glucksberg,* 343 U.S 579 (1997). If confirmed as a judge, I would apply that and all other binding precedents.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Heightened scrutiny is the controlling standard when the classification being evaluated involves such things as race, religion, gender, or any other classification the Supreme Court has identified as "suspect," and also controls where a classification would burden the exercise of a fundamental right. *City of Cleburne v. Cleburne Living Center,* 521 U.S. 702 (1997).

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If an issue concerning racial preferences were before me, I would apply *Grutter* and other relevant precedent, including *Fisher v. University of Texas at Austin,* 133 S. Ct. 2411 (2013), to the factual record before me.

Response of Gerald Austin McHugh, Jr.
Nominee, United States District Judge for the Eastern District of Pennsylvania
To the Written Questions of Senator Chuck Grassley

1. During your hearing, I mentioned that you have been very active as a trial lawyer and in speaking out about tort reform. For example, you stated "Given the impact the trial bar has, it is to be expected that powerful and monied interests, like the United States Chamber of Commerce, or demagogues like House Speaker Newt Gingrich, will target trial lawyers with negative ad campaigns." Please feel free to explain your comments and/or current views regarding the Chamber of Commerce and Speaker Gingrich. Do you believe this language illustrates the appropriate temperament for a federal judge?

Response: Coming from a federal judge, such language would be clearly inappropriate. At the time, I was President of the Philadelphia Trial Lawyers Association, and in that representative capacity, it was my responsibility to respond to political criticism that trial lawyers had a negative impact on society. It did not reflect any personal views, then or now, regarding the Chamber of Commerce or Speaker Gingrich, but rather was meant as a political response to a political criticism. In the article which is quoted above I also admonished trial lawyers against bringing frivolous claims, and exhorted them to practice law in a manner which would defy reproach.

A letter of support sent to Senators Casey and Toomey signed by 18 past presidents of the defense bar in Pennsylvania demonstrates the confidence my past opponents have in my temperament and ability to preside as a judge in an even-handed way.

2. In 1997 you were quoted as saying, "[The law] is something that has a profound impact on the people who are affected by it, [McHugh] said. As the common law evolves, the most important question to answer is what is the practical impact of decisions we make on the people who are affected."

a. Do you believe this is the most important question to answer as a judge?

Response: No. I cannot recall the context in which this statement was made, but since it occurred shortly after publication of my treatise on Pennsylvania torts, which comprehensively reviewed the evolution of various common law principles, I believe it likely represents an academic reflection on the way in which various appellate decisions have, over time, affected those who appear before the courts. Development of the law is not the role of a district court judge.

b. Would you be inclined to let this perspective affect your judicial decision-making process if confirmed?

Response: No. The duty of a district court judge is to apply the law impartially to the facts before him.

3. You list on your personal website that you have been involved in representing victims of the Lockerbie terrorism in 1998, yet you have made no mention of it in your questionnaire. What involvement, if any, did you have with this case?

Response: I was retained to represent the widow and family of Martin Apfelbaum, a resident of Philadelphia who died in the mid-air explosion. I filed suit against Pan Am under the Warsaw Convention in the Eastern District of Pennsylvania. My suit was then consolidated with actions pending in New York, and stayed pending final resolution of the question of Pan Am's liability. Following affirmance of a judgment against Pan Am by the Second Circuit, my case was remanded to the Eastern District of Pennsylvania for a trial on damages. The case settled pre-trial with the assistance of the assigned judge, the honorable Thomas O'Neill. I did not list it in my questionnaire because my role diminished following transfer, and I felt that my own professional ability was better demonstrated by the international cases I cited, such as *Breen v. Keystone Helicopter*, and *Jaude v. Aeroports de Paris*, where I played a more major role.

4. An author of the Pennsylvania Super Lawyers article in which you are profiled states that you describe yourself as a "product of the Catholic left." What do you mean by that and what influence would this have on your decision-making process, if confirmed?

Response: I was taught that although piety and devotion are religious virtues in their own right, that between Sunday Mass and next Sunday's Mass, we are called to express the values of the Gospel in how we treat others. I believe this is reflected in the *pro bono* and community work I have done. My religious values, although they have helped shape my character, would not influence the duties I would exercise as a federal judge, or serve as the basis for any judicial decision.

5. What is the most important attribute of a judge, and do you possess it?

Response: Integrity is the most important attribute of a judge. I believe that I possess this quality, as confirmed by the trust that others have placed in me with respect to positions I have been asked to hold, which include appointments by the courts, and elections by fellow members of the bar. Also, attorneys whom I routinely oppose, and parties against whom I routinely bring litigation, have entrusted me to mediate important cases and bring about a resolution, and to sit as a sole binding arbitrator in matters of importance to them.

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 good judge must be patient, open-minded, and civil to all who appear before him. As set forth above, I believe that the responsibilities entrusted to me by others in the resolution of important disputes demonstrate that I am able to meet that standard.

7. In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit.

Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: The oath sworn by a judge to uphold the law necessarily requires that a judge respect and follow all binding precedents, regardless of a judge's individual beliefs. I am firmly committed to following that rule.

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 a case of first impression arises under a statute, the benchmark for decisions should be the text of the statute itself. If the text is clear, my analysis would end. If no answer is apparent from the text, the next sources of information would be precedent from the Supreme Court and Third Circuit. Absent such guidance, I would consult other federal precedent, which while not binding, may offer persuasive guidance on the question before me.

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: A district court judge is duty bound to apply precedent from the Supreme Court or Court of Appeals regardless of his or her view as to the error of such courts. I would be required to follow that law, and would do so without hesitation.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: In the first instance, if the issue of constitutionality is truly ripe for decision by the court, the statute should be presumed to be constitutional. If there is a way to construe a statute which renders it constitutional, the court should adopt such construction. If, however, in a case fairly presented, a statute as written or as applied either exceeds the authority of Congress, or otherwise plainly violates the Constitution, it is the responsibility of a judge to so declare.

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? Please explain.

Response: No, although in limited circumstances, principles of British common law in effect as of the time of the adoption of the Constitution might shed light on its construction.

12. What assurance or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: A judge takes an oath faithfully to discharge the duties of his office. To make any decision based on any consideration other than the precedent or text of the law would be a profound violation of that oath, which I would not commit. In addition to that personal assurance, I believe that my bi-partisan participation in the drafting of six separate statutes, all signed by Republican governors, and the widespread support of my nomination from across the bar, is evidence that I have no political agenda in submitting my name for appointment.

13. What assurances or evidence can you give the Committee and future litigants that you put aside any personal views and be fair to all who appear before you, if confirmed?

Response: Over the course of my career, I have frequently been requested to serve as a mediator and, in some cases, as a sole binding arbitrator. That invitation has been extended by counsel whom I regularly oppose, and even by parties against whom I regularly bring litigation. In a case against Drexel College of Medicine, Drexel asked me to defend it. The Plaintiff was proceeding under a precedent I had established, but I accepted representation and secured Drexel's dismissal from the case. In connection with my application to the Advisory Committee established by Senators Casey and Toomey, 18 past presidents of the defense bar in Pennsylvania, 18 past Chancellors of the Philadelphia Bar Association, and 67 Fellows of the American College of Trial Lawyers, who represent a wide variety of different interests, joined group letters of support to the Senators. I would point to that as evidence that although my career has typically involved the representation of plaintiffs, among the leaders of the bar in Pennsylvania, I am viewed as someone who can set aside personal views and be fair to all.

14. If confirmed, how do you intend to manage your caseload?

Response: My intention would be to hold a Rule 16 conference shortly after the filing of each case assigned to me, at which time reasonable deadlines will be established. In the Eastern District of Pennsylvania, each judge is assigned a deputy clerk for purposes of docket management. My proposed course of action would be to supervise closely the responsibilities of the deputy clerk, while reserving law clerks for substantive legal research and analysis. I would create an internal calendar alert system for purposes of compliance with the Speedy Trial Act.

15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: The quality of justice dispensed by the court is in part a function of the efficiency with which courts operate. I believe that a judge should use the Federal Rules of Civil Procedure to hold prompt Rule 16 conferences, and to establish reasonable deadlines for a case that will allow a fair determination on the merits in a timely fashion.

16. You have spent your entire career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be the most difficult part of this transition for you?

Response: Having served as a federal district court clerk, state appellate court clerk, hearing officer for the Disciplinary Board of the Supreme Court of Pennsylvania, and arbitrator in a number of matters, I have experience in decision-making that will assist me in a transition to the bench. I expect to look to the briefs and arguments of counsel, to read the critical statutes or cases and to review the relevant evidence. One challenge will be deeper familiarization with criminal law, with which I have less experience.

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: As a member of AAJ, in the spring of 2011, I contacted its Public Affairs Office and asked if AAJ involved itself in federal judicial nominations. I was referred to a Mr. John Bowman, and advised to forward my resume, which I did. Shortly thereafter, again in the spring of 2011, Mr. Bowman called me, and we briefly discussed my interest in the federal bench, and my perception of my reputation within the legal community in Pennsylvania. Sometime thereafter, in a second conversation, he advised me that AAJ would be supportive of my appointment.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: I was advised that AAJ would support my candidacy, but I am not aware of any specific acts that were taken on my behalf.

18. Please describe with particularity the process by which these questions were answered?

Response: I drafted my answers to these questions and presented them to the Department of Justice, Office of Legal Policy, for review. I then made some revisions and finalized my answers for submission to the Committee.

19. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

M. Douglas Harpool
Nominee, U.S. District Judge for the Western District of Missouri

Describe how you would characterize your judicial philosophy, and identify which US Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I do not have any particular judicial philosophy. I do believe it is very important for judges to respect judicial precedent. I also believe in judicial restraint which requires courts to only act when presented with an actual case or controversy which is ripe for adjudication and then to issue as narrow a ruling as necessary to resolve the case presented. A trial judge in particular should strictly adhere to judicial precedent established by higher courts. The trial judges I hope to emulate are judges who work hard, aggressively manage their docket, treat all litigants with respect, carefully adhere to court rules, and act impartially.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: As a trial judge, it would be my responsibility to follow binding case precedent from the Supreme Court and Eighth Circuit with respect to interpretation of the Constitution. The Supreme Court has found that public understanding of text around the time of enactment plays a critical role in Constitutional interpretation, *District of Columbia v. Heller,* 545 U.S. 570, 605 (2008), and I would follow that and other binding precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district court judge, I would not overrule established precedent, but would follow the precedent established by higher courts.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: As a district court judge, it would be my obligation to follow case precedent adopted by the United States Supreme Court, including *Garcia*. My personal feelings, if any, would be set aside in order to follow precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has decided several cases discussing the breadth and application of the Commerce Clause, and in particular, its application to the regulation of non-economic activity. Under court precedent, the Commerce Clause empowers Congress to regulate: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce or people or things in interstate commerce; and (3) activity that has a substantial effect on interstate commerce. See, e.g., *United States v. Morrison,* 529 U.S. 598 (2000), *United States v. Lopez,* 514 U.S. 549 (1995). If confirmed and presented with a case concerning the Commerce Clause, I would apply the facts of the case presented to the Supreme Court's analysis in *Morrison, Lopez,* and any other applicable Supreme Court precedent.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The power of the President to issue executive orders or executive actions and the limits on the authority of the President to act through executive orders or executive actions, can be found in the Acts of Congress and in the United States Constitution. See e.g., *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579 (1952), *Medellin v. Texas,* 552 U.S. 491 (2008). If confirmed, I would apply these and other pertinent Supreme Court precedent to any case pertaining to the limits of executive power.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is fundamental for purposes of the substantive due process doctrine when it is "deeply rooted in the nation's history and traditions." See *Washington v. Glucksberg,* 521 U.S. 702 (1997). As a district judge, I would follow all applicable Supreme Court precedent involving alleged infringement of fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that strict scrutiny is appropriate in only a narrow set of cases, such as cases involving classifications based on race, *Richmond v. J.A. Croson Co.,* 488 U.S. 469 (1989) and that an intermediate scrutiny is appropriate in another narrow set of cases such as those involving classifications based on gender. *United States v. Virginia,* 518 U.S. 515 (1996). See also *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432 (1985) wherein the court discusses when a classification should be subject to heightened scrutiny. As a district court judge, I would follow Supreme Court precedent concerning which classifications require a heightened scrutiny under the Equal Protection Clause.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I have not formed any expectation concerning the use of racial preferences fifteen years from now. However, as a district judge, I will follow Supreme Court precedent concerning the legality of such racial preferences, including the precedent established by *Grutter v.*

Bollinger, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).

Senator Chuck Grassley
Questions for the Record

M. Douglas Harpool
Nominee, U.S. District Judge for the Western District of Missouri

1. **I asked you about a statement you made in your hearing and I had some follow-up questions on it. You said that you were pro-choice because it's "not a government issue". When I asked you about this you told me that you would follow precedent in deciding cases before you. Abortion and life matters have very much become a "government issue". Would you please explain more specifically to me what rights and duties the state governments and the federal governments have in regulating abortion?**

   Response: A state government has the right to regulate abortion, except where prohibited by a state constitution or the United States Constitution. See e.g., *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). The federal government has the right to regulate abortion, except where prohibited by the United States Constitution. See e.g., *Gonzales v. Carhart*, 550 U.S. 124 (2007). As a district judge, I would follow Supreme Court precedent in determining which governmental regulations of abortions are legal. My job as a district judge would be very different than the job I had as a legislator. As a legislator, it was my responsibility to take position on issues of public policy. As a district judge, my job will be the opposite. As a district judge, my personal beliefs concerning public policy would be set aside to apply the rule of law and judicial precedent.

2. **Will you please further elaborate on what steps you have taken and will take to get up to speed on criminal law matters?**

   Response: While my law practice is exclusively a civil one, it frequently involves issues concerning alleged violations of civil rights by the law enforcement community. That has required me to keep up with legal issues pertaining to search, seizure, detention, arrest, and alleged malicious prosecution. I also serve on the Federal Practice Committee of the United States District Court for the Western District of Missouri, which from time to time discusses issues relevant to federal criminal law. Since being nominated, I have begun the process of becoming more familiar with federal sentencing guidelines and refreshing my knowledge of federal criminal law. This has primarily been completed through self-study, review of the applicable rules, review of jury instructions used in criminal cases, and the *Bench Book for United States District Judges*, Fourth Edition. I plan to continue self-study, to take advantage of training opportunities provided through the Administrative Office of the United States Courts, and to sit through criminal trials before other district judges.

3. **Some have contended that a judge should have empathy for those who appear before them. My concern is that when someone suggests a judge should have empathy, they are really suggesting the judge should place their thumb on the scales**

of justice to tilt it in the favor of the proverbial little guy. In your personal opinion, is it ever the role of a judge to favor one party over another?

Response: A district judge should apply the law to the facts without regard to the identity of the parties. A judge should never tilt the scales of justice to favor any party.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: Integrity and impartiality are the most important attributes of a judge. I believe I possess both.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must be calm, courteous and confident. I believe I have exhibited each of those temperaments.

6. **In general, Supreme Court precedents are binding on all lower federal courts, and Circuit Court precedents are binding on the district courts within the particular circuit. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would look first to the plain meaning of the words in order to determine legislative intent. Where the text is unambiguous, further inquiry is not required. If, however, ambiguity remains after application of the plain meaning of the words, I would look to rules of construction and interpretation used by the Supreme Court or the U.S. Court of Appeals for the Eighth Circuit in analogous situations. If no such reported cases could be found, I would then look to the rules of interpretation and construction used by other circuit courts in analogous situations.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the decision.

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: The federal courts should only declare a statute enacted by Congress unconstitutional when a congressional action exceeds Congress' authority, or when an act of Congress impermissibly infringes on a Constitutional right.

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: No.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I give first, and most importantly, my personal assurance. In my law practice, I have represented plaintiffs and defendants, elected officials from both major political parties, large corporations and private persons. Never in the representation of a client have I allowed underlying political ideology or political motivation to impact my work. I have over thirty years' experience separating personal political beliefs from my work in the legal system as an officer of the court. My record demonstrates my commitment to keeping political ideology out of the courtroom where the rule of law must prevail regardless of political belief or affiliation.

12. 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 give first, and most importantly, my personal assurance. I believe my record of representing both plaintiffs and defendants in civil disputes will help me understand the perspectives of all parties to a dispute. I have never allowed personal beliefs to interfere with my duties as an advocate for my client. I will not allow them to interfere with my obligation as a judge to protect the rule of law.

13. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I intend to personally be involved in caseload management by establishing clear expectations with counsel and then reasonably enforcing those expectations. I would expect to require periodic updates by counsel on progress being made in advancing a case toward final disposition. I also would intend to address pending motions without unnecessary delay and to effectively dispose of cases by summary disposition when appropriate.

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. A trial judge should make specific scheduling orders and then reasonably enforce them. I believe requiring periodic progress reports from counsel can also be helpful in advancing cases toward timely disposition. I believe my experience as a litigator gives me a sense of the pace appropriate for litigation, and an understanding when delays in case disposition are unnecessary or inconsistent with the administration of justice.

15. **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 will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?**

Response: I will look at the plain meaning of the statutes enacted by Congress, case precedent established by higher courts, and the evidence of the case. After thirty-three years of advocating for one party in litigation, service as a judge will require me to make the transition to objective decision maker. My focus as a judge will be on protecting the rule of law and the integrity of the judicial process rather than any particular outcome to the litigation. I am confident I am prepared to make the transition from an advocate where my loyalties have been focused on the interest of my client, to a judge, where my interest will be in protecting the integrity of the rule of law.

16. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

17. Please describe with particularity the process by which these questions were answered.

Response: I received the questions from the Department of Justice on November 13. I drafted these responses and presented them to officials from the Department of Justice. After receiving comments from them, I edited the responses and authorized the Department of Justice to submit them to the committee on my behalf.

18. Do these answers reflect your true and personal views?

Response: Yes.

Response of Edward G. Smith
Nominee to be United States District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: As a trial judge, my judicial philosophy is focused on the responsibilities of a trial judge, which include being patient, courteous, and diligent. A judge must have an unwavering respect for the rule of law and treat everyone that comes before the court impartially and respectfully. A trial judge must faithfully follow the principle of *stare decisis*, and I have followed that principle during my twelve years as a state trial court judge. As for the Justices of the United States Supreme Court, while I greatly admire and respect the Justices, due to the different roles of a trial court judge and a Justice of the Supreme Court, I do not have a specific Justice of the Supreme Court whose judicial philosophy is most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: If confirmed, I would follow all binding precedent of the United States Supreme Court and the Third Circuit Court of Appeals with respect to interpreting the Constitution. The United States Supreme Court has explained that public understanding of a text around the time of its enactment has a critical role in constitutional interpretation. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570 (2008). I would follow the *Heller* decision and all other binding precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district judge, there are no circumstances in which I would overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: The United States Supreme Court's decision in *Garcia* is binding precedent. Therefore, if confirmed, I would follow the holdings in that case as I would for all other precedent established by the United States Supreme Court.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has addressed the scope of Congress's Commerce Clause power in *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529

U.S. 598 (2000), and *Gonzales v. Raich*, 545 U.S. 1 (2005). The Supreme Court determined 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, even though the threat may come only from intrastate activities" and (3) "those activities having a substantial relation to" or that "substantially affect" interstate commerce. *Lopez*, 514 U.S. 549, 558-59 (1995). In *Lopez* and *Morrison*, the Supreme Court concluded that Congress had exceeded its powers under the Commerce Clause when Congress regulated non-economic activity. Although the Supreme Court concluded that Congress exceeded its powers in *Lopez* and *Morrison*, the Court did not hold that Congress could never rely on the Commerce Clause to regulate non-economic activity. In *Raich*, Justice Scalia authored a concurring opinion in which he stated that Congress may regulate non-economic activity if "that regulation is a necessary part of a more general regulation of interstate commerce." 545 U.S. at 37 (Scalia, J., concurring). If confirmed, I would follow *Morrison*, *Lopez*, *Raich*, and all other applicable precedent of the United States Supreme Court and Third Circuit Court of Appeals in resolving any cases involving issues with the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The standard for judicial review of executive orders and executive actions by the President is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring). The President can issue executive orders or take executive action if the Constitution or an act of Congress provides the President with the authority to do so.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: Pursuant to United States Supreme Court precedent, rights are "fundamental" if the rights 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, 720-21 (1997) (citations omitted). If confirmed, I would follow this and all other applicable United States Supreme Court and Third Circuit Court of Appeals precedent in addressing issues involving fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The United States Supreme Court applies strict scrutiny under the Equal Protection Clause when the legislation involves classifications based on race, religion, or national origin. The Supreme Court also applies strict scrutiny to state laws infringing upon fundamental rights. Additionally, the Supreme Court has applied a heightened, or "intermediate," level of scrutiny to classifications based on gender or illegitimacy. *See, e.g.*, *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-41 (1985). I would follow binding United States Supreme Court and United State Court of Appeals for the Third Circuit precedent in addressing any questions regarding heightened scrutiny.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: In *Grutter*, the United States Supreme Court stated its expectation that by 2028, "the use of racial preferences will no longer be necessary to further the interest" of a school in promoting a diverse student body. 539 U.S. at 343. If confirmed as a district court judge, I will apply binding Supreme Court precedent, including *Grutter*, and any Third Circuit Court of Appeals precedent, regardless of any personal expectations.

Response of Edward G. Smith
Nominee to be United States District Judge for the Eastern District of Pennsylvania
to the Written Questions of Senator Chuck Grassley

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is an unwavering commitment to the rule of law while fairly, objectively, and impartially deciding cases. I believe I possess this attribute.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A trial judge must be patient, respectful, and courteous to everyone that appears before the court. Also, a judge's demeanor should reflect that the judge is thoughtful, impartial, and diligent. I believe that I have demonstrated this temperament throughout my twelve years as a trial judge.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: I am committed to faithfully following and giving full force and effect to the precedent of the United States Supreme Court and the Third Circuit Court of Appeals, even if I personally disagreed with such precedent. As a state trial judge in Pennsylvania, I have consistently followed the precedent of the United States Supreme Court, the Supreme Court of Pennsylvania, and Pennsylvania's intermediate appellate courts in resolving the issues that have come before me.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: If faced with a case of first impression, I would first review any potentially analogous decisions by the Supreme Court of the United States or the Third Circuit Court of Appeals. Although I understand that the decisions would only serve as persuasive authority, I would also review and consider any applicable decisions by the other circuit courts or district courts. If the case of first impression involves the interpretation of a statute, code, or regulation, I would examine the text of the law in question, and employ recognized methods of statutory interpretation.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: Even if I believed that the United States Supreme Court or the Third Circuit Court of Appeals seriously erred in rendering a decision, I would follow the precedent established by that decision. As a trial judge, I will follow existing precedent until or unless that precedent is changed by an appellate court.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Any statute enacted by Congress is presumed to be constitutional. There are rare circumstances when a judge is called upon to determine whether Congress has exceeded its authority under the Constitution with respect to particular legislation. Only if a statute is clearly not in conformance with the Constitution as interpreted by the United States Supreme Court or the Circuit Court of Appeals, should a district court judge declare a particular statute unconstitutional.

7. **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? Please explain.**

Response: No, it is never proper for judges to rely on foreign law, or the views of the "world community", in interpreting the meaning of the Constitution.

8. **What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: It is never appropriate for a judge's decision to be influenced by political ideology or motivation. I am committed to following the rule of law, which demands strict adherence to the principles of *stare decisis*. With respect to evidence, my twelve-year record as a trial judge in Pennsylvania demonstrates that I have consistently followed the precedent of the United States Supreme Court, the Supreme Court of Pennsylvania, the Superior Court of Pennsylvania, and the Commonwealth Court of Pennsylvania in rendering my decisions.

9. **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: During my twelve years as a Pennsylvania state trial court judge, I have never allowed my personal views to affect my ability to be fair and impartial to everyone that has come before the court.

10. If confirmed, how do you intend to manage your caseload?

Response: If confirmed as a federal district judge, I would ensure that an efficient process was established to resolve cases on my docket. In particular, I would take an active role in tracking all cases assigned to me. I would set up a process by which any assigned cases are initially reviewed for a determination of whether they are properly filed in federal court. I would then actively monitor my cases, promptly reviewing and scheduling any motions for argument or hearing, and disposing of those motions in a timely fashion. I would also ensure that I effectively work with the United States Magistrate Judges in my district to ensure that cases are efficiently and expeditiously proceeding to settlement or trial.

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 in controlling the pace and conduct of litigation. If confirmed, I would regularly monitor the cases on my docket. I would also establish firm and fair deadlines for any case management orders, promptly resolve any motions or discovery issues, and entertain and encourage settlement discussions as early as practicable in the litigation.

12. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: As a judge, I first have to establish the factual record on which I am to decide a particular issue. Once that record is established, I must determine the law that is applicable to the facts at issue. I will often provide the parties the opportunity to supply written submissions, and I will review those submissions and analyze the cases cited by the parties. I will also consider any oral arguments presented by the parties. I then conduct my analysis of the cases cited and my own review of the applicable law and draft a decision in accordance with the appellate precedent applicable to the particular issue in the case.

13. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No, I have not had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with the AAJ regarding my nomination.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No, I am unaware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding my nomination.

14. Please describe with particularity the process by which these questions were answered.

Response: I received these questions via email on November 13, 2013. I drafted responses and forwarded them to the Department of Justice on November 14, 2013. I discussed responses with a representative of the Department of Justice and authorized the Department of Justice to submit my responses to the United States Senate.

15. Do these answers reflect your true and personal views?

Response: Yes.

Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
740 Fifteenth Street, NW
Washington, DC 20005-1022

CHAIR
Jack Pirro, Martinez
New Orleans, LA

Mailing Address:
9985 Fairview Park Drive
Falls Church, VA 22042

FIRST CIRCUIT
Lisa G. Arrowood
Suite 1200 South
One Post Office Square
Boston, MA 02109

SECOND CIRCUIT
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

THIRD CIRCUIT
Robert C. Heim
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

FOURTH CIRCUIT
L. Fitzgerald Parnell, III
Suite 2400
101 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
Wayne L. Lee
1100 Poydras Street
New Orleans, LA 70163

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1301 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Cassella Metrick
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
David L. Brown
5th Floor
U.S. Bank Building
320 Walnut Street
Des Moines, IA 50309-4119

NINTH CIRCUIT
Edith R. Matthai
Suite 1200
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl L. Wolfert
Suite 4100
600 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Loh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Ramon A. Abadin
Suite 1201
9155 South Dadeland Boulevard
Miami, FL 33156-2719

D.C. CIRCUIT
Ronald A. Cass
10701 Lee Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
202-662-1761
denise.cardman@americanbar.org

Please respond to:
Benjamin H. Hill, III, Esq.
Hill Ward Henderson
101 E. Kennedy Blvd., Suite 3700
Tampa, Florida 33602
Tel: (813) 227-8420
Fax: (813) 221-2900
Email: bhill@hwhlaw.com

VIA EMAIL AND FIRST CLASS MAIL

August 2, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Michelle T. Friedland to the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy:

I am writing as the acting chair of the ABA Standing Committee on the Federal Judiciary as a result of the recusal of the current chair for the evaluation of the above nominee, Michelle T. Friedland.

The Committee has completed its evaluation of the professional qualifications of Michelle T. Friedland who has been nominated for a position on the United States Court of Appeals for the Ninth Circuit. As a result of our investigation, the Committee is of the opinion that for this position Ms. Michelle T. Friedland is Unanimously Well Qualified.

A copy of this letter has been provided to Ms. Friedland.

Sincerely,

Benjamin H. Hill
Acting Chair

cc: Ms. Michelle T. Friedland, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on August 2, 2013.

July 26, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We write to express our strong support for Michelle Friedland's nomination to the U.S. Court of Appeals for the Ninth Circuit. We believe that she would make an excellent addition to that important court.

Each of us had the privilege of clerking for the Supreme Court during October Term 2001, the same term during which Michelle clerked for Justice O'Connor. As co-clerks during that year, we had opportunity to view Michelle's legal aptitude, her writing ability, and her temperament. We can say without reservation that Michelle demonstrated the qualities that would make her an excellent judge. Michelle approached each case with dedication, with an open mind, and with a keen legal intellect. She was invariably collegial with her fellow law clerks, and she approached her job without any ideological agenda other than her commitment to get the law right.

Michelle's career confirms that she has the experience, skills and demeanor for the federal bench. She holds degrees from Stanford University, was a Fulbright Scholar at Oxford University, and clerked for Judge Tatel of the U.S. Court of Appeals for the D.C. Circuit. Since her clerkships, she has developed an active appellate practice at Munger, Tolls & Olson, LLP, where she has represented clients in cases of national importance, including *FTC v. Actavis, Inc.* In addition to practicing law, Michelle has found the time to do stints teaching at Stanford Law School and at the University of Virginia School of Law.

Michelle was well-liked by her fellow law clerks, and she is similarly well-liked by members of the appellate bar, both in California and across the country. This is because she is respectful of colleagues, fair-minded to attorneys and litigants, and sharp as a tack. All of those characteristics would make her an excellent choice for the U.S. Court of Appeals for the Ninth Circuit.

Sincerely,

Steven A. Engel

Justice Anthony M. Kennedy
October Term 2001

Susan E. Engel

Justice Antonin Scalia
October Term 2001

Sigal P. Mandelker

Justice Clarence Thomas
October Term 2001

Heidi Doerhoff Vollet

Chief Justice William H. Rehnquist
October Term 2001

Alexander J. Willscher

Justice Anthony M. Kennedy
October Term 2001

Shay Dvoretzky

Justice Antonin Scalia
October 2001

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
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: ***Nomination of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit***

Dear Chairman Leahy and Ranking Member Grassley:

We are partners at Munger, Tolles & Olson LLP with Michelle Friedland. We write in strong support of Michelle's nomination to be a Judge of the United States Court of Appeals for the Ninth Circuit. Based on our professional and personal experience with Michelle as a lawyer, a colleague, and a friend, we enthusiastically endorse her nomination to the Ninth Circuit. Each of us has known Michelle for nearly a decade, and some of us have worked closely with her on litigation matters. We are confident that Michelle has the skills, judgment, temperament, and integrity to be an outstanding appellate judge.

At the outset, we note that we and Michelle come from opposite ends of the political spectrum—all of the signatories to this letter are long-time Republicans. We likewise undoubtedly have certain jurisprudential differences with Michelle. Each of us served as a law clerk to either Justice Scalia, Justice Kennedy, or then-Justice Rehnquist. All of us are members or supporters of the Federalist Society, and one of us is the past President of the Society's Los Angeles chapter. Notwithstanding our political and jurisprudential differences, all of us believe that Michelle would be an impartial and fair-minded Judge, who would approach cases with an open mind and who would faithfully apply binding precedent. Michelle is a nominee of President Obama's that we, as Republicans, would be happy to see confirmed to the federal judiciary.

Michelle is an enormously talented lawyer. Her many accomplishments outside of private practice—two degrees from Stanford, clerkships with Judge Tatel and Justice O'Connor, and teaching experience at Stanford and the University of Virginia—are themselves remarkable. Within our firm, Michelle has distinguished herself as a brilliant and dedicated lawyer. She is universally regarded as an outstanding legal analyst and thinker and is among the finest brief-writers in our partnership. Michelle's outstanding legal work on a wide range of litigation matters consistently has drawn respect from her clients and colleagues, and even from her litigation adversaries.

Those of us who have been fortunate to work directly with Michelle—including in a federal court trial, in preparing a case for hearing at the Supreme Court (described below), and on numerous appellate briefs—consistently have been impressed by her objectivity, her extraordinary legal skills, and her civility and cheerfulness, even in the most contentious of matters. We also have been struck by Michelle's unfailing respect for precedent, whether it be prior Supreme Court cases or other binding authority. Michelle is not a lawyer who tries to read cases to stand for what they do not hold, nor does she try to avoid or distort applicable precedent to support a desired result.

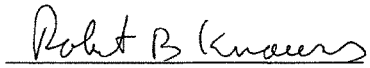
All of us also believe that an indispensable quality of a judge is the ability to be fair-minded on a wide range of issues. To our minds, one indication of Michelle's ability to do this is the diversity of matters on which she has worked while at our firm. For example, Michelle played a central role in the Supreme Court briefing for the pharmaceutical company respondent in *Federal Trade Commission v. Actavis, Inc.*, 133 S. Ct. 2223 (2013), argued and decided in the most recent Supreme Court Term. In that case, Michelle's brief argued against the Federal Trade Commission's efforts to invalidate what it calls "pay-for-delay" settlement agreements in certain pharmaceutical patent cases. Michelle also represented the pharmaceutical company in an antitrust challenge to pricing practices for HIV drugs—a case that has generated considerable controversy in the context of the debate over health-care costs and pharmaceutical-industry pricing. *Safeway v. Abbott Laboratories*, 761 F. Supp. 2d 874 (N.D. Cal. 2011), *appeals pending*, Case Nos. 11-17357 & 11-17373 (9th Cir.). These and many other engagements confirm that Michelle approaches her professional role with intellectual energy and balance. We believe that Michelle would bring these same qualities to the bench.

Finally, Michelle is a role model and mentor for attorneys within our firm and in the legal community at large, especially—but by no means only—for women attorneys. After joining our firm from teaching at Stanford, she immediately emerged as a leader of the San Francisco office and rapidly accelerated to partner status. She is an extraordinarily well-respected and beloved member of our law firm and our partnership.

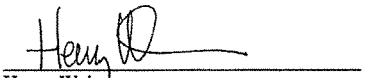
In sum, we are confident that Michelle Friedland has the talent, fairness, and integrity to be an outstanding Circuit Judge on the Ninth Circuit, and we recommend her with great enthusiasm.

Please do not hesitate to have any members of your staff contact any of us if any further information is needed.

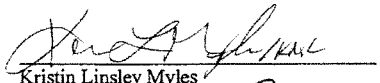
Respectfully submitted,



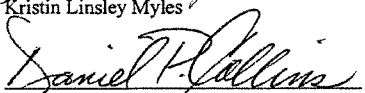
Robert B. Knauss



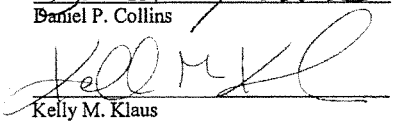
Henry Weissmann



Kristin Linsley Myles



Daniel P. Collins



Kelly M. Klaus

UNIVERSITY OF CALIFORNIA, LOS ANGELES

UCLA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

EUGENE VOLOKH
GARY T. SCHWARTZ PROFESSOR OF LAW

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volokh@law.ucla.edu

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Michelle Friedland to the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Senator Grassley:

I am writing to convey my strong support for the nomination of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit. Michelle is a brilliant and extremely accomplished lawyer, who will make a superb judge.

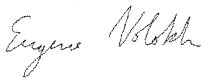
I first met Michelle when she was clerking for Justice Sandra Day O'Connor, and have been constantly impressed by her ever since. As you know, she did superbly at Stanford Law School, and went on to clerk for Judge David Tatel on the D.C. Circuit and for Justice O'Connor—credentials that are themselves marks of high intellectual distinction and legal acumen.

Since then, Michelle has been a law teacher at two of the nation's leading law schools (Stanford and the University of Virginia) and a prominent and highly respected business litigator at Munger, Tolles & Olson, a firm whose work I know well and which evaluates its lawyers using the highest standards. And in the process Michelle has impressed not just those on her side of the political aisle, but conservatives like me as well. The letter from Robert Knauss, Henry Weissman, Kristin Linsley, Kelly Klaus, and Dan Collins powerfully attests to her skills, her

fairmindedness, and her judicial and judicious temperament, qualities of Michelle's that I have also often observed.

I expect that Michelle will likewise impress you and your colleagues; and I'm sure that she will equally impress her future colleagues on the court and the lawyers and litigants who come before her. I hope to see her on the federal bench soon, and for many decades to come.

Sincerely,



Eugene Volokh
Gary T. Schwartz Professor of Law
UCLA School of Law

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

1111 East 60th Street | Chicago, Illinois 60637
PHONE 773-834-8698 | FAX 773-702-0730
E-MAIL emorrison@law.uchicago.edu
www.law.uchicago.edu

Edward R. Morrison
Paul H. & Theo Leffmann Professor of Commercial Law

September 9, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

I am writing to express my support for the nomination of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit.

Michelle and I clerked for the Supreme Court during October Term 2001. She worked in Justice O'Connor's chambers; I worked in Justice Scalia's. We interacted directly and indirectly throughout the year – sometimes discussing pending cases, sometimes reading each other's memos on petitions for writ of certiorari, sometimes during weekly clerk dinners. In all contexts I came away impressed by Michelle's penetrating legal analysis. I am confident that she would be a sterling addition to our judiciary.

Sincerely,

Edward R. Morrison
Paul H. & Theo Leffmann Professor of Commercial Law

September 12, 2013

Senator Patrick Leahy
437 Russell Senate Building
United States Senate
Washington, DC 20510

Senator Chuck Grassley
135 Hart Senate Office Building
United States Senate
Washington, DC 20510

Dear Senators Leahy and Grassley:

I write in support of the Senate confirming Michelle Friedland as a nominee to the U.S. Court of Appeals for the Ninth Circuit. I have long been impressed by Michelle, dating back to 1997 when we were classmates in the same small section of Stanford Law School's Class of 2000 and extending through our time as young lawyers who began our careers in Washington D.C.

I myself have served as a government lawyer for nearly a decade, the majority of which have been spent as a federal prosecutor, including in the Ninth Circuit's jurisdiction. And I am, thanks to my work, especially attuned to how important it is to have judges that follow precedent and are moderate. My experience with Michelle leads me to believe she would bring these qualities to the bench if confirmed.

Michelle and I fall at opposite ends of the political spectrum. I clerked for Supreme Court Justice Anthony Kennedy, am a member of the Federalist Society, and have always been a registered Republican. Notwithstanding our political differences, I believe she would make an outstanding federal appellate judge if confirmed. This is because Michelle has a deep respect for legal precedent above seeking a particular result in a given case. She has a balance and a willingness to listen to all arguments before formulating a position on a particular issue. She displays, above all else, intellectual honesty and personal modesty that suit her exceptionally well for a federal appellate judgeship.

Her qualifications are, of course, bar none, having completed two prestigious clerkships only to become a well-respected partner at a major law firm where she has worked on cases of national significance. Despite her lofty accomplishments, Michelle remains thoroughly grounded and has an ideal judicial temperament. She is not ideological or arrogant, but rather has an easy and measured manner, qualities that I imagine can be elusive when surveying a field of prospective nominees.

I first observed these qualities in Michelle in our small section of approximately 30 students. Across the many and diverse classes we shared -- ranging from torts, to contracts, to civil procedure, to constitutional law -- Michelle distinguished herself as a

star, in all the best ways: she displayed not only first-class intellect but also thoughtful, well-considered observations and judgments. She spoke up not to aggrandize herself but to offer unique insights. Tellingly, Michelle was simultaneously an attentive, conscientious listener who considered others' viewpoints, including conservative viewpoints, in a climate where that went against the grain. I understand from several of her colleagues (many of whom I consider close friends) that she has only continued to demonstrate these traits, whether it be in private practice or during her time clerking, including for Justice O'Connor.

In sum, I recommend that you and your colleagues confirm Michelle's nomination to the Ninth Circuit.

Respectfully submitted,

/s/

Kathryn Haun
San Francisco, California

September 23, 2013

DELIVERED BY EMAIL

Hon. Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
473 Russell Senate Office Building
Washington, D.C. 20510

Hon. Chuck Grassley, Ranking Member
United States Senate
Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of Michelle Friedland as Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We write to express our support for the nomination of Michelle Friedland to the U.S. Court of Appeals for the Ninth Circuit. We hope that the Committee will act promptly to send her nomination to the full Senate for confirmation.

We are General Counsels of a wide variety of American companies. Some of us have worked directly with Ms. Friedland, while others have seen or heard about her work from trusted colleagues. We all agree she would be an excellent addition to the bench.

Ms. Friedland has practiced for almost a decade at one of the top private law firms in the country. Her career has been marked by energy, integrity, and legal excellence. She has represented a broad spectrum of clients in both the private and public sectors. Without fail, she has shown a deep understanding of the legal and economic challenges that arise in both areas and the importance of the rule of law in addressing them. The careful, unbiased approach she would bring to the types of issues that arise before the Ninth Circuit are critical to our nation's values and to its economic health. We are confident that Ms. Friedland repeatedly has demonstrated the intellect and character necessary for the important judicial seat she would be filling.

She also has the right mix of experience. Before going into private practice, she served as a law clerk to Judge David Tatel on the D.C. Circuit and to Justice Sandra Day O'Connor on the Supreme Court. Since then, she has taught at both Stanford Law School and the University of Virginia School of Law.

Ms. Friedland has shown herself to be a deep legal thinker, an articulate advocate, an excellent writer, and a lawyer able to convey to her audience the important issues at stake in the matter at hand. All parties appearing before her, from individual litigants to small businesses to

the nation's largest corporations, would be confident that she will adjudge their cases fairly and in accordance with the law.

We hope the Committee will move quickly to approve her nomination and send it to the floor of the Senate.

Respectfully,

Laura J. Schumacher
Executive Vice President, Business Development External Affairs and General Counsel
AbbVie Inc.

Mark Chandler
Senior Vice President and General Counsel
Cisco Systems, Inc.

J. Nathan Jensen
Vice President and General Counsel
Clean Energy Fuels Corp.

Robert L. Adler
Executive Vice President and General Counsel
Edison International

Colin Stretch
Vice President and General Counsel
Facebook, Inc.

Kent Walker
Senior Vice President and General Counsel
Google Inc.

Todd Molz
General Counsel and Managing Director
Oaktree Capital Management, L.P.

Jae Kim
Senior Vice President and General Counsel
Rambus Inc.

Allen Katz
Interim General Counsel
Transocean Offshore Deepwater Drilling Inc.

October 2, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We write to express our strong support for Michelle Friedland's nomination to the U.S. Court of Appeals for the Ninth Circuit. We believe that she would make an excellent addition to that important court.

Each of us had the privilege of clerking for the Supreme Court during October Term 2001, the same term during which Michelle clerked for Justice O'Connor. As co-clerks during that year, we had opportunity to view Michelle's legal aptitude, her writing ability, and her temperament. We can say without reservation that Michelle demonstrated the qualities that would make her an excellent judge. Michelle approached each case with dedication, with an open mind, and with a keen legal intellect. She was invariably collegial with her fellow law clerks, and she approached her job without any ideological agenda other than her commitment to get the law right.

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Michelle was well-liked by her fellow law clerks, and she is similarly well-liked by members of the appellate bar, both in California and across the country. This is because she is respectful of colleagues, fair-minded to attorneys and litigants, and sharp as a tack. All of those characteristics would make her an excellent choice for the U.S. Court of Appeals for the Ninth Circuit.

Sincerely,

Matthew Berry

Law Clerk to Justice Clarence Thomas
October Term 2001

Shay Dvoretzky

Law Clerk to Justice Antonin Scalia
October Term 2001

Heather Elliott

Law Clerk to Justice Ruth Bader Ginsburg
October Term 2001

Steven A. Engel

Law Clerk to Justice Anthony M. Kennedy
October Term 2001

Susan E. Engel

Law Clerk to Justice Antonin Scalia
October Term 2001

Brian T. Fitzpatrick

Law Clerk to Justice Antonin Scalia
October Term 2001

Carolyn J. Frantz

Law Clerk to Justice Sandra Day O'Connor
October Term 2001

Jeremy Gaston

Law Clerk to Justice Sandra Day O'Connor
October Term 2001

Risa Goluboff

Law Clerk to Justice Stephen G. Breyer
October Term 2001

Benjamin Gruenstein

Law Clerk to Justice David H. Souter
October Term 2001

Mirah A Horowitz

Law Clerk to Justice Stephen G. Breyer
October Term 2001

Thomas Lee

Law Clerk to Justice David H. Souter
October Term 2001

Michael Leiter

Law Clerk to Justice Stephen G. Breyer
October Term 2001

Ann M. Lipton

Law Clerk to Justice David H. Souter
October Term 2001

Anup Malani

Law Clerk to Justice Sandra Day O'Connor
October Term 2001

Sigal P. Mandelker

Law Clerk to Justice Clarence Thomas
October Term 2001

Brett McGurk

Law Clerk to Chief Justice William H. Rehnquist
October Term 2001

Troy McKenzie

Law Clerk to Retired Justice Byron White
October Term 2001

Edward Morrison

Law Clerk to Justice Antonin Scalia
October Term 2001

David O'Neil

Law Clerk to Justice Ruth Bader Ginsburg
October Term 2001

Joseph Palmore

Law Clerk to Justice Ruth Bader Ginsburg
October Term 2001

Neomi Rao

Law Clerk to Justice Clarence Thomas
October Term 2001

Nicholas Quinn Rosenkranz

Law Clerk to Justice Anthony M. Kennedy
October Term 2001

Monica W. Rothbaum

Law Clerk to Justice David H. Souter
October Term 2001

Aaron Saiger

Law Clerk to Justice Ruth Bader Ginsburg
October Term 2001

Heidi Doerhoff Vollet

Law Clerk to Chief Justice William H. Rehnquist
October Term 2001

Alexander J. Willscher

Law Clerk to Justice Anthony M. Kennedy
October Term 2001

October 24, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We write to express our strong support for Michelle Friedland's nomination to the U.S. Court of Appeals for the Ninth Circuit. We urge the Committee to send her nomination to the full Senate for confirmation.

We are all attorneys who as students had the privilege of taking one or more classes from Michelle at Stanford Law School. Based on our experiences with her as a law professor, we enthusiastically endorse her nomination.

In addition to her many accomplishments as a practicing attorney, Michelle has served as a legal scholar and educator. In particular, she spent two years as a Lecturer at Stanford Law School. Even in the context of a faculty well-stocked with brilliant legal thinkers, Michelle stood out and demonstrated talents that we believe will make her a superlative judge.

Even when presenting complicated legal concepts, Michelle demonstrated a mastery of the material and had a knack for distilling and explaining the issues in a clear and coherent manner. She was always extremely well prepared for lectures and discussion, and took the time to assist and counsel students outside of class.

Michelle made a special effort to present all of the relevant perspectives on controversial legal issues. She did not take sides, and did not push any particular agenda. Every student in her classes was treated equally, regardless of their point of view. Michelle's friendly and open manner, combined with her powerful intellect, meant that she was well-liked and respected by her colleagues and her students.

We believe that the skills and demeanor that we observed in Michelle as a law professor will serve her well on the federal appellate bench. We are confident that Michelle will be a thoughtful and diligent judge, who will fairly apply the law to the facts before her and treat all parties with respect.

Sincerely,

Mike Abate, Class of 2005

James Abrams, Class of 2005

William B. Adams, Class of 2004

Pablo Arredondo, Class of 2005

Megan Barbero, Class of 2005

Brigham Bowen, Class of 2004

Suzanne Bratis, Class of 2005

Kevin Calia, Class of 2003

Genevieve Cox, Class of 2003

Jordan Elias, Class of 2003

Eric Feigin, Class of 2005

Elizabeth Fishman, Class of 2003

Courtney Huizar, Class of 2003

Matthew Kahn, Class of 2003

Selena Kyle, Class of 2005

Luke Liss, Class of 2006

Jeffrey McKenna, Class of 2003

Peter M. Morgan, Class of 2006

Nicola J. Mrazek, Class of 2004

Micah S. Myers, Class of 2004

Bethany Davis Noll, Class of 2005

Peter Pfaffenroth, Class of 2003

Justin Pidot, Class of 2006

Matthew Rice, Class of 2003

Elena Saxonhouse, Class of 2004

Jennifer Thomas, Class of 2004

Alyssa L. Vickers, Class of 2005

John Wilson, Class of 2003

November 4, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We, a group of former clerks for U.S. Supreme Court Justice Sandra Day O'Connor, write to express our support for the confirmation of Michelle Friedland to the United States Court of Appeals for the Ninth Circuit. Her intellect and temperament would greatly benefit the federal bench.

We have differing political views and differing careers, but we can all agree that Michelle would be an excellent federal appellate judge. In our interactions with her through Justice O'Connor and her close-knit clerk community, we have found Michelle to have a superior legal mind. We have also enjoyed her warm collegiality, her honesty and fairness, and her dedication to law above ideology.

Michelle would be a tremendous addition to the Ninth Circuit Court of Appeals, and we urge you to confirm her nomination.

Sincerely,

Richard Bierschbach
October Term 2000

Carolyn Frantz
October Term 2001

Jeremy Gaston
October Term 2001

Theane Evangelis
October Term 2004

Sean Gallagher
October Term 1995

Sean Grimsley
October Term 2003

Emily Johnson Henn
October Term 2002

RonNell Andersen Jones
October Term 2003

Noah Levine
October Term 1999

Jennifer Mason McAward
October Term 2000

Joshua Klein
October Term 2004

Justin Nelson
October Term 2002

Cristina Rodriguez
October Term 2002

Alexander "Sasha" Volokh
October Term 2005

Allyson N. Ho
October Term 2002

Bradley Joondeph
October Term 1999

Anup Malani
October Term 2001

Amy Kapczynski
October Term 2005

Isaac Lidsky
October Term 2008

Stanley J. Panikowski
October Term 2000

Sambhav N. Sankar
October Term 2003

Shirley Woodward
October Term 1999

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

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E-MAIL amalani@uchicago.edu
www.law.uchicago.edu

Anup Malani
Lee and Brena Freeman Professor of Law
Professor of Medicine

September 9, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Potential Nomination of Michelle Friedland to the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley,

I am writing to express my enthusiastic support for Michelle Friedland, who has been nominated by President Obama to the United States Court of Appeals for the Ninth Circuit. I respect Michelle's intellect and integrity and believe she would be an exceptionally strong addition to the Federal judiciary.

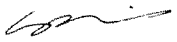
I first met Michelle when she was clerking for Judge David Tatel and I was clerking in the neighboring chambers of Judge Stephen F. Williams on the U.S. Court of Appeals for the D.C. Circuit. The two judges had an affinity that carried over to their clerks. I also had the opportunity to clerk with her in the Chambers of Justice Sandra Day O'Connor. She and I did not see eye to eye on all issues, which gave us plenty of opportunity for debate. This was quite a pleasure as Michelle could always be relied upon to make the strongest arguments for a position and to dispense quickly with weak and non-serious positions. Yet, no matter how heated discussions became, she remained unflappably positive in her relationships with fellow clerks. While a Supreme Court clerkship certainly requires a capacity for hard work, I was taken aback by the exceptional effort Michelle put in, especially in screening petitions for certiorari. Overall, she was a model of intellectual rigor, courtesy and dedication.

Michelle and I have taken different paths since clerking. She became a partner at the prestigious and demanding firm of Munger, Tolls & Olson, LLP, working in that

firm's appellate practice. However, I had the good fortune to be able to work with her while drafting an amicus brief (Brief amici curiae of Health and Economics Professors) in *Federal Trade Commission v. Actavis, Inc.*, a case decided last month by the U.S. Supreme Court. I was reminded of her breadth of knowledge. The case concerned "reverse payment" settlements in pharmaceutical patent cases. Our amicus brief dealt largely with the competitive effects of longer medical patents and the appropriate tradeoff between medical innovation and high drug prices. Michelle quickly understood our logic, how it differed from the petitioner's brief and other amicus briefs, and its legal implications for the settlements in the *Actavis* case. I came away thinking she would have excelled had she decided to become an economist rather than a lawyer.

Based on these experiences and my knowledge of her as a person, I firmly believe she will admirably serve both litigants and the U.S. legal system.

Sincerely,



Anup Malani

STANFORD LAW SCHOOL

M. Elizabeth Magill
Richard E. Lang Professor
of Law and Dean

Crown Quadrangle
559 Nathan Abbott Way
Stanford, CA 94305-8610
tel 650 723 [illegible]
Fax 650 723 4969
emagill@stanford.edu

August 27, 2013

Senator Dianne Feinstein
Untied States Senate
331 Hart Senate Office Building
Washington, DC 20510

Subject: Nomination of Michelle Friedland

Dear Senator Feinstein:

We write as three former deans and the current dean of Stanford Law School to express our enthusiastic support for Michelle Friedland, who is under consideration for nomination of the Ninth Circuit Court of Appeals.

Ms. Friedland graduated second in her class from Stanford Law School in 2000 and then served as law clerk to David Tatel on the D.C. Court of Appeals and Justice Sandra Day O'Connor (coincidentally, also said to be second in her class at Stanford Law School). After a two-year lectureship at Stanford, she joined the San Francisco office of Munger, Tolles & Olson, where she is a litigation partner. Her clients include the University of California as well as corporate clients, and she has engaged in substantial pro bono work as well.

We write to tell you about Ms. Friedland's reputation at Stanford which, in a word, is stellar. Faculty members describe her as "a super lawyer and a person of real integrity," "a fabulous human being and fabulous lawyer," and "a brilliant lawyer and one of the finest people I know." Another says that she "can't imagine a person better suited to being a judge than Michelle." What is striking about these comments is the consistent combination of her professional and personal qualities.

One of us (Paul) was dean during her years as a student, and her reputation among faculty and classmates had already developed to presage her qualities as a lawyer. Another of us (Kathleen) was dean during her later student years and not only knew her as a terrific student but chose her to work as a teaching assistant, where her performance was first-rate. A third of us (Larry) was dean when Michelle was teaching as a visiting assistant professor at the law school. And the fourth dean (Liz) invited her to teach as a visiting lecturer at University of Virginia and hosted her there. As a visiting assistant professor at Stanford and as a visiting lecturer at Virginia, Michelle performed superbly and got strong reviews from both students and faculty.

All of which is to say that, should the President nominate Ms. Friedland for a position on the Court of Appeals, we hope that you will give her your most serious consideration and we are optimistic that you will find her record as impressive as that of her teachers.

Sincerely,

Paul Brest
Professor Emeritus and former Dean, Stanford Law School

Kathleen M. Sullivan
Quinn Emanuel Urquhart & Sullivan
(former Dean, Stanford Law School)

Larry Kramer
President, William and Flora Hewlett Foundation
(former Dean, Stanford Law School)

M. Elizabeth Magill
Dean and Richard E. Lang Professor of Law
Stanford Law School

Cc: Jennifer Duck
Eric Haren

Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

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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Fax: (813) 221-2900
Email: bhill@hwhlaw.com

VIA EMAIL AND FIRST CLASS MAIL

August 2, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Christopher Reid Cooper to tthe United States District Court for the District of Columbia

Dear Chairman Leahy:

I am writing as the acting chair of the ABA Standing Committee on the Federal Judiciary as a result of the recusal of the current chair for the evaluation of the above nominee, Christopher Reid Cooper.

The Committee has completed its evaluation of the professional qualifications of Christopher Reid Cooper who has been nominated for a position on the United States District Court for the District of Columbia. As a result of our investigation, a majority of the Committee is of the opinion that Mr. Cooper is Well Qualified. A minority of the Committee is of the opinion that Mr. Cooper is Qualified, one recusal recorded.

A copy of this letter has been provided to Mr. Cooper.

Sincerely,

Benjamin H. Hill
Acting Chair

cc: Mr. Christopher Reid Cooper, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on August 2, 2013.



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Judy Perry Martinez
New Orleans, LA

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THIRD CIRCUIT
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2929 Arch Street
Philadelphia, PA 19104-2808

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Charlotte, NC 28202-6021

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Suite 1208
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Ronald A. Case
10560 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Elton J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF CO: NOEL
Denise A. Cardman
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denise.cardman@americanbar.org

Please respond to:
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2980 Fairview Park Drive
Falls Church, VA 22042
Tel: 703-280-4088
Email: judy.martinez@ngc.com

AMERICAN BAR ASSOCIATION

Standing Committee on the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

VIA EMAIL AND FIRST CLASS MAIL

August 2. 2013

The Honorable Patrick J. Leahy. Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington. DC 20510

Re: Nomination of Gerald Austin McHugh, Jr. to the United States District Court for the Eastern District of Pennsylvania

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Gerald Austin McHugh, Jr. who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. As a result of our investigation, the Committee is of the opinion that for this position Mr. Gerald Austin McHugh, Jr. is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. McHugh, Jr.

Sincerely,

Judy Perry Martinez
Chair

cc: Mr. Gerald A. McHugh, Jr., Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on August 2, 2013.

FELDMAN SHEPHERD
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TRIAL LAWYERS

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†§ EZRA WOHLGELERNTER
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† DANIEL S. WEINSTOCK
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ROBERTA D. PICHINI
†§ THOMAS MORE MARRONE
†‡ DANIEL J. MANN
PETER M. NEWMAN
† JASON A. DARIA
† THOMAS MARTIN
† PATRICIA M. GIORDANO
† ANDREW K. MITNICK
† EDWARD S. GOLDIS
† CAROLYN M. CHOPKO
•† ROYCE W. SMITH
† EVAN Y. LIU, M.D.

OF COUNSEL
* JOSEPH D. SAMS
BARTON A. HAINES
DONALD A. KRAIN

*CERTIFIED CIVIL TRIAL ADVOCATE, NATIONAL BOARD OF TRIAL ADVOCACY
† LL.M. IN TRIAL ADVOCACY
†ALSO MEMBER NJ BAR
‡ALSO MEMBER TX BAR
§ALSO MEMBER NY BAR
*ADMITTED IN NJ ONLY

February 6, 2012

Honorable Robert P. Casey
U.S. Senate
393 Russell Senate Office Building
Washington, DC 20510

Honorable Patrick J. Toomey
U.S. Senate
502 Hart Senate Office Building
Washington, DC 20510

Re: Application of Gerald A. McHugh for the Federal Bench

Dear Senators Casey & Toomey:

I am pleased to enclose herein a letter from the present Chancellor and many former Chancellors of the Philadelphia Bar Association, requesting your consideration of the application of Gerald A. McHugh, Esquire for a seat on the United States District Court for the Eastern District of Pennsylvania.

Very truly yours,

Alan M. Feldman

AMF/dk
Enclosure

February 6, 2012

Honorable Robert P. Casey
U.S. Senate
393 Russell Senate Office Building
Washington, DC 20510

Honorable Patrick J. Toomey
U.S. Senate
502 Hart Senate Office Building
Washington, DC 20510

Re: Application of Gerald A. McHugh for the Federal Bench

Dear Senators Casey & Toomey:

All of us who have affixed our name to this letter have had the privilege to be elected Chancellor of the Philadelphia Bar Association, the oldest bar association in the nation.

We practice in different fields of the law. We have represented a wide variety of clients, in some cases litigating matters against one another. As Chancellors, we each set different priorities during our respective tenures, and we bring different perspectives to the law. We encompass widely differing political views.

We stand united, however, in the conviction that Jerry McHugh would make an outstanding federal judge.

Little needs to be said about Jerry's professional achievement and reputation. By any measure he ranks among the elite of the bar not just in Pennsylvania, but nationally. He is the rare lawyer who has combined courtroom ability with intellectual prowess. His two-volume treatise, which he wrote while practicing full time, is recognized as an authoritative statement of Pennsylvania law, and he is in wide demand as a teacher and lecturer.

In a profession that is often marked by contentiousness, he adheres to the highest standards of professionalism. His adversaries not only speak well of him, but have chosen him to sit in judgment on matters involving their clients.

His service to the community, the courts, the bar, and legal education epitomizes the classical ideal of the "citizen lawyer," as reflected by the multiple awards he has received from so many different quarters. And yet, it is noteworthy that despite wide acclaim, he never presents as self-important.

If the concept of merit selection is to have any meaning in our political process, then surely there is a place on the federal bench for a lawyer such as Jerry McHugh.

Respectfully,

John Savoth (2012)
Scott F. Cooper (2010)
A. Michael Pratt (2008)
Alan M. Feldman (2006)
Carl S. Primavera (2001)
Edward F. Chacker (1999)
Abraham C. Reich (1995)
Andre L. Dennis (1993)
Joseph H. Foster (1981)
Rudolph Garcia (2011)
Sayde J. Ladov (2009)
Jane L. Dalton (2007)
Allan H. Gordon (2002)
Doreen S. Davis (2000)
Francis P. Devine, III (1996)
Lawrence J. Beaser (1994)
David H. Marion (1985)

Conrad O'Brien

Howard M. Klein
Attorney at Law
Direct Dial: 215.864.8068
Cell: 267.879.2388
Direct Fax: 215.864.0068
hklein@conradobrien.com

February 8, 2012

VIA FEDERAL EXPRESS

Honorable Robert P. Casey
United States Senate
393 Russell Senate Office Building
Washington, D.C. 20510

Honorable Patrick J. Toomey
United States Senate
502 Hart Senate Office Building
Washington, D.C. 20510

Re: Potential Nomination of Gerald McHugh, Jr. to the
United States District Court for the Eastern District of Pennsylvania

Dear Senators:

We send this letter as attorneys whose practices have focused on the defense of civil claims. All of us have served as representatives of the defense bar, either as President of the Philadelphia Association of Defense Counsel or its statewide counterpart, the Pennsylvania Defense Institute.

It is sometimes said that the most revealing assessment of a lawyer comes from his or her opponents. The attorney about whom we write, Jerry McHugh, has represented mostly plaintiffs in civil litigation, with some exceptions including his notable defense of Drexel College of Medicine. Thus, we know Jerry principally as our opponent in cases and as a leader of the plaintiffs' bar. Having worked with him from the opposite side of the courtroom, we lend our unqualified support to the prospect of his appointment to the bench.

Jerry has distinguished himself not just in the results he has obtained for his clients, but also in his teaching, writing, and service to the profession. His integrity is unquestioned, and his word is his bond. The fact that he is regularly sought out as both a mediator and arbitrator attests to his reputation for fairness. In the eyes of many lawyers, he sets the standard for professionalism within the trial bar.

To have a lawyer of his experience and caliber assume the bench would represent judicial selection at its finest.

Respectfully,

/s/

Norbet Bergholtz
Retired

Howard M. Klein
Conrad O'Brien PC

Joseph T. Bodell, Jr.
Bodell, Bové, Grace & Van Horn, P.C.

Richard Kolb
White and Williams PC

Butler Buchanan, III
Marshall Dennehey Warner Coleman & Goggin

Peter S. Miller
Marshall Dennehey Warner Coleman & Goggin

Robert Casey
Robert J. Casey, Jr. & Associates

William J. O'Brien
Conrad O'Brien PC

Nicholas M. Centrella
Conrad O'Brien PC

Michael Plevyak

Armand J. Della Porta, Jr.
Marshall Dennehey Warner Coleman & Goggin

David Prewitt
Bennett, Bricklin & Saltzburg LLC

James Haggerty
Schwartz Campbell LLC

Madeline M. Sherry
Gibbons PC

Joseph M. Hankins
Britt, Hankins & Moughan

Andrew Susko
White and Williams PC

Peter J. Hoffman
Eckert Seamans Cherin & Mellott, LLC

Gerald J. Valentini
Deasey Mahoney Valentini & North, Ltd.

February 6, 2012

Honorable Robert Casey
U.S. Senate
393 Russell Senate Office Building
Washington, D.C. 20510

Honorable Patrick Toomey
U.S. Senate
502 Hart Senate Office Building
Washington, D.C. 20510

Re: **Nomination of Gerald A. McHugh, Jr. to the Eastern District**

Dear Senators Toomey and Casey:

Please consider this letter in support of the potential nomination of Gerald McHugh to the federal trial bench.

The signatories to this letter represent a broad cross-section of the trial bar. We hail from firms large and small; represent government, corporations, management, labor, and individuals from all walks of life. We include Democrats, Republicans, and Independents. Some of us have prosecuted accused criminals, and others defended them. We find ourselves on opposite sides of the courtroom on a regular basis. What we share in common is Fellowship in the American College of Trial Lawyers.[1]

The College is the oldest and most respected institution of the trial bar. Past Presidents have included Justice Lewis Powell and Attorney General Griffin Bell, among other legendary members of the bar.

Fellowship in the College is limited to the top one percent of practicing trial attorneys in any state. In addition to showing exceptional ability, a proposed Fellow must show exceptional integrity and character. The vetting process is painstaking and lengthy.

Membership in the College is so cherished that upon elevation to the United States Supreme Court, each new Justice is offered, and gladly accepts, admission. Members of the High Court have regularly addressed the College, and advice from the College's standing committees on the administration of justice is welcomed by the federal judiciary.

In addition to sharing that Fellowship, the other common thread uniting us, and the motivation for this letter, is the firm conviction that Jerry McHugh would make an outstanding federal judge.

---

1 This letter does not represent an official position of the American College, but a personal communication from individual lawyers who are Fellows of the College.

Some of us know him as a colleague or as co-counsel. Others know him as an opponent. Some of us have sought his advice or asked his representation of our clients, family and friends. Many of us have learned from his lectures, or relied upon his treatise on Pennsylvania torts. Yet others have worked with him on projects to improve the administration of justice or access to the courts.

These multiple interactions bring all of us to the same place: Jerry McHugh would be a judge to whom we could entrust our most important matters, and whatever the outcome, we would be confident that our clients will receive an impartial, informed decision, soundly rooted in the law. We are equally confident that his temperament is uniquely suited to presiding over a courtroom and fulfilling the duties of a judge

We assume there is no need to recount the many professional achievements which account for Jerry McHugh's stature in the bar. There is one revealing footnote, however, the significance which would only be understood by Fellows of the College. Each year, at the induction ceremony, one new Fellow is selected by the President of the College to deliver remarks on behalf of the inductees, an intimidating array of the best of the trial bar from around the United States. In Jerry McHugh's year, after weighing the accomplishments of a characteristically impressive class, the President accorded him that signature honor.

As lawyers who are privileged to litigate some of the most important cases in our federal courts, we harbor no doubt that an appointment of Jerry McHugh would be acclaimed across Pennsylvania.

Respectfully yours,

Elizabeth K. Ainslie
Schnader Harrison Segal & Lewis, LLP

Carmen P. Belefonte
Saltz, Mongeluzzi Barrett & Bendesky, PC

Thomas A. Bergstrom
Buchanan Ingersoll & Rooney, PC

David F. Binder
Gold Silverman Goldenberg & Binder

Allan D. Black
Fine Kaplan and Black

Andrew L. Braunfeld
Masterson Braunfeld, LLP

James M. Brogan
DLA Piper

Fred B. Buck
Rawle & Henderson, LLP

William R. Caroselli
Caroselli Beachler McTiernan & Conboy, LLC

Honorable Robert Cindrich
Univ. of Pitts. Med. Ctr.
U.S. District Court (Ret)

J. Gordon Cooney, Jr.
Morgan Lewis & Bockius, LLP

James D. Crawford
Schnader Harrison Segal & Lewis, LLP

Joseph C. Crawford
Pepper Hamilton, LLP

Kell M. Damsgaard
Morgan Lewis & Bockius, LLP

Francis J. Deasey
Deasey Mahoney Valentini & North

A. Roy DeCaro
Raynes McCarty

Thomas J. Duffy
Duffy & Partners

Lawrence J. Fox
Drinker Biddle & Reath, LLP

Louis W. Fryman
Conrad O'Brien, PC

Nancy H. Fullam
The Fullam Firm, PC

Joseph Fullem, Jr.
Thorp, Reed & Armstrong

Nancy J. Gellman
Conrad O'Brien, PC

Charles B. Gibbons
Buchanan Ingersoll & Rooney, PC

Amy B. Ginensky
Pepper Hamilton, LLP

John P. Gismondi
Gismondi & Associates

Allan H. Gordon
Kolsby Gordon Robin Shore Bezar

John A. Guernsey
Conrad O'Brien, PC

Susan K. Herschel
Hoyle Fickler Herschel & Mathes, LLP

C. Clark Hodgson, Jr.
Stradley Ronon Stevens & Young, LLP (Ret)

Peter J. Hoffman
Eckert Seamans Cherin & Mellott, LLC

Daniel B. Huyett
Stevens & Lee, PC

Adrian R. King
Post & Schell, PC

Edwin L. Klett
Buchanan Ingersoll & Rooney

The Honorable William Lamb
Lamb McErlane, PC
Supreme Court of PA (Ret)

Timothy R. Lawn
Raynes McCarty

David Lehman
McNees Wallace & Nurick (Ret)

S. Gerald Litvin
Morgan Lewis & Bockius, LLP (Ret)

Stephen A. Madva
Montgomery McCracken Walker & Rhoads, LLP

Gregory P. Miller
Drinker Biddle

H. Laddie Montague, Jr.
Berger & Montague

James F. Mundy
Powell Law

Dean F. Murtagh
German Gallagher & Murtagh, PC

Arthur Newbold
Dechert, LLP

William J. O'Brien
Conrad O'Brien, PC

Roberta D. Pichini
Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig

William H. Pugh, IV
Kane Pugh Knoell Troy & Kramer, LLP

Alfred W. Putnam, Jr.
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O'Brien & Ryan, LLP

Howard D. Scher
Buchanan Ingersoll & Rooney, PC

Carol Nelson Shepherd
Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig

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Ralph G. Wellington
Schnader Harrison Segal & Lewis, LLP

Robert E. Welsh, Jr.
Welsh & Recker, PC

Thomas R. Wilson
Unruh Turner Burke & Frees

William M. Wycoff
Thorp Reed & Armstrong, LLP

James A. Young
Christie Pabarue Mortensen & Young

CHAIR
Judy Perry Martinez
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AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
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1050 Connecticut Avenue, NW
Washington, DC 20036

VIA EMAIL AND FIRST CLASS MAIL

August 2, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of M. Douglas Harpool to the United States District Court for the Western District of Missouri

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of M. Douglas Harpool who has been nominated for a position on the United States District Court for the Western District of Missouri. As a result of our investigation, the Committee is of the opinion that for this position Mr. M. Douglas Harpool is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. Harpool.

Sincerely,

Judy Perry Martinez
Chair

cc: M. Douglas Harpool, Esquire (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on August 2, 2013.

Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
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VIA EMAIL AND FIRST CLASS MAIL

August 2, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Edward G. Smith to the United States District Court for the Eastern District of Pennsylvania

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Edward G. Smith who has been nominated for a position on the United States District Court for the Eastern District of Pennsylvania. As a result of our investigation, the Committee is of the opinion that for this position Judge Edward G. Smith is Unanimously Well Qualified.

A copy of this letter has been provided to Judge Smith.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Edward G. Smith (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esquire (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esquire (via email)

This letter was sent to The Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on August 2, 2013.

MICHAEL F. BENNET
COLORADO

COMMITTEES:
AGRICULTURE, NUTRITION, AND FORESTRY
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November 6, 2013

Chairman Patrick J. Leahy
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Chuck Grassley
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Chairman Leahy and Ranking Member Grassley,

I want to express my support for the appointment of Christopher "Casey" Reid Cooper as the United States District Court Judge for the District of Columbia.

Mr. Cooper brings broad expertise to the District Court judgeship that spans both the public and private sector. He is an accomplished lawyer with over fifteen years of litigation experience. He has extensive knowledge of white-collar and anti-corruption matters which have allowed him to advocate on behalf of clients in both criminal and civil investigations.

Mr. Cooper's experience extends beyond private practice and into the public interest. As Special Assistant to the Deputy Attorney General at the Department of Justice, Mr. Cooper was on the front lines of defending the nation's interests and gained valuable insight into the diverse array of legal issues affecting the public.

I have no doubt that Mr. Cooper will bring a fair and thoughtful demeanor to the District Court bench and I look forward to his consideration by the full Senate following the passage of his nomination through Committee.

Sincerely,

Michael F. Bennet
United States Senator

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