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S. HRG. 113–515, Pt. 6

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

NOVEMBER 13, NOVEMBER 20, and DECEMBER 19, 2013

Serial No. J–113–1

PART 6

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WEDNESDAY, NOVEMBER 13, 2013

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:04 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Dick Durbin, presiding.

Present: Senators Durbin and Grassley.

Senator DURBIN. Good afternoon. The Judiciary Committee will come to order, and we will consider four nominations for the Federal bench. They include: Nancy Moritz, of Kansas, who has been nominated to serve on the U.S. Court of Appeals for the Tenth Circuit; Stanley Bastian, nominated to be a district judge for the Eastern District of Washington; Sheryl Lipman, nominated to be a district judge for the Western District of Tennessee; and Manish Shah, who has been nominated to be a district judge for the Northern District of Illinois.

Each nominee has the support of their home State Senators, and I commend President Obama for sending their names to the Senate.

At these hearings it is traditional for the nominees to be introduced before the Committee by Senators from their home States, and unless the Ranking Member has any opening remarks—okay, they will be submitted for the record.

We will proceed with the introductions. I would like to invite my Senate colleagues at the witness table to make their introductions, and I know they have busy schedules and may have to leave afterwards, but we are honored to have them here.

First up will be Senator Mark Kirk of the great State of Illinois. Senator Kirk, proceed. Make sure your microphone is on there, Mark.

PRESENTATION OF MANISH S. SHAH, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, BY HON. MARK KIRK, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator KIRK. Thank you, Mr. Chairman. I want to say that you and I both agree that Manish Shah should be sitting on the Federal bench in the Northern District of Illinois. I would say about Manish that he has been heading the Criminal Division of the U.S. Attorney's Office, which has substantial management responsibility because he is overlooking the work of 130 other people, more than most U.S. Attorneys in the country.

I want to note this about Manish's career: that he has managed the prosecution of the hired truck scandal that included the prosecution of 49 public officials, sorely needed for our State where we suffer from corruption problems, that Manish has been a good corruption fighter. I think as a justice he will be outstanding in his service to the country.

Senator DURBIN. Thank you very much, Senator Kirk. It is true that we do this on a bipartisan basis, and each approves the other's nominees, and I was happy to join. I will have a few words about Mr. Shah after our other colleagues have had a chance to speak about their nominees.

Let me now recognize Senator Jerry Moran of Kansas.

PRESENTATION OF HON. NANCY L. MORITZ, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT, BY HON. JERRY MORAN, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator MORAN. Chairman Durbin, thank you very much. I appreciate you and Ranking Member Grassley giving me the opportunity to appear before this Committee, and it is a pleasure and honor to be here to introduce Honorable Nancy Moritz, who is a Supreme Court Justice of the Kansas Supreme Court. She has been nominated by the President to serve as a judge on the Tenth Circuit Court of Appeals.

I am a member of the bar and have great concern about the dispensing of justice in our State, and this position has been open for a considerable amount of time, and I am pleased to say that Senator Roberts and I and the White House had the opportunity to work together to find nominees that were acceptable to the White House as well as to Senator Roberts and to me, and Justice Moritz meets that criteria.

It is important, it seems to me, that our ability to come together is particularly demonstrated in the need for the filling of positions, both at the Federal district court as well as the Tenth Circuit.

I am also grateful to Justice Moritz for her willingness to continue her public service. She will, if confirmed, replace Judge Deanell Reece Tacha, a very highly qualified and respected member of the Tenth Circuit Court of Appeals, someone highly regarded in Kansas and across the country, and I have little doubt that Justice Moritz will fulfill those shoes with similar capabilities and similar distinction.

Justice Moritz comes—let me express my support for her nomination in a couple of ways. She comes from a community of a population of just a few hundred, Tipton, Kansas, and not too far down

the road from my home town. And I know the type of community as well as I know the specifics of this community, and I have great regard for the way that small towns raise their kids. And I have great regard and, therefore, great expectation that, if confirmed, Nancy will serve justice well and will serve our country well.

In small towns across Kansas and across the country, when you grow up in that setting, you are raised in a way that I think is important. It creates a certain level of character, kind of character, amount of respect, kindness for others, a work ethic, and a genuine concern for others. And I am so supportive of that kind of upbringing and the kind of qualifications, therefore, that this nominee brings.

So it is in a sense an opportunity to brag about the way we raise our kids in Kansas and indicate to you that Nancy Moritz really exemplifies that kind of upbringing.

She is highly regarded in her community where you have no way but being known in a town that size. Everyone knows you, and so the way that the community came together to support her nomination and to support her qualifications to be a judge has great appeal to me.

Additionally, Justice Moritz was a law clerk for a Kansas Supreme Court Justice named Ed Larson. If there is a lawyer in Kansas who I consider a lawyer's lawyer, it is Justice Larson. And the fact that Justice Moritz was mentored by Justice Larson means a great deal to me. Ed Larson was one of my partners in our law firm of five attorneys, and so I know the justice well, and I know based upon his recommendation and the relationship that he and Nancy Moritz developed, clerk to judge, that she has been mentored by one of Kansas' finest jurists.

So those two aspects of her life—her upbringing and her mentorship by a great attorney and justice—causes me to be here. And then you add to that all of the experience, the mix of experience that Nancy has had in private practice and as a Federal attorney as well as a court of appeals judge and a Supreme Court justice, I think there is a significant and well-based foundation for her to make an excellent Federal judge.

And so, Mr. Chairman and Ranking Member Grassley, I look forward to supporting Justice Moritz's confirmation to the Tenth Circuit, assuming that this Committee recommends her favorably to the U.S. Senate, and, again, I express my gratitude to her and her family, who have joined her here today, for her willingness to serve in this important capacity.

Thank you very much, Senator Grassley.

Senator DURBIN. Thank you, Senator Moran.

Senator Murray.

Senator MURRAY. Mr. Chairman, I note that Senator Kirk was here ahead of me, and I am happy to allow him to go first, if he wants.

Senator DURBIN. He has already spoken.

Senator MURRAY. He already has, okay.

PRESENTATION OF STANLEY ALLEN BASTIAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON, BY HON. PATTY MURRAY, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator MURRAY. Well, thank you very much, Chairman Durbin and Ranking Member Grassley and all the Members of your Committee. I really appreciate the opportunity today to join you to introduce an outstanding nominee to be the United States District Judge for the Eastern District of Washington, Stan Bastian. I am pleased to welcome him and, I believe, his wife and daughters as well who are with him in Washington, DC, today—or as the people from my State call it, "the other Washington."

As many of you may know, in my home State we use a bipartisan judicial selection process to recommend to the President potential nominees to the Federal bench. At a time when we too often suffer from partisan gridlock, facing the threat of filibusters on the floor of the Senate for even the most routine of votes, I am very pleased to report to you that Stan Bastian was unanimously recommended by Democrats and Republicans alike to be the next Federal judge in eastern Washington.

For the many reasons I will briefly touch upon, Stan is immensely qualified to serve as United States district judge, and I urge this Committee to support his confirmation.

With nearly 30 years of litigation experience under his belt, Stan represents the best of the legal profession in Washington State. He is a fellow in the American College of Trial Lawyers. He is a lawyer representative to the Ninth Circuit Judicial Conference. He is chairman of the Equal Justice Coalition and has served the Washington bar faithfully, first as a member of the board of Governors, then as president-elect and as president.

As a partner at the Wenatchee law firm Jeffers, Danielson, Sonn and Aylward, Stan has practiced in both State and Federal court trying hundreds of cases, including civil and criminal cases and jury and bench trials.

At the outset of his career, Stan clerked for the Washington State Court of Appeals, and he served for a time as judge pro tem in several municipal courts.

Stan has described the ideal judicial temperament as one of "fairness, impartiality, efficiency, and patience"—attributes that Stan displays time and time again in the courtroom, as a leader in his firm, and as a leader in the bar. I have no doubt, Mr. Chairman, that these attributes will serve him well as a Federal judge.

So let me thank Stan for accepting the President's nomination and for his willingness to serve Washington State and our Nation as a Federal judge. Our system of Government is at its best when good people step up to the plate and are willing to serve. Throughout his legal career, Stan Bastian has done just that, working tirelessly to strengthen and improve the practice of law and access to justice in my State. I know Stan will bring this same work ethic to his service as a Federal judge in the Eastern District, and I know the judiciary will be better off because of his service.

Thank you very much.

Senator DURBIN. Thanks, Senator Murray.

I understand the Senators from Tennessee could not join us at this moment, and they have asked me to give a brief introduction on behalf of Sheryl Lipman, who has been nominated to the District Court for the Western District of Tennessee. She served as university counsel for the University of Memphis since 2002. In this capacity, she serves as the university's primary in-house counsel for all major litigation. Previously she worked as vice president of Comprehensive Services at the Memphis Race Relations and Diversity Institute, spent a decade in private practice at the law firms Reed Smith; Wyatt, Tarrant and Combs; and Burch, Porter and Johnson. She received her undergraduate degree from the University of Michigan, her J.D. from New York University School of Law, served as a law clerk for Judge Julian Gibbons, who was then serving on the District Court for the Western District of Tennessee, and we are happy that she is here today.

I will just conclude—Senator Kirk opened with the introduction of Mr. Shah. We have a bipartisan process, and I am happy to lend my name in support of his candidacy or nomination. He is the nominee of historic moment in that he would be the first Article III judge of South Asian descent to serve in our State of Illinois. I understand that Mr. Shah is joined by his family and friends, whom I am sure he will introduce at a later moment.

I want to thank our colleagues, unless Senator Grassley has something to say at this point before we call up the panel.

Senator GRASSLEY. I welcome all the nominees, and I am going to put my statement in the record.

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

Senator DURBIN. Thank you, Senator Grassley. Thank you to our colleagues. You are free to go if you wish, and I am sure you have very busy schedules.

Justice Moritz, you will be the first, and if you would stand for just a moment. Do you affirm that the testimony that you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Justice MORITZ. I do.

Senator DURBIN. Thank you. The record will reflect that the nominee answered in the affirmative.

And now let me turn it over to future Justice Moritz—current Justice Moritz to say a few words and introduce her family.

STATEMENT OF HON. NANCY L. MORITZ, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT

Justice MORITZ. I would like to first thank President Obama for appointing me and putting his trust in me for this position, and Senator Durbin, Chair, and Senator Grassley, the Ranking Minority Member, for convening this hearing. I appreciate it very much.

And I want to thank Senator Moran for those very, very kind remarks, and especially for the kind remarks about my little community of Tipton. I can guarantee you that they feel just as strongly about him as he does about them and for all he has done to help them remain a thriving community.

And very quickly, I want to say that I have my family here to support me, and my brother reminded me yesterday of how our big

adventures used to be. We would get in the family station wagon, and we would all pile in, and we would argue about who had to sit in the back seat, and fight, and take a Sunday drive all around Tipton. Well, the adventure has changed a little bit, but one thing is the same, and my family is still here to support me, as you will see in a minute, and it is great that I finally get the front seat.

I have here with me my daughters, two daughters: Kathleen Landis, who is a student at Colgate University, and her friend, Bennett Wade, from Portland, Maine; and my daughter Sarah Landis who is a student at Washburn University in Topeka, and her fiance, Ryan Rowe, who is a student at Washburn also; my mother, Carol Moritz, from Salina, Kansas; my sister, Kathy Gasper, and her husband, Steve Gasper, from Salina, Kansas; my brother Larry Moritz, from Salina; my brother John Moritz, from Tipton; my cousin Rose Ann Morrow, from Topeka, and her children, Beth and Jeff Morrow, and his fiance, Patricia Clark, from Topeka; my former friend Mike Corpstein from Tipton; my two research attorneys from the Kansas Supreme Court, my right and left hands, Tina Hardin—and her husband, Greg, is here—and Jackie Blase Freed. And I also have a couple of cousins from this area: Sharon Winter is here, and Retired Colonel Ron Winter, her husband, and retired fighter pilot, I might add.

And I also want to introduce Mary Elizabeth Elliott, who is sitting in the back and is here—is from this area, and she is the daughter of Senator—or, I am sorry, Justice Larson, who the Senator mentioned. And she is representing him today because he could not be here, and I am very, very pleased to have her here.

And with that, I would open myself up to questions.

[The biographical information of Justice Moritz appears as a submission for the record.]

Senator DURBIN. Thank you very much, and let me just say at the outset, since Senator Moran is still here, that his appeal to your Kansas roots and Kansas values was really loaded testimony, because he knows that my grandfather was born in Kansas.

Justice MORITZ. Really? Wow.

[Laughter.]

Senator DURBIN. So he is trying his best to get on my best side, and it worked. So thank you very much for those comments, Senator Moran.

You have had some interesting assignments on the Kansas Supreme Court and the Court of Appeals, and now you have an opportunity to serve in a very important position in the Federal judiciary. How do you view the difference in moving from the State courts to the Federal courts, the difference in the challenge?

Justice MORITZ. The difference, I do not know that there is a difference in the challenge. The challenge is always the same, Senator. That is a good question. But it seems to me it is always the same, which is to apply the rule of law, whether it is our United States Constitution or our Kansas Constitution or a Federal statute or a State statute, and to apply it as well as you can. I think the challenge is the same.

Senator DURBIN. So let me ask you about several cases that you have been involved in, and I think it gives you an opportunity to

explain your reasoning when you are confronted with, in many cases, challenging and very difficult factual patterns.

Earlier this year, the Kansas Supreme Court issued a ruling in the case *Shirley v. Glass* that dealt with the duty owed by gun dealers not to sell guns to straw purchasers. In this case, a man named Russell Graham had a history of violence and abuse against his son and his son's mother. He went into a gun shop to buy a shotgun. Graham told the dealer at the gun shop that he had a felony conviction, and the dealer then sold the gun to Graham's grandmother who was with him in the store and who could pass a background check. Graham paid for the gun in cash, took it home that night, and used it to fatally shoot his son and then himself. The son's mother sued the gun dealer, alleging that he negligently entrusted the gun knowing that it was really intended for Graham.

The Kansas Supreme Court upheld a lower court decision allowing the mother to proceed with her negligent entrustment claim and also found that gun dealers must use a high standard of care to avoid selling guns to convicted felons.

Please tell me how you analyzed that case and your reasoning behind that decision.

Justice MORITZ. Yes, Senator, thank you for the opportunity. That case actually involved a statute, a Kansas statute. It did not involve the Second Amendment. It involved a statute that we had to decide whether that statute created a duty, and our case law had not been particularly clear on that point. So we kind of went through that case law and analyzed it and determined that there was a duty on the part of the pawn shop in this case.

We did not go any further than that because the other elements of a negligence case were not before us. This was a summary judgment decision, which means that, you know, they still had to go back and try the case. But we determined that there was a duty——

Senator DURBIN. Based on the statute?

Justice MORITZ. Based on the statute, yes.

Senator DURBIN. Let me ask you about another case. Last year, you wrote an opinion on behalf of a unanimous Kansas Supreme Court in a case called *In re T.S.W.*

Justice MORITZ. Yes.

Senator DURBIN. The case involved a Federal law called the "Indian Child Welfare Act." This Act contains an adoption preference to place tribal children either with a member of the child's extended family or with other members of the child's tribe. In this case, the mother wanted to put her child up for adoption, and the child was a member of the Cherokee Nation on his father's side. The mother had a desire to place the child with a non-Indian family, and there was a question about whether a deviation from the Act's placement preference was warranted because of the wishes of the mother. Your court held that the preference under the law applied in that case.

Can you describe your reasoning behind that decision?

Justice MORITZ. Yes, Senator. The Indian Child Welfare Act that you referred to, it creates preferences, and trial courts are required to follow those preferences. And in this case, we had to determine whether the mother's preference for the placement—the non-Indian

mother's preference for the placement of her child could overcome the normal preference procedure that—the steps that you follow. And we determined based on our analysis of the law as well as Supreme Court precedent and some of our own Kansas Supreme Court precedent that it could not overcome those steps.

Senator DURBIN. I have not deal with this particular Federal law, but there are no exceptions in it for parental preference or cases where one of the parents might be Native American and the other not Native American? There are no exceptions in the law?

Justice MORITZ. I believe it is a factor that can be considered, but our decision had to do with whether that one—the mother's preference could overcome other preferences that are required to be considered under the law.

Senator DURBIN. You worked from 1995 to 2004 as an Assistant U.S. Attorney on civil litigation and served as the office's appellate coordinator. Could you discuss the types of matters you handled in that capacity?

Justice MORITZ. Yes. I actually handled both civil and criminal matters. I had not been a prosecutor, but I did handle a number of criminal matters. Generally they were not matters that had lengthy trials because our office preferred that if there had been a lengthy trial that the prosecutor herself or himself would appear in front of the court and handle those cases. But I did handle a number of criminal matters, drug-related robberies, kind of the normal criminal cases. And I also handled several civil appeals in front of the Tenth Circuit.

Senator DURBIN. Thank you.

Senator Grassley.

Senator GRASSLEY. Thank you for your willingness to serve.

Justice MORITZ. Thank you.

Senator GRASSLEY. In 1991, you wrote an article regarding permissible discrimination in private clubs. I recognize this was a long time ago and early in your career, so it might not be fresh in your mind. Nevertheless, I have a few questions based on that article and have you explain your current views and approach to the subject.

In your conclusion, you wrote, "As is often the case, the law is in step with the views of society." That statement implies that there are times when the law may not be in step with societal views. When is it appropriate for a judge either to determine what the views of society are or to take them into account in a particular case?

Justice MORITZ. Thank you, Senator, for the opportunity to address that article. It is dated. It was quite some time ago. But I think that statement that you are referring to, we were addressing, as I recall, the various statutes that can be used to address discrimination in private clubs. At the time it was not particularly clear and the cases were fairly new, and so we were trying to set out what some of those means were. I think that was the context of the statement that you have read.

Senator GRASSLEY. When then is it appropriate for a judge either to determine what the views of society are or to take them into account in a particular case?

Justice MORITZ. I do not believe it is ever appropriate for a judge to consider that.

Senator GRASSLEY. If a judge determined that the law and prevailing society views are out of step, what is the duty of a judge? I think you just answered that, didn't you?

Justice MORITZ. Yes, sir.

Senator GRASSLEY. In the case of first impression, *In re Interest of K.M.H*, decided in 2007, the Kansas Supreme Court addressed the issue of parental rights. The majority held that the clear language of the statute said a particular class of individuals had no parental rights and the statute did not violate equal protection or due process. You dissented, arguing that the statute violated a fundamental right and that fundamental rights must be actively waived.

I am not asking you about the specifics of that case but more generally how you would approach judging. What is your approach to statutory construction?

Justice MORITZ. Senator, my approach to statutory construction is I take a look at the statute, and I determine whether the statute is clear or unambiguous on its face. And in doing that, I look at the whole statute, not just that part of the statute, and if I find that it is clear from the text of the statute, that is what I go with and that is what we go with. And if I find that it is not clear, then we have to look outside the statute to intent and try to determine the intent of the legislature in Kansas now or, if I am lucky enough to be nominated, of the legislature, of Congress in enacting that statute.

Senator GRASSLEY. And then what process would you under take to determine the plain meaning of a statute, and at the point you would just end it?

Justice MORITZ. I think I would, you know, first of all, I would look at the context and how it was enacted, why it was enacted, and whatever evidence we have of intent. And then I would also, of course, look to precedent interpreting it.

Senator GRASSLEY. Under what circumstances is it appropriate to disregard statutory language?

Justice MORITZ. To disregard statutory language?

Senator GRASSLEY. Yes.

Justice MORITZ. I do not think it is appropriate.

Senator GRASSLEY. As a judge, how would you determine what is a fundamental right?

Justice MORITZ. Well, Senator, our Supreme Court has determined a number of rights are fundamental, and I would certainly enforce and—excuse me, I would certainly apply that precedent.

Senator GRASSLEY. Okay. In the Kansas Supreme Court case regarding parental custody, there was a discussion that a judge must differentiate between the religiously motivated conduct or actions that concern the parents' religious beliefs versus those that implicate the best interests of the child. You dissented in that case, stating, "The majority has essentially judicially mandated a preference for one parent's fundamental right to the free exercise of religion over another parent's fundamental liberty interest in exercising the care, custody, and control of the child."

Again, I do not necessarily want to get into the specifics of the case, so at a more general level, can you describe the approach you take in weighing competing interests? First, how would you distinguish between a fundamental right and a fundamental liberty interest?

Justice MORITZ. Well, I guess I cannot—taking it in the context of that case, the fundamental right that we were referring to was the right—or I was referring to, excuse me, in the dissent was the right to parent.

Senator GRASSLEY. You said one side of it was a fundamental right to free exercise of religion and——

Justice MORITZ. I am sorry. I apologize——

Senator GRASSLEY [continuing]. The other was a fundamental liberty——

Justice MORITZ. Yes. Right, right. I am sorry. Yes, the context of that in that case was—that was a custody matter. I think you are referring to a custody matter.

Senator GRASSLEY. Yes.

Justice MORITZ. And what we had determined was the majority determined that the best interests of the child did not require—or the judge was not allowed to consider the impact of religious practices upon the best interests of the child. And my point really was to say that that may have deprived one parent of their fundamental religious right, the right to express their religious freedom because that parent's views and practices were not being taken into account, as I recall that case. And my view was that the religious practices should not control that setting, but that the religious practices should be considered just like any other practice on what is in the best interests of the child. And ultimately that is what the Kansas Supreme Court held. That was a court of appeals case that I dissented on, and they did take that. They ultimately affirmed the decision, but they did find that a religious practice, if it has an impact upon the best interests of the child, just like any other factor, should be considered.

Senator GRASSLEY. If you want to look at your answer to that and submit in writing a more clear view of how you distinguish between a fundamental right and a fundamental liberty interest, I would appreciate it.

Justice MORITZ. All right.

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

Senator GRASSLEY. I will submit my last question for answer in writing.

Justice MORITZ. Thank you, Senator.

Senator DURBIN. Thank you, Senator Grassley.

[The question of Ranking Member Grassley appears as a submission for the record.]

Senator DURBIN. Justice Moritz, thanks for—did I pronounce that correctly?

Justice MORITZ. Yes, you did.

Senator DURBIN. Okay. Justice Moritz, thank you very much for being with us today, and as Senator Grassley indicated, some of the questions may be sent to you in writing. I hope you can give

us a prompt response and give us an incentive to move your nomination along based on that.

Justice MORITZ. I certainly will.

Senator DURBIN. So thank you very much for your testimony today and for the attendance of your family and friends.

Justice MORITZ. Thank you so much, Senator.

Senator DURBIN. We now call the second panel, which will include Mr. Shah, Mr. Bastian, and Ms. Lipman. If you would please raise your right hand. Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. LIPMAN. I do.

Mr. BASTIAN. I do.

Mr. SHAH. I do.

Senator DURBIN. Thank you. Let the record reflect that all three of the witnesses have answered in the affirmative.

We will give you each an opportunity for a brief opening statement, introduction of your family. Ms. Lipman, you are first.

STATEMENT OF SHERYL H. LIPMAN, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE

Ms. LIPMAN. Thank you. Thank you, Mr. Chairman, and thank you to the Committee for convening this hearing. I would also like to thank the President for the nomination, Senators Alexander and Corker as well as Congressman Cohen for their support for this position.

Today I have with me a few family and friends that I would like to introduce. First, my husband, Dale Anderson. Dale is a retired Navy photojournalist and currently a civilian Navy employee at the Navy Recruiting Command at Millington.

My father, Clifton Lipman, is a semi-retired construction lawyer in Memphis.

My mother, Sandra Lipman, is a retired business executive and former educator.

My sister, Elise Jordan, is a senior vice president with FedEx Express. She is here representing the entire Jordan family watching back home in Memphis: my brother-in-law, Richard; my nieces Samantha and Hannah.

Also in Boston watching online is my brother, Barton Lipman, who is the chair of the economics department at Boston University. He is watching with my sister-in-law, Marie O'Deal, and my nephew, Matthew.

Today I also have several DC friends who I am very thankful who could come today: friends Eve Dubrow, Michael Boston, Lynn Starr, Nancy Berkall, and Scott Kreeger, as well as two colleagues from the University of Memphis who happened to be in DC, David and Pam Cox. I am thankful for them.

Finally—and I am almost done—watching back home in Memphis, I have got colleagues at the University of Memphis' Cecil C. Humphreys School of Law watching, as well as colleagues at the main campus of the university, including our president, Brad Martin. And family and friends in Memphis and San Antonio and other parts of the country watching, I want to thank them all for their support and their confidence.

I am here to answer any questions.

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

Senator DURBIN. One of the widest national broadcasts we have ever had of this Judiciary Committee.

[Laughter.]

Senator DURBIN. Thank you very much.

Mr. Bastian, if you would like to make a brief opening statement and introduce your family and friends.

STATEMENT OF STANLEY ALLEN BASTIAN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON

Mr. BASTIAN. Good afternoon, and thank you for that opportunity. And, Senator Durbin and Senator Grassley, I want to thank both of you for inviting me to appear before this Committee and answering your questions regarding my nomination.

I would also like to thank Senator Patty Murray for the very kind remarks that she just made about me and for supporting my nomination, and for Senator Cantwell, who has also supported me.

I am very pleased today to introduce to the Committee and to acknowledge the support of my family: my wife, Alicia Nakata, who is seated behind me, who is a judge on the Chelan County Superior Court; my daughter Audrey Bastian, who flew in last night from Chicago, where she is teaching high school with the Teach for America program; and my daughter Elenore Bastian, who flew in last night from Walla Walla, Washington, where she is a junior at Whitman College.

Thank you, and I am here to answer any questions that you might have.

[The biographical information of Mr. Bastian appears as a submission for the record.]

Senator DURBIN. Thank you.

Mr. Shah.

STATEMENT OF MANISH S. SHAH, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Mr. SHAH. Thank you, Mr. Chairman. Thank you, Ranking Member Grassley and to Chairman Leahy as well, for scheduling this hearing. Senator Durbin, I thank you for your support of my nomination. I also thank Senator Kirk for his efforts on my behalf.

I also thank President Obama for this nomination, which is the greatest honor of my professional life, and I am deeply humbled by it.

My family is here today, and I would like to introduce them to you. My wife, Joanna Grisinger, is here, and without her support and sacrifice, I would not be here today.

My mother-in-law, Patricia Grisinger, traveled a great distance to be here, and I appreciate her support.

My father-in-law, John Grisinger, was unable to attend the hearing, but I understand he is watching on the webcast.

My brother, Dr. Ash Shah, his wife, Rebecca Shah, and their two children, my nephew, Alexander, and my niece, Sonia, are here

today, had to juggle their busy schedules to be here today, and I appreciate their support.

A very dear family friend, Mrs. Kala Prasad, is here today accompanying, finally, my mother, Mrs. Dina Shah, and I appreciate all the support that my family has given me.

And one final word of thanks, my father, Dr. Suresh Shah, passed away last year. He would have been thrilled with this moment for me, and I would like to take the opportunity to at least place his name in the record of this august body as a small token of my thanks.

And with that, I am happy to answer any of the questions of the Committee.

[The biographical information of Mr. Shah appears as a submission for the record.]

Senator DURBIN. Thank you. I am sure your father would be honored to see you before us today, and in his memory, we will be remembering him, as your family is at this moment.

Let me ask you, Mr. Shah—just a few questions for the three nominees—most of the work which you will probably do on the Federal bench will be of a criminal nature to start with, not exclusively but a lot of criminal work, and there will be many criminal defendants who will stand before you in a courtroom seeking justice, and they will undoubtedly know that your background is primarily that of a criminal prosecutor. They may wonder if they are going to get a fair shake from someone who spent most of their legal career at the other table.

What assurance could you give them and this Committee today about that concern?

Mr. SHAH. Senator, thank you for the question. I can give this Committee my personal assurance that when and if I were fortunate enough to be confirmed, I would absolutely shed the role of an advocate and become the neutral arbiter that I firmly believe the judge must be. For stability and integrity of the rule of law, the judge must be open-minded and fair to all who come before the court.

And I will say that it has been my experience as a prosecutor that being a prosecutor is not just being an advocate seeking a conviction at all costs. A prosecutor has to be thoughtful about the very consequential decision to bring a criminal charge, and I have been fortunate enough to experience a prosecutor's office that takes that responsibility very seriously, and I have learned from, I hope, the very best, and I have tried to pass on to others in my office that one should never forget that the choice to bring a criminal charge affects defendants and that one should always consider the vantage point of the defendant when wrestling with issues in criminal prosecution. And while I would be shedding my role as an advocate if I became a judge, I certainly would take with me the appreciation of the gravity of the situation and the importance to everybody before the court of having a fair and open-minded judge.

Senator DURBIN. Thank you.

Mr. Bastian, among other things, you were president of the Washington State Bar Association from 2007 to 2008. You have had an active private practice of your own. What qualities do you look for in a Federal judge if you are going to appear before him?

Mr. BASTIAN. Your Honor, I look to the same qualities that I think I brought my practice. I think that a Federal judge should be fair, should work hard, should give everybody in the courtroom an opportunity to be heard, should listen carefully to the points that they are trying to make, should strive hard to make them feel that they are getting justice in the courtroom even if they are not pleased with the result. And I think all of those qualities I will bring to the bench if I am confirmed, and that is what I look as my role model.

Senator DURBIN. In response to your questionnaire, you talked about a case that you took to trial in 2009, *Bining v. Central Washington Hospital*. In that case, you represented a plaintiff diagnosed with cancer who took leave under the Family and Medical Leave Act. The plaintiff was replaced while she was on leave, and when she got better and went back for her job, her employer did not provide her an accommodation. She sued for disability discrimination, and the case resulted in a deadlocked jury.

Can you please discuss some of the facts of that case and the work you did on it?

Mr. BASTIAN. That was a case—I generally work as a defense attorney in employment-related matters. In that case I represented the plaintiff. She was a woman who I believed was not provided the accommodations that she was entitled to by her employer. We tried to convince the employer to offer those accommodations prior to filing the lawsuit, and we were not given the relief that we were looking for.

We took the matter to trial. We mediated it twice. We still felt that it was important to try the case. And I think the jury was bothered with the accommodations that were offered and with whether or not those were sufficient for what she struggled with.

Unfortunately the jury hung, and we did not have a decision from them. We settled the case a few weeks later with mediation, but we got a much better result for her than we would have prior to trial, so I think the trial was a very useful tool to get her the relief that I think she was entitled to. I believe that Ms. Bining is still with us and is still successfully employed.

Senator DURBIN. More and more cases are headed to mediation. More and more Federal judges retire now instead of going senior status to become mediators. What do you think about this trend?

Mr. BASTIAN. Well, I think mediation is a very important tool in resolving cases, and that is, after all, what we are trying to do, is to get that case resolved after it starts. That is what I always tell my clients when they come in and hire me, that my job is not necessarily to take their case to trial or to get the best result that they might have in mind. My job is to get that dispute resolved.

I think, unfortunately, a lot of our courts are backlogged with family law cases, particularly at the State level, with criminal law cases, and it is difficult for civil cases, the type of cases that I have worked on in my career, to get to trial. Therefore, it is important that we always look to settlement conferences, mediations, and arbitrations if necessary to try to resolve that matter. I think it is a very useful tool, and it is a tool that we should always keep in mind for every case.

Senator DURBIN. Ms. Lipman, you became in-house counsel at the University of Memphis and represented the school for nearly a decade in litigation involving the school. You know that I represent the city of Chicago. You may not know that I am a Chicago Bulls fan, but you can probably guess my next question.

Could you tell us about a case you were involved in, a high-profile case involving Derrick Rose as a student at the University of Memphis?

Ms. LIPMAN. Yes, Senator. Thank you. I could probably go on for much longer than you really want to hear about the case. It was a very high profile matter in the city of Memphis. Like in Chicago with your Bulls, the Tigers are very popular in the city, and it is truly the city's team.

That was an unfortunate situation where we had a student athlete who played an entire season. We assumed that he was, in fact, eligible to play. We had a wonderful season. It was a joyous year for all Tiger fans—and you may have seen the article I wrote about this—until 2 minutes and 12 seconds to go in the game, we were up by 9, and then it went downhill.

After the season was over, after the school year was over, in fact, the school was notified that the student athlete's SAT score was invalidated, which meant that he was not eligible, and we began the NCAA process of essentially trying that matter within the confines of the NCAA.

It was an interesting case, had all sorts of different angles to it, from the press' view to fans' view to how the NCAA approaches infractions matters. In the end, the season was invalidated. The NCAA felt—the Committee on Infractions as well as the Infractions Appeals Committee felt that the university should be strictly liable for the student athlete's invalid test score and his ineligibility and, therefore, invalidated the season and required that we repay the bonus money.

I will add on behalf of the student athlete, he was never found to have not taken his test. It is simply that he did not get the—we have no proof that he got the notice and was able to respond to the inquiry from the testing service.

I would be happy to answer any other questions. We could talk for days.

Senator DURBIN. I am sure there is a lot more you could say.

Senator Grassley.

Senator GRASSLEY. I will have different questions, as the Chairman did, for each of you, so do not feel offended if I do not ask each of you the same question.

First of all, congratulations for your nomination. I will start with you, Ms. Lipman. Where in the Constitution do you find the right to privacy? That is a philosophical question, but one I would like to have you answer.

Ms. LIPMAN. Well, the Supreme Court has noted that there is a right to privacy in the Fourth Amendment, in the Fourteenth Amendment, has found that right to privacy in several different situations.

Senator GRASSLEY. What is your understanding in general terms of the contours of that right to privacy?

Ms. LIPMAN. The Supreme Court, again, has held that there is the right to—in the context of the Fourth Amendment, of course, the right to be free from unreasonable searches and seizures; in the Fourteenth Amendment, there is marital privacy rights; and other situations like that.

Senator GRASSLEY. Yes. I am going to bring up a controversial issue. I am not asking you for your opinion on it. I just want to know how you might approach this as a judge.

If confirmed, how would you approach a law that requires physicians performing abortions to have hospital admitting procedures? I am not asking how you would decide the case, but I am interested in what factors you would consider and what weight you would give to those factors.

Ms. LIPMAN. Well, Senator, as a district court judge, my job is to look to the facts of the case and then look to precedent and to look to what the Sixth Circuit has instructed the judge to look to as well as the Supreme Court. So my approach to the case would be to look to case precedent, to analyze the facts in front of me, and to apply that precedent.

Senator GRASSLEY. Okay. Because of your involvement in the Memphis Regional Planned Parenthood, I would ask you maybe a general description of your roles, but more specifically, what policies have you been involved in, in crafting, advocating for, or advising on while associated with that organization?

Ms. LIPMAN. Certainly, Senator. My role—as you know, I served as a board member and as board chair of the local affiliate of Planned Parenthood. My role during that time was really to try and help the organization in terms of their operations. It had not been an affiliate that was operated in a very business-like fashion, and so the concentration of my time and effort during that time period was to help right the ship, so to speak, to help it operate in a more efficient way.

In terms of policies, it was not a time where I participated in policies, so I—that was my role at the time.

Senator GRASSLEY. Okay. Mr. Bastian, in 2007, as president of the Washington State Bar Association, you advocated for the fundamental right to Government-provided counsel for low-income litigants in civil matters. What is the constitutional provision, statute, precedent, or legal analysis you used to determine this fundamental right?

Mr. BASTIAN. Well, I think we were looking to the language of the Constitution and equal justice for all, and we were faced with a problem of people coming into the courtrooms without lawyers because they could not afford them, and it would be very difficult for the judge—it would be very difficult for them to find their way through the civil procedure rules and the rules of law. It is difficult for the judge to help them sort that out, and it clogs the system. And I think that it is important for all litigants to have access to an attorney if they can afford it, certainly, and if they cannot, that is one of the things I have done, as the former chair now, not the chair of the local Equal Justice Coalition, to try to advocate for funding for that.

So we do think it is important, and unfortunately, too many litigants cannot afford lawyers, and that creates quite a strain on the civil justice system.

Senator GRASSLEY. If confirmed as a Federal trial judge, you might preside over cases involving indigent pro se litigants. Would you remain impartial in those circumstances? Or would you feel one party is being denied equal justice because they are not represented?

Mr. BASTIAN. Senator, my job as a trial judge is to remain impartial on all cases, independent of whether the parties are represented by counsel or not. I think the challenge that your example presents is that sometimes it is difficult for a judge to discern exactly what the unrepresented party is advocating or is trying to argue. That is a challenge that I am prepared to meet, but I can assure you that I will remain impartial regardless of whether they are represented or not represented.

Senator GRASSLEY. Okay. You were past president of the State bar, but the board's presiding officer. You broke with the bar's—the association's tradition of abstaining from political matters to join a resolution signed by bar association board of Governors supporting equal access for same-sex couples, civil marriage, and its attendant legal rights and obligations afterwards, and those few words are in quotes. I should have said that.

It appears this decision was made without polling bar association members. Why did you feel that it was necessary to break with the norm of abstaining from political matters?

Mr. BASTIAN. Well, I am not sure that I agree with the facts as you stated them. As the president of the board of Governors, I do not have a vote, and I did not vote at that particular meeting. I did sign the resolution because that is my job as president to do, acknowledging that the board has taken——

Senator GRASSLEY. Well, then, I am wrong in assuming you were part of that decision then. If I am wrong, you can tell me I am wrong.

Mr. BASTIAN. I do not think you are wrong, Senator Grassley. However, I do not believe that we broke from a longstanding tradition in terms of taking a position on a political matter. It clearly does have political import, but our job as the board of Governors and my job as president of the board was to guide the bar in taking positions on legislation when asked to, if that legislation impacted the practice of law and the administration of justice. And so it was the decision of the board of Governors during the time that I was president that supporting marriage equality legislation, in fact, did impact the practice of law and the administration of justice, and that is why they took that position.

We did not poll the members of the bar, but we knew that it would be—you know, there would be opposition to it, and there was. But what we did to plan for that resolution, for about 2 years we held seminars throughout the State of Washington. We invited all members of the bar to come. We offered them CLE credits to encourage them to attend, and we offered everybody an opportunity to be heard on it before that vote was taken. So we felt that we did involve the bar as much as we could.

Senator GRASSLEY. Last question. You said in 2007 that diversity is a journey not a destination. "The public must trust that justice will be delivered in a fair and impartial manner, but this trust can be easily lost if lawyers and judges do not reflect the public they serve."

Are you saying that the public cannot trust people who do not reflect their own personal demographics?

Mr. BASTIAN. No, not at all. I think what I was trying to do was encourage debate and thought on the part of the members of the bar that it is important to have diversity both in the legal profession, those serving as lawyers and those serving as judges. However, I think all of those people who are serving as both lawyers and judges are all trained in the same legal system, all trained to respect the rule of law, and I would expect that all of them, regardless of their race, their gender, their geographic area, or their age, all of them would approach their role equally. But it is important to cast the net widely and to have a diverse membership.

Senator GRASSLEY. Mr. Shah, I am going to ask you something I have got a big interest in, is protecting whistleblowers. At CLE on ethics and internal investigations, you addressed whistleblower as well as company counsel being present for employee interviews by Government agencies. Would you please further describe your experience with whistleblower cases?

Mr. SHAH. Yes, thank you, Senator, for the question. In my current practice at the U.S. Attorney's Office in the Criminal Division, it is not uncommon for matters to be referred for potential criminal investigation and prosecution that were initiated by civil litigants, possibly filing a False Claims Act case, qui tam litigation, as well as, more broadly speaking, it is not uncommon for individuals who are insiders in corporations or institutions to report wrongdoing that they have observed in the course of their employment to the authorities.

And so in my experience as a criminal prosecutor, I have had occasion to review cases that were either initiated or a byproduct of some type of whistleblower complaint. It is not an uncommon feature of criminal investigation.

Senator GRASSLEY. Okay. And in a general way, give me your view on whistleblower assertions.

Mr. SHAH. Well, Senator, the general view of whistleblower assertions in my experience is really no different than assertions from anyone. Every case requires investigation and thoughtful deliberation to determine the facts in any given case, without regard to the nature of the person making the complaint being labeled a "whistleblower" or not.

Senator GRASSLEY. I think you just answered another question, so I will go on. Would you comment on particular or special ethical considerations that are raised by employee interviews by Government agents?

Mr. SHAH. Well, in my experience, Senator, one of the ethical considerations that comes into play when agents are interviewing employees is the question of their representation. If the corporation is represented by an attorney, it is often the case that that attorney may also be the attorney for the individual employees, and those raise ethical questions with regard to having contact with individ-

uals who are represented by attorneys, and it has been my experience that we look very carefully at the ethical rules that might apply before authorizing an agent to speak to anyone who may or may not be represented.

Senator GRASSLEY. Okay. My last question. On a number of occasions, you addressed the University of Chicago Law School regarding Federal sentencing. In your notes, you stated, "The prosecutor is or should be thinking about all defendants currently in the system, past and future defendants, victims and future victims, and policy goals that are set to achieve societal interests."

Do you believe that the role of a prosecutor is to advance a policy agenda?

Mr. SHAH. Senator, thank you for the question. I think the comment that I was making in those talks was to address the issue from the prosecutor's perspective, which is to enforce the law and often enforce judgments that are made by prosecutors about the types of crimes that ought to be investigated and prosecuted. And it is on occasion a judgment made by the executive branch as to what crimes ought to be investigated and prosecuted. And those are necessarily policy judgments, but are made by the appropriate officials of the executive branch in seeking out criminal prosecution.

Senator GRASSLEY. Then in your prospective position as a Federal judge, what weight would you give to societal interests in deciding cases or controversies?

Mr. SHAH. Thank you for the question, Senator. None. My approach would be to study the text of whatever provision were before me and to apply the law according to precedent.

Senator GRASSLEY. Thanks to all of you.

Senator DURBIN. Thanks, Senator Grassley.

There will be a statement for the record from Congressman Steve Cohen entered in support of Sheryl Lipman.

[The prepared statement of Representative Cohen appears as a submission for the record.]

Senator DURBIN. And Senator Cantwell regrets that she could not be here today to speak personally in favor of Mr. Bastian, but gives her assurance that she will join in supporting his nomination and speak on the floor about his qualifications for this judge.

Mr. Shah, thank you so much for being here, and I would have to say in just a moment of personal pride, we have been able to work out judicial appointments in Illinois, sometimes with the great cooperation of my friend here, on a very bipartisan basis, and the same is true of your nomination. We are very proud of the fact that you have stepped forward and are willing to serve in this capacity, and I think that you will be a good person to support before the Committee and the full Senate.

We will leave the record open for any questions that might be sent your way. The quicker you can respond, the quicker you might even get on the Committee calendar. So we ask you to try to do that in a thoughtful way and as quickly as possible.

We thank you and all of your friends and relatives for being with us today, and if there is nothing further, the Committee will stand adjourned.

[Whereupon, at 3 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 13, 2013
Dirksen Senate Office Building, Room 226
2:00 p.m.

Panel I

Nancy L. Moritz, to be United States Circuit Judge for the Tenth Circuit

Panel II

Sheryl H. Lipman, to be United States District Judge for the Western District of Tennessee

Stanley Allen Bastian, to be United States District Judge for the Eastern District of Washington

Manish S. Shah, to be United States District Judge for the Northern District of Illinois

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Nancy Louise Moritz
   Former Names: Nancy Moritz Landis and Nancy Landis Caplinger

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.

   Kansas Supreme Court
   Kansas Judicial Center
   301 Southwest Tenth Avenue
   Topeka, Kansas 66612

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

   1960; Beloit, Kansas

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

   1982 – 1985, Washburn University School of Law; J.D., 1985
   1978 – 1982, Washburn University; B.B.A., 1982

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
   Kansas Supreme Court
   Kansas Judicial Center
   301 Southwest Tenth Avenue

Topeka, Kansas 66612
Justice

2004 – 2011
Kansas Court of Appeals
Kansas Judicial Center
301 Southwest Tenth Avenue
Topeka, Kansas 66612
Judge

1995 – 2004
United States Attorney's Office for the District of Kansas
United States Courthouse
444 Southeast Quincy, Suite 290
Topeka, Kansas 66683
Appellate Coordinator (2000 – 2004)
Assistant United States Attorney (1995 – 2004)
(From 1995 to 1996, I worked in the Kansas City office, located at United States Courthouse, 500 State Avenue, Suite 360, Kansas City, Kansas 66101.)

1989 – 1995
Spencer Fane Britt & Browne, LLP
9401 Indian Creek Parkway
Corporate Woods Building 40, Suite 700
Overland Park, Kansas 66210
Associate
(From 1991 to 1993, I worked in the firm's Kansas City office, located at 1000 Walnut Street, Suite 1400, Kansas City, Missouri 64106.)

1987 – 1989
United States District Court for the District of Kansas
United States Courthouse
401 North Market Street
Wichita, Kansas 67202
Law Clerk to the Honorable Patrick F. Kelly

1985 – 1987
Kansas Supreme Court
Kansas Judicial Center
301 Southwest Tenth Avenue
Topeka, Kansas 66612
Research Attorney to the Honorable Harold S. Herd

1984 – 1985
Shawnee County District Court
Shawnee County Courthouse

200 Southeast Seventh Street
Topeka, Kansas 66603
Law Clerk for District Court Judges (part-time)

1983 – 1984
Davis, Unrein, Hummer & McCallister
29th Street & Gage Boulevard
Topeka, Kansas 66614
Law Clerk (part-time)

Summer 1982
Washburn Law School Library
1700 College
Topeka, Kansas 66621
Library Clerk (part-time)

Other Affiliations (uncompensated)

2001 – 2008
Washburn Law School Alumni Association
1700 Southwest College
Topeka, Kansas 66621
Member, Board of Governors

1999 – 2005
Kansas Continuing Legal Education Commission
400 South Kansas Avenue, Suite 202
Topeka, Kansas 66603
Board Member
Vice-Chair (2001 – 2003)
Secretary (2003 – 2005)

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

I have not served in the military. I 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.

Professional
Superior Achievement in Law Award, Washburn University School of Law (2007)
United States Attorney's Office Sustained Superior Performance Award (2002)

United States Attorney's Office Sustained Superior Performance Award (2001)
United States Attorney's Office Sustained Superior Performance Award (2000)
United States Attorney's Office "On the Spot" Award (1999)
Kansas Bar Association Outstanding Service Award (1998)

Educational
Washburn Law Journal Notes Editor (1984 – 1985)
Award for Best Law Journal Comment (1984)
American Jurisprudence Award, Contracts I & II (1982 – 1983)
NONOSO (Senior Women's Honorary Society) (1981 – 1982)
Garvey Scholar (1978 – 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
American Bar Foundation
Earl E. O'Connor Kansas Inn of Court
Johnson County Bar Association
    Program Committee (1995 – 1996)
        Chair
Kansas Bar Association
    Board of Editors, *Journal of the Kansas Bar Association* (1985 – 2006)
        Chair (1996 – 1998)
        Vice-Chair (1994 – 1996)
    Continuing Legal Education Committee (1996 – 1998)
        Chair, Handbook Committee (1997 – 1998)
    Ethics Advisory Committee (1996 – 1997)
Kansas Bar Foundation
Kansas Board of Court Reporters
    Supreme Court Liaison (2011 – present)
Kansas City Metropolitan Bar Association
Kansas Client Protection Fund
    Supreme Court Liaison (2011 – present)
Kansas Continuing Legal Education Commission
    Secretary (2003 – 2005)
    Vice-Chair (2001 – 2003)
Kansas Criminal Justice Coordinating Council
    Member/Chief Justice designee (2011 – present)
Kansas Judicial Council
    Chair, Criminal Law Advisory Committee (2010)
Kansas Women Attorneys Association
Tenth Circuit Court of Appeals Advisory Committee
    Kansas Attorney Representative (2001 – 2004)
Topeka Bar Association

Topeka Women Attorneys Association
Twelfth Judicial District Nominating Commission
Non-Voting Chair (2011 – present)
Wichita 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.

Missouri, 1989 (inactive)
Kansas, 1985

There have been no lapses in membership, although as indicated, my membership in Missouri 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 Court of Appeals for the Tenth Circuit, 1997
United States District Court for the District of Kansas, 1985

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.

Topeka Lawyers' Club (2012 – present)
SOABS (statewide fraternal organization of litigation attorneys) (2009 – present)
Meals on Wheels (Topeka) (2002 – present)
Washburn Law School Alumni Association Board of Governors (2001 – 2008)
Mentoring Program (2004 – present)
Dean Search Committee (2008)

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 believe that years before I became a member, the Topeka Lawyers Club and SOABS limited their membership to men. 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. **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 Argument, *in* APPELLATE PRACTICE HANDBOOK (Kansas Judicial Council ed., 4th ed. 2009). Copy supplied.

Vengeance is Not Mine: A Survey of the Law of Title VII Retaliation, 73 J. KAN. B. ASS'N 20 (2004) (with Diane S. Worth). Copy supplied.

Prediscovery, *in* FEDERAL PRACTICE HANDBOOK FOR THE DISTRICT OF KANSAS (2d ed. 1997). Copy supplied.

Bar Luncheon, THE BARLETTER (Vol. 10, Issue 3; March 1996). Copy supplied.

January Bar Luncheon, THE BARLETTER (Vol. 10, Issue 1; Jan. 1996). Copy supplied.

Bar Luncheon, THE BARLETTER (Vol. 9, Issue 11; Nov. 1995). Copy supplied.

October Bar Luncheon, The BARLETTER (Vol. 9, Issue 10; Oct. 1995). Copy supplied.

Charlie Schnider: Gentleman Lawyer or Knockout Champ?, JOHNSON COUNTY BARLETTER (Vol. 9, Issue 8; August 1995). Copy supplied.

Fire at Will? The Status of Judicially Created Exceptions to Employment-at-Will in Kansas, 64 J. KAN. B. ASS'N 22 (1995) (with Diane S. Worth). Copy supplied.

Discovery, *in* FEDERAL PRACTICE HANDBOOK FOR THE DISTRICT OF KANSAS (1st ed. 1992) (with Janice Miller Karlin). Copy supplied (annotations by co-author).

Does Membership Have its Privileges? The Limits on Permissible Discrimination in Private Clubs, 60 J. KAN. B. ASS'N 27 (1991) (with Diane S. Worth). Copy supplied.

Comment, *Evidence: Placing Limits on the Admissibility of Hypnotically Refreshed Testimony*, 24 WASHBURN L. J. 697 (1984). Copy supplied.

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

Memorandum regarding Washburn Law School Association – Long Range Planning Committee Report, submitted by Washburn Law School Association Board of Governors Planning Committee, June 7, 2005. Copy supplied.

Annual Reports of the Kansas Continuing Legal Education Commission, 1999-2005. Copies 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.

In Spring 2010, I provided a brief self-evaluation to the Kansas Commission on Judicial Performance in connection with my 2010 Judicial Performance Survey Report. The evaluation can be viewed at: http://www.kansasjudicialperformance.org/evaluation.cfm?JudgeID=122.

d. Supply four (4) copies, transcripts or videos 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 video of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

June 6, 2013: Speaker, remarks to Sunflower Girls' State participants visiting Judicial Center, American Legion Girls' State, Topeka, Kansas. Notes supplied.

April 3, 2013: Speaker, question and answer session about my work at the Kansas Supreme Court with Concordia high school students visiting Judicial Center, Concordia High School, Topeka, Kansas. I have no notes, transcript or recording. The address of Concordia High School is 217 West Seventh Street, Concordia, Kansas 66901.

March 22, 2013: Speaker, remarks to attorneys being sworn in to practice in Kansas pursuant to Kansas Supreme Court Rule 708, Kansas Supreme Court, Topeka, Kansas. Notes supplied.

March 20, 2013: Speaker, question and answer session about my work at the Kansas Supreme Court with Tipton high school students visiting Judicial Center, Tipton Catholic High School, Topeka, Kansas. I have no notes, transcript or recording but press coverage supplied. The address of Tipton High School is 301 State Street, Tipton, Kansas 67485.

October 3, 2012: Panelist, "*A CLE Roundtable on Oral Argument: Best Practices When Appearing Before the High Court*," a panel presentation by all members of the Kansas Supreme Court, Johnson County Bar Association, Overland Park, Kansas. Outline supplied.

September 7, 2012: Speaker, *Appellate Practice*, Southwest Kansas Bar Association, Dodge City, Kansas. Outline supplied.

May 18, 2012: Speaker, brief remarks as Departmental Justice for the Fifteenth Judicial District, Fifteenth Judicial District Bench-Bar, Goodland, Kansas. I have no notes, transcript or recording, but the presentation would have been similar to the one given on September 16, 2011, for which notes have been supplied.

May 4, 2012: Speaker, remarks regarding Kansas appellate court system at breakfast meeting of Topeka South Rotary Club, Topeka, Kansas. Notes supplied.

March 30, 2012: Speaker, brief remarks to attorneys being sworn in to practice in Kansas pursuant to Kansas Supreme Court Rule 708, Kansas Supreme Court, Topeka, Kansas. Notes supplied.

March 29, 2012: Guest speaker for legal writing class, Washburn School of Law, Topeka, Kansas. Notes supplied.

March 12, 2012: Speaker, brief remarks regarding the appellate courts to a group of ten women, Seward County Historical Society, Topeka, Kansas. I have no notes, transcript, or recording. The address of Seward County Historical Museum is 567 East Cedar Street, Liberal, Kansas 67901.

February 24, 2012: Panelist, *Recent Appellate Cases of Interest*, Women Attorneys Association of Topeka and Washburn Women Attorneys Association, Topeka, Kansas. Outline supplied.

January 13, 2012: Speaker, *Stewardship & Professionalism in the Study and Practice of Law*, Washburn School of Law, Topeka, Kansas. Outline supplied.

November 8, 2012: Panelist, *Recent Appellate Cases of Interest*, for regional training of district court judges, Kansas Judicial Branch Office of Judicial Administration, Hays, Kansas. I have no notes, transcript or recording. The address of the Kansas Judicial Branch Office of Judicial Administration is 301 Southwest Tenth Street, Topeka, Kansas 66612.

October 14, 2011: Speaker, remarks about achievements of my research attorney upon her swearing-in to the Missouri Bar, Topeka, Kansas. Notes supplied.

September 29, 2011: Panelist, "*A Roundtable on Oral Argument: Applying Practical Steps as you Go*," a panel presentation by all members of the Kansas Supreme Court, Wichita Bar Association, Wichita, Kansas. Outline supplied.

September 16, 2011: Speaker, brief remarks as Departmental Justice for the Twelfth Judicial District at an annual meeting, Twelfth Judicial District, Washington, Kansas. Notes provided.

September 16, 2011: Speaker, remarks to high school and junior high assembly about my legal and judicial career, Hanover Junior High and High Schools, Hanover, Kansas. I have no notes, transcript or recording. The address of Hanover High School is 209 East North Street, Hanover, Kansas 66945.

July 1, 2011: Speaker, remarks about career of newly appointed District Court Judge Preston Pratt following his swearing-in in Oberlin, Kansas. I have no notes, transcript or recording. The address of the Decatur County Courthouse is 120 East Hall, Oberlin, Kansas 67749.

June 10, 2011: Speaker, presentation on recent appellate cases of interest to joint annual meeting of state district and appellate judges, Kansas Bar Association, Topeka, Kansas. I have no notes, transcript or recording. The address for the KBA is 1200 Southwest Harrison Street, Topeka, Kansas 66612.

April 8, 2011: Speaker, presentation on appellate practice, Wichita Bar Association, Wichita, Kansas. Outline supplied.

January 19, 2011: Speaker, brief remarks and swearing-in of clinical law students, Washburn Law School, Topeka, Kansas. Notes provided.

January 7, 2011: Speaker, remarks made at proceedings upon my taking the oath of office for the Kansas Supreme Court, Kansas Supreme Court, Topeka, Kansas. Remarks supplied.

December 1, 2010: Speaker, remarks about the work of the Kansas Supreme Court to three Criminal Justice Classes, Washburn Rural High School, Topeka, Kansas. I have no notes, transcript or recording. The address of Washburn Rural High School is 5900 Southwest Sixty-First Street, Topeka, Kansas 66619.

November 9, 2010: Judge, commented on and judged moot court practice rounds, Kansas University School of Law, Lawrence, Kansas. I have no notes, transcript or recording. The address of the Kansas University School of Law is Green Hall, 1535 West Fifteenth Street, Lawrence, Kansas 66045.

March 23, 2010: Panelist, presentation regarding appellate practice for all first-year legal writing students after moot oral arguments, Kansas University School of Law, Lawrence, Kansas. I have no notes, transcript or recording. The address of the Kansas University School of Law is Green Hall, 1535 West Fifteenth Street, Lawrence, Kansas 66045.

March 10, 2010: Speaker, brief remarks to "Grow Your Own Attorneys," a program sponsored by the Wichita Bar Association for underprivileged high school students interested in legal careers, Kansas Judicial Center, Topeka, Kansas. Notes provided.

February 12-13, 2010: Judge for forensic tournament, Washburn Rural High School, Topeka, Kansas. I did not give a presentation at this event and have no notes, transcript or recording. The school's address is 5900 Southwest 61st Street, Topeka, Kansas 66619.

December 10, 2009: Panelist, *Judge's Road Show 2009*, a panel review of appellate cases of interest with Kansas Court of Appeals Judges Joseph Pierron and Michael Buser and United States District Court Judge Thomas Marten, Wichita Bar Association, Wichita, Kansas. I have no notes, transcript or recording. The address of the Wichita Bar Association is 225 North Market Street, Suite 200, Wichita, Kansas, 67202.

September 24, 2009: Dinner speaker about the importance of pre-law school training and networking for gathering of regional college Pre-Law Advisors, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

July 17-18, 2009: Panelist, *Appellate Case Update*, a panel presentation with Kansas Court of Appeals Judges Richard Greene and Melissa Standridge, Kansas Women Attorneys Association, Lindsborg, Kansas. I have no notes, transcript or

recording. The association's address is Post Office Box 598, Topeka, Kansas 66601.

March 2009: Lunch speaker about the strengths of Washburn Law School for the orientation program for law school admittees and their guests, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

January 28, 2009: Panelist, *Appellate Practice*, a panel presentation along with Kansas Supreme Court Chief Justice Kay McFarland, Kansas Court of Appeals Judge Melissa Standridge, and attorney Patricia Peterson-Klein, Topeka Women Attorneys Association and Washburn Women Law Students Association, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

January 23-24, 2009: Judge, 6A State Debate Tournament, Washburn Rural High School, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 5900 Southwest 61st Street, Topeka, Kansas 66619.

December 5, 2008: Judge, Moot Court, Washburn Rural High School, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 5900 Southwest 61st Street, Topeka, Kansas 66619.

November 12, 2008: Guest Speaker for appellate writing class, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 1700 Southwest College, Topeka, Kansas 66621.

September 17, 2008: Speaker, remarks in recognition of Constitution Day regarding the importance of an independent judiciary, Manhattan Downtown Kiwanis Club, Manhattan, Kansas. I have no notes, transcript or recording. The Club's Address is Post Office Box 876, Manhattan, Kansas 66506-0876.

September 16, 2008: Panelist, panel discussion on racial profiling, Kansas State University's Dorothy L. Thompson Civil Rights Lecture Series, Manhattan, Kansas. I have no notes, transcript or recording. The address of the Lecture Series is Office of the Provost, Kansas State University, 106 Anderson Hall, Manhattan, Kansas 66506.

January 22, 2008: Speaker, brief remarks and conducted swearing-in of clinical law students, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording, but my remarks were similar to my remarks at the January 19, 2011, clinic swearing-in, for which notes have been supplied.

April 20, 2007: Speaker, *Oral Argument, Making a Difference,* Appellate Practice Symposium, Kansas Bar Association and Kansas Judicial Council, Topeka, Kansas. I have no notes, transcript or recording, but I submitted a copy

of the oral argument chapter I wrote for the Appellate Practice Handbook, which was supplied in response to 12.a.

April 2007: Guest Speaker on Judicial Process for political science class, Kansas State University, Manhattan, Kansas. I have no notes, transcript or recording. The address of Kansas State University is 244 Waters Hall, Kansas State University, Manhattan, Kansas 66506.

March 9, 2007: Panel Moderator, *The Winning Brief, What Appellate Court Judges Expect from Advocates*, Legal Writing Symposium, the panel included Tenth Circuit Court of Appeals Judges Mary Beck Briscoe, Deanell Reece Tacha, and Neil M. Gorsuch, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 1700 Southwest College, Topeka, Kansas 66621.

March 2007: Lunch speaker about the strengths of Washburn Law School for the orientation program for law school admittees and their guests, Washburn School of Law, Topeka, Kansas. I have no notes, transcript, or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

December 2006: Speaker, brief remarks about legal and judicial careers with participants in career fair, Washburn Rural High School, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 5900 Southwest 61st Street, Topeka, Kansas 66619.

November 2006: Judge, Judged Regional National Moot Court Competition, Kansas University School of Law, Lawrence, Kansas. I have no notes, transcript or recording. The address of the University of Kansas School of Law is Green Hall, 1535 West Fifteenth Street, Lawrence, Kansas 66045.

October 2006: Panelist, panel discussion on appellate practice, Washburn School of Law Center for Excellence in Advocacy, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 1700 Southwest College, Topeka, Kansas 66621.

October 2006: Panelist, *The Judges' Perspectives, Orientation to Kansas Practice*, Kansas Trial Lawyers Association, Topeka, Kansas. I have no notes, transcript or recording. The address of the association (now known as the Kansas Association for Justice) is 719 Southwest Van Buren, Suite 222, Topeka, Kansas 66603.

September 2006: Panelist, *Oral Argument-It Ain't Over 'Til it's Over*, Southwest Kansas Bar Association, Dodge City, Kansas. I have no notes, transcript or recording, but my presentation primarily was based on the oral argument chapter of the Appellate Practice Handbook, which was supplied in response to 12.a.

September 2006: Panelist, *Judicial Review and Constitutional Democracy*, moderated by former Kansas Governor John Carlin as part of Constitution Day activities, Kansas State University, Manhattan, Kansas. I have no notes, transcript or recording. The address of the university is Anderson Hall, Kansas State University, Manhattan, Kansas 66506.

August 2006: Speaker, brief remarks and conducted swearing-in of clinical law students, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. However, my remarks were similar to the remarks I gave when conducting the swearing-in on January 19, 2011, for which notes have been supplied.

June 2006: Speaker, *Preparation for Oral Argument*, Appellate Practice Seminar, Kansas Trial Lawyers Association, Topeka, Kansas. I have no notes, transcript or recording, but my presentation primarily was based upon the oral argument chapter of the Appellate Practice Handbook, which was supplied in response to 12.a.

May 2006: Judge, three-day National Finals of the High School Competition, *We the People: The Citizen and the Constitution*, Center for Civic Education, Washington, D.C. I have no notes, transcript or recording. The address of the program is 21600 Oxnard Street, Suite 500, Woodland Hills, California 91367.

March 2006: Lunch speaker about the strengths of Washburn Law School for a day long orientation program for law school admittees and their guests, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

February 2006: Panelist, *Appellate Advocacy,* for first-year research and writing classes, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The school's address is 1700 Southwest College, Topeka, Kansas 66621.

January 2006: Judge, State High School Qualifying Competitions, *We the People: The Citizen and the Constitution*, Center for Civic Education, Topeka, Kansas. I have no notes, transcript or recording. The address of the program is 21600 Oxnard Street, Suite 500, Woodland Hills, California 91367.

October 2005: Lunch speaker about the strengths of Washburn Law School for a day long orientation program for law school admittees and their guests, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording. The law school's address is 1700 Southwest College, Topeka, Kansas 66621.

September 22, 2005: Dinner Speaker, remarks about the mentoring and support necessary to achieve success, Women of Achievement Awards Banquet, Salina Girl Scouts and Salina YWCA, Salina, Kansas. I have no notes, recording or

transcript of my presentation, but press coverage is supplied. The address of the Salina Girl Scouts is 3115 Enterprise Drive, Suite 66901, Salina, Kansas 67401.

January 2005: Judge, State High School Qualifying Competitions, *We the People: The Citizen and the Constitution*, Center for Civic Education, Topeka, Kansas. I have no notes, transcript or recording. The address of the program is 21600 Oxnard Street, Suite 500, Woodland Hills, California 91367.

October 1, 2004: Speaker, remarks on the occasion of my swearing-in ceremony as a Judge on the Kansas Court of Appeals, Kansas Court of Appeals, Topeka, Kansas. Remarks supplied.

September 19, 2004: Speaker, remarks about the importance of mentoring at Washburn Law School Alumni Association Mentor/Mentee reception, Washburn School of Law, Topeka, Kansas. I have no notes, transcript or recording, but press coverage is supplied. The address of the Law School is 1700 College, Topeka, Kansas 66621.

August 2002: Speaker, *Supreme Court and Tenth Circuit Review*, United States Attorney's Office Annual District Conference, United States Attorney's Office, Emporia, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

June 2002: Speaker, *Supreme Court and Tenth Circuit Review*, Kansas County and District Attorney's Association, Wichita, Kansas. I have no notes, transcript or recording. The association's address is 1200 Southwest Tenth Avenue, Topeka, Kansas 66604.

September 2001: Speaker, *Tenth Circuit Review and Appellate Training*, United States Attorney's Office Annual District Conference, United States Attorney's Office, Manhattan, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

September 1999: Speaker, *Government Ethics Training and Appellate Practice Training*, United States Attorney's Office Annual Conference, United States Attorney's Office, Kansas City, Missouri. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

Summer 1999: Speaker, *Interpretation and Application of the McDade Amendment to DOJ Attorneys* presented to Assistant United States Attorneys in three separate locations: Kansas City, Wichita, and Topeka, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

September 1998: Speaker, *Professional Responsibility Training and Government Ethics Training* at United States Attorney's Office Annual District Conference, United States Attorney's Office, Wichita, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

April 1998: Speaker, *Evaluation of Disability and Injury*, Symposium for Women Physicians, Kansas City, Missouri. I have no notes, transcript or recording, nor do I have a record of who sponsored the program.

September 1997: Speaker, *Federal Practice Handbook Overview, Professional Responsibility and Government Ethics Training* at the United States Attorney's Annual Conference, Lindsborg, Kansas. I have no notes, transcript or recording, but my remarks primarily were based on the chapter of the Federal Practice Handbook, which was supplied in response to Q12.a.

June 1997: Speaker, *Evolving Issues Concerning Federal Court Discovery, "Hot Topics in Federal Law,"* Kansas City Metropolitan Bar Association, Kansas City, Missouri. I have no notes, transcript or recording of my remarks, but the address of the association is Two Pershing Square, 2300 Main Street, Suite 100, Kansas City, Missouri 64108.

June 1997: Speaker, *Federal Practice Handbook Seminar*, sponsored by Federal District Courts, in Overland Park, Kansas. I have no notes, transcript or recording, but my remarks primarily were based upon the chapter of the Federal Practice Handbook, which was supplied in response to 12.a.

August 1996: Speaker, *Professional Responsibility Training at Government Ethics Training* for the United States Attorney's Office Annual Conference, Lindsborg, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

August 1995: Speaker, *Employment Discrimination Litigation Update* at United States Attorney's Office Annual Conference, United States Attorney's Office, Council Grove, Kansas. I have no notes, transcript or recording. The address of the United States Attorney's Office in Topeka is 444 Southeast Quincy, Suite 290, Topeka, Kansas 66683.

June 1995: Speaker, *Employment Law Update* at "Greatest Hits" Seminar, Kansas Bar Association, Topeka, Kansas. I have no notes, transcript or recording. The association's address is 1200 Southwest Harrison Street, Topeka, Kansas 66612.

April 1995: Speaker, *Personnel Law Update*, Council on Education in Management, Wichita, Kansas. I have no notes, transcript or recording. I am unable to locate an address for the Council on Education in Management.

March 1995: Coordinator and Moderator of panel presentation regarding recent issues in employment law, Employment Law Institute, Kansas City Metropolitan Bar Association, Kansas City, Missouri. I have no notes, transcript or recording. The association's address is Two Pershing Square, 2300 Main Street, Suite 100, Kansas City, Missouri 64108.

December 1994: Speaker, *The Whittling Away of Employment at Will: An Update*, Kansas Association of Defense Counsel, Kansas City, Missouri. I have no notes, transcript or recording, but my presentation primarily was based on the article on this same subject which I co-authored and supplied in response to 12.a.

July 1994: Speaker, *Employment Law Update*, Kansas Women Attorneys Association, Lindsborg, Kansas. I have no notes, transcript or recording. The association's address is Post Office Box 598, Topeka, Kansas 66601.

September 1993: Speaker, *Wrongful Discharge, Have the Exceptions to Employment at Will Become the Rule?* at Employment Law Seminar, Kansas Bar Association, Overland Park, Kansas and Wichita, Kansas. I have no notes, transcript or recording. The association's address is 1200 Southwest Harrison Street, Topeka, Kansas 66612.

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.

July 2012: At the request of the former Admissions Director for Washburn School of Law, Karla Whitaker, I provided a brief, recorded statement about the importance of the school to my life and career. That recording is now part of the "Alumni" section of a "virtual tour" on the school's website. It can be viewed at: http://washburnlaw.edu/admissions/virtualtour/alumni.html.

April 14, 2011: Brief interview (along with Chief Justice Lawton Nuss) with KWCH of Wichita, Kansas prior to Supreme Court conducting oral arguments in Salina, Kansas. I contacted the station and requested a copy of the clip or transcript of the interview, but none is available.

January 7, 2011: Brief interview with Topeka television station, WIBW, following my swearing-in to the Kansas Supreme Court. I contacted the station and requested a copy of the clip or transcript of the interview, but none is available.

January 5, 2011: Radio interview with Wichita radio station regarding my appointment to the Supreme Court. I contacted the station and requested a copy of the clip or transcript of the interview, but none is available.

Kansas Bar Ass'n, *In Memoriam Hon. Jerry G. Elliot*, 71 J. KAN. B. ASS'N 10 (2010). Copy supplied.

Erin Mathews, *Sacred Heart Grad Named to State Supreme Court*, Salina Journal (Nov. 2, 2010). Copy supplied.

Tim Carpenter, *Topekan Named to Opening on State Supreme Court*, Capital-Journal (Nov. 2, 2010). Copy supplied.

David Klepper, *Parkinson Selects Caplinger for Kansas Supreme Court*, Olathe News (Nov. 1, 2010). Copy supplied.

Women Judge Kansas Appeals on Anniversary of Suffrage, Wichita Eagle (Aug. 26, 2008). Copy supplied.

October, 2004: Interview with Professor Stephanie Matthews, Washburn Law School, regarding my appointment to the Kansas Court of Appeals. A transcript of the interview is available at http://washburnlaw.edu/news/2004/2004-11alumni-caplinger.php.

Kansas Court of Appeals: New judge gives siblings credit, Salina Journal (Aug. 25, 2004). Copy supplied.

Susan M. McKaskle, *Nuss Appointment to the Supreme Court Revisits History*, 71 J. KAN. B. ASS'N 6 (2002). Copy supplied.

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

I was appointed to the Kansas Court of Appeals by Governor Kathleen Sebelius in October 2004, following a merit selection process, to fill a vacancy created by the death of Judge Robert Lewis. The Kansas Court of Appeals is an intermediate appellate court that has jurisdiction over all direct appeals from the state district courts in civil and criminal cases, except those cases that can be directly appealed to the Kansas Supreme Court. It also has jurisdiction over original habeas corpus actions.

In January 2011, I was appointed to the Kansas Supreme Court by Governor Mark Parkinson, again following a merit selection process, to fill a vacancy created by the death of Justice Robert Davis. The Kansas Supreme Court is the state's court of last resort. It has original jurisdiction over the most serious crimes and cases in which a statute has been declared unconstitutional. The Court also reviews decisions of the

Kansas Court of Appeals and can transfer cases on its own motion. The Kansas Supreme Court also has general administrative authority over all Kansas courts including authority to develop and monitor rules for appellate practice and district court procedures. The Court develops and monitors the code of professional responsibility and the canons of judicial ethics and administers discipline to attorneys and judges. Additionally, the Court adopts and administers the pay plan governing court employees and develops and submits the judicial branch annual budget to the Kansas Legislature.

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

I have not been a trial judge and have not presided over any trials that have gone to verdict.

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.

See attached list of cases.

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

1. *N. Natural Gas v. ONEOK Field Services Co.*, 296 Kan. 906, 296 P.3d 1106 (2013), *petition for cert. filed June 11, 2013.*

In affirming the district court's grant of summary judgment in favor of several gas producers and gas purchasers, we resolved an issue of first impression regarding the interpretation of K.S.A. 55-1210(c). Specifically, we held that the statute abolished the common-law rule of capture as to injected storage gas that migrates horizontally within a geographic stratum to adjoining property or vertically to a different stratum, but preserved the rule of capture as to natural gas which migrates beyond those boundaries.

Appellant's counsel were Mark D. Coldiron, Corey A. Neller and Paula M. Jantzen, Ryan Whaley Coldiron Shandy PLLC, 119 North Robinson Avenue, Suite 900, Oklahoma City, Oklahoma 73102, 405.239.6040; and Richard A.

Olmstead, Kutak Rock LLP, 1605 North Waterfront Parkway, Suite 150, Wichita, Kansas 67206, 316.609.7904.

Appellees' counsel were Dennis C. Cameron, Tyson D. Schwerdtfeger and Bradley W. Welsh, Gable & Gotwals, 1100 ONEOK Plaza, 100 West Fifth Street, Tulsa, Oklahoma 74103, 918.595.4800, and Robert R. Eisenhauer, Johnston and Eisenhauer, 113 East Third Street, Pratt, Kansas 67124, 620.672.5533 (for ONEOK); David L. Heinemann and S.J. Moore, Shank & Hamilton, P.C., 2345 Grand, Suite 1600, Kansas City, Missouri 64108, 816.471.0909, and Brian J. Madden and Adam S. Davis, Wagstaff & Cartmell, LLP., 4740 Grand Avenue, Suite 300, Kansas City, Missouri 64112, 816.701.1100 (for Nash Oil & Gas, Inc.); Jim H. Goering and Timothy B. Mustaine, Foulston Siefkin LLP, 1551 North Waterfront Parkway, Suite 100, Wichita, Kansas 67206, 316.291.9709, and Larry E. Keenan and Timothy R. Keenan, Keenan Law Firm, P.A., 2200 Lakin Avenue, Post Office Drawer 459, Great Bend, Kansas 67530, 620.603.0049 (for L.D. Drilling, Inc.); and Mark Banner, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., 320 South Boston Avenue, Suite 200, Tulsa, Oklahoma 74103, 918.594.0400 (for Lumen Energy Corporation and Lumen Midstream Partnership, LLC).

2. *Eastman v. Coffeyville Res. Ref. & Mktg. L.L.C.*, 295 Kan. 470, 284 P.3d 1049 (2012).

In the United States District Court for the District of Kansas, the plaintiff landowners sued the defendant refinery alleging that crude oil from the defendant's plant spilled into floodwaters that in turn damaged the landowners' pecan grove. The district court judge presiding over that case certified several questions to the Kansas Supreme Court. In answering those questions, we held that the statutory claim brought by the plaintiffs under K.S.A. 65-6203, unlike the common law strict liability cause of action, imposes a duty on the party responsible for the accidental release or discharge of polluting materials to compensate the injured owner without regard to whether the party was engaged in an abnormally dangerous activity. We further determined that the three-year statute of limitations applies to actions arising under the statute because the statute creates a wholly separate cause of action and is not subject to the two-year limitation period that controls the common law claim.

Plaintiff's counsel was Randall K. Rathbun, Depew Gillen Rathbun & McInteer, L.C., 8301 East Twenty-First Street North, Suite 450, Wichita, Kansas 67206, 316.262.4000.

Defendant's counsel was Arthur E. Rhodes, Smithyman & Zakoura, Chartered, 7400 West 110th Street, Suite 750, Overland Park, Kansas 66210, 913.661.9800.

3. *In re T.S.W.*, 294 Kan. 423, 276 P.3d 133 (2012).

In an appeal by the Cherokee Nation from the district court's order granting deviation from the Indian Child Welfare Act's (ICWA) placement preferences to permit an adoption agency to place the child with a non-Native American Indian adoptive couple, we obtained jurisdiction through the collateral order doctrine. We ultimately held that despite the non-Indian mother's stated preference for the child's placement with a non-Native American family, ICWA's parental placement preference applied to the child's placement. Further, we concluded that the mother's wish that the child not be placed with any member of the father's family, together with her wish that the child be placed with a non-Native American family, by itself, was not good cause to deviate from ICWA's placement preference statute.

Petitioner's counsel was Richard A. Macias, Dodd & Macias, 901 North Broadway, Wichita, Kansas 67214, 316.262.5103.

Intervenor Cherokee Nation's counsel were N. Cheryl Hamby, Cherokee Nation Office of the Attorney General, Post Office Box 948, Tahlequah, Oklahoma 74465, 918.453.5000, extension 5438, and Anita Settle Kemp, 200 West Douglas, Suite 350, Wichita, Kansas 67202, 316.618.0818.

4. *State v. Robinson*, 293 Kan. 1002, 270 P.3d 1183 (2012).

The defendant appealed his conviction for the capital murder of a 14-year-old girl who was pregnant with the defendant's child. We affirmed his conviction concluding the district court properly admitted evidence of defendant's internet searches on how to kill a baby, how to have a miscarriage, and how to find a missing person. We also rejected the defendant's suggestion that the district court erred in admitting hearsay statements of the victim under the forfeiture by wrongdoing exception to the hearsay rule and in denying the defendant's motion for a change of judge based on judicial bias. Finally, we rejected the defendant's argument that the identical offense doctrine entitled him to resentencing on his capital murder conviction.

Plaintiff's counsel was Lesley A. Isherwood, Sedgwick County District Attorney's Office, 1900 East Morris, Wichita, Kansas 67211, 316.660.3622.

Defendant's counsel was Reid T. Nelson, Capital Appeals and Conflicts Office, 701 Southwest Jackson, Topeka, Kansas 66603, 785.296.6764.

5. *Shrader v. Kansas Dep't of Revenue*, 45 Kan. App. 2d 216, 247 P.3d 681 (2011), *aff'd*, 296 Kan. 3, 290 P.3d 549 (2012).

We reversed the suspension of the plaintiff's driver's license following his refusal to submit to a breath test after his arrest for a non-alcohol-related offense. We

disagreed with another panel of the Court of Appeals and held that Kansas' implied consent law permits suspension of driving privileges for a breath test refusal only if the driver has been arrested for an alcohol-related offense. The Kansas Supreme Court affirmed our interpretation of the implied consent law and overruled the inconsistent decision of the prior panel.

Plaintiff's counsel was Daniel C. Walter, Ryan, Walter, McClymont, Chtd., Post Office Box 364, Norton, Kansas 67654, 785.877.5183.

Defendant's counsel was James G. Keller, Legal Services Bureau, Kansas Department of Revenue, 915 Southwest Harrison, Topeka, Kansas 66612, 785.877.5183.

6. *In re Sipe*, 44 Kan. App. 2d 584, 239 P.3d 871 (2010).

The petitioner, who was involuntarily civilly committed as a sexually violent predator, appealed from the district court's conclusion that he failed to establish probable cause to show he was safe to be discharged from treatment or to transitional release. We resolved two issues of first impression: (1) the standard of review to be applied to a trial court's order denying a petitioner's motion for transitional release, and (2) which party bears the burden of proof at the probable cause hearing to determine whether the petitioner is entitled to an evidentiary hearing. The Kansas Supreme Court adopted the *Sipe* panel's application of a *de novo* standard of review and further adopted its conclusion that a petitioner bears the burden to show probable cause justifying transitional release. See *In re Burch*, 296 Kan. 215, 291 P.3d 78 (2012).

Petitioner's counsel was Geoffrey Clark, Wilbert & Towner, P.A., 506 North Pine, Pittsburg, Kansas 66762, 620.231.5620.

Respondent, the State of Kansas, did not file a brief.

7. *Bd. of Cnty. Com'rs of Cnty. of Sumner v. City of Mulvane*, 43 Kan. App. 2d 500, 227 P.3d 997, *rev. denied* 291 Kan. __ (2010).

The Board of County Commissioners of Sumner County brought a declaratory judgment and quo warranto action against the City of Mulvane, alleging the City's attempted consent annexation of a strip of land to connect to a proposed casino site was void. The landowners intervened. The district court denied the City's motions to dismiss and motion for summary judgment and granted the Board's motion for summary judgment in part. The City and a group of landowners appealed. We synthesized an inconsistent line of case law regarding the issue of standing in a zoning dispute, and we ultimately held the Board lacked statutory standing to bring a quo warranto action or to challenge the annexation. Finally, we held that the annexed strip "adjoined" the city.

Plaintiff's counsel were Teresa S. Watson and David R. Cooper, Fisher, Patterson, Sayler & Smith, L.L.P., Post Office Box 949, Topeka, Kansas 66601, 785.232.7761.

Defendant's counsel were James A. Walker and Paula D. Langworthy, Triplett, Woolf & Garretson, L.L.C., 2959 North Rock Road, Suite 300, Wichita, Kansas 67226, 316.630.8100.

The intervenors-landowner's counsel was Martin J. Peck, Security State Bank Building, 107 East Harvey, Wellington, Kansas 67152, 620.326.3641.

8. *Dodge City Implement, Inc. v. Bd. of Cnty. Com'rs of Cnty. of Barber*, 38 Kan. App. 2d 348, 165 P.3d 1060 (2007), *aff'd*, 288 Kan. 619, 205 P.3d 1265 (2009).

In this negligence action emanating from a train-truck collision, the panel affirmed the district court's dismissal of the plaintiffs' comparative implied indemnity claim. We analyzed a series of complex cases involving whether a defendant seeking to minimize its liability in a comparative fault situation not involving a chain of distribution or similar commercial relationship must compare the fault of other defendants in order to reduce its own share of liability and damages. We ultimately held that if the defendant chooses to settle and obtain a release of common liabilities involving other parties whom the plaintiff did not sue, the defendant does not have an action for comparative implied indemnity or post-settlement contribution for damages caused by the other tortfeasors. The Kansas Supreme Court affirmed our panel's opinion, quoting liberally from the panel's assessment of the case law.

Plaintiffs' counsel was Mark A. Buck, Fairchild & Buck, P.A., Post Office Box 865, Lawrence, Kansas 66044, 785.838.8950.

Defendants' counsel were Stephen M. Kerwick, Foulston Siefkin, LLP, 1551 North Waterfront Parkway, Suite 100, Wichita, Kansas 67206, 316.267.6371 (Board of County Commissioners), and Edward L. Keeley, McDonald, Tinker, Skaer, Quinn & Herrington, P.A., Post Office Box 207, Wichita, Kansas 67201, 316.263.5851 (Moore Township).

9. *Bd. of Cnty. Com'rs of Sumner Cnty. v. Bremby*, 38 Kan. App. 2d 557, 168 P.3d 1034 (2007), *aff'd*, 286 Kan. 745, 189 P.3d 494 (2008).

The petitioners challenged the district court's finding that they lacked standing to appeal the issuance of a permit granted by the state to construct a solid waste landfill in the county. We reversed the district court's standing determination, concluding the petitioners had standing to sue as "parties" under the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*, based on their participation as a group and individually in the public hearing process preceding issuance of the permit. We further held that the petitioning citizens' group met the three-part test

permitting it to sue as an association on behalf of its members. The Kansas Supreme Court affirmed the panel's decision.

Plaintiffs' counsel were Robert V. Eye, Kaufman & Eye, 123 Southeast Sixth Avenue, Suite 200, Topeka, Kansas 66603, 785.234.4040 (Board of County Commissioners), and Robert J. Vincze, 10446 West Walker Place, Littleton, Colorado 80127, 303.948.8266 (Tri-County and Holland).

Defendants' counsel were Nancy L. Ulrich, 1000 Southwest Jackson, Suite 560, Topeka, Kansas 66612, 785.296.0685 (Kansas Department of Health and Environment), and Robert H. Epstein, Gallup, Johnson & Newman, L.C., Interco Corporate Tower, 101 South Hanley, Suite 1700, St. Louis, Missouri 63105, 314.615.6205, and John Terry Moore of Moore Martin, L.C., 622 East Douglas Avenue, Wichita, Kansas 67202, 316.267.6001 (for Waste Connections of Kansas, Inc.).

10. *State v. Moody*, 34 Kan. App. 2d 526, 120 P.3d 1156 (2005), *aff'd in part, rev'd in part*, 282 Kan. 181, 144 P.3d 612 (2006).

We concluded the district court had jurisdiction to sentence the defendant as a fourth-time offender for driving under the influence (DUI) despite a lack of proof of her prior convictions. We reasoned that proof of prior convictions is not an element of DUI and the defendant's due process rights were not violated because the complaint properly charged the defendant with a nonperson felony and the defendant received notice at the plea stage of the penalties for a fourth offense. On review, the Supreme Court affirmed, agreeing with the due process analysis applied by the panel and with the panel's conclusion that the defendant received due process at sentencing.

Plaintiff's counsel was Kristi Barton, Sedgwick County District Attorney's Office, 535 North Main, Second Floor, Wichita, Kansas 67203, 316.660.3621.

Defendant's counsel was Shawn Minihan (previously of the Appellate Defender Office), Johnson County District Attorney's Office, Post Office Box 728, Olathe, Kansas 66051, 913.715.3124.

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. *N. Natural Gas v. ONEOK Field Services Co.*, 296 Kan. 906, 296 P.3d 1106 (2013), *petition for cert. filed June 11, 2013.*

Appellant's counsel were Mark D. Coldiron, Corey A. Neller and Paula M. Jantzen, Ryan Whaley Coldiron Shandy PLLC, 119 North Robinson Avenue,

Suite 900, Oklahoma City, Oklahoma 73102, 405.239.6040; and Richard A. Olmstead, Kutak Rock LLP, 1605 North Waterfront Parkway, Suite 150, Wichita, Kansas 67206, 316.609.7904.

Appellees' counsel were Dennis C. Cameron, Tyson D. Schwerdtfeger and Bradley W. Welsh, Gable & Gotwals, 1100 ONEOK Plaza, 100 West Fifth Street, Tulsa, Oklahoma 74103. 918.595.4800, and Robert R. Eisenhauer, Johnston and Eisenhauer, 113 East Third Street, Pratt, Kansas 67124, 620.672.5533 (for ONEOK); David L. Heinemann and S.J. Moore, Shank & Hamilton, P.C., 2345 Grand, Suite 1600, Kansas City, Missouri 64108, 816.471.0909, and Brian J. Madden and Adam S. Davis, Wagstaff & Cartmell, LLP., 4740 Grand Avenue, Suite 300, Kansas City, Missouri 64112, 816.701.1100 (for Nash Oil & Gas, Inc.); Jim H. Goering and Timothy B. Mustaine, Foulston Siefkin LLP, 1551 North Waterfront Parkway, Suite 100, Wichita, Kansas 67206, 316.291.9709, and Larry E. Keenan and Timothy R. Keenan, Keenan Law Firm, P.A., 2200 Lakin Avenue, Post Office Drawer 459, Great Bend, Kansas 67530, 620.603.0049 (for L.D. Drilling, Inc.); and Mark Banner, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., 320 South Boston Avenue, Suite 200, Tulsa, Oklahoma 74103, 918.594.0400 (for Lumen Energy Corporation and Lumen Midstream Partnership, LLC).

2. *Eastman v. Coffeyville Res. Ref. & Mktg. L.L.C.*, 295 Kan. 470, 284 P.3d 1049 (2012).

   Plaintiff's counsel was Randall K. Rathbun, Depew Gillen Rathbun & McInteer, L.C., 8301 East Twenty-First Street North, Suite 450, Wichita, Kansas 67206, 316.262.4000.

   Defendant's counsel was Arthur E. Rhodes, Smithyman & Zakoura, Chartered, 7400 West 110th Street, Suite 750, Overland Park, Kansas 66210, 913.661.9800.

3. *In re T.S.W.*, 294 Kan. 423, 276 P.3d 133 (2012).

   Petitioner's counsel was Richard A. Macias, Dodd & Macias, 901 North Broadway, Wichita, Kansas 67214, 316.262.5103.

   Intervenor Cherokee Nation's counsel were N. Cheryl Hamby, Cherokee Nation Office of the Attorney General, Post Office Box 948, Tahlequah, Oklahoma 74465, 918.453.5000, extension 5438, and Anita Settle Kemp, 200 West Douglas, Suite 350, Wichita, Kansas 67202, 316.618.0818.

4. *State v. Robinson*, 293 Kan. 1002, 270 P.3d 1183 (2012).

   Plaintiff's counsel was Lesley A. Isherwood, Sedgwick County District Attorney's Office, 1900 East Morris, Wichita, Kansas 67211, 316.660.3622.

Defendant's counsel was Reid T. Nelson, Capital Appeals and Conflicts Office, 701 Southwest Jackson, Topeka, Kansas 66603, 785.296.6764.

5. *Shrader v. Kansas Dep't of Revenue*, 45 Kan. App. 2d 216, 247 P.3d 681 (2011), *aff'd*, 296 Kan. 3, 290 P.3d 549 (2012).

   Plaintiff's counsel was Daniel C. Walter, Ryan, Walter, McClymont, Chtd., Post Office Box 364, Norton, Kansas 67654, 785.877.5183.

   Defendant's counsel was James G. Keller, Legal Services Bureau, Kansas Department of Revenue, 915 Southwest Harrison, Topeka, Kansas 66612, 785.877.5183.

6. *In re Sipe*, 44 Kan. App. 2d 584, 239 P.3d 871 (2010).

   Petitioner's counsel was Geoffrey Clark, Wilbert & Towner, P.A., 506 North Pine, Pittsburg, Kansas 66762, 620.231.5620.

   Respondent, the State of Kansas, did not file a brief.

7. *Bd. of Cnty. Com'rs of Cnty. of Sumner v. City of Mulvane*, 43 Kan. App. 2d 500, 227 P.3d 997, *rev. denied* 291 Kan. __ (2010).

   Plaintiff's counsel were Teresa S. Watson and David R. Cooper, Fisher, Patterson, Sayler & Smith, L.L.P., Post Office Box 949, Topeka, Kansas 66601, 785.232.7761.

   Defendant's counsel were James A. Walker and Paula D. Langworthy, Triplett, Woolf & Garretson, L.L.C., 2959 North Rock Road, Suite 300, Wichita, Kansas 67226, 316.630.8100.

   The intervenors-landowner's counsel was Martin J. Peck, Security State Bank Building, 107 East Harvey, Wellington, Kansas 67152, 620.326.3641.

8. *Dodge City Implement, Inc. v. Bd. of Cnty. Com'rs of Cnty. of Barber*, 38 Kan. App. 2d 348, 165 P.3d 1060 (2007), *aff'd*, 288 Kan. 619, 205 P.3d 1265 (2009).

   Plaintiffs' counsel was Mark A. Buck, Fairchild & Buck, P.A., Post Office Box 865, Lawrence, Kansas 66044, 785.838.8950.

   Defendants' counsel were Stephen M. Kerwick, Foulston Siefkin, LLP, 1551 North Waterfront Parkway, Suite 100, Wichita, Kansas 67206, 316.267.6371 (Board of County Commissioners), and Edward L. Keeley, McDonald, Tinker, Skaer, Quinn & Herrington, P.A., Post Office Box 207, Wichita, Kansas 67201, 316.263.5851 (Moore Township).

9. *Bd. of Cnty. Com'rs of Sumner Cnty. v. Bremby*, 38 Kan. App. 2d 557, 168 P.3d 1034 (2007), *aff'd*, 286 Kan. 745, 189 P.3d 494 (2008).

   Plaintiffs' counsel were Robert V. Eye, Kaufman & Eye, 123 Southeast Sixth Avenue, Suite 200, Topeka, Kansas 66603, 785.234.4040 (Board of County Commissioners), and Robert J. Vincze, 10446 West Walker Place, Littleton, Colorado 80127, 303.948.8266 (Tri-County and Holland).

   Defendants' counsel were Nancy L. Ulrich, 1000 Southwest Jackson, Suite 560, Topeka, Kansas 66612, 785.296.0685 (Kansas Department of Health and Environment), and Robert H. Epstein, Gallup, Johnson & Newman, L.C., Interco Corporate Tower, 101 South Hanley, Suite 1700, St. Louis, Missouri 63105, 314.615.6205, and John Terry Moore of Moore Martin, L.C., 622 East Douglas Avenue, Wichita, Kansas 67202, 316.267.6001 (for Waste Connections of Kansas, Inc.).

10. *State v. Moody*, 34 Kan. App. 2d 526, 120 P.3d 1156 (2005), *aff'd in part, rev'd in part*, 282 Kan. 181, 144 P.3d 612 (2006).

    Plaintiff's counsel was Kristi Barton, Sedgwick County District Attorney's Office, 535 North Main, Second Floor, Wichita, Kansas 67203, 316.660.3621.

    Defendant's counsel was Shawn Minihan (previously of the Appellate Defender Office), Johnson County District Attorney's Office, Post Office Box 728, Olathe, Kansas 66051, 913.715.3124.

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

   State v. Swindler, 296 Kan. 670, 294 P.3d 308 (2013), *petition for cert. filed*, 2013 WL 3477047 (U.S. July 9, 2013) (No. 13-52).
   State v. Astorga, 295 Kan. 339, 284 P.3d 279 (2012), *vacated*, 81 U.S.L.W. 3701 (No. 12-7568), *remanded in light of Alleyne v. United States*, 570 U.S. __, 133 S. Ct. 2151 (2013).
   N. Natural Gas v. ONEOK Field Services Co., 296 Kan. 906, 296 P.3d 1106 (2013), *petition for cert. filed*, 2013 WL 2726793 (U.S. June 11, 2013) (No. 12-1436).
   State v. Cheever, 295 Kan. 229, 284 P.3d 1007, *cert. granted in part*, 133 S. Ct. 1460 (2013).
   State v. Gilliland, 294 Kan. 519, 276 P.3d 165 (2012), *cert denied*, 133 S. Ct. 1274 (2013).
   State v. Kidd, 293 Kan. 591, 265 P.3d 1165 (2011), *cert. denied*, 132 S. Ct. 2433 (2012).
   State v. Harris, No. 105,345, 2012 WL 1253215, 274 P.3d 25 (Kan. Apr. 6, 2012) (unpublished opinion) (per curiam), *cert. denied*, 133 S. Ct. 289 (2012).
   State v. Jackson, No. 105,760, 2012 WL 1253377, 274 P.3d 26 (Kan. Apr. 6, 2012) (unpublished opinion) (per curiam), *cert denied*, 133 S. Ct. 282 (2012).

State v. Woodward, No. 103,555, 248 P.3d 280 (Kan. Mar. 18, 2011) (unpublished opinion), *cert. denied*, 132 S. Ct. 62 (2011).
In re: K.M.H., 285 Kan. 53, 169 P.3d 1025 (2007), *cert. denied*, 129 S. Ct. 36 (2008).

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.

During my six years on the Kansas Court of Appeals, I authored or participated in over 1600 opinions. Of those opinions, approximately 2% have been reversed.

Stechschulte v. Jennings, 43 Kan. App. 2d 47, 222 P.3d 507 (2010), *aff'd in part, rev'd in part*, No. 100,648, __ Kan. __, 298 P.3d 1083 (2013). The panel reversed summary judgment on several tort claims in favor of the sellers of a home, holding that the buyers had not waived reliance on sellers' alleged misrepresentations in disclosure form. The Kansas Supreme Court affirmed this holding. The panel also affirmed summary judgment in favor of the listing agent/broker and realty company. The Supreme Court reversed this holding, finding that the agent could be liable in tort for misrepresentations and that the agent's realty company could be vicariously liable.

State v. Peterson, No. 102,198, 2010 WL 3063159 (Kan. Ct. App. July 30, 2010), *rev'd*, 296 Kan. 563, 293 P.3d 730 (2013). The panel held a prosecutor's questioning at sentencing did not violate the State's obligation in the plea agreement to stand silent at sentencing. The Kansas Supreme Court reversed, concluding some of questions breached agreement to stand silent at sentencing.

In re Marriage of Brown, No. 103,758, 2010 WL 4157111 (Kan. Ct. App. Oct. 8, 2010) (per curiam), *rev'd*, 295 Kan. 966, 291 P.3d 55 (2012). The panel held the district court did not err in discharging all unpaid child support. The Kansas Supreme Court reversed, holding the district court was not authorized to vacate a temporary child support order.

State v. Galaviz, No. 101,084, 2009 WL 5206238 (Kan. Ct. App. Dec. 31, 2009) (per curiam), *rev'd*, 296 Kan. 168, 291 P.3d 62 (2012). The panel held the district court abused its discretion by failing to address an attorney's conflict of interest, but affirmed based on the defendant's failure to demonstrate prejudice. The Kansas Supreme Court reversed and remanded for a probation revocation hearing with a new attorney or for a hearing to address the conflict of interest.

State v. Lackey, 42 Kan. App. 2d 89, 208 P.3d 793 (2009), *rev'd*, 295 Kan. 816, 286 P.3d 859 (2012). The panel affirmed the district court's denial of a post-

conviction motion for DNA testing. The Kansas Supreme Court reversed, holding at least one item cited by the movant qualified for testing.

In re D.D.M., No. 101,868, 2009 WL 3428790 (Kan. Ct. App. Oct. 23, 2009) (per curiam), *rev'd*, 291 Kan. 883, 249 P.3d 5 (2011). The panel reversed the district court's denial of the State's motion to prosecute the juvenile as an adult. The Kansas Supreme Court reversed the panel, holding substantial competent evidence supported the district court's ruling.

Hill v. Kansas Dept. of Labor, Div. of Workers Compensation, 42 Kan. App. 2d 215, 210 P.3d 647 (2009), *rev'd in part*, 292 Kan. 17, 248 P.3d 1287 (2011). The panel held that the company's cab drivers were employees rather than independent contractors and the company knowingly failed to procure workers compensation insurance for the drivers, requiring imposition of a mandatory civil penalty. The Kansas Supreme Court agreed that the drivers were employees but reversed the panel's conclusion that the fine was mandatory.

State v. Neal, No. 100,366, 2009 WL 1140329 (Kan. Ct. App. April 24, 2009) (per curiam), *rev'd*, 292 Kan. 625, 258 P.3d 365 (2011). The panel affirmed the denial of a motion to correct an illegal sentence, concluding the district court did not err in aggregating three misdemeanor convictions into one person felony. The Kansas Supreme Court reversed and remanded for an evidentiary hearing to determine whether the movant waived his right to counsel regarding the misdemeanor convictions.

State v. Simmons, No. 98,770, 2009 WL 981685 (Kan. Ct. App. April 10, 2009) (per curiam), *rev'd*, 292 Kan. 406, 254 P.3d 97 (2011). The panel rejected the defendant's claims of ineffective assistance of counsel and prosecutorial misconduct. The Kansas Supreme Court reversed the panel's determination regarding prosecutorial misconduct.

Mitchell v. Petsmart, Inc., 41 Kan. App. 2d 523, 203 P.3d 76 (2009), *aff'd in part, rev'd in part*, 291 Kan. 153, 239 P.3d 51 (2010). The panel affirmed the Workers' Compensation Board's determinations regarding the claimant's repetitive injuries and held the Board properly determined the award by deducting temporary benefits from the total permanent award. The Kansas Supreme Court reversed this aspect of the panel's decision, holding an injured worker is entitled to an award at each separate level for multiple injuries to the same extremity.

In re J.M.D., 41 Kan. App. 2d 157, 202 P.3d 27 (2009), *rev'd*, 293 Kan. 153, 260 P.3d 1196 (2011). The panel reversed the termination of father's parental rights, finding insufficient evidence to support the findings that the father failed to provide financial or emotional support. The Kansas Supreme Court reversed, holding substantial competent evidence supported the district court's conclusions.

State v. Allen, No. 99,014, 2009 WL 196166 (Kan. Ct. App. Jan. 23, 2009) (per curiam), *rev'd*, 290 Kan. 540, 232 P.3d 861 (2010). The panel rejected the claim that two jury instruction errors deprived the defendant of a fair trial. The Kansas Supreme Court reversed, finding the failure to instruct on jury unanimity was clear error.

State v. Copes, No. 99,403, 2008 WL 5401449 (Kan. Ct. App. Dec. 19, 2008) (per curiam), *rev'd*, 290 Kan. 209, 224 P.3d 571 (2010). The panel affirmed an award of attorney fees and assessment of a statutory fine for the defendant's fourth conviction of driving under the influence. The Kansas Supreme Court reversed, holding the district court failed to consider the defendant's financial resources in determining the appropriate method of payment for the mandatory fine.

State v. Sheldon, No. 98,160, 2008 WL 4291510 (Kan. Ct. App. Sept. 19, 2008) (per curiam), *rev'd in part*, 290 Kan. 523, 231 P.3d 573 (2010). Finding insufficient evidence, the panel reversed three convictions of making a false information, but affirmed a conviction of felony obstruction of official duty. The Kansas Supreme Court reversed the felony obstruction conviction, finding the State failed to prove all essential elements of the crime.

State v. LaBelle, No. 98,136, 2008 WL 3915985 (Kan. Ct. App. Aug. 22, 2008) (per curiam), *aff'd in part, rev'd in part*, 290 Kan. 529, 231 P.3d 1065 (2010). The panel affirmed the defendant's criminal history score calculation and the defendant's sentencing as a persistent sex offender. The Kansas Supreme Court reversed, holding the district court erred in double counting the defendant's prior sex offense conviction and in classifying the defendant as a persistent sex offender based on a prior juvenile adjudication.

Nat'l Bank of Andover v. Kansas Bankers Sur. Co., No. 95,548, 2008 WL 939545 (Kan. Ct. App. April 4, 2008) (per curiam), *aff'd in part, rev'd in part*, 290 Kan. 247, 225 P.3d 707 (2010). The panel reversed the verdict for the bank in this action by the surety company to rescind bond. The Kansas Supreme Court held the panel erred in failing to reverse the judgment against the surety company regarding a specific question on the bond application, but ultimately affirmed the panel's reversal and remand.

State v. Schultz, No. 98,727, 2008 WL 713747 (Kan. Ct. App. Mar. 14, 2008) (per curiam), *aff'd in part, rev'd in part*, 289 Kan. 334, 212 P.3d 150 (2009). The panel affirmed a suppression, holding that a knock-and-talk encounter became a custodial interrogation requiring *Miranda* warnings. The Kansas Supreme Court reversed in part, holding that the failure to give timely *Miranda* warnings did not invalidate the subsequent consent to search.

State v. Overstreet, No. 95,682, 2008 WL 360642 (Kan. Ct. App. Feb. 8, 2008) (per curiam), *rev'd*, 288 Kan. 1, 200 P.3d 427 (2009). The panel affirmed the defendant's attempted first-degree murder conviction. The Kansas Supreme

Court reversed, finding error in aiding and abetting and deadlocked jury instructions and finding ineffective assistance of counsel prejudiced the defendant.

Deal v. Bowman, No. 96,868, 2007 WL 2768037 (Kan. Ct. App. Sept. 21, 2007) (per curiam), *rev'd*, 286 Kan. 853, 188 P.3d 941 (2008). The panel reversed the district court's denial of the plaintiff's motion for a directed verdict. The Kansas Supreme Court reversed, holding the district court properly submitted the negligence issue to the jury.

Rinke v. Bank of Am., 34 Kan. App. 2d 591, 121 P.3d 472 (2005), *rev'd*, 282 Kan. 746, 148 P.3d 553 (2006). The panel concluded the Workers' Compensation Board erred in finding that the parking lot in which the claimant fell was under employer's control. The Kansas Supreme Court reversed, finding the bank had control of the parking lot and suggesting the panel too narrowly construed the term "premises."

State v. Moody, 34 Kan. App. 2d 526, 120 P.3d 1156 (2005), *aff'd in part, rev'd in part*, 282 Kan. 181, 144 P.3d 612 (2006). The Kansas Supreme Court affirmed the panel's due process analysis but reversed the panel's decision on fees.

State v. Porting, 34 Kan. App. 2d 211, 116 P.3d 728 (2005), *rev'd*, 281 Kan. 320, 130 P.3d 1173 (2006). A majority of the panel affirmed the trial court's suppression of a warrantless search of the home of a soon-to-be released inmate. The Kansas Supreme Court reversed, disagreeing with the panel's determination that the defendant had common and apparent authority to consent to the search.

State v. Morton, No. 97,848, 2007 WL 2080540 (Kan. Ct. App. July 20, 2007) (per curiam), *rev'd*, 286 Kan. 632, 186 P.3d 785 (2008). The panel reversed a suppression order, holding that *Miranda* warnings were not required because the defendant was not in custody during the interrogation. The Kansas Supreme Court agreed that *Miranda* warnings were not required, but held that investigator's conduct during the interrogation rendered the defendant's statements involuntary.

State v. Tully, No. 92,764, 2007 WL 1109309 (Kan. Ct. App. April 13, 2007) (per curiam), *rev'd*, 293 Kan. 176, 262 P.3d 314 (2011). The panel rejected multiple alleged trial errors and affirmed the defendant's rape conviction. The Kansas Supreme Court reversed, holding the State violated the defendant's right to due process by eliciting testimony regarding invocation of his right to remain silent and the district court gave a clearly erroneous jury instruction on the level of force required to support rape charge.

Miller v. Westport Ins. Corp., No. 95,768, 2007 WL 519043 (Kan. Ct. App. Feb. 16, 2007) (per curiam), *rev'd*, 288 Kan. 27, 200 P.3d 419 (2009). The panel affirmed summary judgment in favor of the insurer who denied coverage for the

insurance agents' liability claims arising out of losses sustained by the agents' clients. The Kansas Supreme Court reversed, holding policy exclusions did not relieve the insurer of its duty to defend agents.

In re L.M., No. 96,197, 2006 WL 3775275 (Kan. Ct. App. Dec. 22, 2006) (per curiam), *rev'd*, 286 Kan. 460, 186 P.3d 164 (2008). The panel held the juvenile defendant was not entitled to a jury trial based on Kansas Supreme Court precedent, but questioned the rationale of that precedent. The Kansas Supreme Court then overruled its precedent, finding it no longer applied because of a legislative overhaul of the relevant statutes and concluded the juvenile had a right to a jury trial.

Wilkins v. State, No. 95,023, 2006 WL 3409418 (Kan. Ct. App. Nov. 22, 2006) (per curiam), *rev'd*, 286 Kan. 971, 190 P.3d 957 (2008). The panel determined the defendant was entitled to a new trial, in part, based on ineffective assistance of counsel. The Kansas Supreme Court acknowledged the close question regarding counsel's effectiveness, but ultimately concluded counsel's failure did not prejudice the defendant.

Jeremiah 29:11, Inc. v. Seifert, 36 Kan. App. 2d 19, 136 P.3d 357 (2006), *rev'd* 284 Kan. 468, 161 P.3d 750 (2007). The panel held that a deed unsigned by the grantee was a valid warranty deed, and the grantees were bound by restrictions in the deed. The Kansas Supreme Court disagreed, holding that without the grantees' signatures there was no evidence the grantees had notice of the restrictive covenant.

State v. Adams, 35 Kan. App. 2d 439, 131 P.3d 556 (2006), *rev'd*, 283 Kan. 365, 153 P.3d 512 (2007). The panel reversed one conviction and affirmed the defendant's remaining convictions and sentence. The Kansas Supreme Court concluded exceptional circumstance permitted review of a speedy trial issue not presented to the panel and reversed all of defendant's convictions on that ground.

State v. McKissack, No. 93,670, 2006 WL 619195 (Kan. Ct. App. Mar. 10, 2006) (per curiam), *aff'd in part, rev'd in part*, 283 Kan. 721, 156 P.3d 1249 (2007). The panel concluded that hearsay evidence was properly admitted, that there was not insufficient evidence to support a conviction because of inconsistent verdicts, and the district court did not err in determining criminal deprivation of property was a lesser included offense of misdemeanor theft. In reaching its third holding, the panel noted it was bound by precedent, but questioned the rationale of that precedent. The Kansas Supreme Court found its precedent inconsistent with applicable statutes and case law and overruled its earlier opinion. The court agreed with the panel that the hearsay was properly admitted but disagreed that an erroneous instruction did not require reversing a conviction.

State v. Parker, No. 92,541, 2005 WL 3434002 (Kan. Ct. App. Dec. 9, 2005) (per curiam), *rev'd*, 282 Kan. 584, 147 P.3d 115 (2006). In an opinion that I dissented

from, the panel held that the defendant's initial encounter with officers was voluntary and that officers had reasonable suspicion to detain the defendant at the time he was seized. The Kansas Supreme Court reversed, agreeing that the initial encounter was voluntary, but concluding the encounter later became involuntary and the officers lacked reasonable suspicion to detain the defendant.

State v. Hicks, No. 93,602, 2005 WL 2840295 (Kan. Ct. App. Oct. 28, 2005) (per curiam), *rev'd*, 282 Kan. 599, 147 P.3d 1076 (2006). In an opinion that I dissented from, the panel relied on corroborated anonymous tips, trash pulls, and the defendant's criminal history to find probable cause supported a search warrant affidavit. The panel also determined a review of a probable cause determination is deferential. The Kansas Supreme Court reversed, agreeing that a probable cause determination is not reviewed de novo, but holding that even under a deferential review, the affidavit did not establish probable cause.

Botkin v. Security State Bank, 33 Kan. App. 2d 914, 111 P.3d 182 (2005), *aff'd in part, rev'd in part*, 281 Kan. 243, 130 P.3d 92 (2006). The panel determined that the Statute of Frauds did not prevent a bank from enforcing 32 instruments guaranteeing a loan, reasoning the instruments contained the essential elements of the contract. The panel remanded for a determination as to the parties' intent regarding a phrase in the contract and held that if the parties' intent could not be determined, then the loan could be enforced against each instrument without limitation. The Kansas Supreme Court affirmed on all points except the panel's conclusion regarding interpretation of the contract.

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 justice of the Kansas Supreme Court, I have not issued any unpublished opinions. During my service as a judge of the Kansas Court of Appeals, approximately 80% of the opinions I authored were unpublished. All such unpublished decisions are listed in response to Question 13b, are available on Westlaw and LexisNexis, and can be obtained in hard copy from the Clerk of the Kansas Appellate Court's Office.

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.

State v. Moralez, 297 Kan. 397, 300 P.3d 1090 (2013).
State v. Williams, 297 Kan. 370, 300 P.3d 1072 (2013).
In re Burch, 296 Kan. 713, 294 P.3d 1155 (2013).
State v. Diaz-Ruiz, 42 Kan. App. 2d 325, 211 P.3d 836 (2009).
State v. Haffner, 42 Kan. App. 2d 205, 209 P.3d 734 (2009), *rev. denied*, 290 Kan. 1098 (2010).
State v. Chilson, 38 Kan. App. 2d 338, 165 P.3d 304 (2007).

State v. Palmer, 37 Kan. App. 2d 819, 158 P.3d 363 (2007).
State v. Shelinbarger, 33 Kan. App. 2d 678, 108 P.3d 445 (2005), *rev. denied*, 280 Kan. 990 (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.

Our Court of Appeals utilizes an automatic recusal system whereby each judge submits a list of automatic recusals – *i.e.*, a list of individuals, companies, or circumstances under which that judge will always recuse. This list is updated periodically as the judge reports additions or deletions to the list.

In the Court of Appeals, if a judge cannot hear an appeal because of an identified automatic recusal, the case is simply assigned to a panel on which the recusing judge will not be sitting and the judge is generally unaware of the consideration of the automatic recusal. After the automatic recusals are identified, the panel is provided with a list of ready case sheets, and those sheets are reviewed for any additional recusals. While I was on the Court of Appeals, I do not recall being required to recuse on any appeal once it had been assigned to the panel.

Our Supreme Court, like the Court of Appeals, utilizes an automatic recusal system whereby each justice submits a list of automatic recusals – *i.e.*, a list of individuals,

companies, or circumstances under which that justice will always recuse. The list is updated periodically as the justice reports additions or deletions to the list.

In the Supreme Court, after the clerk identifies the automatic recusals on a given docket, she circulates to each member of the court those cases identified along with ready case sheets, showing the parties and counsel involved in all cases on the docket. The justices then report back to the clerk whether there are any additional recusals.

In addition to these automatic recusals in the Supreme Court, effective upon my joining the Kansas Supreme Court in January 2011, I directed the clerk to show me as recused on any petition for review from a Court of Appeals opinion published on or before November 3, 2010, or any opinion on which I had served as a member of the Court of Appeals panel deciding the case. Effective January 2012, I modified that directive to include only petitions for review from opinions on which I had served as a member of the Court of Appeals panel deciding the case.

Since joining the Kansas Supreme Court, I have been automatically recused on the following cases based upon the automatic recusal list I provided to the clerk or because it was a petition for review which met the above circumstances.

Case No. 99,953, *Judith Berry v. National Medical Services, Inc., d/b/a NMS Labs, et al.* (Petition for Review)
Case No. 100,366, *State of Kansas v. Eric L. Neal* (Petition for Review)
Case No. 100,248, *Craig Alan Fischer v. State of Kansas* (Petition for Review)
Case No. 99,550, *Progressive Products, Inc. v. Tom Swartz, et al.* (Petition for Review)
Case No. 102,214, *Monica Harrison v. Adiel W. Tauheed* (Petition for Review)
Case No. 98,292/98,952, *State of Kansas v. Dana Wayne Deal* (Petition for Review)
Case No. 98,883, *State of Kansas v. Carlos E. Montes-Mata* (Petition for Review)
Case No. 100,012, *Cory Saylor v. Westar Energy, Inc.* (Petition for Review)
Case No. 99,503, *Tammy J. Adamson v. Kody J. Bicknell* (Petition for Review)
Case No. 98,822, *State of Kansas v. Rodolfo Gaona* (Petition for Review)
Case No. 102,731, *State of Kansas, et al. v. City of Topeka, et al.* (Recusal based upon district judge, who was the judge assigned to my 2010 divorce case)
Case No. 98,629, *State of Kansas v. Bernard Eugene Preston* (Petition for Review)
Case No. 99,232, *State of Kansas v. Saul Arthur Miller* (Petition for Review)
Case No. 100,246, *State of Kansas v. William E. McKnight, Jr.* (Petition for Review)
Case No. 100,286, *Keely Foster, et al. v. Michelle A. Klaumann, M.D.* (Petition for Review)
Case No. 100,215, *Tom Bates and Michelle Entriken, as Parents and Next Friends of Hayley Bates, A Minor v. Dodge City Healthcare Group, L.P., d/b/a Western Plains Regional Hospital* (Petition for Review)

Case No. 104,294, *Seaboard Corporation v. Marsh, Inc., et al.* (Recusal based on appellants' counsel, J. Nick Badgerow, my good friend and former supervising partner at Spencer Fane Britt & Browne)
Case No. 101,766, *Donald R. Rucker, et al. v. Earl R. Delay, et al.* (Petition for Review)
Case No. 101,812, *Waste Connections of Kansas, Inc. v. Ritchie Corporation* (Petition for Review)
Case No. 100,728, *State of Kansas v. Vicki L. Johnson* (Petition for Review)
Case No. 100,396, *State of Kansas v. Kerry D. Jenkins* (Petition for Review)
Case No. 100,489, *State of Kansas v. Chad Fleming* (Petition for Review)
Case No. 101,445, *Danny Douglas v. Ad Astra Information Systems, et al.* (Petition for Review)
Case No. 100,890, *State of Kansas v. Robert Henry Lackey, II* (Petition for Review)
Case No. 104,498, *Kansas One-Call System, Inc. v. State of Kansas* (Recusal based on district judge, who was the judge assigned to my 2010 divorce case.)
Case No. 100,648, *Daniel J. Stechschulte, Jr., et al. v. A. Drue Jennings, et al.* (Petition for Review)
Case No. 100,464, *State of Kansas v. Gabriel Nambo, Jr.* (Petition for Review)
Case No. 100,494, *State of Kansas v. Joshua B. Coman* (Petition for Review)
Case No. 100,497, *Margaret Russell Law v. Law Company Building Associates, et al.* (Petition for Review)
Case No. 100,178, *State of Kansas v. Anthony R. Murphy* (Petition for Review)
Case No. 100,173, *State of Kansas v. Angela Anderson* (Petition for Review)
Case No. 101,834, *In the Matter of the Marriage of Marc H. Hall and Susan C. Hall* (Petition for Review)
Case No. 100,362, *In the Matter of the Care and Treatment of Robert C. Ontiberos* (Petition for Review)
Case No. 101,912, *State of Kansas v. Dinah Sanchez-Loredo* (Petition for Review)
Case No. 100,596, *State of Kansas v. Alexander Tapia* (Petition for Review)
Case No. 101,392, *State of Kansas v. Kenneth D. Adams* (Petition for Review)
Case No. 101,378, *State of Kansas v. M.L. Snellings* (Petition for Review)
Case No. 100,888, *State of Kansas v. Christopher J. Brittingham* (Petition for Review)
Case No. 100,501, *Lynwood Baker v. State of Kansas* (Petition for Review)
Case No. 103,758, *In the Matter of the Marriage of Kristin L. Brown and John Jared Brown* (Petition for Review)
Case No. 101,084/101,085, *State of Kansas v. Jose Galaviz* (Petition for Review)
Case No. 102,122, *Marvin Hansford v. Silver Lake Heights, LLC, et al.* (Petition for Review)
Case No. 103,176, *Stanley L. Shrader v. Kansas Department of Revenue* (Petition for Review)
Case No. 102,198, *State of Kansas v. Robert C. Peterson* (Petition for Review)

My recusal has never been requested by motion by any party either in the Kansas Court of Appeals or the Kansas Supreme Court.

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

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

I have not held public office other than judicial office. I have not had any unsuccessful candidacies for elected 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 any political party, nor have I held a position or played a role in a political campaign.

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

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

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

I served as a law clerk to Judge Patrick F. Kelly, United States District Court for the District of Kansas, from August 1987 to August 1989.

I served as a research attorney to Justice Harold S. Herd, Kansas Supreme Court, from August 1985 to August 1987.

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.

1989 – 1995
Spencer Fane Britt & Browne, LLP
9401 Indian Creek Parkway
Corporate Woods Building 40, Suite 700
Overland Park, Kansas 66210
Associate
(From 1991 to 1993, I worked in the firm's Kansas City office, located at 1000 Walnut Street, Suite 1400, Kansas City, Missouri, 64106.)

1995 – 2004
United States Attorney's Office for the District of Kansas
United States Courthouse
444 Southeast Quincy, Suite 290
Topeka, Kansas 66683
Assistant United States Attorney
Appellate Coordinator (2000 – 2004)
(From 1995 to 1996, I worked in the Kansas City office, located at United States Courthouse, 500 State Avenue, Suite 360, Kansas City, Kansas 66101.)

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.

While an associate at Spencer Fane Britt & Browne, I practiced in the firm's Litigation Group and Labor and Employment Group. In my first two years at the firm, from 1989 to 1991, I handled various types of litigation including medical malpractice, employment litigation and personal injury cases. During this period of time, my practice primarily was a discovery and motion practice. From 1991 to 1995, I increasingly specialized in employment litigation defense. Approximately 90% of that litigation was before the United States District Court in Kansas City, Topeka and Wichita, Kansas. The cases I handled or worked on included federal claims of discrimination on the basis of race, sex, age and disability, retaliation, and state law claims of retaliatory discharge, negligent supervision and infliction of emotional distress. The cases seldom went to trial, mostly because we had a very successful discovery and motion practice, and nearly every case I handled involved one or more

dispositive motions. If we were not successful in resolving the case in our client's favor through pretrial rulings, we most often settled the case. During my last few years at the firm, as I became more specialized in the employment litigation arena, I began counseling employers and training employees on preventing employment claims and working with employers in the pre-litigation and Equal Employment Opportunity stages of the process.

During my first five years as an Assistant United States Attorney (AUSA), from 1995 to 2000, I handled the traditional responsibilities of a civil AUSA, including a caseload of approximately 70% general litigation and 30% non-litigation. During those years, I handled a variety of defensive litigation, including Federal Tort Claims Act litigation, medical malpractice claims and employment discrimination litigation. My non-litigation practice included handling bankruptcies, foreclosures and obtaining judgments on defaulted government loans. Until 1999, I also handled significant additional responsibilities for the District of Kansas when I served as both the Government Ethics Officer and the Professional Responsibility Officer for the district.

Beginning in 2000 until I left the United States Attorney's Office in 2004, I was the Appellate Coordinator for the district. As the Appellate Coordinator, I handled both civil and criminal appeals for the United States. Over my nearly five years in that role, I wrote approximately 100 briefs on behalf of the United States or its agencies, primarily as the appellee. I also argued approximately 25 appeals to the Tenth Circuit Court of Appeals. Among my duties as Appellate Coordinator, I was responsible for evaluating the viability of appeals by the United States from adverse decisions, preparing supporting memoranda and seeking authority from the Solicitor General of the United States for all such appeals. From 2002 to 2004, I took on a civil litigation caseload in addition to my appellate responsibilities. In that capacity, I handled three or four litigation matters at any given time, primarily employment litigation, in which I had developed an expertise.

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

At Spencer Fane Britt & Browne, our clients were primarily large manufacturers, retail employers in the Kansas City and Midwest region and municipalities, and I specialized in defensive employment counseling and litigation. As a civil AUSA, I represented various federal agencies in multiple capacities but primarily focused on defensive employment litigation. The employers we most frequently represented in defensive litigation included the United States Postal Service, the Veterans Administration, the Department of Housing and Urban Development, and

the Federal Bureau of Investigation. In non-defensive matters, I also represented the Internal Revenue Service, the Small Business Administration, the Department of Education, and the Farm Services Agency.

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.

After clerking, approximately 90% of my practice was in litigation and I appeared in court occasionally from 1989 to 2000. From 2000 to 2004, my practice was approximately 80% appellate and 20% litigation, and I continued to appear in court occasionally. I have not practiced since I was appointed to the Kansas Court of Appeals in 2004.

i. Indicate the percentage of your practice in:
   1. federal courts: 80 %
   2. state courts of record: 15 %
   3. other courts: 0%
   4. administrative agencies: 5 %

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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 three cases to verdict, judgment or final decision, one as sole counsel and two 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 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. *Barvick v. Cisneros*, No. 95-2326-JWL; 1996 WL157731 (D. Kan. Mar. 21, 1996); 941 F. Supp. 1007 (D. Kan. 1996) (before District Judge John Lungstrum (pre-trial) & Magistrate Judge Gerald Rushfelt (trial)).

   The plaintiff, Barvick, originally alleged he was discriminated against by the Department of Housing and Urban Development (HUD) on the basis of his sex and his age when he was denied a promotion to a GS-13 criminal investigator position. He also alleged that he was subjected to several other discriminatory acts leading up to the promotion denial, that he was retaliated against and that he was subjected to violations of the Rehabilitation Act and Equal Pay Acts. I defended this reverse discrimination case on behalf of HUD. The Rehabilitation Act and retaliation claims were voluntarily dismissed by agreement of the parties. The district court thereafter granted my motion to dismiss in part and dismissed all but one of Barvick's failure to promote claims. Following extensive discovery on the remaining counts, I filed a motion for summary judgment on behalf of HUD which was granted in part and denied in part.

   The case then proceeded to a one-week jury trial on Barvick's remaining claims of gender and age discrimination, which, pursuant to an agreement of the parties, was tried before United States District Magistrate Judge Gerald Rushfelt. I served as sole counsel at trial, handling all aspects of the case from start to finish. The jury rejected Barvick's age discrimination case, but found for him on his claim of gender discrimination and awarded him damages of $80,000. In a post-trial ruling, Judge Rushfelt determined Barvick was entitled to post-judgment interest and equitable relief in the form of a promotion.

   I was sole counsel in this case.

   Opposing counsel was Andrew Marquardt, currently at Advantage Tech Inc., 4400 West 107th Street, Overland Park, Kansas 66207, 913.888.5050.

2. *Downey v. United States*, No. 96-4167-RDR (D. Kan.), 79 F. Supp. 2d 1250 (D. Kan. 1999) (before Senior District Judge Richard Rogers).

   The plaintiff originally filed this case as two separate malpractice cases — one in federal court against the Veterans Administration and the other in state court against Dr. Tom Patterson. From 1997 to 2000, I defended the case on behalf of the United States, which intervened in the state court action and removed the case to federal court. The United States Attorney General filed a partial certification under the Westfall Act, 28 U.S.C. 2679, certifying that part of the actions for which plaintiff was suing occurred while Dr. Patterson was working within the scope of his employment for the United States. Following discovery, I filed a motion for summary judgment as to the Veterans Administration on statute of limitations grounds. The court held triable issues of material fact existed regarding the date the patient knew he was injured, precluding summary judgment. Eventually, because of my assignment as the Appellate Coordinator, the case was tried to the court by Assistant United States Attorney Mary Ramirez, resulting in a defense verdict.

   Plaintiff's counsel was Brock Snyder, 1401 Southwest Topeka Boulevard, Topeka, Kansas 66612, 785.232.1400.

   Co-defendant Patterson's counsel was Richard Anderson, currently a state district court judge for the Shawnee County District Court, 200 East Seventh Street, Room 411, Topeka, Kansas 66603, 785.233.8200.

3. *Lemons v. Dillard's Dept. Store*, Case No. 92-CV-4170 (D. Kan.) (before Senior District Judge Dale Saffels, now deceased (trial) and Magistrate Judge Ron Newman, now deceased (post trial)).

   In this age discrimination and retaliation case, I represented Dillard's Department Stores. I do not recall the extent of my participation in discovery, although the docket sheet indicates the case was removed to federal court from state court. I, along with lead counsel, Michaela Warden, tried the case to a jury for approximately three days, resulting in a defense verdict. As second-chair, my responsibilities included conducting voir dire, direct and cross-examination of several witnesses, and preparation of all trial pleadings, including jury instructions. Post-trial, in proceedings before the magistrate, I obtained a judgment in excess of $3000 on behalf of Dillard's for costs. I eventually conducted a judgment debtor's examination of plaintiff to assist in collecting those costs.

   Lead counsel for defendant was Michaela Warden, currently Warden Law Firm, LLC, 6815 West 67th Street, Shawnee Mission, Kansas 66202, 816.516.5755.

Plaintiff's counsel were Glenn Griffeth, 401 Southwest Topeka Boulevard, Topeka, Kansas 66603, 785.296.4902, and A.J. Kotich, 1000 Southwest Jackson, Suite 500, Topeka, Kansas 66612, 785.296.5670.

4. *Anspach v. Tomkins Industries*, No. 91-2279 (D. Kan.), 817 F. Supp. 1499 (D. Kan. 1993) (before Judge Earl O'Connor, now deceased).

   Plaintiffs, a husband and wife, brought suit against their mutual employer, their individual supervisors, the union and its agents. Lead counsel Michael Delaney and I represented the employer and its individual supervisors. I handled paper discovery, witness interviews, some depositions and prepared the summary judgment motion in which the company defendants obtained partial summary judgment on both plaintiffs' state law claims of intentional infliction of emotional distress and negligence against the employer, and the plaintiffs' state law claims against the union and its agents. Following summary judgment, we settled the remaining claims against the company defendants. I then worked with the company's corporate office to develop a program to educate the company's employees about policies and procedures to prevent harassment and then traveled to several of the company's plants nationwide to conduct the training.

   Plaintiffs' counsel were Alan Johnson, Sloan, Listrom, Eisenbarth, Sloan & Glassman, L.L.C., 534 South Kansas Avenue, Suite 1000, Topeka, Kansas 66603, 785.357.6311 and Thomas Stratton, now Director of the City Council of New Orleans' Utilities Regulatory Office, 1300 Perdido Street Second Floor West, New Orleans, Louisiana 70112, 504.653.1110.

   Defendants' lead counsel was Michael Delaney, Spencer Fane Britt & Browne, 9401 Indian Creek Parkway, Building 40, Suite 700, Overland Park, Kansas 66210, 913.327.5177.

5. *United States v. Youts*, 229 F.3d 1312 (10th Cir. 2000) (before Judges Seymour, Henry and McMurphy)

   Youts was convicted by a jury in the United States District Court for the District of Kansas of "joyriding" a train engine and ultimately wrecking the train in downtown Wichita in violation of federal law. I wrote the brief and argued the appeal for the United States. The panel affirmed Youts' conviction ruling that: (1) putting the train in reverse at full throttle, causing subsequent derailment, constituted "willful" wrecking of the train; (2) admission of evidence that defendant had previously stolen and wrecked a semi-truck was harmless error; and (3) the district court's decision to readmonish jury rather than conduct a bias hearing following a juror's contact with the prosecutor was not "plain error."

   Defendant's counsel was Steven Gradert, Assistant Federal Public Defender, 301 North Main, 850 Epic Center, Wichita, Kansas 67202, 316.269.6445.

6. *United States v. Zubia-Melendez*, 263 F.3d 1155 (10th Cir. 2001) (before Judges Ebel, Anderson and Baldock).

   The defendant appealed from the denial of his motion to suppress. I wrote the brief and argued the appeal on behalf of the United States. The panel affirmed the conviction, finding: (1) the officer had probable cause to stop the defendant's vehicle for crossing into another lane of travel; (2) the officer was justified in requesting identifying information from passenger; (3) the officer had reasonable suspicion to detain the driver and his passenger to conduct further investigation; and (4) the defendant's consent to search was not rendered involuntary by his initial refusal or the officer's actions.

   Defendant's counsel was Assistant Federal Public Defender Michael Harris. I could not locate contact information.

7. *United States v. Peterson*, 312 F.3d 1300 (10th Cir. 2002) (before Judges Seymour, Henry and Briscoe).

   The defendant appealed his conviction pursuant to a guilty plea to mail fraud and tax evasion. I wrote the brief and argued this case on appeal on behalf of the United States. The panel affirmed, finding the trial court did not clearly err in calculating the total amount of the loss resulting from the defendant's illegal activities. Further, in a matter of first impression, the panel concluded the defendant's mail fraud and tax evasion offenses were properly not grouped together for a multiple count adjustment under the guideline for groups of closely related counts on the basis that one of the counts embodied conduct treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to the other count.

   Defendant's counsel was former Assistant Federal Public Defender Marilyn Trubey, who has since retired.

8. *United States v. Hathaway*, 318 F.3d 1001 (10th Cir. 2003) (before Judges Kelly, Brorby and Oberdorfer).

   The defendant appealed his conviction of forcibly assaulting a federal officer under 18 U.S.C. Sec. 111(a), arguing that since both the indictment and the jury instructions failed to distinguish between simple and non-simple assault, he had been charged only with a misdemeanor violation and he could not in fact be convicted of a felony. I wrote the brief and argued the appeal on behalf of the United States. The panel held as a matter of first impression that the misdemeanor offense of simple assault of a federal officer or employee is an assault which does not involve actual physical contact, a deadly or dangerous weapon, bodily injury or the intent to commit murder or certain other felonies. The panel reversed the defendant's felony conviction and remanded the case for imposition of the misdemeanor simple assault conviction.

Defendant's counsel was Assistant Federal Public Defender Michael Harris. I could not locate contact information.

9. *Harms v. I.R.S.*, 321 F.3d 1001 (10th Cir. 2003) (before Judges Lucero, Portfilio and Murphy)

   I wrote the brief and argued the appeal on behalf of the Internal Revenue Service (I.R.S.). Harms sued the I.R.S., alleging wrongful suspension and termination in violation of Title VII and Rehabilitation Act. Harms appealed from the district court's entry of summary judgment for the I.R.S. on his suspension claims and its dismissal of his termination claims for lack of subject matter jurisdiction. The panel affirmed the district court decision, holding that the district court: (1) did not abuse its discretion in declining to equitably toll the period for filing claims based on mental incapacity; (2) did not abuse its discretion in declining to equitably toll the period for filing claims based on the Treasury Complaint Center improperly instructing Harms to take his suspension claims to the Merit Systems Protection Board (MSPB); and (3) had jurisdiction to review the MSPB decision dismissing "mixed case" appeal for untimeliness.

   Plaintiff's counsel was Alleen Castellani, Van Bebber, McDowell, Rice, Smith & Buchanan, 605 West 47th Street, Suite 350, Kansas City, Missouri 64112, 816.753.5400.

10. *United States v. Carter*, 360 F.3d 1235 (10th Cir. 2004) (Judges Seymour, McWilliams and Hartz).

    I wrote the brief and argued this appeal from the denial of a motion to suppress that preceded defendant's plea to possession of a firearm after previously being convicted of three felonies. The panel held that: (1) the officers did not violate the Fourth Amendment in drawing weapons and placing the defendant in handcuffs; (2) the officers' entry into the backyard and sweep of the garage was not warranted by the possibility of destruction of evidence; and (3) the officers' entry into the backyard and their sweep of the garage was not justified as a protective sweep. The case was remanded to the district court for a determination of whether the consent to search was voluntary.

    Defendant' s counsel was Ron Wurtz, formerly Assistant Federal Public Defender. I was not able to locate contact information.

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 1995 to 2000, I served as a Government Ethics Officer at the United States Attorney's Office. In that capacity, I was responsible for providing annual training to all employees of the United States Attorney's Office in all three of the district's locations. Additionally, during that same period of time, I served as the Professional Responsibility Officer for the United States Attorney's Office. In that role, my responsibilities included training and counseling Assistant United States Attorneys in the district on professional responsibility issues that arose in criminal and civil litigation, including application of the Model Rules of Professional Conduct.

Throughout most of my career, I was an active member of the Board of Editors of the Journal of the Kansas Bar Association. The Journal is the monthly publication of the Kansas Bar Association. As a member, I solicited articles from members of the bar, co-authored several substantive legal articles, edited many other articles and eventually chaired the Board.

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 expect to receive income from the Kansas Retirement System for Judges (KRSJ), which is under the umbrella of the Kansas Public Employees Retirement System (KPERS). I became vested in the KRSJ immediately upon my appointment. I have no other deferred income arrangements.

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

I have no such plans, commitment or agreements.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial

disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

At this time I do not anticipate any conflicts-of-interest from family members, other persons or financial arrangements if confirmed. The only category of ligation that might present a conflict would be habeas cases in which I sat on the appellate court, from which I would recuse myself.

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

If confirmed, I would carefully follow 28 U.S.C. 455 and Canon 3 of the Code of Conduct for United States Judges. I would also engage in prompt and immediate review of the parties, their affiliates, and the issues in any litigated matter to come before me so that I could make a prompt, informed decision regarding the propriety of my participation in the matter.

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

While employed at Spencer Fane Britt & Browne in Kansas City, Missouri, I represented biological mothers (whose children were in alternative care) in proceedings in the Juvenile Division of the Jackson County, Missouri Circuit Court. Since becoming a judge in 2004, I have volunteered my time at Washburn School of Law in many different capacities, but in particular, I have focused on the mentorship program. Each year I mentored at least one student in addition to maintaining mentoring relationships with previous mentees through law school and beyond. I have participated in many moot court activities and competitions at both our state law schools as well as at local high

schools. I also began delivering for Meals on Wheels in Topeka in approximately 2003, delivering a route every other week for more than seven years.

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 October 2012, I received a call from a representative from the White House Counsel's Office to discuss whether I would be interested in serving on the Tenth Circuit. Since October 12, 2012, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On May 21, 2013, I spoke by phone with United States Senator Jerry Moran regarding my interest in the position. On July 25, 2013, I met with officials 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
Moritz, Nancy L.	U.S. Court of Appeals--Tenth 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 Court Judge, Active	☑ Nomination Date 08/01/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 07/24/2013
7. Chambers or Office Address		
Kansas Judicial Center 301 SW 10th ST Topeka, KS 66612		

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.	2004	KPERS (Kansas Public Employment Retirement System) defined benefit plan
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Moritz, Nancy L.	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	State of Kansas/Salary	$117,719.00
2.	2012	State of Kansas/Salary	$123,317.00
3.	2013	State of Kansas/Salary	$83,633.92
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 Moritz, Nancy L.	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.	U.S. Dept. of Education	Educational loans for child	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	**Name of Person Reporting** **Moritz, Nancy L.**	**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. Bank of America Accounts	A	Interest	L	T	Exempt				
2. Northwestern Mutual Life Ins. Universal Life	A	Dividend	J	T					
3. Janus Balanced Fund	A	Dividend	J	T					
4. T. Rowe Price Growth Stock Fund		None	J	T					
5. T.Towe Price Capital Appreciation Fund		None	J	T					
6. T. Rowe Price Personal Strategy Growth Fund		None	J	T					
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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 Moritz, Nancy L.	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	Date of Report
	Moritz, Nancy L.	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/ Nancy L. Moritz**

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		59	632	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		10	457	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		212	799
Real estate owned – personal residence		340	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000	Education loans		37	968
Cash value-life insurance		5	430				
Other assets itemize:							
KPERS (Fixed Income Retirement Account)		76	500				
				Total liabilities		250	767
				Net Worth		316	252
Total Assets		567	019	Total liabilities and net worth		567	019
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	
Janus Balanced Fund	$ 2,606
T. Rowe Price Growth Stock Fund	2,611
T. Rowe Price Capital Appreciation Fund	2,570
T. Rowe Price Personal Strategy Growth Fund	2,670
Total Listed Securities	$ 10,457

AFFIDAVIT

I, Nancy L. Moritz, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

08/01/2013
(DATE)

(NAME)

Cindy Lowe
(NOTARY)

Cindy Lowe
NOTARY PUBLIC - STATE OF KANSAS
MY APPT EXP 3-28-16

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Sheryl (Sheri) Halle Lipman

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

   United States District Judge for the Western District of Tennessee

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

   Office of Legal Counsel
   University of Memphis
   201 Administration Building
   Memphis, Tennessee 38152

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

   1963; Memphis, Tennessee

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

   1984 – 1987, New York University School of Law; J.D., 1987

   1981 – 1984, University of Michigan; B.A., 1984

   Summer 1982, University of Memphis (formerly Memphis State University); 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.

   1999 – present
   University of Memphis

201 Administration Building
Memphis, TN 38152
Interim Chief of Staff to the President (July 1, 2013 – present)
University Counsel (2002 – present)
Interim Equal Employment/Affirmative Action Director (July 1, 2012 – March 31, 2013)
Senior Attorney (1999 – 2002)

1997 – 1999
Burch, Porter & Johnson
130 North Court Avenue
Memphis, TN 38103
Litigation Associate

1996 – 1997
Memphis Race Relations & Diversity Institute
no longer exists
Vice President-Comprehensive Services (1997)
Director of Programs (1996)

1991 – 1995
Wyatt, Tarrant & Combs
(formerly McDonnell Boyd and McDonnell Dyer)
The Renaissance Center
1715 Aaron Brenner Drive, Suite 800
Memphis, TN 38120
Member (1995)
Counsel (1995)
Litigation Associate (1991 – 1995)

1988 – 1991, Summer 1986
Reed Smith Shaw & McClay
(formerly Pierson, Ball and Dowd)
1301 K Street, N.W., Suite 1100 - East Tower
Washington, D.C. 20005
Litigation Associate (1988 – 1991)
Summer Associate (Summer 1986)

1987 – 1988
Honorable Julia S. Gibbons, United States District Court
Western District of Tennessee
Federal Building
Memphis, TN 38103
Judicial Law Clerk

1985 – 1986
Matthew A. Kaufman

225 Broadway Street, Suite 1606
New York, NY 10007
Law Clerk

Summer 1985
Litt and Stormer
(no longer exists)
Los Angeles, CA
Summer Associate

Summer 1984
Armadillo Jack's Restaurant
(no longer exists)
Memphis, TN
Waitress

Other affiliations (uncompensated unless otherwise noted):

2012 – present
Memphis Child Advocacy Center
1085 Poplar Avenue
Memphis, TN 38105
Counsel, Board of Directors

2008 – present
Tennessee Shakespeare Company
2260 West Street
Germantown, TN 38138
Member, Board of Directors (2008 – present)
President, Board of Directors (2009 – 2010)
Treasurer, Board of Directors (2008 – 2009)

2000 – present
Facing History and Ourselves
650 East Parkway South
Memphis, TN 38104
Board of Advisors

2007 – present
Memphis Jewish Federation
6560 Poplar Avenue
Germantown, TN 38138
Director, Board of Directors
Counsel, Board of Directors (2009 – 2011)

2009 – 2010
Leo Bearman, Sr. Chapter, American Inn of Court
(no physical address)
Secretary to the Inn

2004 – 2009 (ceased operations) (compensated)
LLR, LLC d/b/a Relax the Back
201 University Blvd., Suite 123
Denver, CO 80206
Member, LLC

1998 – 2009
The Leadership Academy
(now New Memphis Institute, formerly Goals for Memphis)
22 North Front Street, Suite 500
Memphis, TN 38103
Trustee, Board of Directors
Vice President, Leadership Development Intensive (2004 - 2005)
Counsel (1998 - 2005)

1999 – 2008
Memphis Regional Planned Parenthood
2430 Poplar Avenue
Memphis, TN 38104
Member, Board of Directors (1999 – 2008)
Chair, Board of Directors (2003 – 2005)
Vice Chair, Board of Directors (2001 – 2003)
Member, Executive Committee (2000 – 2001)

2005 – 2007
Memphis & Shelby County Sports Development Corporation
(no longer exists)
Member, Board of Directors

1997 – 2004
Memphis Jewish Community Center
6560 Poplar Avenue
Memphis, TN 38138
Member, Board of Directors
Counsel, Board of Directors (2000 – 2002)
Assistant Vice President of Membership (1998 – 2000)

2000 – 2002
Memphis Bar Association
80 Monroe Avenue, Suite 220
Memphis, TN 38103

Member, Board of Directors
Member, Executive Committee (2001 – 2002)

1999 – 2002
National Ornamental Metal Museum
374 Metal Museum Drive
Memphis, TN 38106
Member, Board of Directors

1999 – 2001
The Exchange Club Family Center
2180 Union Ave
Memphis, TN 38104
Member, Board of Directors

1992 – 2001
American Civil Liberties Union of Tennessee
P. O. Box 120160
Nashville, TN 37212
Member, Board of Directors
Vice President, Board of Directors (1996 – 2001)

1993 – 2000
Hands On Memphis
(merged with Volunteer Midsouth)
General Counsel, Board of Directors (1993 – 1999)
Co-Chair, Board of Directors (1997 – 1998)
Vice President, Board of Directors (1994 – 1996)
President, Board of Directors (1993 – 1994)

1995 – 1999
Memphis Jewish Home
36 Bazeberry Road
Cordova, TN 38018
Member, Board of Directors

1993 – 1994, 1994 – 1995
Bethany Home
(no longer exists)
Member, Board of Directors
Vice Chair, Board of Directors (1994 – 1995)
Secretary (1993 – 1994)

1995 – 1996
Vollintine-Evergreen Community Development Corporation

(no longer exists)
Member, Board of Directors

1991 – 1995
Center for Southern Folklore
119 South Main Street
Memphis, TN 38103
Member and General Counsel, Board of Directors

1988 – 1990
Project Northstar (homeless children's tutoring project)
(no longer exists)
Washington, D.C.
Member, Board of Directors

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

   I have not served in the military. I was not required to register with 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.

   Allen J. Hammond Presidential Service Award, University of Memphis (2012)
   Named one of 100 Women who have made a difference in the University of Memphis' first 100 years (2012)
   AV rating, Martindale-Hubbell (2008)
   Memphis & Shelby County Bar Foundation, Fellow (2005)
   Nominated for local Jefferson Award for outstanding volunteer service (2001)
   Chosen Top 40 under 40 by Memphis Business Journal (1998)
   Honorary Member of Memphis City Council (1998 and 1999)
   Harvard Business School Executive Education Programs, "Strategic Perspectives in Nonprofit Management" (April 27, 1997 – May 3, 1997)
   Leadership Memphis, Member, Class of 1995
   Public Interest Grant, New York University School of Law (1985)
   University of Michigan Honors Convocation (1983 – 1984, 1981 – 1982)
   Public Interest Internship, University of Michigan, Summer 1983
   University of Michigan, College of Literature, Science and the Arts Academic Scholarship (1982 – 1983)
   University of Michigan, Branstrom Prize, Top 5% of Freshman Class (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 (1987 – approximately 1999)
American Judicature Society (several years between 1988 and 1995)
Association of Women Attorneys
    Co-editor of newsletter (1992)
Delegate, Sixth Circuit Judicial Conference (named by Honorable Julia S. Gibbons) (1995)
District of Columbia Bar
Leo Bearman, Sr. Chapter, American Inn of Court
    Master (2008 – 2011)
    Secretary (2009 – 2010)
    Associate (1995 – 1997)
Member, Merit Selection Panel to Choose Federal Public Defender for Western District of Tennessee (appointed by the Sixth Circuit Court of Appeals) (1995)
Memphis Bar Association
    Human Resources Committee (2002 – 2005)
    Director (2000 – 2002)
    Executive Committee (2001 – 2002)
National Association of Women Judges Conference Planning Committee (2009)
Tennessee Bar Association (1991 – approximately 1999)
The Bar Association of the District of Columbia (1989 – 1991)

10. **Bar and Court Admission**:

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

    Tennessee, 1987
    District of Columbia, 1989 (inactive)

    There have been no lapses in membership, although, as indicated, my membership in the District of Columbia bar 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.

    All Tennessee State Courts, 1987
    United States District Court for the Western District of Tennessee, 1988
    United State Court of Appeals for the Sixth Circuit, 1988
    All District of Columbia Courts, 1989
    United States Court of Appeals for the Fourth Circuit, 1990
    United States District Court for the District of Columbia, 1991
    United States District Court for the Central District of Illinois, 1993

United States District Court for the District of Arizona, 1994
United States Court of Federal Claims, 1995

There have been no lapses in membership.

11. **Memberships**:

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

American Civil Liberties Union of Tennessee (1991 – present)
Member, Board of Directors (1992 – 2001)
Vice President, Board of Directors (1996 – 2001)
Bethany Home (1992 – 1999)
Member, Board of Directors (1992 – 1995, 1998 – 1999)
Vice Chair, Board of Directors (1994 – 1995)
Secretary (1993 – 1994)
Bridges, Inc. (1998-2000)
Member, Board of Advisors (1998 – 2000)
Center for Southern Folklore (1991 – 2008)
Member and General Counsel, Board of Directors (1991 – 1995)
Facing History and Ourselves, Memphis Region (2000 – present)
Member, Board of Advisors (2000 – present)
Hands On Memphis (1993 – 2000)
Member, Board of Directors (1993 – 2000)
First President, Board of Directors (1993 – 1994)
Vice President, Board of Directors (1994 – 1996)
Co-Chair, Board of Directors (1997 – 1998)
General Counsel, Board of Directors (1993 – 1999)
Marcus Orr Center for the Humanities at the University of Memphis (2009 – present)
Member, Board of Advisors (2009 – present)
Memphis Child Advocacy Center (2012 – present)
Counsel, Board of Directors (2012 – present)
Memphis Jewish Community Center (1991 – present)
Member, Board of Directors (1997 – 2004)
Assistant Vice President of Membership (1998 – 2000)
Counsel, Board of Directors (2000 – 2002)
Memphis Jewish Federation (1991 – present)
Director, Board of Directors (2007 – present)
Counsel, Board of Directors (2009 – 2011)
Genesis Young Leadership Program Chair (2010)

Strategic Planning Committee (2007)
Memphis Jewish Home (1995 – 1999)
Member, Board of Directors (1995 – 1999)
Memphis Regional Planned Parenthood (1999 – present)
Member, Board of Directors (1999 – 2008)
Member, Executive Committee (2000 – 2001)
Vice Chair, Board of Directors (2001 – 2003)
Chair, Board of Directors (2003 – 2005)
Member, Search Committee for President (2012 – 2013)
Memphis & Shelby County Sports Development Corporation (2005 – 2007)
Member, Board of Directors (2005 – 2007)
National Association of College and University Attorneys (1995, 1999 – present)
Member (1995, 1999 – present)
Annual Conference Program Committee (2011 – 2013)
Co-chair, subcommittee on Student Affairs and Athletics (2011 – 2012)
Co-chair, subcommittee on General Counsel (2013)
Task Force on the Annual Conferences (2012)
National Collegiate Athletic Association (NCAA) (2010)
Member, Search Committee for General Counsel (2010)
National Ornamental Metal Museum (1999 – present)
Member, Resource Board (2002 – present)
Member, Board of Directors (1999 – 2002)
New York University Alumni Association (est. 1991 – present)
Project Northstar (1988 – 1990)
Member, Board of Directors (1988 – 1990)
Tennessee Shakespeare Company (2008 – present)
Member, Board of Directors (2008 – present)
President, Board of Directors (2009 – 2010)
Treasurer, Board of Directors (2008 – 2009)
The Exchange Club Family Center (1999 – 2001)
Member, Board of Directors (1999 – 2001)
The Leadership Academy (now New Memphis Institute, formerly Goals for Memphis) (1998 – present)
Trustee, Board of Directors (1998 – 2009)
Vice President, Leadership Development Intensive (2004 – 2005)
University of Michigan Alumni Association (est. 1988 – present)
Vollintine-Evergreen Community Development Corporation (1995 – 1996)
Member, Board of Directors (1995 – 1996)
Vollintine-Evergreen Community Association (est. 1995 – 2011)

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

or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

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

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

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

The Story of the Disappearing Season: Should Strict Liability Be Used in the NCAA Infractions Process?, 41 U. MEM. L. REV. 847 (2011). Copy supplied.

Open Letter to Tiger Fans from Sheri Lipman, June 2, 2009. Copy supplied.

U of M Pleads for Trust in Student-Athlete Issues, The Commercial Appeal, January 26, 2005. Copy supplied.

Businesses Learning to Manage Effect of HIV/AIDS in Workplace, The Memphis Business Journal, July 27, 2003. Copy supplied.

Women at the Bar, HER Business News, April 1998. Copy supplied.

Women at the Bar: Hiring to Avoid Firing, HER Business News, February 1998. Copy supplied.

Women at the Bar: Getting Paid!, HER Business News, January 1998. Copy supplied.

Legal Matters: The Courts Help Shatter the Glass, The Same Difference (newsletter of the Memphis Race Relations and Diversity Institute), June 1995. Copy supplied.

Legal Matters: Civil Rights Act of 1991: Changes in the Landscape, The Same Difference (newsletter of the Memphis Race Relations and Diversity Institute), March 1995. Copy supplied.

With Gerson & Lakey, *Minorities and Women in the Profession and Labor and Employment: 'Diversity Management: Opposites Don't Always Attract,'* subtitled *Increasing Diversity in the Legal Workplace: A Look at the Recruitment,*

Retention, and Promotion of Minority and Women Attorneys in Law Firms, presented at the 13th Annual Mid-Winter Corporate Counsel Meeting of the American Bar Association on February 16-19, 1995. Copy supplied.

Legal Matters, The Same Difference (newsletter of the Memphis Race Relations and Diversity Institute), December 1994. Copy supplied.

Legal Matters, The Same Difference (newsletter of the Memphis Race Relations and Diversity Institute), September 1994. Copy supplied.

Legal Matters, The Same Difference (newsletter of the Memphis Race Relations and Diversity Institute), June 1994. 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.

As the Vice Chair and Chair of the Board of Directors of Memphis Regional Planned Parenthood, I authored messages in the 2002-2003, FY2004, and FY2005 annual reports. Otherwise, I did not personally prepare or review any portion of the annual reports in advance. Copies supplied.

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

I have not presented such testimony, but I have been present before public bodies as part of a team from the University of Memphis, seeking approval for certain contracts for the University. These appearances include:

August 5, 2011: Executive Sub-Committee of the Tennessee State Building Commission (acquisition of Lambuth campus). I have no notes, transcript or recording.

August 4, 2011: Madison County (Tennessee) Commission (acquisition of Lambuth campus). Minutes supplied.

August 2, 2011: Jackson City (Tennessee) Council (acquisition of Lambuth campus). Minutes supplied.

November 23, 2009: Executive Sub-Committee of the Tennessee State Building Commission (Highland Row development project). Minutes supplied.

December 16, 2008: Fiscal Review Committee of the Tennessee state legislature (Nike contract). I have no notes, transcript or recording.

May 18, 2007: West Tennessee Seismic Safety Commission. Minutes supplied.

November 20, 2006: Executive Sub-Committee of the Tennessee State Building Commission (contract to obtain use of downtown law school building). Minutes supplied.

May 13, 2004: Tennessee State Building Commission (use agreement for FedExForum and termination of Pyramid agreement). Minutes supplied.

April 19, 2004: Executive Sub-Committee of the Tennessee State Building Commission (use agreement for FedExForum and termination of Pyramid agreement). Minutes supplied.

April 13, 2004: Memphis City Council Committee and Council (use agreement for FedExForum and termination of Pyramid agreement). I have no notes, transcript or recording.

March 3, 2004: Shelby County (Tennessee) Commission (use agreement for FedExForum and termination of Pyramid agreement). I have no notes, transcript or recording.

February 14, 2004: Memphis City Council (use agreement for FedExForum and termination of Pyramid agreement). I have no notes, transcript or recording.

Since becoming University Counsel in 2002, I have served on a number of committees that have issued reports or studies for the university. Although these were issued in my capacity as in-house counsel for the University, I have supplied the public documents that I could locate:

April 14, 2005: Report of the President's Task Force on the University's Response to Student-Athlete Conduct and the Criminal Justice System.

July 15, 2004: 2003-2004 Division I Athletics Certification Self Study Instrument.

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 the speeches or talks I delivered. To answer this question, I searched my files and papers, and conducted Internet searches for responsive materials and information. I tried to compile as complete a list as possible, but there may be other speeches or talks that I have been unable to recall or identify. Although I usually wrote notes in advance of my participation on a panel, that was not always my practice, nor has it always been my practice to maintain the notes I used.

June 18, 2013: Panelist, "College Athletics," 2013 Lawyers New to Higher Education Workshop, Philadelphia, PA. This session was an introduction to legal issues in collegiate athletics, including contract issues, employment matters and a compliance overview. I have no notes, transcript or recording. The address of the National Association of College and University Attorneys is One Dupont Circle, Suite 620, Washington, DC 20036.

January 12, 2013: Panelist, "General Counsel and Athletics," 2013 NACUA General Counsel Institute, New Orleans, LA. Recording supplied.

June 29, 2012: Discussion Coordinator, "Intercollegiate Athletics and Sports Forum," 2012 NACUA Annual Conference, Chicago, IL. The Forum sessions are open sessions where various people update the group on current events. I did not provide an update in this session, but I served as one of the discussion coordinators. I have no notes, transcript or recording. The address of the National Association of College and University Attorneys is One Dupont Circle, Suite 620, Washington, DC 20036.

June 27, 2012: Panelist, "Where Are We Now? An Update on NCAA Efforts to Deregulate," 2012 NACUA Annual Conference, Chicago, IL. Recording supplied.

May 13, 2012: Guest Speaker, Germantown High School Baccalaureate, Memphis, TN. Transcript supplied.

April 18, 2012: Co-Presenter, "Top Ten Legal Issues in Higher Education," Continuing Legal Education Luncheon sponsored by the Labor and Employment section of the Memphis Bar Association, Memphis, TN. Notes supplied.

November 4, 2011: Guest Lecturer, "Self Leadership," Executive MBA Program,

Fogelman College of Business and Economics, University of Memphis, Memphis, TN. The lecture focused on my background and how I made the professional choices in my life. I have no notes, transcript or recording. The address for the Fogelman College of Business and Economics is University of Memphis, Memphis, TN 38152.

June 28, 2011: Moderator, "Trends in NCAA Compliance: Understanding Institutional Controls and Counsel's Role in Managing the Risks Inherent in Athletics Compliance," 2011 NACUA Annual Conference, San Francisco, CA. I have no notes, transcript or recording. The address for the National Association of College and University Attorneys is One Dupont Circle, Suite 620, Washington, DC 20036.

June 27, 2011: Discussion Coordinator, "Athletics Forum," 2011 NACUA Annual Conference, San Francisco, CA. The Forum sessions are open sessions where various people update the group on current events. My recollection is that I provided an update on clawback provisions in coaches' contracts at this session, in addition to serving as a discussion coordinator. I have no notes, transcript or recording. The address of the National Association of College and University Attorneys is One Dupont Circle, Suite 620, Washington, DC 20036.

June 27, 2011: Panelist, "What Should Athletics Call Me About? The Legal Issues Every University Counsel Should Know About in the Athletics Department," 2011 NACUA Annual Conference, San Francisco, CA. Recording supplied.

February 11, 2011: Presenter, "Should Strict Liability Be Used in the NCAA Infractions Process? The Story of the Disappearing Season," University of Memphis Law Review Symposium, Memphis, TN. Copy of article that formed the basis of the talk supplied in response to Question 12a.

December 14, 2010: Co-Presenter, "Memphis Jewish History," discussion co-led with Judy Ringel at Temple Israel Synagogue, Memphis, TN. Notes supplied.

Fall 2010, Fall 2008: Guest Lecturer, "Public Administration: Collective Bargaining and Conflict Resolution," University of Memphis, Memphis, TN. Notes supplied.

April 8, 2010: Guest Speaker, Germantown High School National Honor Society Induction Ceremony, Memphis, TN. Transcript supplied.

March 25, 2010: Panelist, "Who's Your Client? A Corporate Counsel's Dilemma," Business Law Section of the Memphis Bar Association. In this presentation, I discussed how to work with the leaders of a large institution while still being clear that the institution is the client. I have no notes, transcript or recording. The address of the Memphis Bar Association is 80 Monroe Avenue,

Suite 220, Memphis, TN 38103.

April 9, 2007: Panelist, "Being a Lawyer," University of Memphis Student-Athletes' Career Panel, Memphis, TN. Notes supplied.

February 27, 2007: Speaker, "Update on Geier Litigation," Black Law Students Association at the University of Memphis, Memphis, TN. Notes supplied.

April 18, 2006 and October 22, 2001: Speaker, "The Role of Lawyers," University of Memphis Pre-Law Society, Memphis, TN. Notes supplied.

November 4, 2005: Panelist, "Diversity's Role in Public and Private Employment Sectors: Differences and Similarities," Conference on Diversity in the Workplace, Memphis, TN, sponsored by the University of Memphis Law School and Baker, Donelson, Bearman, Caldwell & Berkowitz. In this presentation, I discussed how the Geier litigation provided the framework for various practices on our campus. I have no notes, transcript or recording. The address of the University of Memphis Law School is One North Front Street, Memphis, TN 38103.

October 20, 2003: Guest Lecturer, Higher Education Law, "Role of Counsel on Campus," University of Memphis, Memphis, TN. Notes supplied.

Spring Semester 2003, Spring Semester 2001, Spring Semester 2000: Guest Lecturer, "Legal Environment of Business," Fogelman College of Business and Economics, University of Memphis, Memphis, TN. In these lectures, I believe I described recent ACLU litigation. I have no notes, transcript or recording. The address for the Fogelman College of Business and Economics is University of Memphis, Memphis, TN 38152.

May 2003: Speaker, Presentation at the 15th Annual Memphis in May Student Affairs Conference, Student Affairs Division, University of Memphis, Memphis, TN. I do not specifically recall this presentation, but I believe I would have discussed legal issues in student affairs matters. I have no notes, transcript or recording. The address for the Student Affairs Division at the University of Memphis is Student Affairs, University of Memphis, Memphis, TN 38152.

February 8, 2002: Speaker, "You May Think You Don't Need a Lawyer ... Legal Issues and the Affiliate: Developing a Checklist for an Organization", co-presented with Rob Pineda at the 2002 CityCares Annual Conference, Memphis, TN. Notes supplied.

Spring Semester 2002 and Spring Semester 2001: Guest Lecturer, Federal Courts, University of Memphis Law School, Memphis, TN. I used substantially the same notes for both events. Notes from Spring Semester 2001 supplied.

May 22-23, 2001: Panelist, "The Law Professor as Lawyer," Conference on Legal Education in the United States and China, sponsored by the University of Memphis Law School, Memphis, TN. Notes supplied.

March 29, 2001: Panelist, "Legal Transitions," sponsored by Association for Women Attorneys, Memphis, TN. Notes supplied.

March 28, 2001: Speaker, "Status of Law on Abortion," UT Medical Students for Choice, University of Tennessee Health Science Center, Memphis, TN. In this speech, I provided an overview of the then-current law. I have no notes, transcript or recording. The address of the University of Tennessee Health Science Center is 62 South Dunlap, Memphis, TN 38163.

August 19, 2000: Speaker, "ADA and Sexual Harassment Training," provided for YMCA of Memphis and the Mid-South City Wide Child Care Training, Memphis, TN. I have no notes, transcript or recording. The address of the YMCA of Memphis and the Mid-South is 6373 Quail Hollow, Suite 201, Memphis, TN 38120.

May 19, 2000: Panelist, ADA Panel, University of Memphis School of Law Labor & Employment Law Symposium, Memphis, TN. Notes supplied.

April 12, 2000: Panelist, "Racial Profiling Forum and Town Meeting," sponsored by the ACLU of Tennessee, the Black Law Students and Jewish Law Students of the University of Memphis School of Law, and the Civilian Law Enforcement Review Board of the City of Memphis, Memphis, TN. As a panelist, my recollection is that I discussed a proposed law that would track the reasoning behind police stops. Minutes and press coverage supplied.

February 14, 2000: Speaker, "Legal Issues," University of Memphis Campus Ministries, Student Affairs Division, University of Memphis, Memphis, TN. In this speech, I believe I discussed legal issues that could affect the campus ministries. I have no notes, transcript or recording. The address of the University of Memphis Campus Ministries, Student Affairs Division, University of Memphis, 3625 Mynders Avenue, Memphis, TN 38111.

March 9, 1999: Speaker, "Free Exercise Clause and Attendance Policies," sponsored by the Jewish Law Students, University of Memphis Law School, Memphis, TN. In this speech, I discussed how attendance policies affect students who miss class to observe religious holidays. I have no notes, transcript or recording. The address for the University of Memphis Law School is One North Front Street, Memphis, TN 38103.

December 8, 1998 and October 15, 1997: Guest Lecturer, Great Expectations Honors Forum, University of Memphis, Memphis, TN. In these lecturers, I believe I spoke about my background, and how I made my career choices. I have

no notes, transcript or recording. The address for the University of Memphis is Memphis, TN 38152.

October 18, 1998: Panelist, "Blacks and Jews in Memphis," sponsored by the Jewish Historical Society of Memphis and the Mid-South. My recollection of this panel is that it included four participants from different generations, describing their experiences with the intersection of these two groups. I have no notes, transcript or recording. The Jewish Historical Society of Memphis and the Mid-South does not have a physical address.

January 13, 1998: Panelist, "Forum on Public School Issues," sponsored by the National Council of Jewish Women/Memphis Section, Memphis, TN. In this speech, I believe I spoke about issues related to religion in public schools. I have no notes, transcript or recording. The National Council of Jewish Women/Memphis Section has no physical address.

July 14, 1997: Panelist, "The Argument for Gun Control from Different Perspectives," sponsored by the Memphis Public Issues Forum, Memphis, TN. I have no notes, transcript or recording. The Memphis Public Issues Forum has no physical address.

September 13, 1996: Speaker, "White Collar Crime," sponsored by the Greater Memphis Legal Assistants, Memphis, TN. In this speech, I described the differences between civil and criminal cases, including substance, process and preparation. I have no notes, transcript or recording. The Greater Memphis Legal Assistants has no physical address.

February 10, 1995: Panelist, "What to Say After You've Said Hello or Effective Client Communications," sponsored by the Memphis Bar Association, Memphis, TN. In this speech, I believe I spoke about the importance of clearly communicating with your client, and the need to document those communications. I have no notes, transcript or recording. The address of the Memphis Bar Association is 80 Monroe Avenue, Suite 220, Memphis, TN 38103.

March 3 and 23, 1993: Speaker, Faculty and Student Judicial Committee Training, University of Memphis, Memphis, TN. In these trainings, I focused on evidence principles that help guide evaluation of proof. I have no notes, transcript or recording. The address of the University of Memphis is 3641 Central Avenue, Memphis, TN 38111.

January 14, 1992: Presenter, Trial of Eve, sponsored by Beth Sholom Synagogue Sisterhood, Memphis, TN. This was a mock trial where Eve was charged with possession of a forbidden substance (apple) with intent to eat and entice others to eat. I represented Eve, and she was found not guilty. I have no notes, transcript or recording. The address of Beth Sholom Synagogue is 6675 Humphreys Blvd, Memphis, TN 38120.

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 my role as University Counsel, I am periodically asked to comment on matters at the University. Most of these articles are the result of my fulfillment of those job duties, and many of these articles were reprinted in part or in full in multiple outlets. To compile this list, I have searched my own files, conducted Internet searches, and endeavored to find all responsive documents.

Kyle Veazey, "TV Deal Has Little Impact on Tigers," The Commercial Appeal, February 26, 2013. Copy supplied.

Kyle Veazey, "Exploring What the New Big East TV Deal Means to the Tigers' Bottom Line," The Commercial Appeal, February 25, 2013. Copy supplied.

Jennifer Rorie, "Committee Efforts Futile, Helmsman Future Uncertain," The Daily Helmsman, February 6, 2013. Copy supplied.

Erik Brady, Steve Berkowitz, and Jodi Upton, "Schools Seek Protection if Coach Breaks NCAA Rules," USA TODAY, November 20, 2012. Copy supplied.

Kyle Veazey, "Auditors Explore University of Memphis Athletics; School Calls It 'Common and Routine,'" The Commercial Appeal, November 18, 2012. Copy supplied.

Michelle Corbet, "Student Privacy Law Misused, Lawyer Says," The Daily Helmsman, October 17, 2012. Copy supplied.

Michelle Corbet, "Security Gate Chaos. Gates Come Down on Graduate Student, Family Housing," The Daily Helmsman, October 5, 2012. Copy supplied.

Margot Pera, "Daily Helmsman Works for Financial Independence," The Daily Helmsman, August 29, 2012. Copy supplied.

Bianca Phillips, "Stonewalling the Student Press?," The Memphis Flyer, August 16, 2012. Copy supplied.

"U of M to Probe Student Newspaper Funding Cut," The Associated Press State & Local Wire, August 4, 2012. Copy supplied.

Samantha Bryson, "University of Memphis President Launches Inquiry Into Student Newspaper Budget Cuts," The Commercial Appeal, August 3, 2012. Copy supplied.

Jody Callahan, "Budget Cut for U of M Newspaper Brings Allegations of 1st Amendment Violation," The Commercial Appeal, July 30, 2012. Copy supplied.

"Memphis Student Newspaper Upset over Funding Cut," The Associated Press State & Local Wire, July 30, 2012. Copy supplied.

Christopher Whitten, "Lawyer Says Different Appeal Standards Under Athlete Conduct Policy 'Shady,'" The Daily Helmsman, April 25, 2012. Copy supplied.

Kyle Veazey, "BLOG: The Memphis Edge: Beaudine's Bill for Tigers' AD Search: $75,000," The Memphis Edge, April 19, 2012. Copy supplied.

Christopher Whitten, "UM Football Player's Trial Set for June," The Daily Helmsman, April 19, 2012. Copy supplied.

Kyle Veazey, "Beaudine's Bill for Tigers' AD Search: $75,000," The Memphis Edge, April 18, 2012. Copy supplied.

Phil Stukenborg, "New Top Tiger; Bowen Brings Vision for Excellence on Playing Fields, in Classroom," The Commercial Appeal, April 17, 2012. Copy supplied.

Phil Stukenborg, "Tom Bowen Introduced as Next Athletic Director at University of Memphis," The Commercial Appeal, April 16, 2012. Copy supplied.

Michelle Corbet, "Liberty Bowl Improvements Approved," The Daily Helmsman, April 3, 2012. Copy supplied.

Kyle Veazey, "Tigers' 2008 Final Four Banner Tucked Away in R.C. Johnson's Closet," The Commercial Appeal, March 30, 2012. Copy supplied.

Kyle Veazey, "University of Memphis Announces Search Firm, Committee Members for Athletic Director Hunt," The Commercial Appeal, March 23, 2012. Copy supplied.

Kyle Veazey, "Memphis Tigers Athletic Director R.C. Johnson Benefits from Compensation Plan," The Commercial Appeal, February 17, 2012. Copy supplied.

Kyle Veazey, "Conference USA, Mountain West Merger May Save University of Memphis Money. MWC, C-USA Reveal Plan for New Conference," The Commercial Appeal, February 14, 2012. Copy supplied.

Kyle Veazey, "Tigers' Pursuit of Big East Conference Cloaked in Secrecy, Intrigue," The Commercial Appeal, February 12, 2012. Copy supplied.

Elizabeth Cooper, "Debate Surrounds Harassment Allegations," The Daily Helmsman, January 31, 2012. Copy supplied.

Christopher Whitten, "UM Brings Stability to Lambuth Campus," The Daily Helmsman, January 11, 2012. Copy supplied.

Tom Humphrey, "Lambuth Now Officially Part of University of Memphis. Humphrey on the Hill," Newstex Web Blog, December 21, 2011. Copy supplied.

"U of M Officially Takes over Lambuth Campus," The Associated Press State & Local Wire, December 21, 2011. Copy supplied.

Kyle Veazey, "Colleges: Memphis AD Will Get Salary for 2012-13 After Retiring," Knoxville News-Sentinel, December 18, 2011. Copy supplied.

Kyle Veazey, "University of Memphis Athletics Boss Will Get Salary After He Retires. R.C. Johnson Also Can Keep Much of Final Four Bonus," The Commercial Appeal, December 15, 2011. Copy supplied.

Kyle Veazey, "Paying the Price: University of Memphis Will Pay 3 Football Coaches Next Season," The Commercial Appeal, December 1, 2011. Copy supplied.

Chelsea Boozer, "University to Pay More than $2.6 Million Combined to Departing Johnson, Porter," November 30, 2011. Copy supplied.

Phil Stukenborg, "Search Firm to Aid in University of Memphis' New Hire. Retiring AD R.C. Johnson Will Not Have Direct Input in the Process," The Commercial Appeal, November 29, 2011. Copy supplied.

Kyle Veazey, "Sweeping Change: R.C. Johnson to Retire Next Year as University of Memphis Continues Huge Athletic Department Shakeup," The Commercial Appeal, November 29, 2011. Copy supplied.

Kyle Veazey, "University of Memphis Self-Reports Softball Team Violations," The Commercial Appeal, November 19, 2011. Copy supplied.

Geoff Calkins, "A Peek Inside the World of Tiger Basketball Assistant Frank Matrisciano," The Commercial Appeal, November 14, 2011. Copy supplied.

Richard Morgan, "U of M Calls Off Investigation of Campus Porn Video; No Resolution About Whether Mystery Woman was Student," The Commercial Appeal, November 4, 2011. Copy supplied.

Richard Morgan, "University of Memphis Ends Porn Tape Investigation," The Commercial Appeal, November 3, 2011. 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 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.

Civilian Law Enforcement Review Board of the City of Memphis (1998-2002), appointed by the Memphis City Council.

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 or position with a political party, election committee or political campaign. In 1987 or 1988, I believe that I stuffed envelopes for Congressman Cohen, when he was in the state legislature.

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 September 1987 until August 1988, I clerked for the Honorable Julia S. Gibbons, then District Judge of the United States District Court for the Western District of Tennessee.

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

1996 – 1997
(from my home)
(practice limited to one case)

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

1988 – 1991
Reed Smith Shaw & McClay (formerly Pierson, Ball and Dowd)
1301 K Street, N.W., Suite 1100 - East Tower
Washington, D.C. 20005
Litigation Associate

1991 – 1995
Wyatt, Tarrant & Combs (formerly McDonnell Boyd and McDonnell Dyer)
The Renaissance Center
1715 Aaron Brenner Drive, Suite 800
Memphis, Tennessee, 38120
Litigation Associate (1991 – 1995)
Member (1995)
Counsel (1995)

1997 – 1999
Burch, Porter & Johnson
130 North Court Avenue
Memphis, Tennessee 38103
Litigation Associate

1999 – present
University of Memphis
201 Administration Building
Memphis, Tennessee 38152
University Counsel (2002 – present)
Senior Attorney (1999 – 2002)

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

No.

b. Describe:

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

Since 1987, I have worked in four different settings. The diversity of these experiences has enabled me to see all stages of the litigation process – both civil and criminal – from different perspectives.

In my clerkship year, I worked day-to-day with the Honorable Judge Julia Gibbons, which provided an invaluable exposure to the way in which a judge approaches motions, trials, a calendar, interactions with lawyers, interactions with litigants, and every other aspect of being a judge.

During my almost two and a half years at Reed Smith Shaw & McClay (formerly Pierson, Ball & Dowd), my practice was primarily devoted to white-collar criminal defense, but I also handled litigation involving breach of contract, employment discrimination and other business-related matters. Most of my practice was in federal court, including a criminal jury trial and a civil suit tried to verdict in the United States District Court for the Eastern District of Virginia.

When I returned to Memphis to work at Wyatt, Tarrant & Combs (formerly McDonnell Boyd and McDonnell Dyer) in 1991, my practice became more civil-oriented, although I was still involved in a few criminal matters. My civil practice during those years was primarily business-oriented. I spent a great deal of time on one large matter, having been hired as outside counsel by the Tennessee Attorney General's office to represent the University of Memphis in an age discrimination lawsuit. Most of my practice was in federal court.

In 1996, while I served in a non-legal capacity at the Memphis Race Relations and Diversity Institute, I retained the University of Memphis case as my only legal matter.

When I joined Burch Porter & Johnson, my practice returned to a mix of civil and criminal litigation, but primarily civil cases. I had a few more cases in state court during this time period, and I also worked on a few transactional matters. I continued to work on the University of Memphis case.

When I became in-house counsel to the University of Memphis in 1999, my practice shifted. I have served as the University's primary in-house counsel on all major employment discrimination litigation and tort litigation, as well as supervising the other in-house attorneys in smaller litigation matters. I manage litigation handled by the Tennessee Attorney General's office and have responded to investigations and appeared before governmental bodies and regulatory bodies, including the National Collegiate Athletic Association, the Office of Civil Rights in the Department of Education, and the Equal Employment Opportunity Commission. Finally, I handle general internal problem solving of issues with legal implications and transactions related to University business.

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

As an associate at Reed Smith, my practice was primarily devoted to white-collar criminal defense, and those clients were primarily individuals who worked at large corporations also being investigated. In the civil litigation I handled, I represented both corporations and individuals. When I returned to Memphis to work at Wyatt (and predecessor firm) in 1991 and my practice became more heavily civil litigation, I continued to represent primarily businesses, along with the University of Memphis. I also had a few individual clients, in both civil and criminal matters. In 1996, as I transitioned from law to non-legal non-profit work, my only client was the University of Memphis in the age discrimination matter. In 1997, when I joined Burch, I again represented primarily businesses in federal court litigation, but I also had a growing practice representing individuals in employment discrimination cases and tort litigation.

As in-house counsel to the University of Memphis, my only client is the University.

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.

Although my practice has varied over the years, I can best describe the time in two segments. During the approximately 11 years I was in private practice, I would estimate 90% of my practice was litigation and 10% transactional or general legal advice. During the 14 years I have been in-house counsel for the University of Memphis, my practice has been approximately 15% litigation. Combining these numbers results in an overall practice that has been approximately 50% litigation and 50% other legal endeavors. During the time I have been engaged in litigation, my court appearances were occasional.

i. Indicate the percentage of your practice in:
   1. federal courts: 65%
   2. state courts of record: 30%
   3. other courts: 0%
   4. administrative agencies: 5%

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 participated in a case for approximately eight years, where I was co-lead counsel and eventually the lead counsel; this case was tried to final decision. At Reed Smith, I was associate counsel on the trial teams in two cases, one white collar criminal case that was tried to verdict and one civil case that was tried to judgment. At Wyatt's predecessor firm, I was part of a three member trial team serving as "elbow counsel" in a criminal matter that was tried to verdict. Finally, at the University of Memphis, I assisted on the trial team in a matter that was a jury trial, with the judge deciding the University portion of the trial because the University is a state agency.

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.

Young v. United States; Klaymic v. United States (consolidated appeals), 481 U.S. 787 (1987) (reply brief supplied).

Coger v. Board of Regents, 528 U.S. 1110 (2000) (petition for certiorari 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. Coger, et al. v. Board of Regents of the State of Tennessee, et al., Case No. 89-2374-GA, 1997 U.S. District LEXIS 5362 (Jan. 2, 1997) (Gibbons, J) (case reversed by 154 F.3d 296 (6th Cir. 1998), cert. granted, 528 U.S. 1110 (2000) (decision reversed in light of Kimel v. Florida Board of Regents, 528 U.S. 62, 120 S. Ct. 631, 145 L.Ed 2d 522 (2000)).

In this matter, 18 professors from 11 different departments at the University of Memphis claimed that the University's evaluation system, which was tied to salary increases, discriminated on the basis of age because of its increased emphasis on research. The case was filed in May 1989, and I was hired as outside counsel by the Tennessee Attorney General's office in the summer of 1991. At that stage of the litigation, documents had been produced but no other progress had been made in the case. Assistant State Attorney General Al Cocke and I represented the University as co-chief counsel, splitting the departments at issue. I handled all depositions, motions, and trial examinations related to my assigned departments. The case was tried as a bench trial before Judge Julia Gibbons in the United States District Court for the Western District of Tennessee for approximately 23 trial days between December 1993 and May 1994, when the plaintiffs concluded their proof. While the parties awaited the return to trial for defendants' proof, the Supreme Court handed down a seminal case involving Eleventh Amendment immunity, Seminole Tribe of Florida v. Florida, 116 S. Ct. 1114 (1996), and defendants renewed their motion to dismiss the matter based on lack of subject matter jurisdiction. Judge Gibbons dismissed the case, which was appealed to the Sixth Circuit Court of Appeals and reversed. I participated in the drafting of the appellate briefs, and the matter was argued by the Tennessee Solicitor General, who is now deceased. The State filed a petition for certiorari with the Supreme Court, which I assisted in drafting, but the issue was decided by the Court in a companion case to ours, which found that the states' immunity was not properly abrogated by the passage of the Age Discrimination in Employment Act. My representation of the University in this matter lasted from approximately June 1991 until approximately 2000. Although I began the case as co-lead counsel, I became the lead counsel in 1996 when my co-counsel retired from the practice of law.

Co-Counsel for the University of Memphis:
Albert K. Cocke (formerly with the Tennessee Attorneys General Office)
Retired

Counsel for Plaintiffs:
Donald Donati
Donati Law
1545 Union Avenue
Memphis, TN 38104
901-278-1004

Jeffrey Atchley (formerly with Donati Law)
Norwood and Atchley
266 South Front Street, Suite 206
Memphis, TN 38103
901-528-8300

2. United States v. Pena, 983 F.2d 71, 1993 WL 4810 (6th Cir. 1993) (Merritt, CJ, Guy, J, Ryan, J):

In early 1992, I was appointed to represent defendant Ms. Pena on appeal, following a guilty verdict. Ms. Pena was traveling as a passenger in a car, which was stopped by police for a traffic violation. When the vehicle was searched, a large quantity of illegal drugs was found hidden beneath several layers of "false floors" in the car's trunk, leading the government to charge both the driver and the passenger with possession with intent to distribute the drugs. I argued the case before the United States Court of Appeals for the Sixth Circuit, which reversed the conviction, holding that there was insufficient evidence linking the passenger to the hidden drugs in the trunk. I served as sole counsel on all aspects of the appeal.

Counsel for the United States:
Linda Harris (formerly Assistant United States Attorney)
Nettles Harris Law Firm and Dispute Resolution PLLC
22 North Front Street, Suite 170
Memphis, Tennessee 38103
901-522-2747

3. United States v. Kaub, et al., Case No. 89-00007-A (1989) (Williams, J), aff'd., United States v. Sullivan, 905 F.2d 1532 (4th Cir. 1990):

This criminal matter in the United States District Court for the Eastern District of Virginia involved three individual defendants who were employees of a defense contractor. The three employees were charged with crimes arising from their hiring of two individuals to assist in lobbying the military services to ensure that their product was purchased. The two outside individuals pled guilty to bribery and other charges. I assisted in all phases of preparation for trial, including reviewing wiretap evidence, drafting pre-trial motions and trial documents, and developing trial strategy. During the trial, I served as the sole associate counsel, with Mark Tuohey serving as lead counsel for Mr. Kaub. The matter was tried before Judge Richard L. Williams, now deceased. Mr. Kaub was convicted by a jury of filing a false statement in connection with

representations made in the contracting process, but was found not guilty of conspiracy, wire fraud, and bribery. He was sentenced to one year, with six months being suspended and six months to be served in a halfway house, in addition to two years' probation, 300 hours of a community service, and a fine. We appealed this case to the Fourth Circuit Court of Appeals, No. 89-5414, 89-5415, which affirmed the conviction. On appeal, I was the primary author of the briefs, and prepared Mr. Tuohey for oral argument, where I was second chair. My work on this matter began in approximately October 1989 and concluded in 1990.

Counsel for the United States:
Joseph J. Aronica (formerly Assistant United States Attorney)
Duane Morris LLP
505 Ninth Street, N.W., Suite 1000
Washington, DC 20004
202-776-7824

Co-Counsel for Mr. Kaub:
Mark H. Tuohey (formerly Reed Smith Shaw and McClay)
Brown Rudnick
601 Thirteenth Street, N.W., Suite 600
Washington, DC 20005
202-536-1740

Counsel for co-Defendants:
Jamie Gorelick (formerly Miller, Cassidy, Larroca and Lewin)
WilmerHale
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
202-663-6500

George O'Connell (formerly Miller and O'Connell)
DLA Piper
400 Capitol Mall, Suite 2400
Sacramento, California 95814
916-930-3289

Jeffrey Isaacs (formerly Miller and O'Connell)
Los Angeles City Attorney's Office
200 North Main Street, Eighth Floor
Los Angeles, CA 90012
213-978-8100

Craig C. Reilly
The Office of Craig C. Reilly, Esq.
111 Oronoco Street

Alexandria, Virginia 22314
703-549-5354

4. Tel-Instrument Electronics Corp. v. Teledyne Industries, et al., Case No. 90-0120-A (1990) (Bryan, J):

Following the criminal case in United States v. Kaub, the disappointed bidder in the bid process for the equipment at issue sued the company for whom the defendants worked, Teledyne Industries, as well as our individual client and others, claiming that they lost the bid only as a result of the illegal actions of the defendants. The case was tried before a jury in the United States District Court for the Eastern District of Virginia. At the close of plaintiff's proof, the defendants' motion for a directed verdict was granted, with the court finding insufficient proof that the plaintiff could produce the equipment given the specifications needed by the military services. I took the lead for our client during most of the discovery phase, including at depositions and in drafting pre-trial motions. At trial, I served as the sole associate counsel, including being responsible for presenting and cross-examining witnesses. This case was filed in January 1990 and tried later that same year. The Judge in this matter was the Honorable Albert V. Bryan, Jr., now retired.

Counsel for Plaintiff:
Robert Anesi
Aborn & Anesi
One Madison Avenue
New York, NY 10010
212-684-6111

Donald Bab
Bresler and Bab
99 Park Avenue
New York, NY 10016
212-935-6000

Co-Counsel for Mr. Kaub:
Mark H. Tuohey (formerly Reed Smith Shaw and McClay)
Brown Rudnick
601 Thirteenth Street, N.W., Suite 600
Washington, DC 20005
202-536-1740

Counsel for co-Defendants:
Jamie Gorelick (formerly Miller, Cassidy, Larroca and Lewin)
WilmerHale
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
202-663-6500

Craig C. Reilly
The Office of Craig C. Reilly, Esq.
111 Oronoco Street
Alexandria, Virginia 22314
703-549-5354

5. United States v. Sanders, et al., Case No. 89-20321-01 (1991) (Gibbons, J):

In this multi-defendant criminal tax case, the defendants were charged with willful failure to pay taxes. The defendants argued that they had a "good faith" understanding that they were not required to pay taxes. Judge Gibbons presided over the jury trial, which lasted more than four months in the United States District Court for the Western District of Tennessee. Some of the defendants were represented by counsel and others were pro se. Defendant Hollingsworth chose to represent himself but asked Judge Gibbons to appoint "elbow counsel" to advise him on trial strategy, answer questions for him, and assist him in preparing for his own testimony. Because of the anticipated length of the trial, I was one of the three lawyers appointed to rotate as counsel for this defendant. The jury returned a not guilty verdict for all defendants.

Counsel for the United States:
Devon Gosnell (formerly Assistant United States Attorney)
The University of Tennessee, Office of General Counsel
66 North Pauline, Room 428
Memphis, TN 38163
901-448-5615

Anthony Arvin
Assistant United States Attorney
167 North Main Street, Suite 1026
Memphis, Tennessee 38103
901-544-4231

Co-elbow counsel:
Carl Jacobson (formerly Wyatt, Tarrant & Combs)
Lenny's, Inc.
8295 Tournament Dr.
Suite 200
Memphis, TN 38125
901-259-2840

Jack Kopald (formerly Wyatt, Tarrant & Combs)
Retired

6. Wells v. State of Tennessee, et al., Case No. CT-003593-06 (2011) (Stokes, J):

This civil action was brought by Mr. Wells, a student, against the University of Memphis and Mr. Estes, a property owner. Mr. Wells participated in an end of year art exhibit at a private gallery, sponsored by the University's Art department, and unfortunately was injured the next day when removing his exhibit from the premises. The University was sued in tort by the plaintiff, pursuant to an alleged contract by the building owner and based on a purported indemnification agreement improperly signed by the Art department chair, contrary to University policy and state law. I was part of the trial team for the University, which was represented by the Tennessee Attorney General's office as counsel of record. I participated in the trial strategy and trial preparation from beginning to end, including the day-to-day decisions at trial. The matter was tried in the Circuit Court of Shelby County. This was a jury trial as to the liability of the plaintiff and the building owner, but the judge ultimately determined liability as to the University, followed by a bench trial as to whether an indemnification clause should apply to the University. In November 2011, the jury returned a verdict in favor of the plaintiff for $4,103,472, assessing fault between both defendants and the plaintiff. The Court altered the fault percentages, sitting in place of the Claims Commission as to the tort action against the University. This case is currently on appeal to the Tennessee Court of Appeals.

Counsel for the University at trial:
Assistant Attorney General Mary Bers
Tennessee Attorney General's Office
Civil Rights & Claims Division
P.O. Box 20207
Nashville, Tennessee 37202
615-741-1845

Assistant Attorney General Martha Campbell
Tennessee Attorney General's Office
Civil Rights & Claims Division
P.O. Box 20207
Nashville, Tennessee 37202
615-741-6420

Counsel for Plaintiff:
Gary Smith
Karen Campbell
Apperson Crump
6070 Poplar Avenue, Suite 600
Memphis, TN 38119
901-756-6300

John E. McManus
8304 Walnut Grove Road, Suite 200

Memphis, TN 38018
901-624-2244

Counsel for Defendant Estes:
John Wade
Wade Law
5100 Poplar Avenue, Suite 2700
Memphis, TN 38137
901-308-7308

Russell Rutledge Esq.
Law Office of Craig J. Lazarov (Nationwide Insurance Company)
5350 Poplar Avenue, Suite 306
Memphis, TN 38119
901-620-2980

7. John J. Serven v. Robin Derk Silver and Mercy Healthcare Arizona, Inc. (formerly known as St. Joseph's Hospital and Medical Center), Case No. 2:93-cv-02269-EHC (D. Ariz.) (Carroll, J):

This was a medical malpractice case in which I represented the plaintiff, who, because he lacked insurance, was sent home without treatment by a doctor in the emergency room of a hospital in Maricopa County, Arizona. The issues in the case were whether his condition was one that should have been treated immediately, regardless of insurance coverage, and whether his outcome would have been better had he been treated immediately. I was lead counsel in the case, in which both the treating physician and the hospital were sued. I conducted all discovery and drafted all motions and responses for the client from 1993 to 1995. Following unsuccessful attempts by the defendants to dispose of the matter by summary judgment, the matter was settled.

Counsel for Defendants:

Richard A. Kent
Kent & Wittekind PC
111 West Monroe Street, Suite 1000
Phoenix, AZ 85003
602-528-0182

John A. Micheaels
Beale Micheaels & Slack
7012 North 18th Street
Phoenix, AZ 85020
602-650-2465

8. Tanner v. Caplin and Drysdale, 24 F. 3d 874, 1994 WL 201245 (6th Cir 1994) (Gibbons, J):

Caplin & Drysdale ("Caplin"), a Washington, D.C. law firm whom we represented, was accused of legal malpractice by Mr. Tanner. Mr. Tanner charged that Caplin negligently handled the settlement of several civil actions, during a time when criminal charges were pending against Mr. Tanner. The proof developed in discovery failed to show that the settlements handled by Caplin caused any harm to Mr. Tanner. In addition, the proof of damages was speculative, at best. Judge Gibbons granted summary judgment in favor of Caplin, which was appealed to the Sixth Circuit. The Sixth Circuit affirmed the lower court. In this matter, I conducted discovery as associate counsel to James W. McDonnell and drafted the majority of the memoranda submitted in support of summary judgment as well as the appellate briefs. I prepared Mr. McDonnell for the appellate oral argument, at which I served as second chair. We represented the defendant in this matter from approximately 1992 through 1994.

Co-Counsel for Caplin and Drysdale:
James W. McDonnell
Wyatt Tarrant and Combs
The Renaissance Center
1715 Aaron Brenner Drive
Suite 800
Memphis TN 38120
901-537-1000

Counsel for Plaintiff:
Everett Gibson
Bateman Gibson Law Firm
65 Union Ave Suite 1010
Memphis, TN 38103
901-526-0412

9. Rydelek v. Board of Regents of the State of Tennessee, University of Memphis, et al., Case No. CT-00-4347-06 (Fields, J):

This employment discrimination case was brought by a research professor whose contract was not renewed after approximately 15 years at the University because of his failure to acquire sufficient outside funding for his work. Plaintiff claimed that the non-renewal was based on his age and gender and that he had maintained an adequate level of funding over the years. The case was filed in the Circuit Court of Shelby County, Tennessee. Following discovery, the parties settled the case. In this matter, I was active throughout the discovery and motions practice, working with the Assistant Attorney General who served as counsel of record.

Counsel for the University:
William Marett

Senior Counsel
Civil Litigation and State Services Division
Tennessee Attorney General's Office
P.O. Box 20207
Nashville, TN 37202-0207
615-741-7087

Counsel for Plaintiff:
Reva Kriegel
266 South Front Street, Suite 206
Memphis, TN 38103
901-527-1319

10. Sunshine Corporation, et al. v. USF&G, et al., Case No. 2:97-cv-02695 (McCalla, J):

Our client, Sunshine Corporation, received an adverse judgment in a class action matter, and sought help in obtaining insurance coverage for the judgment. Although Joel Porter was co-lead counsel, I handled all aspects of the case, which was eventually resolved against our client on dispositive motions. Although the matter centered on an interpretation of the coverage language in the policy, some depositions were taken, including expert witnesses. In addition, the parties attempted to resolve the matter through mediation, which was unsuccessful. This case was filed in 1997 and concluded in 1998.

Co-counsel:
Joel Porter
Burch Porter and Johnson
130 North Court Street
Memphis, TN 38103
901-524-5000

Counsel for Defendant Insurance Companies:
Michael G. McLaren, Esq.
Black, McLaren, Jones, Ryland & Griffee, P.C.
530 Oak Court Drive, Suite 360
Memphis, TN 38117
901-762-0535

Michael E. Keeney, Esq.
Thomas, Hendrix, Harvey, Johnson & Mitchell, PLLC
One Commerce Square, 29th Floor
40 South Main Street
Memphis, TN 38103
901-577-6109

John Leach, Esq.
Chiozza Law Firm
230 Adams Avenue
Memphis, TN 38013
901-526-9494

Robert E. Parker, Esq.
Parker, Lawrence, Cantrell & Smith
201 Fourth Avenue, Suite 1700
Nashville, TN 37219
615-255-7500

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 University Counsel, I am involved in statutory, regulatory and policy interpretation on a regular basis. Today's university is highly-regulated, including both state and federal laws affecting everything from education records to financial aid to the research enterprise and athletics. Both to ensure ongoing compliance and to address specific situations that arise, I am often called upon to review a statutory or regulatory issue and determine the best course of action.

In one of the most significant matters, in May 2008, the University of Memphis was notified that a student-athlete who had just competed for the University in the NCAA men's basketball tournament's championship game had been declared ineligible for competition. The eligibility issue was based on the student-athlete's failure to respond to inquiries from one of the collegiate testing services about the test score he submitted before the academic year and the season began. The score was used to gain admittance to the University and to be declared eligible to compete by the NCAA. We appeared before the Committee on Infractions of the NCAA, and the Infractions Appeals Committee, contesting the conclusion that the University should be "strictly liable" for the actions at issue related to the test score. The term "strict liability" had not previously been used in the NCAA setting, and the proof showed no actual knowledge by the University, but rather an attempt by the University to ensure that the student-athlete was properly ruled eligible. I represented the University in this matter, in conjunction with outside counsel. The NCAA found against the University. I participated in the drafting of the documents submitted in this matter and assisted in the hearings before both committees. The matter concluded in March 2010.

I also participate in all of the most significant litigation impacting the University, and I supervise the in-house attorneys who are primarily responsible for the smaller litigation

matters. In my role as University Counsel, I ensure that the President of the University is kept informed of all major developments in the litigation, and I make recommendations to her related to any settlement decisions. In a typical year, the University has one to two pending employment-related cases, which are usually filed in federal court but are sometimes brought in state court. For these matters, I participate in case strategy, discovery, review of motions and the trial, if the matter reaches that point. Currently, there are two such cases pending, one in federal court and one in state. As for tort matters, we currently have five cases pending, four before the Tennessee Claims Commission and one in state court. This number has declined from a high of 13 in 2008. I have served as the primary in-house counsel for the University in four of these tort cases in the last five years. Like the employment matters, my involvement has included participating in development of case strategy, discovery, reviewing motions, and any eventual trials.

I have also engaged in several significant and complicated investigations and negotiations. On the investigation side, we typically have two to four matters per year where outside agencies, primarily the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Education's Office of Civil Rights (OCR), investigate complaints made by employees or students related to alleged discrimination. As to claims filed with the EEOC, my typical role is to review and edit our response statement and to represent the University in all interviews and other proceedings that occur related to these employment discrimination matters. The way in which these inquiries are handled is critical to whether the EEOC will pursue a matter or make no finding and issue a "right to sue" letter. During my tenure as University Counsel, the EEOC has never pursued a case against the University beyond this stage. As to OCR matters, which are typically filed by students who believe they have been subject to discrimination in the course of their academic work, I prepare the position statement of the University after interviewing witnesses myself and reviewing all documents. Once I determine our position on the matter, I represent the University in all stages of the investigation, including witness interviews, review of documents, and any alternative dispute resolution. In my time as University Counsel, the University has agreed to a settlement in two OCR matters and has prevailed in all others.

Finally, I have been involved in two complex transactions in which the University acquired additional facilities for its expansion. First, I took the lead on the negotiations with the United States Postal Service to purchase an historic Post Office and Customs House, which had a complicated legal status, to relocate our law school to downtown Memphis. Second, I represented the University in our acquisition of the Lambuth University college campus in Jackson, Tennessee, which involved working with governmental and private entities in Jackson, Tennessee, who were helping to satisfy the debts of the former school, and working with the Chairman of the Board of the former school. This transaction was further complicated because it had to be approved by a bankruptcy court. During the bankruptcy proceedings, I assisted counsel for Lambuth, in conjunction with counsel from the Tennessee Attorney General's Office.

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.

    Sports Law, University of Memphis Law School, Fall semesters 2011, 2012, 2013 (scheduled). Course covers both amateur and professional sports issues. 2011 and 2012 syllabi provided.

    Law of Higher Education, University of Memphis, Graduate School, College of Education, Fall semesters 2005-2010. Course covers statutory and regulatory provisions affecting higher education institutions. Representative syllabus from 2010 provided.

    Legal Methods, University of Memphis Law School, academic years, 1999-2005. Course required for first year law students, and includes research, writing and oral advocacy skills. Representative syllabi from Fall 2002 and Spring 2003 provided.

    Legal Methods, University of Memphis Law School, Tennessee Pre-Law Fellowship Program (alternative admission program), Summer 2000 and 2001. Abbreviated version of class taught to first year law students covering research, writing and advocacy skills, as part of a program for diverse students offered an alternative way to prove they are qualified for law school. No syllabus available.

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

    I have no such anticipated deferred income or future benefits.

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

    If confirmed, I would consider continuing to teach Sports Law in the Fall of 2013 and in future semesters, 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 in any litigation where I have ever played a role or to which I have a familial tie. I would always recuse myself from any cases in which my father, who is semi-retired, represents a party. For a period of time, I also anticipate recusing myself in all cases where my current employer, the University of Memphis, plays a role.

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.

During the years I spent in private practice, I almost always had at least one pro bono case active, including both civil and criminal matters for indigent litigants. On the civil side, I have handled a divorce, a social security matter, employment discrimination matters (as appointed counsel), and other referrals from nonprofit organizations. I have also participated in events with the local bar association where we provided instant legal advice, either at a physical location or via phone lines. On the criminal side, I volunteered to handle appointed cases, which paid only a small fraction of my billing rate, to help ensure competent representation for all.

In addition, both during my time in private practice and continuing to the present, I have served as General Counsel to numerous nonprofit organizations. Currently, I serve as

General Counsel to the Memphis Child Advocacy Center (MCAC), whose mission is to provide a holistic approach to addressing child sexual and severe abuse issues. In my role as counsel to MCAC, I am currently negotiating a lease with the Veterans Administration for use of a building next door to our current location, a key component of the organization's expansion.

26. **Selection Process**:

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

In February 2013, the Memphis Bar Association announced that Judge Jon McCalla would be taking senior status and that Congressman Steve Cohen was accepting statements of interest in the position. On February 22, 2013, I submitted my resume for consideration. On March 1, 2013, I interviewed with Congressman Cohen in Memphis, Tennessee. At the conclusion of that interview, he informed me that a group of community stakeholders would advise him on the selection. I met with the committee on March 11, 2013, also in Memphis. The next day, Congressman Cohen notified me that my name would be among those forwarded to the White House. Since March 18, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On April 25, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On May 12, 2013, I briefly met Senator Alexander when he delivered the commencement address at the University of Memphis. In this short conversation, I mentioned that I was under consideration for this judicial vacancy. 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
Lipman, Sheryl H.	United States District Court for the Western District of TN	08/04/2013
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 8/01/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 08/01/2013
7. Chambers or Office Address		
201 Administration Building University of Memphis Memphis, TN 38112		

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.	University Counsel	University of Memphis
2.	Counsel, Board of Directors	Memphis Child Advocacy Center
3.	Director	Tennessee Shakespeare Company
4.	Director	Memphis Jewish Federation
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 **Lipman, Sheryl H.**	Date of Report 08/04/2013

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 Memphis salary	$148,765.63
2. 2012	University of Memphis salary	$157,039.87
3. 2012	University of Memphis Foundation-- Award	$5,000.00
4. 2013	University of Memphis salary	$92,576.00

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	Commerical Appeal, free lance photography
2. 2012	University of Memphis, teaching
3. 2012	Southwest Community College, teaching
4. 2013	University of Memphis, teaching
5. 2013	Southwest Community College, teaching

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 Lipman, Sheryl H.	Date of Report 08/04/2013

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 Credit Union	Signature loan	K
2.	SallieMae	Education loans	L
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Lipman, Sheryl H.	Date of Report 08/04/2013

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)
1. American Funds Capital World Growth & Income Fund	B	Dividend	K	T	Exempt				
2. American Funds EuroPacific Growth Fund	A	Dividend	K	T					
3. American Funds Growth Fund of America	A	Dividend	K	T					
4. Federated Government Obligations Fund		None	J	T					
5. Fidelity International Discovery Fund	A	Int./Div.	J	T					
6. ING Fixed Fund		None	K	T					
7. iShares Barclays TIPS Bond Fund	A	Dividend							
8. iShares IBoxx $ Investment Grade Corporate Bond Fund	A	Dividend	J	T					
9. iShares MSCI EAFE Index Fund	A	Dividend	J	T					
10. iShares MSCI Emerging Markets Index Fund	A	Dividend	J	T					
11. iShares Russell 1000 Growth Index Fund	A	Dividend	K	T					
12. iShares Russell 1000 Value Index Fund	A	Dividend	K	T					
13. iShares Russell 2000 Growth Index Fund	A	Dividend	J	T					
14. iShares Russell 2000 Value Index Fund	A	Dividend	J	T					
15. iShares Russell Midcap Growth Index Fund	A	Dividend	J	T					
16. iShares Russell Midcap Value Index Fund	A	Dividend	J	T					
17. Morgan Stanley Mid Cap 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 7	Name of Person Reporting Lipman, Sheryl H.	Date of Report 08/04/2013

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. PIMCO Total Return Fund	C	Dividend	K	T					
19. Princeton Futures Strategy Fund	A	Dividend	J	T					
20. SPDR Barclays Converticle Securities ETF	A	Dividend	J	T					
21. SPDR Barclays High Yield Bond ETF	A	Dividend	J	T					
22. SPDR Barclays International Treasury Bond ETF	A	Dividend	J	T					
23. SPDR Dow Jones REIT ETF	A	Dividend	J	T					
24. JP Morgan Strategic Income Opportunities Fund Select Class	A	Dividend	J	T					
25. Paragon National Bank accounts	A	Interest	J	T					
26. Navy Credit Union accounts	A	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
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 Lipman, Sheryl H.	Date of Report 08/04/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting	Date of Report
	Lipman, Sheryl H.	08/04/2013

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/ Sheryl H. Lipman

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		16	842	Notes payable to banks-secured (autos)		33	775
U.S. Government securities				Notes payable to banks-unsecured		26	155
Listed securities – see schedule		380	885	Notes payable to relatives		114	454
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		2	217
Due from relatives and friends		10	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		248	359
Real estate owned – see schedule		921	190	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		85	725	Education loans		65	930
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		119	914				
				Total liabilities		490	890
				Net Worth	1	043	666
Total Assets	1	534	556	Total liabilities and net worth	1	534	556
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	$ 43,653
American Funds EuroPacific Growth Fund	43,824
American Funds Growth Fund of America	43,607
Federated Government Obligations Fund	3,344
Fidelity International Discovery Fund	2,288
ING Fixed Fund	19,777
iShares IBoxx $ Investment Grade Corporate Bond Fund	5,692
iShares MSCI EAFE Index Fund	13,875
iShares MSCI Emerging Markets Index Fund	6,949
iShares Russell 1000 Growth Index Fund	17,873
iShares Russell 1000 Value Index Fund	15,547
iShares Russell 2000 Growth Index Fund	12,834
iShares Russell 2000 Value Index Fund	12,583
iShares Russell Midcap Growth Index Fund	11,113
iShares Russell Midcap Value Index Fund	10,852
JPMorgan Strategic Income Opportunities Fund	3,343
Morgan Stanley Mid Cap Growth Fund	43,662
PIMCO Total Return Fund	42,065
Princeton Futures Strategy Fund	7,246
SPDR Barclays Convertible Securities ETF	5,635
SPDR Barclays High Yield Bond ETF	5,003
SPDR Barclays International Treasury Bond ETF	4,812
SPDR Dow Jones REIT ETF	5,308
Total Listed Securities	$ 380,885

Real Estate Owned	
Personal residence	$ 220,000
Secondary residence	137,000
Family farm (50% interest)	564,190
Total Real Estate Owned	$ 921,190

Real Estate Mortgages Payable	
Personal residence	$ 156,296
Secondary residence	92,063
Total Real Estate Mortgages Payable	$ 248,359

AFFIDAVIT

I, Sheryl H. Lipman, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8.6.13
(DATE)

(NAME)

ARLENE L. ABERNATHY
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF SHELBY

Arlene L. Abernathy
(NOTARY)
my commission expires 8.15.15

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Stanley Allen Bastian

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

   United States District Judge for the Eastern District of Washington

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

   Jeffers, Danielson, Sonn & Aylward, P.S.
   2600 Chester Kimm Road
   P.O. Box 1688
   Wenatchee, WA 98801

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

   1958; Seattle, Washington

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

   1980 – 1983, University of Washington School of Law; J.D., 1983
   1976 – 1980, University of Oregon; B.S. (*Phi Beta Kappa*), 1980
   1978 – 1979, University of Massachusetts, Amherst; 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.

   1988 – present
   Jeffers, Danielson, Sonn & Aylward, P.S.
   2600 Chester Kimm Road
   P.O. Box 1688

Wenatchee, WA 98801
Managing Partner (2012 – present)
Shareholder (1992 – present)
Associate (1988 – 1992)

1985 – 1988
Seattle City Attorney's Office
Criminal Division
700 Fifth Avenue, Suite 5350
Seattle, WA 98124
Assistant City Attorney

1984 – 1985
Washington State Court of Appeals – Division I
600 University Street
One Union Square
Seattle, WA 98101
Law Clerk to Judge Ward Williams

1983 – 1984
Bergman & Bauer
Fourth & Blanchard Building
Seattle, WA 98124
Associate

1984
City of Renton
Renton City Hall
1055 South Grady Way
Renton, WA 98057
Public Defender

Summer 1980
Willamette Industries, Inc.
5570 SW Western Avenue
Beaverton, OR 97005
Bailer

Other Affiliations (uncompensated except as otherwise indicated)

2000 – present (compensated)
JDSA Building, LLC
2600 Chester Kimm Road
Wenatchee, WA 98801
Member

2010 – 2013
The Equal Justice Coalition (EJC)
1325 Fourth Avenue
Suite 1335
Seattle, WA 98101
Chair

2004 – 2009
Washington State Bar Association
1325 Fourth Avenue
Suite 600
Seattle, WA 98101
Immediate Past President (2008 – 2009)
President (2007 – 2008)
President-Elect (2006 – 2007)
Governor for Fourth District (2004 – 2006)

2004 – 2005
Chelan-Douglas County Bar Association
(no physical address)
President

1992 – 2004
LAW Fund
Legal Aid for Washington
1325 Fourth Avenue
Suite 1335
Seattle, WA 98101
Board of Directors

1992 – 2000
United Way of Chelan and Douglas Counties
P.O. Box 488
107 South Mission Street
Wenatchee, WA 98801
Board of Directors (1992 – 2000)
President (1997 – 1998)

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

I have never served in the U.S. Military. I did not register for selective service because that was not required when I turned 18.

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

   Super Lawyer, Washington Super Lawyers Magazine, 2007 – 2013

   Fellow, American College of Trial Lawyers, 2007

   Phi Beta Kappa, University of Oregon, 1980

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

   American Bar Association

   American College of Trial Lawyers

   Attorneys United to Preserve WSBA
   Co-Chair (2012)

   Chelan-Douglas County Bar Association
   President (2004 – 2005)

   The Equal Justice Coalition (EJC)
   Chair (2010 – 2013)

   LAW Fund, Legal Aid for Washington
   Board of Directors (1992 – 2004)

   Ninth Circuit Judicial Conference
   Lawyer Representative (2012 – present)

   Oregon State Bar Association

   Washington State Association for Justice

   Washington State Bar Association (WSBA)
   Immediate Past President (2008 – 2009)
   President (2007 – 2008)
   President-Elect (2006 – 2007)
   Governor for Fourth District (2004 – 2006)

   WSBA Lawyers Fund for Client Protection
   Board of Trustees (2004 – 2009)

WSBA Mandatory Continuing Legal Education Task Force
Chair (2013)

Washington Board for Judicial Administration
Non-Voting Member (2006 – 2008)
Justice in Jeopardy Implementation Committee (2010 – 2012)

10. **Bar and Court Admission**:

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

Washington, 1983

Oregon, 1988 (inactive)

There have been no lapses in membership, although as indicated, my membership in Oregon 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.

State of Washington, all State Courts, 1983
United States District Court, Eastern District of Washington, 1992
U.S. District Court, Western District of Washington, 1983
United States Court of Appeals, Ninth Circuit, 1983

There have been no lapses in membership.

11. **Memberships**:

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

Washington Athletic Club (2002 – present)
Wenatchee Golf and Country Club (1994 – present)
United Way of Chelan and Douglas Counties (1992 – 1998)
Board of Directors (1992 – 2000)
President (1997 – 1998)

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

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

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

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

Equal Pay for Equal Work Law a Good Reminder, Wenatchee Business Journal (May 1, 2009). Copy supplied.

Two Laws Introduce New Leave Benefits, Wenatchee Business Journal (October 1, 2008). Copy supplied.

Some Final Thoughts, Washington State Bar News (September 2008). Copy supplied.

WSBA President Stan Bastian Responds, Washington State Bar News (August 2008). Copy supplied.

The Future of the Lawyers' Fund for Client Protection, Washington State Bar News (August 2008). Copy supplied.

Growing Pains: The Cost of Doing Business, Washington State Bar News (July 2008). Copy supplied.

An Interview with Governor Gregoire, Washington State Bar News (June 2008). Copy supplied.

Legal Technician Talk, Washington State Bar News (June 2008). Copy supplied.

Access to Justice 101, Washington State Bar News (May 2008). Copy supplied.

Court Ponders Giving Legal Technicians More Authority, Wenatchee Business Journal (May 1, 2008). Copy supplied.

A Conversation with Dean Earl Martin, Washington State Bar News (April 2008). Copy supplied.

WSBA President Stan Bastian Responds, Washington State Bar News (April 2008). Copy supplied.

At Your Service, Washington State Bar News (March 2008). Copy supplied.

WSBA President Stan Bastian Responds, Washington State Bar News (March 2008). Copy supplied.

Proud to be a Lawyer, Washington State Bar News (February 2008). Copy supplied.

Be the Judge: Do We Pay Them Enough?, Washington State Bar News (January 2008). Copy supplied.

It's Not Justice if it's Not Equal, Even When it's a Civil Proceeding, Seattle Post-Intelligencer. (December 26, 2007). Copy supplied.

Lawyers Can be Proud of Their Profession, Seattle Post-Intelligencer (December 6, 2007). Copy supplied.

Being John McKay, Washington State Bar News (December 2007). Copy supplied.

State, Federal Law Protects Jobs for Veterans, Wenatchee Business Journal (December 1, 2007). Copy supplied.

Civil Actions, Washington State Bar News (November 2007). Copy supplied.

Bar Essentials, Washington State Bar News (October 2007). Copy supplied.

Marriage and the Law, Washington State Bar News (September 2007). Copy supplied.

Employment Law Different at the Federal Level, Wenatchee Business Journal (September 1, 2007). Copy supplied.

Leadership and Values, Washington State Bar News (August 2007). Copy supplied.

New Developments from the Supreme Court, Wenatchee Business Journal (June 2007). Copy supplied.

The 8 Rules of Just Cause to Discharge, Wenatchee Business Journal (February 2007). Copy supplied.

Six Steps to Effective Discipline, Wenatchee Business Journal (December 2006). Copy supplied.

Overtime Pay: Common Exemptions, Wenatchee Business Journal (September 2006). Copy supplied.

Overtime Pay: Common Problems and Solutions, Wenatchee Business Journal (June 2006). Copy supplied.

Antidiscrimination Laws Recently Expanded to Include Sexual Orientation, Wenatchee Business Journal (March 2006). Copy supplied.

Employees with Temporary Disabilities May be Entitled to Accommodations, Wenatchee Business Journal (December 2005). 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.

Washington State Bar Association, "Resolution Regarding Marriage and the Law." (September 19, 2008). Copy supplied. The resolution was drafted by WSBA staff but as President I did not vote on it.

Washington State Bar Association, "Report of the WSBA Board of Governors Discipline Committee." (September 19, 2008). Copy supplied.

Washington State Bar Association, "Resolution in Support of Lawyers with Disabilities." (April 13, 2007). Copy supplied. The resolution was drafted by WSBA staff but as President-Elect I did not vote on it.

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 met with members of the Washington State Congressional delegation as part of a group of representatives from the Washington State Bar Association and the

Equal Justice Coalition to discuss funding issues for civil legal aid and the budget for the Legal Services Corporation. I was part of this delegation in April 2006, 2008, 2011, and 2012. I have no notes, transcripts, or recordings of the meetings.

April 19, 2010: Co-signer on letter to Washington Supreme Court. Copy supplied.

April 7, 2010: Letter to Washington State Bar Association Awards Committee. Copy supplied.

I was a member of the Board of Governors for the Washington State Bar Association from October 2004 to September 2009. The Board met in public session 8-9 times per year, but I have no notes, transcripts, or recording of the meetings. The Washington State Bar Association website only has record of meeting minutes starting in 2010.

From 2008 to 2009 I was a member of the Washington State Bar Association Rules for Enforcement of Lawyer Conduct (ELC) Task Force. This task force met several times but I have no notes, transcripts, or recordings of the meetings other than for the September 10, 2009 meeting. Copy of the meeting minutes supplied.

October, 8, 2008: Co-signer on letter to Senator Barack Obama. Copy supplied.

October, 8, 2008: Co-signer on letter to Senator John McCain. Copy supplied.

April 15, 2008: Co-signer on letter to Senators Barbara Mikulski and Senator Richard Shelby. Copy supplied.

February 15, 2008: Letter to Washington State Supreme Court Chief Justice Gerry Alexander. Copy supplied.

February 5, 2008: Letter to Washington State Supreme Court Justice Charles Johnson. Copy supplied.

As a non-voting member of the Washington State Board of Judicial Administration, I made comments regarding various issues during the meetings on July 18, 2008, May 16, 2008, March 21, 2008, February 15, 2008, January 18, 2008, November 16, 2007, September 16, 2007, April 20, 2007, February 16, 2007, and November 17, 2006. Copy of meeting minutes supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or

recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

September 14, 2012: Panelist, Federal Bar Association District Conference, Success on Appeal Begins with the Trial Court Record, Spokane, Washington. I have no notes, transcripts, or recordings of this event. The Spokane address of the U.S. District Court for the Eastern District of Washington is 920 West Riverside Avenue, Room 840, Spokane, WA 99201.

May 11, 2012: Panelist, Sixth Annual Federal CLE, Mediations, Richland, Washington. I participated in a panel discussion regarding mediation and settlement conferences, but I have no notes, transcripts, or recordings of this event. The Richland address of the U.S. District Court for the Eastern District of Washington is 825 Jadwin Avenue, Room 174, Richland, WA 99352.

October 28, 2011: Panelist, Chelan-Douglas County Preadmission Program, Wenatchee, Washington. Outline supplied.

October 7, 2011: Presenter, Washington State Bar Association, Seattle, Washington. I participated in a presentation called "Building and Maintaining Your Practice: Ten Simple Rules". A video can be found at http://www.wsba.org/WSBA-CLE/New-Lawyer-Education/Preadmission-Education-Program/PREP-Online-Course/Category-2.

January 24, 2011: Presenter, Training at the United States Attorney's Office, Eastern District of Washington, Spokane, Washington. I participated in a panel discussion regarding the discovery issues involving electronic records, but I have no notes, transcripts, or recordings of this event. The Spokane address of the U.S. Attorney's Office is 920 West Riverside Avenue, Suite 300, Spokane, WA 99201.

May 2010: Presenter, WATAI Spring Conference, The Use of Expert Witnesses, Bellevue, WA. Outline supplied.

March 25, 2009, Washington Counties Risk Pool Management and Supervisory Training, Longview, WA. I provided training to county officials regarding various employment law issues such as discrimination, wage and hour issues, hiring and firing procedures. This training was also presented in February 2009 in Columbia County, in January 2009 in Kittitas County, and in November 2008 in Skagit County. I have no notes, transcripts, or recordings of these presentations. The address of the Washington County Risk Pool is 2558 RW Johnson Road SW, Suite 106, Tumwater, WA 98512.

July 17, 2008: Presenter, The Third Annual Washington State Bar Association Solo and Small Firm Conference, Wenatchee, Washington. As President of the

WSBA I explained how the state bar association could assist solo practitioners and small law firms, but I have no notes, transcripts, or recordings of this event. The address of the WSBA is 1325 Fourth Avenue, Suite 600, Seattle, WA 98101.

May 30, 2008: Presenter, Washington State Access to Justice Conference and WSBA Bar Leaders Conference, Vancouver, Washington. Notes supplied.

April 11, 2008: Panelist, Washington State Office of Public Defense Program, "Making Good on Gideon's Promise – A Symposium on the State of Public Defense in Washington," Olympia, Washington. I have no notes, transcripts, or recordings of this event, but press coverage is supplied. The address of the Office of Public Defense is 711 Capitol Way South, Olympia, WA 98504.

October 18, 2007: Speaker, Spokane County Bar Association Reception and Diversity, Spokane, Washington. Remarks supplied.

October 17, 2007: Speaker, Washington State Bar Association 50-year Member Tribute Luncheon, Seattle, WA. Remarks supplied.

October 2007: Speaker, Yakima Rotary, "The Washington State Bar Association," Yakima, Washington. Notes supplied.

From September 2007 to September 2008 I served as the President of the Washington State Bar Association and made dozens of opening or closing remarks at various luncheons, dinners, receptions, and law student outreach events. I do not recall the dates and locations of each of these events, and I have no notes or outlines from these appearances, but my remarks were consistent with the other materials supplied.

September 20, 2007: Speaker, Washington State Bar Association Awards Dinner, Seattle, Washington. Remarks supplied.

September 16, 2007: Speaker, 49th Washington State Judicial Conference, Vancouver, Washington. Remarks supplied.

July 24, 2007: Presenter, "Professionalism in the Courtroom", Washington State Bar Association CLE Teleconference from Wenatchee, Washington. Outline supplied.

May 2007: Speaker, Chelan-Douglas County Bar Association/Volunteer Attorney Services Awards. Wenatchee, Washington. As President-Elect of the WSBA I spoke about pending issues with the state bar association. I have no notes, transcripts, or recordings of this event. The office of the current President of the Chelan-Douglas County Bar Association is 2600 Chester Kimm Road, Wenatchee, WA 98801.

March 2, 2007: Panelist, "2007 Washington State Bar Association Celebrating Diversity," Seattle, Washington. I have no notes, transcripts, or recordings of this event. The address of the WSBA is 1325 Fourth Avenue, Suite 600, Seattle, WA 98101.

October 11, 2006: Speaker, Alliance for Equal Justice Open House Day, Ephrata, Washington. Remarks supplied.

October 23, 2003: Presenter, "Government and Police Liability for Criminal Acts of Third Parties," Washington Defense Trial Lawyers Association – CLE, Seattle, Washington. Outline supplied.

June 2, 2003: Presenter, "The Court as an Employer," District and Municipal Court Judges Association – CLE, Seattle, Washington. I have no notes, transcripts, or recordings of this event. The address of the Administrative Office of the Courts is 1206 Quince Street SE, Olympia, WA 98504.

November 6, 1998: Presenter, "The Family and Medical Leave Act", Wenatchee Valley Association of Professional Mortgage Women, 1998 Fall Attorney Seminar, Wenatchee, Washington. Outline supplied.

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

June 2013: Super Lawyers Magazine, "What Do We Talk About When We Talk About Age Discrimination?" Copy Supplied.

December 2, 2011: The Wenatchee World, "Disqualified Wenatchee Law Firm Declines Grant PUD A Refund." Copy supplied.

November 18, 2011: The Wenatchee World, "Grant PUD Law Firm Disqualified in Crescent Bar Case." Copy supplied.

February 12, 2011: The Wenatchee World, "Elenore Bastian: From Junior Royalty to Festival Queen." Copy supplied. (Reprinted in multiple outlets).

September 1, 2010: Washington State Bar Association press release. Copy supplied.

June 16, 2010: Washington State Bar Association press release. Copy supplied.

May 21, 2010: The Wenatchee World, "Chelan County Isn't Giving Up Fight Over Fired Deputy's Settlement." Copy supplied.

September 28, 2008: Associated Press, "State Bar Association Supports Same-Sex Marriages." Copy Supplied. (Reprinted in multiple outlets).

June 2008: King County Bar Bulletin, "A Lifetime of Changes." Copy supplied.

April 17, 2008: Spokane Journal of Business, "Bar Set to Hold Summer Exam in Spokane." Copy supplied.

January 3, 2008: The Columbian, "Low-Income Get Lowdown Civil Law." Copy supplied.

December 7, 2007: Associated Press, "Washington Supreme Court: No Right to Lawyers in Divorce Cases." Copy supplied. (Reprinted in multiple outlets).

December 6, 2007: Olympian, "State Bar Blasts Ads by R-67 Opponents." I have been unable to locate a copy of the article.

October 30, 2007: Washington State Bar Association press release. Copy supplied.

October 7, 2007: The Docket, TVW – Public Television, Interview with Washington State Bar Association President Stan Bastian. Video supplied.

October 2007: Washington State Bar News, "WSBA Welcomes New Officers and Governors." Copy supplied.

September 24, 2007: Puget Sound Business Journal, "New State Bar President Plans Strategic Review." Copy supplied.

July 18, 2006: Wenatchee World, "A Rare Local President of State Bar Association to Focus on State Funding." Copy supplied.

December 2, 2005: Associated Press, "Court Rules for County in Lawsuit Over Wenatchee Sex Ring Case." Copy supplied.

August 20, 2005: Yakima Herald-Republic, "WEN Sex Ring Suit." Copy supplied.

August 2, 2001: NPR Morning Edition, "Update on the Wenatchee, Washington Child Abuse Case." Copy supplied.

February 25, 2000: Associated Press, "Wenatchee, Douglas County Plan to Appeal Decision in Roberson Case." Copy supplied.

June 30, 1998: Seattle Times, "Wenatchee Jury Foreman: No Doubt About Verdict." Copy supplied.

June 30, 1998: Washington Post, "Jury Rejects Rights Violation Claim in Child Sex Ring Arrests." Copy supplied. (Reprinted in multiple outlets).

June 30, 1998: Los Angeles Times, "Jury Rejects Damage Claims in Sex Case." Copy supplied.

June 30, 1998: Seattle Post-Intelligencer, "Jury Rejects Wenatchee Suit- Verdict Jolts the Accused in Child Sex Cases." Copy supplied.

June 24, 1998: Seattle Post-Intelligencer, "Illness Again Delays Jury's Deliberations." Copy supplied.

June 19, 1998: Seattle Post-Intelligencer, "Wenatchee Abuse Case Goes to Jury." Copy supplied.

June 5, 1998: Seattle Times, "Defense Rests in Sex-Ring Suit." Copy supplied.

June 5, 1998: Seattle Post-Intelligencer, "Defense Suddenly Rests in Wenatchee Case." Copy supplied.

May 29, 1998: Seattle Post-Intelligencer, "Judge Pares Five Defendants From Wenatchee Cases." Copy supplied.

May 28, 1998: The Seattle Times, "Defense's Turn in Sex-Ring Lawsuit." Copy supplied.

April 14, 1998: Seattle Post-Intelligencer, "Churchgoers Say They Saw No Abuse." Copy supplied.

October 11, 1995: The Wenatchee World, "Firebomb Thrown into Lawyer's Office." 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.

None.

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

I served as campaign treasurer in 1994 and 2012 for my wife, Alicia Nakata, who successfully ran for election to judicial office in Chelan County, Washington. In 1994, she ran for the Chelan County District Court, and she was reelected in 1998, 2002, 2006, and 2010 (she was not opposed in those years and did not run a campaign). In 2012, she successfully ran for the Chelan County Superior Court.

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

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

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

From August 1984 to October 1985, I served as a law clerk to Judge Ward Williams of the Washington State Court of Appeals, Division 1.

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.

1983 – 1984
Bergman & Bauer
Fourth & Blanchard Building
Seattle, WA 98124
Associate

1984
City of Renton
Renton City Hall
1055 South Grady Way
Renton, WA 98057
Public Defender

1985 – 1988
Seattle City Attorney's Office
Criminal Division
700 Fifth Avenue, Suite 5350
Seattle, WA 98124
Assistant City Attorney

1988 – present
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
P.O. Box 1688
Wenatchee, WA 98801
Associate (1988 – 1992)
Shareholder (1992 – present)
Managing Partner (2012 – 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 served as the mediator in two employment cases that involved claims of wrongful termination and discrimination. I also served as the mediator in one personal injury case involving a motor vehicle collision. All three cases settled during mediation.

My service as an arbitrator has been limited to only three or four cases

over the past 25 years. All of these cases involved personal injury claims resulting from motor vehicle collisions.

b. Describe:

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

From 1983 to 1984, I worked as an associate at a small law firm in Seattle, Bergman & Bauer, until I left to clerk. My work involved legal research, preparation of motions, and discovery coordination in civil litigation and insurance defense. For about six months during this same time period, I was also employed as a public defender for the City of Renton where I handled cases involving misdemeanors.

After my clerkship ended in 1985, I was employed by the Seattle City Attorney's Office as an assistant city attorney and I worked as a prosecutor in the Seattle Municipal Court. My caseload included criminal cases including misdemeanors, civil infractions, and appeals.

In 1988 I moved to Wenatchee, Washington and was hired by Jeffers, Danielson, Sonn & Aylward, P.S. My cases have primarily involved employment issues such as wrongful termination and discrimination, and police liability.

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

From 1983 to 1984, I practiced insurance defense and represented individuals involved in motor vehicle accidents. Also, I worked part time as a public defender and defended individuals charged with minor criminal violations.

From 1985 to 1988, I worked as an assistant city attorney and prosecuted misdemeanors and civil infractions.

Since 1988, I have focused on trial work, primarily civil litigation. My clients include local counties, public utility districts, medical clinics, individuals and fruit growers. Many of my cases have involved labor grievances, wrongful termination, employment related discrimination, and police liability.

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.

Most of my practice is focused on civil litigation, and I appear in court frequently, perhaps nine to ten times each year. On average, I have one case per year that is tried and the other court appearances usually involve dispositive motions.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 40%
   3. other courts: 0%
   4. administrative agencies: 10%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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.

As a prosecutor from 1985 to 1988, I tried hundreds of cases to final verdict and approximately 65 percent were jury trials. In private practice I have tried 31 cases to final verdict. Four of these cases were bench trials, 13 cases were jury trials, and 14 cases were either labor grievance arbitrations or administrative proceedings. I was the lead counsel on all of these cases.

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

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 worked on any cases in 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 following case summaries are listed alphabetically:

1. Beining v. Central Washington Hospital, Chelan County Superior Court No. 08-2-00562-8.

I represented the plaintiff employee in a disability discrimination case. My client took leave based on the Family and Medical Leave Act after being diagnosed with cancer. She was replaced during her leave and was not provided an accommodation when her health allowed her to return to work. The case was tried in 2009 with Chelan County Superior Court Judge T.W. Small presiding. The jury was deadlocked and could not return a verdict. The parties then mediated a settlement.

Mediator:
David A. Thorner
Thorner, Kennedy & Gano, P.S.
P.O. Box 1410
Yakima, WA 98907
(509) 575-1400

Opposing Counsel:
Lewis W. Card
Davis, Arneil Law Firm, LLP
P.O. Box 2136
Wenatchee, WA 98807
(509) 662-3551

2. Chelan County v. Chelan County Deputy Sheriff's Association, 162 Wash.App. 176, 252, P.3d. 421 (2011).

I represented the county employer in this case, which started as an employment discharge labor grievance. The grievance was settled during mediation, but the settlement agreement unraveled a few days later, which resulted in a lawsuit to enforce the mediation agreement. Eventually, the parties negotiated a new settlement agreement.

Labor Arbitrator:
Michael H. Beck
P. O. Box 15210
Seattle, WA 98115
(206) 523-0500

Opposing Attorney:

James M. Cline
Cline and Associates
2003 Western Avenue, Suite 550
Seattle, WA 98121
(206) 838-8770

3. Clothier v. Sonico, Grant County Superior Court No. 09-2-01108-3.

I represented the defendant employer in this case. The plaintiff claimed disability discrimination under state law, RCW 49.60. He alleged that he was wrongfully discharged because he was diagnosed with a serious illness. The employer was unaware of the medical diagnosis and claimed that the decision to discharge was based on excessive absenteeism. After a 5-day trial, the jury returned a defense verdict in 2011. Grant County Superior Court Judge Evan Sperline presided.

Opposing Counsel:

Steve Lacy
Lacy Kane, P.S.
300 Eastmont Avenue
East Wenatchee, WA 98802
(509) 884-9541

4. Creach v. Spokane County & Hirzel, No. CV-11-432-RMP, U.S. District Court, Eastern District of Washington.

This case was active in 2012 to 2013 and settled in June 2013 a few weeks prior to trial. I represented a deputy sheriff employed by Spokane County who shot and killed a local resident during an on-duty encounter. The decedent was a successful business owner and Baptist preacher, but he approached the deputy with a handgun and then refused to obey commands to drop the weapon. The decedent's family sued alleging civil rights violations, negligence, and the use of unreasonable force. Judge Rosanne Peterson presided, and Magistrate Judge James Hutton conducted the settlement conference.

Counsel for Spokane County:

Heather C. Yakely
Evans, Craven & Lackie, P.S.
Lincoln Building
818 West Riverside, Suite 250
Spokane, WA 99201
(509) 455-5200

Counsel for Creach Family:

Simeon J. Osborn
Osborn Machler, PLLC
2125 Fifth Avenue
Seattle, WA 98121
(206) 441-4110

Richard D. Wall
221 West Main Avenue, Suite 200
Spokane, WA 99201
(509) 747-5646

Robert B. Crary
Crary Clark & Domanico PS
East 9417 Trent Avenue
Spokane, WA 99206
(509) 926-4900

5. Elliott v. Custom Apple, 153 Wash. App. 296, 228 P. 3d 20 (2009).

I represented the defendant employer in an overtime wage claim. My clients claimed that overtime wages were not owed based on two exemptions to the overtime regulations – the supervisor's exemption and the agricultural worker exemption. The jury returned a defense verdict in 2007, which was affirmed on appeal in 2009. Grant County Superior Court Judge Evan Sperline presided.

Opposing Counsel:

Scott M. Kane
Lacy Kane, P.S.
300 Eastmont Avenue
East Wenatchee, WA 98802
(509) 884-9541

6. Kellams v. Norco, 153 Wash.App. 1030 (2009).

I represented the plaintiff employee in a wrongful discharge case which included claims of disability discrimination and failure to accommodate. The defendant employer argued that the employee was fired after 30 years of good service because he took pain medication without a prescription, which was discovered after a random drug test. My client admitted that he took the medication, but argued it was to treat an on-the-job injury and, although he did not have a prescription, he took a nonprescription form of the medication that can be legally obtained in Canada. The case was dismissed after the defendant filed a motion for summary judgment. Chelan County Superior Court Judge John Bridges presided. The order of dismissal was affirmed on appeal in an unpublished decision.

Opposing Attorney:

Keller W. Allen
Law Firm of Keller W. Allen, P.C.
4102 South Regal, Suite 102
Spokane, WA 99223
(509) 777-2211

7. Roberson/Sims v. Perez, 156 W.2d 33, 123 P.3d 844 (2005), 119 Wn. App. 928, 83 P.2d 1026 (2004), 99 Wn. App. 439, 994 P.2d 874 (1999).

This case took nine years to litigate to completion, and was the principal civil case that began after the so-called "Wenatchee Sex Ring" prosecutions. The City of Wenatchee and Douglas County prosecuted several adults for sexually abusing children. Some of those prosecuted pled guilty, some were convicted and some were acquitted. This civil lawsuit was filed in 1996, and the plaintiffs, who were several of the people who had been charged with sexual abuse, alleged civil rights violations, false arrest, malicious prosecution, negligent investigation and several other causes of action. I represented Douglas County and three individuals employed by the Sheriff's Office. The case was tried in King County Superior Court for 13 weeks in 1998. The plaintiffs requested a total of $60 million, but the jury returned a defense verdict. This case was recognized by the National Law Journal as one of the nation's top 15 defense verdicts for 1998.

The plaintiffs appealed and obtained the opportunity for another trial on the limited issue of negligent police investigation. This was the first time that such a cause of action had been recognized in Washington State. The venue for the second trial was moved to Spokane County, and the trial took five weeks in 2001. The jury found against Douglas County and awarded two of the plaintiffs a total of $3 million. Douglas County appealed and successfully reversed the verdict. The Washington Supreme Court issued a decision in December 2005 which terminated the case in favor of Douglas County.

Spokane Superior Court Judge Michael E. Donahue presided over both trials in 1998 and 2001.

Co-Counsel on Appeal:	Howard Goodfriend Catherine Smith 1109 First Avenue Suite 500 Seattle, WA 98101 (206) 624-0974
Counsel for Co-Defendant:	Patrick G. McMahon Carlson, McMahon & Sealby, PLLC P.O. Box 2965 Wenatchee, WA 98807 (509) 662-6131
Counsel for Plaintiffs:	Robert C. Van Siclen Tyler Firkins Van Siclen, Stocks & Firkins 721 - 45th Street, NE

Auburn, WA 98002
(253) 859-8899

8. Snyder v. C&O Nursery, Chelan County Superior Court No. 10-2-01135-2.

I represented the defendant in a family business dispute between third generation owners. This case was settled in 2012 approximately one week before trial. An adverse result could have forced the business to close, which would have been unfortunate because it has been an important part of the local agricultural community for almost 100 years. The settlement conference was managed by Chelan County Superior Court Judge John Bridges, who is now retired.

Opposing Counsel:

Steve Lacy
Lacy Kane, P.S.
300 Eastmont Avenue
East Wenatchee, WA 98802
(509) 884-9541

9. Stansfield v. Douglas County, 146 W.2d 116, 42 P.2d 498 (2002).

I defended Douglas County in this false arrest/wrongful prosecution case. The plaintiff was charged with two counts of first degree murder. The victims, the plaintiff's wife and neighbor, were killed several months apart. The prosecutor's theory was that the plaintiff was having an affair with the neighbor's wife and decided to kill his own wife and his girlfriend's husband. The criminal charges were dismissed mid-trial because some evidence problems developed and the prosecutor decided that he could not proceed. The plaintiff then filed a civil lawsuit against Douglas County.

The civil case was originally filed in federal court, but we were successful in getting the civil rights claims dismissed by Judge Robert Whaley of the U.S. District Court, Eastern District of Washington. The State's claims were refiled in State Superior Court, and again the County was successful with a motion for summary judgment. The Washington Supreme Court reversed, and the case settled shortly before trial. The trial judge was Judge John Hotchkiss of the Douglas County Superior Court.

Counsel for Plaintiff:

Robert F. Hedrick
Aviation Law Group
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101
(206) 464-1166

10. Stearns-Groseclose v. Chelan County, U.S. District Court, Eastern District of Washington, No. CV-04-312-RHW.

I represented the County Sheriff's Office which absorbed the police department of a local city but refused to transfer the plaintiff, a city police officer, into the Sheriff's Office as a deputy sheriff. The plaintiff sued the County alleging breach of contract, violations of civil rights, and gender discrimination based on state law. After a 4-day bench trial, the judge ruled in favor of the County. U.S. District Judge Robert Whaley presided.

Counsel for Plaintiff:

Scott Kane
Lacy Kane, P.S.
300 Eastmont Avenue
East Wenatchee, WA 98802
(509) 884-9541

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 practice as a lawyer has been primarily dedicated to litigation, but there have been three significant non-litigation areas of my practice. Since 1992, I have represented Chelan County for employment and labor law related issues. This has involved providing legal advice as needed, drafting and editing employee manuals, negotiating labor contracts, managing and litigating labor grievances, and meeting with the various elected county officials. Since 1988, I have helped represent the Public Utility District No. 1 of Douglas County which operates an electrical distribution system throughout the County and owns a license from the Federal Energy Regulatory Commission for the Wells Project, a hydroelectric dam on the Columbia River. My legal work for this client has included attending board meetings, participating in the FERC re-licensing efforts, participating in the negotiations for a Habitat Conservation Plan to protect endangered salmon, providing advice on Canadian Entitlement issues regarding the 1961 Treaty between the United States and Canada, and working on power-sales contracts. Since 2010, I also have acted as the lead attorney for the Wenatchee Valley Medical Center, which is a local multi-specialty physician owned medical clinic. My law firm has represented this clinic for over 20 years, but I became more involved only recently. My work has involved primarily issues of employment law, corporate governance, contract negotiation and interpretation, HIPAA compliance, and general health care issues. Recently, the Wenatchee Valley Medical Center has negotiated an affiliation with the local hospital in part to be better positioned for the health care changes created by the Affordable Care Act. I did not have a direct role in the negotiation and drafting of the

affiliation agreement, but I have attended the meetings and provided advice as needed during the process.

From 2007 to 2008, as president of the Washington State Bar Association, I chaired the meetings of the Board of Governors and several committees and was responsible for managing the debate and ultimate resolution of multiple contentious issues, such as marriage equality, the legal technician rules, funding for civil legal needs, the moderate means program, and the Leadership Institute. During my term, I emphasized the issues of ethics, professionalism, and civility and I wrote articles about these issues, which were published in the WSBA Bar News.

I have not served as 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.

    If confirmed, my partners at the law firm of Jeffers, Danielson, Sonn & Aylward will be required to make buyout payments to me for my ownership interest in both the partnership and the office building which is owned by the partners. It is anticipated that this buyout will be paid in a lump sum when I leave the partnership, but the amount has not yet been calculated.

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.

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. In addition, my wife is a Superior Court Judge in Chelan County, Washington. I would not preside on a case in which Chelan County was a party during her term in office.

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

If confirmed, I 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.

In 2007 to 2008 I served as the President of the Washington State Bar Association, which consumed 50 to 60 percent of my time. As President, I was involved in the efforts of the state bar to increase access to justice for low income clients. These efforts included developing a Legal Technician rule, the Moderate Means Program, and advocacy for the Access to Justice Board.

I served as the Chair of the Equal Justice Coalition (EJC) from 2010 to 2013. The EJC is a state wide committee that meets by conference call every two weeks during the legislative session to discuss the various issues of mutual concern regarding access to justice issues. Additionally, as the EJC chair, I visited Washington D.C. four times to meet with the Members of Congress from Washington regarding access to justice issues and funding.

I served on the Law Fund Board of Directors from 1992 to 2004. The Law Fund (the Legal Aid for Washington Fund) helps raise financial contributions primarily from lawyers for access to justice issues.

The Chelan-Douglas County Bar Association helps sponsor local legal clinics in Wenatchee, Washington. I attend these clinics approximately once every two years to spend an afternoon providing legal advice to low income clients.

I served on the Board of Directors of the United Way of Chelan and Douglas Counties from 1992 to 2000. This organization helps raise money for local member charitable organizations.

26. **Selection Process**:

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

On February 13, 2013, I submitted my written application materials to the U.S. District Judicial Screening Committee established by Senators Patty Murray and Maria Cantwell. I interviewed with this Committee on May 31, 2013, in Richland, Washington. I was then interviewed by phone by Senator Murray on June 14, 2013, and by Senator Cantwell on June 20, 2013. Since June 25, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 25, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 19, 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
Bastian, Stanley A.	United States District Court	09/20/2013
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 - Active Status	☑ Nomination Date 09/19/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 09/13/2013
7. Chambers or Office Address		
U. S. Courthouse 825 Jadwin Avenue Richland, Washington 99352		

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. Employee/Managing Partner	Jeffers, Danielson, Sonn & Aylward, P.S.
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. 1986	Jeffers, Danielson, Sonn & Aylward, P.S. Compensation and Retirement Plan, termination buy out equivalent to value of nine months of current monthly salary
2. 2010	Jeffers, Danielson, Sonn & Aylward, P.S. 401(k) - includes provisions for contributions by both employee and employer.
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Bastian, Stanley A.	Date of Report 09/20/2013

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	Jeffers, Danielson, Sonn & Aylward, P.S. - salary	$155,833.39
2.	2012	Jeffers, Danielson, Sonn & Aylward, P.S. - salary	$214,972.00
3.	2011	Jeffers, Danielson, Sonn & Aylward, P.S. - salary	$173,822.00
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.	2013	State of Washington - salary
2.	2013	Chelan County - salary
3.	2012	Chelan County - salary
4.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Bastian, Stanley A.	Date of Report 09/20/2013

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
Bastian, Stanley A.	09/20/2013

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. AllianceBernstein 2020 Retirement Strategy Fund		None	J	T	Exempt				
2. Amazon common stock- AMZN		None	J	T					
3. Amgen Inc, common stock - AMGN	A	Dividend	K	T					
4. Baron Partners Fund - BPTRX		None	J	T					
5. Boeing common stock - BA	A	Dividend	J	T					
6. Dodge & Cox Fund - DODFX	A	Dividend	J	T					
7. Dreyfus S&P 500 Index Fund - PEOPX	E	Dividend	O	T					
8. Fidelity Freedom 2025 Fund - FATWX	C	Dividend	L	T					
9. Fidelity New Insights Fund - FNIAX	A	Dividend	M	T					
10. Janus High Yield Fund - JAHYX	A	Dividend	J	T					
11. Janus Overseas Fund - JAOSX	A	Dividend	J	T					
12. Microsoft common stock - MSFT	A	Dividend	K	T					
13. Oncogenex Pharm. stock - OGXI		None	J	T					
14. Rydex Nasdaq 100 Strategy Fund - RYOCX	A	Dividend	J	T					
15. Schwab Core Equity Fund - SWANX	A	Dividend	K	T					
16. Schwab Dividend Equity Fund - SWDSX	A	Dividend	J	T					
17. Schwab Large Cap Growth Fund - SWLSX	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
Page 5 of 8

Name of Person Reporting	Date of Report
Bastian, Stanley A.	09/20/2013

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. Schwab S&P 500 Index Fund - SWPPX	A	Dividend	J	T					
19. Schwab Small Cap Equity Fund - SWSCX	A	Dividend	J	T					
20. Schwab Total Stock Fund - SWTSX	A	Dividend	J	T					
21. Scout International Fund UMBWX	A	Dividend	J	T					
22. SSgA Internation Stock Selection Fund - SSAIX	A	Dividend	J	T					
23. T. Rowe Price Blue Chip Fund - TRBCX		None	J	T					
24. UPS Inc. common stock - UPS	A	Dividend	J	T					
25. Vanguard Emerging Market Equity Index Fund -	A	Dividend	M	T					
26. Vanguard Internation Growth Fund - VWIGX		None	J	T					
27. Vanguard Total Stock Fund - VTSMX	A	Dividend	K	T					
28. Vanguard U.S. Large Cap Equity Index Fund -	A	Dividend	L	T					
29. Vanguard U.S. Small Cap Value Equity Fund	A	Dividend	L	T					
30. Wasate Small Cap Growth Fund - WAAEX	A	Dividend	J	T					
31. Washington State Bond Fund		None	M	T					
32. WMI Holdings Stock - WMIH		None	J	T					
33. Bank of America accounts	A	Interest	M	T					
34. Chase Bank account	A	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
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 8

Name of Person Reporting	Date of Report
Bastian, Stanley A.	09/20/2013

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. Banner Bank accounts	A	Interest	L	T					
36. Cashmere Valley Bank accounts	A	Interest	J	T					
37. Charles Schwab accounts	B	Interest	K	T					
38. Utah Educational 529 Savings Plan- Age BasedAggressiveGlobal	A	Interest	L	T					
39. Washington 529 GET accounts	A	Interest	L	T					
40. Jeffers, Danielson, Sonn & Aylward P.S. stock		None	K	U					
41. Nakata Orchards, Inc.	E	Int./Div.	M	W					
42. JDSA Building, LLC	D	Dividend	M	W					
43.									
44.									
45.									
46.									
47.									

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 Bastian, Stanley A.	Date of Report 09/20/2013

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Bastian, Stanley A.	Date of Report 09/20/2013

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/ Stanley A. Bastian

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		181	115	Notes payable to banks-secured (auto)		29	347
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	552	818	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		100	744
Real estate owned-add schedule		680	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		120	000				
Cash value-life insurance							
Other assets itemize:							
Jeffers, Danielson Law Firm stock		25	000				
Nakata Orchards, Inc. stock		200	000				
				Total liabilities		130	091
				Net Worth	2	628	842
Total Assets	2	758	933	Total liabilities and net worth	2	758	933
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	Yes		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AllianceBernstein 2020 Retirement Strategy Fund	$ 3
Amazon stock	7,830
Amgen Inc. stock	33,370
Baron Partners Fund	6,914
Boeing stock	6,540
Dodge & Cox Fund	5,524
Dreyfus S&P 500 Index Fund	631,156
Fidelity Freedom 2025 Fund	97,581
Fidelity New Insights Fund	118,972
Janus High-Yield Fund	6,593
Janus Overseas Fund	12,019
Microsoft Corp. stock	20,294
Oncogenex Pharm. Stock	18
Rydex Nasdaq-100 Strategy Fund	12,446
Schwab Core Equity Fund	16,009
Schwab Dividend Equity Fund	9,457
Schwab Large Cap Growth Fund	9,412
Schwab S&P 500 Index Fund	6,886
Schwab Small Cap Equity Fund	14,878
Schwab Total Stock Fund	3,681
Scout International Fund	10,486
SSgA International Stock Selection Fund	5,061
T. Rowe Price Blue Chip Fund	7,825
UPS Inc. stock	2,615
Utah 529 Age-Based Aggressive Global Portfolio	50,125
Vanguard Emerging Market Equity Index Fund	114,729
Vanguard International Growth Fund	1,941
Vanguard Total Stock Fund	23,780
Vanguard U.S. Large Cap Equity Index Fund	67,463
Vanguard U.S. Small Cap Value Equity Index Fund	70,345
Wasatch Small Cap Growth Fund	8,250
Washington State Bond Fund	105,966
Washington Guaranteed Education Tuition Plan	64,646
WMI Holdings stock	3
Total Listed Securities	$ 1,552,818

Real Estate Owned	
Personal residence	$ 550,000
Office building (1/14 share)	130,000
Total Real Estate Owned	$ 680,000

AFFIDAVIT

I, Stanley A. Bastian, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

October 2, 2013
(DATE)

(NAME)

KIMBERLY D. WHITE
Commission Expires
NOTARY PUBLIC
12-07-2014
STATE OF WASHINGTON

(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Manish Suresh Shah

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

   United States District Judge for the Northern District of Illinois

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

   United States Attorney's Office for the Northern District of Illinois
   219 South Dearborn Street, Fifth Floor
   Chicago, Illinois 60604

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

   1972; New York, New York

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

   1995 – 1998, University of Chicago Law School; J.D., 1998

   1990 – 1994, Stanford University; B.A., 1994

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

   2001 – present
   United States Attorney's Office for the Northern District of Illinois
   219 South Dearborn Street, Fifth Floor
   Chicago, Illinois 60604
   Chief, Criminal Division (2012 – present)

Chief, Criminal Appeals (2011 – 2012)
Deputy Chief, Financial Crimes & Special Prosecutions (2008 – 2011)
Deputy Chief, General Crimes (2007 – 2008)
Assistant United States Attorney, Public Corruption (2004 – 2007)
Assistant United States Attorney, Narcotics & Gangs (2003 – 2004)
Assistant United States Attorney, General Crimes (2001 – 2003)

1999 – 2001
United States District Court for the Northern District of Illinois
Everett McKinley Dirksen U.S. Courthouse
219 South Dearborn Street
Chicago, Illinois 60604
Law Clerk to the Honorable Judge James B. Zagel

1998 – 1999, Summer 1997
Heller Ehrman White & McAuliffe
333 Bush Street
San Francisco, California 94104
Associate (1998 – 1999)
Summer Associate (Summer 1997)

Summer 1997
Debevoise & Plimpton
875 Third Avenue
New York, New York 10022
Summer Associate

Summer 1996
Edwin F. Mandel Legal Aid Clinic
University of Chicago Law School
6020 South University Avenue
Chicago, Illinois 60637
Summer Law Clerk

1994 – 1995
New York County District Attorney's Office
One Hogan Place
New York, New York 10013
Trial Preparation Assistant, Frauds Bureau

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.

   Federal Bureau of Investigation Director's Award for Outstanding Criminal Investigation (2008)

   Executive Office of United States Attorneys Director's Award for Superior Performance by a Litigative Team (2007)

   United States Customs Service, Letter of Recognition (2002)

   University of Chicago Law School, J.D. with Honors (1998)

   Stanford University, B.A. in History with Honors and with Distinction (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
   Seventh Circuit Bar Association
   Seventh Circuit Electronic Discovery Pilot Program Committee
   Co-Chair, Criminal Subcommittee, (2012 – 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, 1998
       Illinois, 2013

       From 1999 to 2001, my status in the California bar was inactive while I was clerking and not practicing law. Other than the inactive period noted above, 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, 2012
       United States Court of Appeals for the Second Circuit, 2006
       United States Court of Appeals for the Seventh Circuit, 2002

United States District Court for the Northern District of Illinois, 2001
Supreme Court of California, 1998
Supreme Court of Illinois, 2013

From 2011 to 2012, my status was inactive in the Second Circuit while I had no pending matters before the court. I have since resumed active status. Other than the inactive period noted above, 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.

Stanford University Alumni Association (1994 – 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, the organization listed in response to 11a above does not, and did not formerly, discriminate on the basis of race, sex, religion, national origin, ethnicity, or sexual orientation, 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.

Stanford Chaparral, 1994. I was a staff writer and editor of this Stanford University student humor magazine, published quarterly. I have been unable to obtain any copies of these materials.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association,

committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As Chief of the Criminal Division, and as Chief of Criminal Appeals, I have prepared and contributed to internal memoranda and policy statements for the United States Attorney's Office for the Northern District of Illinois. I have not supplied copies of these materials because they are privileged (or law enforcement sensitive), or constitute attorney work product.

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

Letter from Manish Shah, United States Attorney's Office for the Northern District of Illinois, to Thomas Bruton, Clerk of Court (July 2, 2013). Copy supplied.

E-mail from Manish Shah, United States Attorney's Office for the Northern District of Illinois, to Honorable Rebecca Pallmeyer, United States District Court Judge (May 8, 2013). Copy supplied.

Letter from Manish Shah, United States Attorney's Office for the Northern District of Illinois, to Thomas Bruton, Clerk of Court (March 7, 2013). Copy supplied.

Letter from Manish Shah, United States Attorney's Office for the Northern District of Illinois, to Honorable Geraldine Soat Brown, Presiding Magistrate Judge (Jan. 15, 2013). Copy supplied.

Letter from Manish Shah and Debra Bonamici, United States Attorney's Office for the Northern District of Illinois, to Joel Bertocchi, Hinshaw & Culbertson, LLP (July 25, 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.

July 30, 2013: Panelist, Remarks to Seventh Circuit Law Clerks and Externs Visiting the United States Attorney's Office, United States Attorney's Office for the Northern District of Illinois, Chicago, Illinois. I have no notes, transcript, or recording. The United States Attorney's Office for the Northern District of Illinois is located at 219 South Dearborn Street, Fifth Floor, Chicago, IL 60604.

June 19, 2013: Panelist, Ethics in Internal Investigations: Navigating the Uncertainties of Evolving Information, Perkins Coie LLP, Chicago, Illinois. I have no notes, transcript, or recording. Outline supplied.

May 21, 2013; June 19, 2012: Guest Speaker, Remarks to the Federal Bureau of Investigation Citizen's Academy, FBI, Chicago, Illinois. During these speaking events, I described the United States Attorney's Office and its relationship to the FBI. I have no notes, transcript, or recording. The Federal Bureau of Investigation, Chicago Field Division, is located at 2111 West Roosevelt Road, Chicago, IL 60608.

March 6, 2013; May 17, 2012; May 18, 2011; February 18, 2010; May 5, 2009; November 15, 2007: Guest Speaker, Federal Sentencing from the Prosecutor's Perspective, University of Chicago Law School Seminar "Federal Sentencing: Balancing Judicial and Prosecutorial Discretion," Chicago, Illinois. Notes supplied.

February 15, 2013: Speaker, Remarks to University of Chicago Undergraduate Students visiting the United States Attorney's Office for the Northern District of Illinois, University of Chicago Careers In Law Program, Chicago, Illinois. I described the United States Attorney's Office, the types of cases prosecuted by the office, and my educational and professional experiences. I have no notes, transcript, or recording. University of Chicago Careers In Law is located at The Office of Career Advancement, University of Chicago, 1212 East 59th Street, Chicago, IL 60637.

September 13, 2012; September 15, 2011; September 16, 2010: Lecturer, Exhibits and Foundations, University of Chicago Law School, Intensive Trial Practice Workshop, Chicago, Illinois. Presentation materials supplied.

August 3, 2012: Panelist, Review of the Recent Supreme Court Term, American Bar Association Criminal Justice Section, Chicago, Illinois. I have no notes, transcript, or recording. The ABA Criminal Justice Section is located at 740 15th Street NW, Washington, DC 20005.

May 23, 2012: Panelist, Instructing on Instructions – Expert Advice on the New Seventh Circuit Pattern Criminal Jury Instructions, Federal Bar Association (Chicago Chapter), Chicago, Illinois. I have no notes, transcript, or recording. The mailing address for the Chicago Chapter of the Federal Bar Association is P.O. Box 1200, Chicago, IL 60690.

April 23, 2012: Guest Speaker, Remarks to Undergraduate Students, Illinois Institute for Technology HIST 380: "Corruption in America," Chicago, Illinois. I described the role of the federal court system in investigating and prosecuting corruption in the City of Chicago with a focus on recent prosecutions involving the City of Chicago's Hired Truck Program and Office of Intergovernmental Affairs. I have no notes, transcript, or recording. The Humanities Department of the Illinois Institute of Technology is located at 218 Siegel Hall, 3301 South Dearborn Street, Chicago, IL 60616.

November 16, 2011: Panelist, Careers in Criminal Law, Criminal Law Society, University of Chicago Law School, Chicago, Illinois. I have no notes, transcript, or recording. The University of Chicago Law School is located at 1111 East 60th Street, Chicago, IL 60637.

May 12, 2011: Panelist, Federal Sentencing Since *Booker*, The Chicago Justice Initiative, University of Chicago, Chicago, Illinois. I have no notes, transcript, or recording. The University of Chicago Office of the Reynolds Club and Student Activities is located at 5706 South University Avenue, Chicago, IL 60637.

June 23, 2010: Speaker and Moderator, Appellate Brief Writing and Appellate Advocacy, Asian American Bar Association (Chicago Chapter), Chicago, Illinois. Presentation materials supplied.

April 20, 2010: Lecturer, Perjury and Obstruction of Justice, U.S. Department of Justice, Executive Office of United States Attorneys, Office of Legal Education, National Advocacy Center, Columbia, South Carolina. Because law enforcement sensitive information was shared, the event was not recorded and materials from my presentation are not available to the public. The National Advocacy Center is located at 1620 Pendleton Street, Columbia, SC 29201.

April 21, 2009: Panelist, United States Sentencing Guidelines, Yale Alumni Association (Chicago Chapter), Chicago, Illinois. I have no notes, transcript, or recording. The mailing address for the Association of Yale Alumni is P.O. Box 209010, New Haven, CT 06520-9010.

February 20, 2008: Panelist, Careers in Public Service, Asian Pacific American Law Students Association, University of Chicago Law School, Chicago, Illinois. I have no notes, transcript, or recording, but press coverage is supplied. The University of Chicago Law School is located at 1111 East 60th Street, Chicago, IL 60637.

January 10, 2008: Lecturer, Cross-Examination of the Defendant, U.S. Department of Justice, Executive Office of United States Attorneys, Office of Legal Education, National Advocacy Center, Columbia, South Carolina. Because law enforcement sensitive information was shared, the event was not recorded and

materials from my presentation are not available to the public. The National Advocacy Center is located at 1620 Pendleton Street, Columbia, SC 29201.

August 15, 2007: Panelist, Remarks at the United States Attorney's Office for the Northern District of Illinois for Visiting Lawyers from China, United States Attorney's Office, Chicago, Illinois. I discussed the federal government's role in prosecuting public corruption. I have no notes, transcript, or recording. The United States Attorney's Office for the Northern District of Illinois is located at 219 South Dearborn Street, Fifth Floor, Chicago, IL 60604.

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

This list represents all interviews I have given to newspapers, magazines or other publications, or radio or television stations based on my best recollection after searching my files, and Internet databases. I have tried my best to list all of them here, although there may be some that I have not been able to recall or identify:

Andy Grimm, *Sanchez Again Found Guilty*, Chicago Tribune, July 22, 2010. Copy supplied.

Kim Janssen, *Sanchez Convicted Again: Ex-Streets and San Chief Guilty in Hiring Corruption*, Chicago Sun-Times, July 22, 2010. Copy supplied.

Sam Hudzik, *Ex-Daley Admin Official Sanchez Guilty Again*, WBEZ 91.5, July 22, 2010. Copy supplied.

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Natasha Korecki, *Contractor Admits He Paid For Stolen City Asphalt*, Chicago Sun-Times, June 29, 2005. Copy supplied.

Matt O'Connor, *2 Plead Guilty For Roles In Hired Truck Program*, Chicago Tribune, June 2, 2005. Copy supplied.

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Truck Driver In Scandal-Plagued Hired Truck Program Pleads Guilty, Associate Press State & Local Wire, March 24, 2005. Copy supplied.

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Kim Sweet, *Theory in Practice*, University of Chicago Magazine, June 1997. Copy supplied.

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

I have 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 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 elected or appointed public office. I have not been an unsuccessful candidate for elective office, nor have I had an unsuccessful nomination for appointed office.

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

I have never held membership or office in any political party or election committee. I have never held a position or played a role in a political campaign.

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

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

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

From 1999 to 2001, I served as a law clerk to the Honorable James B. Zagel, District Judge of the United States District Court for the Northern District of Illinois.

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.

1998 – 1999
Heller Ehrman White & McAuliffe
333 Bush Street
San Francisco, California 94104
Associate

2001– present
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, Fifth Floor
Chicago, Illinois 60604
Chief, Criminal Division (2012 – present)
Chief, Criminal Appeals (2011 – 2012)
Deputy Chief, Financial Crimes & Special Prosecutions (2008 – 2011)
Deputy Chief, General Crimes (2007 – 2008)
Assistant United States Attorney, Public Corruption Section (2004 – 2007)
Assistant United States Attorney, Narcotics & Gangs Section
(2003 – 2004)
Assistant United States Attorney, General Crimes Section (2001 – 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.

In 1998, I began my legal career as an associate with the law firm of Heller Ehrman White & McAuliffe in San Francisco, California. I primarily worked on antitrust litigation, reviewing documents for pretrial discovery and writing legal memoranda. I also assisted a partner serving as a court-appointed settlement negotiator in an intellectual property lawsuit. I worked on two pro bono cases, in which the firm represented criminal defendants in federal court. In one case, the client was accused of Hobbs Act robberies, and in the second case, the client was accused of federal drug trafficking offenses.

In 2001, after my clerkship, I became an Assistant United States Attorney in Chicago in the General Crimes Section. I prosecuted the typical, wide range of crimes handled by new prosecutors in the office. This included bank robberies, firearm offenses, drug crimes, child exploitation offenses, and fraud. In 2003, I was assigned to the Narcotics & Gangs Section,

where I focused on cases with ties to international drug cartels and organizations. In 2004, I was assigned to the Public Corruption Section. I investigated and prosecuted cases involving federal, state, and local corruption.

In 2007, I became a Deputy Chief in the General Crimes Section. My primary responsibility was to train and mentor new prosecutors, while continuing to investigate and prosecute my own cases. In 2008, I became a Deputy Chief in the Financial Crimes and Special Prosecutions Section. I supervised experienced AUSAs handling complex financial frauds and other sophisticated crimes. I provided strategic advice on investigations, gave initial approvals for the filing of criminal charges against defendants, and reviewed proposed plea agreements. I also continued to prosecute my own cases.

In 2011, I became the Chief of Appeals for the Criminal Division. I supervised the office's entire practice before the Seventh Circuit Court of Appeals. I directly edited and supervised over 70 briefs and oral arguments before the court. I was also responsible for monitoring the several hundred cases pending before the court. In addition, as Chief of Appeals, I served as a legal adviser to prosecutors in the office, including the United States Attorney. In that capacity, I was consulted on a daily basis on questions concerning the direction of investigations, litigation risk in certain positions, trial strategy, and legal policy issues raised by the United States Attorney and the Department of Justice.

In July 2012, I became the Chief of the Criminal Division. As Criminal Chief, I oversee all criminal prosecutions in the Northern District of Illinois, and I report directly to the United States Attorney. The General Crimes, Narcotics & Gangs, Public Corruption & Organized Crime, Financial Crimes & Special Prosecutions, Money Laundering & Asset Forfeiture, and Criminal Appellate Sections report to me. In consultation with the United States Attorney, I set policies with respect to charging offenses, plea negotiations, criminal law and procedure, and the dedication of office resources in particular investigations and subject matters. I offer direction and advice on non-routine prosecutions, and consider requests for alternative dispositions from defense counsel. I serve as a liaison between the office and the courts, federal law enforcement agencies, other United States Attorneys' Offices, and the Department of Justice. Finally, I participate in hiring and promotion decisions for the Criminal Division.

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

At Heller Ehrman, I represented corporations accused of antitrust violations. I also represented individuals accused of federal criminal offenses, pro bono.

As an Assistant United States Attorney, I represent the United States in the prosecution of criminal offenses at all stages, as well as post-conviction 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.

100% of my practice has been in litigation. During my first year in practice from 1998 to 1999, I did not appear in court. As an Assistant United States Attorney, I appeared in court frequently, often daily. I appeared regularly in the U.S. District Court for the Northern District of Illinois and the Court of Appeals for the Seventh Circuit. In 2007, when I became a supervisor within the U.S. Attorney's Office, I continued to appear in court, albeit less frequently. I often supervised new AUSAs as they made their first court appearances. When I became the Chief of Appeals in 2011, I appeared as co-counsel for many AUSAs when they presented oral argument before the court of appeals. As Criminal Chief for the U.S. Attorney's Office, I appear in court less frequently, and my responsibilities are largely supervisory.

i. Indicate the percentage of your practice in:
   1. federal courts: 100%
   2. state courts of record: 0%
   3. other courts: 0%
   4. administrative agencies: 0%

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

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

I was counsel in 23 trials that went to verdict. In each case, I was co-counsel with at least one other Assistant United States Attorney. I was first chair in 11 trials and second chair in 12 trials. I was also lead counsel in 19 cases before the United States Court of Appeals for the Seventh Circuit, and I presented oral argument in 14 cases before that court.

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

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

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

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

a. the date of representation;

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

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

In reverse chronological order, the ten matters are as follows:

1. *United States v. Blackburn and Banas* (2009 – 2013), 09 CR 976 (N.D. Ill.), Judge Rubén Castillo; 712 F.3d 1006 (7th Cir. 2013), Chief Judge Frank Easterbrook, Circuit Judges William Bauer and Michael Kanne.

Blackburn and Banas were two of the founders and officers of Canopy Financial. The defendants defrauded investors and customers of the company of over $93 million. The fraud involved over 1,600 victims, and I was the lead prosecutor during the investigation and prosecution of this case, representing the United States. The defendants falsified the books and records of the company to induce investment firms to invest $75 million in the company, and defendants defalcated an additional $18 million in customer funds. The defendants pled guilty, and were sentenced in 2012. Defendant Banas appealed his sentence, and I briefed and argued the appeal on behalf of the United States. The court of appeals affirmed the sentence.

Co-Counsel:
Stephanie Zimdahl
Assistant United States Attorney
United States Attorney's Office for the Western District of Kentucky
717 West Broadway
Louisville, KY 40202
(502) 582-6217

Opposing Counsel:
Theodore Poulos
Terence Campbell
Cotsirolos, Tighe, Streicker, Poulos & Campbell
33 North Dearborn Street, Suite 600
Chicago, IL 60602
(312) 263-0345
(Counsel for Blackburn)

Leigh Roadman
Martin, Brown, Sullivan, Roadman & Hartnett
135 South LaSalle Street, Suite 3200
Chicago, IL 60603
(312) 360-5000
(Counsel for Banas)

Edward J. Sedlacek
Huck Bouma PC
1755 South Naperville Road, Suite 200
Wheaton, IL 60189
(630) 221-1755
(Appellate Counsel for Banas)

2. *United States v. Sanchez and Del Valle* (2005 – 2012). 07 CR 149 (N.D. Ill.), Judge Robert Gettleman; 674 F.3d 696 (7th Cir. 2012), Chief Judge Frank Easterbrook, Circuit Judge William Bauer, District Judge James Shadid.

I was a member of a team of prosecutors and agents representing the United States and investigating corruption in the City of Chicago's Hired Truck Program, and later, the Mayor's Office of Intergovernmental Affairs. Sanchez was the former Commissioner of the Department of Streets and Sanitation for the City of Chicago. Following a jury trial, he was convicted of participating in a scheme to defraud. The scheme involved a rigged hiring process at the City that favored applicants who performed political campaign work for certain organizations. Co-Defendant Del Valle was convicted at the same trial for perjury. Del Valle had falsely testified before a federal grand jury about his role in and knowledge of the hiring fraud scheme. I was the lead prosecutor of the *Sanchez* case at trial and on appeal. The court of appeals affirmed the convictions of both defendants.

Co-Counsel:
Julie B. Porter
Assistant United States Attorney
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, Fifth Floor
Chicago, IL 60604
(312) 353-5300

Steven Grimes (former AUSA)
Winston & Strawn, LLP
35 West Wacker Drive
Chicago, IL 60601
(312) 558-5600

Opposing Counsel:
Thomas M. Breen
Todd S. Pugh
Breen, Pugh & Associates
53 West Jackson Boulevard, Suite 1460
Chicago, IL 60604
(312) 360-1001
(Counsel for Sanchez)

Patrick W. Blegen
Blegen & Garvey
53 West Jackson Boulevard, Suite 1437
Chicago, IL 60604
(312) 957-0100
(Counsel for Sanchez)

Martin A. Dolan
Karen Munoz
Dolan Law PC
10 South LaSalle Street, Suite 3702
Chicago, IL 60603
(312) 676-7600
(Counsel for Del Valle)

3. *United States v. Carothers and Boender* (2008 – 2010). 09 CR 186 (N.D. Ill.), Judge Robert Dow; 649 F.3d 650 (7th Cir. 2009). Circuit Judges Daniel Manion, Terence Evans, and David Hamilton.

City of Chicago Alderman Carothers accepted bribes in the form of home improvement services paid for by developer Boender, in exchange for supporting a zoning change sought by Boender. Carothers pled guilty and Boender went to trial. I

was a co-prosecutor on the investigation and trial. Boender was charged with bribery and obstruction of justice (for witness tampering and attempting to impede the grand jury's investigation). The jury convicted Boender, and his conviction was affirmed on appeal. I was not counsel for the government on appeal.

Co-Counsel:
Brandon D. Fox
Assistant United States Attorney
United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, CA 90012
(213) 894-4150

Opposing Counsel:
Jeffrey B. Steinback
53 West Jackson Boulevard, Suite 1400
Chicago, IL 60604
(847) 624-9600
(Counsel for Carothers)

Robert M. Sanger
Stephen K. Dunkle
Sanger & Swysen
125 East De La Guerra Street, Suite 102
Santa Barbara, CA 93101
(805) 962-4887
(Counsel for Boender)

4. *United States v. Tolen* (2008 – 2010). 08 CR 478 (N.D. Ill.), Judge Amy St. Eve; 372 Fed.Appx. 658 (7th Cir. 2010), Circuit Judges William Bauer, Terence Evans, John Daniel Tinder.

Tolen, an inmate at Chicago's federal Metropolitan Correctional Center, beat another inmate to death. I was a co-prosecutor on the investigation and trial of Tolen. The defendant was charged with murder, and the jury found him guilty of the lesser-included offense of manslaughter. Tolen's conviction was affirmed on appeal. I was not counsel for the government on appeal.

Co-Counsel:
Stephen P. Baker
Assistant United States Attorney
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, Fifth Floor
Chicago, IL 60604
(312) 353-5300

Opposing Counsel:
Gerald J. Collins
100 West Monroe Street, Suite 1310
Chicago, IL 60603
(312) 641-1950

Robert L. Gevirtz
Gevirtz & Born
181 Waukegan Road, Suite 306
Northfield, IL 60093
(847) 501-3388

5. *United States v. Booker* (2007 – 2010), 04 CR 182 (N.D. Ill.), Judge James Zagel; 612 F.3d 596 (7th Cir. 2010), Circuit Judges Richard Posner, Joel Flaum, Diane Wood.

Booker negotiated to sell 500 grams of crack cocaine to an individual who, unbeknownst to Booker, was cooperating with the DEA. Booker arrived at a location with the crack and a loaded gun in his car. Agents recovered more crack and drug paraphernalia at an apartment associated with Booker. I was lead counsel for the United States at trial and on appeal. A jury convicted Booker of two counts of possession with intent to distribute crack cocaine, but was unable to reach a verdict on a charge of possession of a firearm in furtherance of a drug crime. The court of appeals affirmed Booker's sentence.

Co-Counsel:
Edward N. Siskel (former AUSA)
Deputy Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20502
(202) 456-2565

Opposing Counsel:
Rosalie J. Lindsay-Guimaraes
Federal Defender Program
55 East Monroe, Suite 2800
Chicago, IL 60603
(312) 621-8300

Honorable Daniel G. Martin (former Federal Defender Program attorney)
United States Magistrate Judge for the Northern District of Illinois
219 South Dearborn Street
Chicago, IL 60604
(312) 435-5354

6. *United States v. Torres, et al.* (2004 – 2008). 04 CR 86 (N.D. Ill.). Judge James Holderman; 484 F.3d 943 (7th Cir. 2007). Chief Judge Frank Easterbrook, Circuit Judges William Bauer, Ann Williams.

The City's Hired Truck Program awarded approximately $40 million per year in trucking business to outside vendors, in lieu of purchasing and maintaining a fleet of trucks. Torres was the director of the Hired Truck Program. Together with Boyle, Martin, and McDonagh, Torres was charged with fraud, extortion, and related offenses arising out of schemes to take bribes in exchange for awarding trucking business to vendors. In addition to bribery, fraud, and extortion, Boyle was also charged with obstruction of justice. In this indictment, the government alleged that Torres and Boyle accepted at least $200,000 in payments in exchange for steering work to trucking companies. I was a co-prosecutor on the Torres-Boyle case, and all defendants pled guilty. The court of appeals affirmed Boyle's sentence. I was not counsel for the government on appeal.

Co-Counsel:
Barry A. Miller (former AUSA)
Harvard University
Office of the General Counsel
Holyoke Center, Suite 980
1350 Massachusetts Avenue
Cambridge, MA 02138
(617) 495-8210

Patrick M. Collins (former AUSA)
Perkins Coie LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603
(312) 324-8400

Julie B. Porter
Assistant United States Attorney
United States Attorney's Office for the Northern District of Illinois
219 South Dearborn Street, Fifth Floor
Chicago, IL 60604
(312) 353-5300

Opposing Counsel:
Theodore Poulos
Cotsirolos, Tighe, Streicker, Poulos & Campbell
33 North Dearborn Street, Suite 600
Chicago, IL 60602
(312) 263-0345
(Counsel for Torres)

James D. Tunick
Law Offices of James D. Tunick
30 North LaSalle Street, Suite 2140
Chicago, IL 60602
(312) 759-7626
(Counsel for Boyle)

Joseph V. Roddy
Law Offices of Joseph V. Roddy
77 West Washington Street, Suite 1100
Chicago, IL 60602
(312) 368-8220
(Counsel for Martin)

Corey B. Rubinstein
David J. Stetler
Stetler, Duffy & Rotert, Ltd.
10 South LaSalle Street, Suite 2800
Chicago, IL 60603
(312) 338-0200
(Counsel for McDonagh)

7. *United States v. Laski, et al.* (2005 – 2007), 05 CR 964 (N.D. Ill.), Judge Charles Norgle; 498 F.3d 467 (7th Cir. 2007), Circuit Judges Richard Posner, John Coffey, Diane Sykes.

Laski was the elected Clerk for the City of Chicago. Laski accepted $48,000 in bribes, in connection with the City's Hired Truck Program, and obstructed justice. Laski accepted the bribes from Jones, the operator of a trucking company. Briatta, an employee of the City's Water Department, also took bribes from Jones and Aderman. Gammicchia obstructed justice by—at Laski's urging—attempting to interfere with and influence Jones's cooperation with the federal government. I was the lead prosecutor in the Laski case. The defendants all pled guilty. Gammicchia appealed his sentence, and I represented the government on appeal. The sentence was affirmed by the appellate court.

Co-Counsel:
Patrick F. McGovern (former AUSA)
McDonald's Corporation
2915 Jorie Boulevard
Oak Brook, IL 60523
(630) 623-7491

Opposing Counsel:
Jeffrey B. Steinback
53 West Jackson Boulevard, Suite 1400
Chicago, IL 60604
(847) 624-9600
(Counsel for Laski)

Keri A. Ambrosio
Keri A. Ambrosio, P.C.
53 West Jackson Boulevard, Suite 1650
Chicago, IL 60604
(312) 788-1598
(Counsel for Gammicchia)

Alexander M. Salerno
Law Offices of Alexander M. Salerno
2505 DesPlaines Ave
North Riverside, IL 60546
(708) 443-5400
(Counsel for Gammicchia)

Theodore Poulos
Cotsirolos, Tighe, Streicker, Poulos & Campbell
33 North Dearborn Street, Suite 600
Chicago, IL 60602
(312) 263-0345
(Counsel for Briatta)

Michael D. Ettinger
Ettinger & Besbekos P.C.
12413 South Harlem Avenue # 203
Palos Heights, IL 60463
(708) 923-0368
(Counsel for Jones)

John T. Theis
Law Office of John T. Theis
190 South LaSalle Street, Suite 520
Chicago, IL 60603
(312) 782-1121
(Counsel for Aderman)

8. Other Hired Truck Program Prosecutions (2004 – 2007), including: *United States v. Tomczak, et al.*, 04 CR 921 (N.D. Ill.), Judge Samuel Der-Yeghiayan; *United States v. Natale*, 04 CR 983 (N.D. Ill.), Judge William Hibbler; *United States v. Laino & Stillo, et al.*, 05 CR 167 (N.D. Ill.), Judge Rubén Castillo;

United States v. Bertucci, 05 CR 802 (N.D. Ill.), Judge Joan Gottschall; *United States v. Resa*, 06 CR 679 (N.D. Ill.), Judge George Lindberg; *United States v. Bausal*, 07 CR 26 (N.D. Ill.), Judge Joan Gottschall.

A total of 49 defendants were prosecuted in connection with the investigation of the City's Hired Truck Program. I was either a co-prosecutor or the lead prosecutor on these cases. In *U.S. v. Tomczak*, 16 defendants were charged with fraud, bribery, racketeering, obstruction of justice, and false statements, arising out a criminal enterprise run by Tomczak from the City's Water Department. In *U.S. v. Natale*, the lead defendant accepted bribes in exchange for approving trucking work that had not been done. In *U.S. v. Laino*, the defendants engaged in a scheme whereby City foremen Laino and Stillo diverted asphalt intended for City streets in exchange for bribes from private paving contractors. The defendant in *U.S. v. Bertucci* obstructed justice by attempting to influence the testimony of a witness, and the defendants in *U.S. v. Resa* and *U.S. v. Bausal* committed perjury before a federal grand jury. All the defendants pled guilty.

Co-Counsel:
Patrick M. Collins (former AUSA)
Perkins Coie LLP
131 South Dearborn Street, Suite 1700
Chicago, IL 60603
(312) 324-8400

Patrick F. McGovern (former AUSA)
McDonald's Corporation
2915 Jorie Boulevard
Oak Brook, IL 60523
(630) 623-7491

Barry A. Miller (former AUSA)
Harvard University
Office of the General Counsel
Holyoke Center, Suite 980
1350 Massachusetts Avenue
Cambridge, MA 02138
(617) 495-8210

Opposing Counsel:
Patrick J. Cotter
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, IL 60606
(312) 338-5939
(Counsel for Tomczak)

Robert A. Novelle, Sr.
Novelle & Roellig, LLC
47 West Polk Street, Suite M11
Chicago, IL 60605
(312) 786-1100
(Counsel for Natale)

George B. Collins
Collins Bargione & Vuckovich
One North LaSalle Street, Suite 300
Chicago, IL 60602
(312) 372-7813
(Counsel for Laino)

Kevin P. Bolger
Kevin P. Bolger and Associates
150 North Wacker Drive, Suite 2460
Chicago, IL 60606
(312) 899-8100
(Counsel for Stillo)

Barry S. Pechter
10135 South Roberts Road, Suite 204
Palos Hills, IL 60465
(708) 599-4300
(Counsel for Bertucci)

Christina Farley
Federal Defender Program
55 East Monroe Street, Suite 2800
Chicago, IL 60602
(312) 621-8300
(Counsel for Resa)

John F. Murphy
Federal Defender Program
55 East Monroe Street, Suite 2800
Chicago, IL 60602
(312) 621-8300
(Counsel for Bausal)

9. *United States v. Vaiseta* (2002 – 2003), 01 CR 922 (N.D. Ill.), Judge Paul Plunkett; 333 F.3d 815 (7th Cir. 2003), Chief Judge Joel Flaum, Circuit Judges Richard Posner, Daniel Manion.

The indictment alleged that Vaiseta participated in a scheme to steal cars in Canada, "clone" the stolen cars (*i.e.*, swap the visible VIN on the stolen car with a VIN from a non-stolen vehicle of similar make, model and year, and then obtain a duplicate set of title documents based on the history of the non-stolen car), submit the Canadian title documents to the Illinois Secretary of State in exchange for "valid" Illinois titles and registrations for the stolen cars, and then sell the stolen cars to innocent, unsuspecting customers through classified ads. I was co-counsel for the United States at trial, and the jury found defendant guilty of five counts of receiving, possessing or selling stolen motor vehicles, not guilty of one count of VIN alteration, and deadlocked on one count of conspiracy. I briefed and argued the appeal on behalf of the United States, and the court of appeals affirmed the convictions.

Co-Counsel:
Sean M. Berkowitz (former AUSA)
Latham & Watkins
233 South Wacker Drive, Suite 5800
Chicago, IL 60606
(312) 777-7016

Opposing Counsel:
Bradley J. Harris
1301 West 22nd Street, Suite 914
Oak Brook, IL 60523
(630) 368-9500

10. *United States v. Renaud* (2002). 02 CR 328 (N.D. Ill.), Judge Harry D. Leinenweber.

Renaud met a person he believed to be a 14 year-old girl in an internet chat room, and attempted to entice this person to engage in criminal sexual activity. The girl was, in fact, an undercover identity for law enforcement agents, and Renaud was charged with attempted enticement and interstate travel with the intent to have sex with a minor. I was lead counsel in the investigation and jury trial of Renaud, and he was convicted at trial.

Co-Counsel:
Matthew C. Crowl (former AUSA)
Schiff Hardin
233 South Wacker Drive
Suite 6600
Chicago, IL 60606
(312) 258-5609

Opposing Counsel:
Terrence P. LeFevour
190 South LaSalle Street
Suite 520
Chicago, IL 60603
(312) 283-1861

Keith Spielfogel
190 South LaSalle Street
Suite 520
Chicago, IL 60603
(312) 236-6021

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 described above, I have lectured on trial advocacy to students at the University of Chicago Law School's Legal Aid Clinic and served as an instructor for Assistant United States Attorneys from across the country through the Department of Justice's National Advocacy Center. In addition, the United States District Court for the Northern District of Illinois solicited my views, as a representative of the U.S. Attorney's Office, on prospective changes to the local criminal rules.

I have also supervised AUSAs in hundreds of cases in which I was not directly litigating the case, but rather was offering advice on investigative and trial strategy. As Chief of Appeals, I supervised the briefing in significant matters such as: *United States v. Schiro, et al.*, 679 F.3d 521 (7th Cir. 2012); *United States v. Burge*, 711 F.3d 803 (7th Cir. 2013); *United States v. Turner*, 720 F.3d 411 (2d Cir. 2013); and *Chaidez v. United States*, 655 F.3d 684 (7th Cir. 2011), aff'd 133 S.Ct. 1103 (2013). As Chief of the Criminal Division, I provide direction and advice on non-routine prosecutions, setting office policy with respect to litigating positions to be taken by AUSAs (particularly in the disposition of cases through plea agreements), and managing resources dedicated to particular prosecutions.

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.

I have not taught any courses.

Each year, from 2008 to 2012, I volunteered to serve as an instructor for one or two days of a two-week long trial practice workshop at the University of Chicago Law School, Edwin F. Mandel Legal Aid Clinic. The subject matter of the course was a series of trial exercises and a mock trial. I provided comments to students performing exercises, and lectured on the admissibility of exhibits and evidentiary foundations. 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.

    I have no deferred income arrangements. As an Assistant United States Attorney, upon retirement, I will receive payments from the Federal Employee Retirement System.

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

    I have no plans, commitments, or agreements to pursue outside employment 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. My wife is employed by Northwestern University, Weinberg College of Arts & Sciences. I would recuse myself from any case involving Northwestern University that presented an actual or an appearance of a conflict of interest. I would recuse myself from any matter involving my immediate family, specifically, my mother, sibling, and spouse.

In general, I would address any potential or actual conflict by consulting the Code of Conduct for United States Judges and all relevant statutes, 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 handle any matters involving actual or potential conflicts of interest in conformity with 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other relevant statutes, ethical canons, and rules. Upon learning of any situation that a party or observer might perceive or identify as an actual or potential conflict of interest, I would alert the parties to the situation in question, and solicit their views. I would also consult with my judicial colleagues on these 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.

As an Assistant United States Attorney, I am restricted from practicing law outside the Department of Justice. Each year, however, I volunteer to teach a portion of a trial practice workshop at the University of Chicago, Edwin F. Mandel Legal Aid Clinic. The students and the faculty supervisors of the clinic provide legal assistance to indigent clients.

As an associate at Heller Ehrman, I worked on two pro bono matters in which I represented clients charged with federal crimes. During the one-year period I was with the firm, I spent approximately ten percent of my time on these cases, investigating potential defenses and drafting pretrial motions.

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 an application to Senator Kirk's selection committee. I interviewed with the committee on March 11, 2013, in Chicago, Illinois. On April 26, 2013, I interviewed with Senator Kirk over the telephone. On June 11, 2013, Senator Kirk announced his intention to recommend me to the White House for nomination to the district court. Since June 13, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 17, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 19, 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
Shah, Manish S	U.S. District Court, Northern District of Illinois	09/19/2013
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 - Active Status	☑ Nomination; Date 09/19/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 08/31/2013
7. Chambers or Office Address		
United States Attorney's Office 219 S. Dearborn Street, 5th Floor Chicago, Illinois 60604		

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		
2		
3		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Shah, Manish S.	Date of Report 09/19/2013

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			
2			
3			
4			

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

[ ] NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1	2012	Northwestern University - salary
2	2013	Northwestern University - salary
3	2013	Cambridge University Press - book royalties
4	2013	University of Pennsylvania - honorarium ($200)
5	2013	Wiley-Blackwell - honorarium ($400)

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 Shah, Manish S.	Date of Report 05/30/2013

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	Sallie Mae	Education Loan	L
2			
3			
4			
5			

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Shah, Manish S.	Date of Report 03/13/2013

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, exchange)	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.	Chase Bank Account	A	Interest	K	T	Exempt				
2.	American Century Equity Growth Fund	B	Distribution	L	T					
3.	American Century Growth Fund	B	Distribution	K	T					
4.	American Century One Choice 2040 Fund	A	Distribution	J	T					
5.	American Century Select Fund	B	Distribution	N	T					
6.	American Century Vista Fund		None	K	T					
7.	Fidelity Balanced Fund	B	Dividend	L	T					
8.	Fidelity Cash Reserves	A	Dividend	L	T					
9.	Fidelity Focused Stock Fund		None	J	T					
10.	Fidelity Select Software & Computer Services Portfolio	A	Dividend	K	T					
11.	Fidelity Freedom K 2035 Fund	A	Int. Div.	J	T					
12.	Merrill Lynch Cash Reserves		None	J	T					
13.	TIAA-CREF Lifecycle 2035 Fund	A	Distribution	J	T					
14.	SC Deferred Comp AllianceBern Small Cap Growth Fund		None	J	T					
15.	SC Deferred Comp SSgA Target Retirement 2040 SL Series II		None	J	T					
16.	SC Deferred Comp T. Rowe Price Growth Fund		None	J	T					
17.	American Funds Fundamental Investors	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 $1,001 or less
B $1,001 - $2,500
C $2,501 - $5,000
D $5,001 - $15,000
E $15,001 - $50,000
F $50,001 - $100,000
G $100,001 - $1,000,000
H1 $1,000,001 - $5,000,000
H2 More than $5,000,000
I $5,001 - $20,000
J $15,001 - $50,000
K $50,001 - $100,000
L $100,001 - $250,000
M $100,001 - $250,000
N $250,001 - $500,000
O $500,001 - $1,000,000
P1 $1,000,001 - $5,000,000
P2 $5,000,001 - $25,000,000
P3 $25,000,001 - $50,000,000
P4 More than $50,000,000
Q Appraisal
R Cost (Real Estate Only)
S Assessment
T Cash Market
U Book Value
V Other
W Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Shah, Manish S.	Date of Report 09/19/2013

VII. INVESTMENTS and TRUSTS *-- income, value, transactions (includes those of spouse and dependent children; see pp. 34-66 of filing instructions.)*

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

	A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period (1) Amount Code 1 (A-H)	B (2) Type (e.g., div., rent, or int.)	C Gross value at end of reporting period (1) Value Code 2 (J-P)	C (2) Value Method Code 3 (Q-W)	D Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D (2) Date (mm/dd/yy)	D (3) Value Code 2 (J-P)	D (4) Gain Code 1 (A-H)	D (5) Identity of buyer/seller (if private transaction)
18.	Aston Fairpointe Mid Cap Fund	A	Dividend	J	T					
19.	Columbia Small Cap Core Fund Z	A	Dividend	J	T					
20.	MFS Massachusetts Investors Growth Stock Fund	A	Dividend	J	T					
21.	Oppenheimer International Growth Fund	A	Dividend	J	T					
22.	T. Rowe Price Retirement 2010 Fund	A	Dividend	J	T					
23.	T. Rowe Price Retirement 2040 Fund	A	Dividend	J	T					
24.	VALIC Fixed Income	A	Interest	J	T					
25.	Vanguard Health Care Fund	A	Dividend	J	T					

1. Income Gain Codes
(See Columns B1 and D4)
2. Value Codes
(See Columns C1 and D3)
3. Value Method Codes
(See Column C2)

A: $1,000 or less
B: $1,001 - $2,500
C: $2,501 - $5,000
D: $5,001 - $15,000
E: $15,001 - $50,000
F: $50,001 - $100,000
G: $100,001 - $1,000,000
H1: $1,000,001 - $5,000,000
H2: More than $5,000,000
I: $5,001 - $15,000
J: $15,001 - $50,000
K: $50,001 - $100,000
L: $100,001 - $250,000
M: $100,001 - $250,000
N: $250,001 - $500,000
O1: $500,001 - $1,000,000
O2: $1,000,001 - $5,000,000
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 Shah, Manish S.	Date of Report 09/19/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Shah, Manish S.	Date of Report 09/19/2013

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/ Manish S. Shah

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		36	224	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		680	634	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		539	834
Real estate owned - personal residence		690	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		85	000	Education Loan		70	220
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		365	095				
				Total liabilities		610	054
				Net Worth	1	246	899
Total Assets	1	856	953	Total liabilities and net worth	1	856	953
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged?	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 Century Equity Growth Fund	$ 85,694
American Century Growth Fund	44,424
American Century One Choice 2040 Fund	12,238
American Century Select Fund	256,156
American Century Vista Fund	39,901
American Funds Fundamental Investors	12,238
Aston Fairpointe Mid Cap Fund	5,121
Columbia Small Cap Core Fund	6,613
Fidelity Balanced Fund	97,820
Fidelity Cash Reserves	53,726
Fidelity Focused Stock Fund	5,161
Fidelity Freedom K 2035 Fund	6,238
Fidelity Select Software & Computer Services Portfolio	18,568
Merrill Lynch Cash Reserves	5,000
MFS Massachusetts Investors Growth Stock Fund	1,716
Oppenheimer International Growth Fund	1,802
SC Deferred Comp. AllianceBern Small Cap Growth Fund	3,141
SC Deferred Comp. SSgA Target Retirement 2040 SI Fund	5,538
SC Deferred Comp. T.Rowe Price Growth Stock Fund	3,054
T. Rowe Price Retirement 2010 Fund	2,013
T. Rowe Price Retirement 2040 Fund	1,803
TIAA-CREF Lifecycle 2035	3,236
VALIC Fixed-Interest Option	4,319
Vanguard Health Care Fund	5,114
Total Listed Securities	$ 680,634

AFFIDAVIT

I, MANISH S. SHAH, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

SEPTEMBER 20, 2013
(DATE)

(NAME)

(NOTARY)

OFFICIAL SEAL
PEGGY M. ZABINSKI
Notary Public - State of Illinois
My Commission Expires Jun 04, 2014

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary regarding the Nominations of:

Nancy L. Moritz, to be United States Circuit Judge for the Tenth Circuit
Sheryl H. Lipman, to be United States District Judge for the Western District of Tennessee
Stanley Allen Bastian, to be United States District Judge for the Eastern District of Washington
Manish S. Shah, to be United States District Judge for the Northern District of Illinois

November 13, 2013

Mr. Chairman,

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 16th judicial nominations hearing this year during which we will have considered a total of 57 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 16th hearing, having considered 57 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 – 16 hearings and 57 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. In any event, I think we have treated President Obama fair and that he enjoys an outstanding record for his judicial nominees. Again, I welcome the nominees.

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

Stanley Allen Bastian
Nominee, U.S. District Judge for the Eastern District of Washington

1. You said in 2007 that diversity is a journey not a destination. "The public must trust that justice will be delivered in a fair and impartial manner, but, this trust can be easily lost if lawyers and judges do not reflect the public they serve."
    a. Are you saying that the public cannot trust people who do not reflect their personal demographics?
    b. Do you think individuals who are not minorities are less capable of administering justice?

2. In your hearing you said that you should consider the "vantage point of the defendant". Please explain what you mean by this. What consideration should a defendant's perspective be given by a judge in making judicial decisions?

3. 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.

4. In 2007 you used your position as President of the Washington State Bar Association to advocate for the "fundamental right" to government-provided counsel for low-income litigants in civil matters. You also said that, "[i]t will take time to convince the public and our lawmakers that the idea is worth the obvious expense. However, it is time that we recognize the importance of civil legal aid and treat it in a similar fashion as public defenders for criminal defendants."
    a. As a judge you would preside over indigent pro se litigants. Would you remain impartial in those circumstances that you feel one party is being "denied equal justice" because they are not represented?
    b. Would you be clear with the litigants that you are not an advocate for either party, regardless of their representation?

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?

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

Sheryl H. Lipman
Nominee, U.S. District Judge for the Western District of Tennessee

1. Please elaborate on your time at the Memphis Race Relations and Diversity Institute. What were your responsibilities and what kind of issues did you work on?

2. At your hearing I asked where in the constitution you find the right to privacy. You responded that the Supreme Court has noted that there is a right to privacy. Is it your belief that there is a right to privacy or that one has been implied by the Supreme Court?

3. I asked you to consider your approach to a case involving a law that requires physicians performing abortions to have hospital admitting privileges. You said that you would be bound by Supreme Court and 6th Circuit precedent. What are the factors that the 6th Circuit would require you to look at?

4. A recent conflict between religious freedom and federal law is the mandate in the Affordable Care Act that employers provide contraception and abortion coverage as part of their employee health insurance plans. For some employers this presents a particularly difficult question of whether to abide by the law or go against their conscience. If a case were to come before you involving this question how would you take into consideration the first amendment rights of these employers and the mandate?

5. You have spent a significant portion of your career as in-house counsel for the University of Memphis. Please explain how your experiences there have prepared you to be a federal judge.

6. 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?

7. What is the most important attribute of a judge, and do you possess it?

8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

9. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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?

10. 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?

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

12. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

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. If confirmed, how do you intend to manage your caseload?

17. 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?

18. 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?

19. 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.

20. Please describe with particularity the process by which these questions were answered.

21. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Nancy L. Moritz
Nominee, U.S. Circuit Judge for the Tenth Circuit

1. In your hearing I asked you how you would distinguish between a fundamental right and a fundamental liberty interest. You made this distinction in *Harrison v. Tauheed*, 235 P.3d 547 (2010). I am not asking you to discuss that particular case, but would you please elaborate on these two concepts?

2. From a judge's perspective, what is the appropriate manner to evaluate religious beliefs of an individual when considering the best interests of a child? What factors are considered and what weight do you give to those factors?

3. You once wrote an article on the admissibility of hypnotically refreshed testimony in court.

    a. What is your understanding of the admissibility of hypnotically refreshed testimony in court?

    b. What would your approach be as a federal trial judge, if confirmed, in dealing with hypnotically refreshed testimony?

4. On page 7 of your questionnaire, section12c, you provided a link to an evaluation form to the Kansas Commission on Judicial performance for the Spring of 2010. The link no longer seems to be valid. Will you please provide the Committee a copy of that evaluation?

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 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 Tenth 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 judicial career as a state court judge. What do you expect to be most difficult part of this transition to being a federal judge for you?

18. 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.

19. 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?

20. 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?

21. 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?

22. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

23. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

24. 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?

25. Do you believe that the death penalty is an acceptable form of punishment?

26. 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?

27. 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?

28. 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?

29. 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?

30. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

31. What would be your definition of an "activist judge"?

32. What weight should a judge give legislative intent in statutory analysis?

33. 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.

34. Please describe with particularity the process by which these questions were answered.

35. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Menish S. Shah
Nominee, U.S. District Judge for the Northern District of Illinois

1. In 2008 you were panelist for an Asian Pacific American Law Students Association event where you discussed, "the role of political ideology in government services and the importance in legitimacy in federal law enforcement," as well as "the role of a prosecutor, the benefits and drawbacks of being a government prosecutor in contrast to a litigator in private practice, and the general difficulty of reconciling differences of opinion with the administration setting policy." You did not provide notes, transcript, or recording of the event.
    a. What is your view of the role of political ideology in government services?

2. What is the most important attribute of a judge, and do you possess it?

3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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?

5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

8. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

9. 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?

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. If confirmed, how do you intend to manage your caseload?

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

13. You have spent your entire legal career as an advocate for your clients, primarily as an attorney representing the United States. 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?

14. 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.

15. Please describe with particularity the process by which these questions were answered.

16. Do these answers reflect your true and personal views?

Questions for the Record
Senator Ted Cruz

Responses of the Honorable Nancy L. Moritz
Nominee, United States Circuit Judge for the Tenth Circuit

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: Since becoming an appellate judge in 2004, my judicial philosophy has been to treat each case that comes before me with the same attention and respect, including familiarizing myself with the record, the parties' arguments and the applicable rule of law. Ultimately, I endeavor to arrive at the correct outcome while maintaining an open mind throughout the appellate process. If I am the authoring judge, I strive to write a concise and cogent decision that judges, practitioners and the public can understand. I have not sufficiently studied the judicial philosophy of particular Justices from the Warren, Burger, and Rehnquist courts to state with any certainty which Supreme Court Justice's judicial philosophy is most analogous to my own.

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: Yes. I would follow Supreme Court and Tenth Circuit precedent regarding the methods to be used in interpreting particular provisions of the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 584 (2008) (comparing the "natural meaning" of the Second Amendment with its 18th century meaning by considering "founding-era sources").

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 I am confirmed as a federal circuit judge, I would never have authority to overrule Supreme Court precedent. Nor would I have authority to overrule Tenth Circuit precedent, unless the court considers an issue *en banc*, which rarely occurs. In deciding whether to vote for *en banc* consideration, I would be guided by Fed. R. App. Proc. 35(a), which provides that *en banc* consideration is not favored unless: (1) it is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance.

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*, the Supreme Court upheld application of federal labor standards to a local transit authority, holding that the State's sovereign interests were protected by the structure of the

federal government as well as the political process itself. However, in *Printz v. United States*, 521 U.S. 898 (1997) and *New York v. United States*, 505 U.S. 144 (1992), the Supreme Court invalidated provisions of federal legislation that imposed obligations on state government. If confirmed as a federal circuit judge, I would be bound to apply these holdings as well as any other binding 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 Supreme Court has categorized three general areas Congress can regulate under the Commerce Clause: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities substantially affecting interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005). Prior to *Gonzales*, the Supreme Court struck down legislation in two cases in which Congress had attempted to regulate non-economic activity. *See United States v. Morrison*, 529 U.S. 598 (2000) and *United States v. Lopez*, 514 U.S. 549 (1995). In *Gonzales*, the court held that Congress' power under the Commerce Clause includes the power to prohibit the local cultivation and use of marijuana, even if such actions were in compliance with California law. Justice Scalia concurred in *Gonzales* and commented, "Congress may regulate even noneconomic local 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 as a federal circuit judge, I would adhere to these and other Supreme Court precedents concerning the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952), the Supreme Court held that the President's power to issue an executive order must stem from an act of Congress or the Constitution. After *Youngstown*, courts generally have relied on Justice Jackson's concurring opinion in that case to delineate the parameters or limits of the President's executive authority. *See* 343 U.S. at 637 (Jackson, J., concurring) (explaining that the President's executive authority is at its greatest when the President acts pursuant to an express or implied authorization and is at its lowest when the President acts in a manner incompatible with the expressed or implied will of Congress). *See, e.g., Dames & Moore v. Regan*, 453 U.S. 654 (1981). If confirmed, I would apply these and other Supreme Court precedents if called upon to decide a question involving the limits of the President's executive power.

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, 720 (1997) (internal citations omitted), the Supreme Court reiterated that the Due Process Clause protects only 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." If confirmed, I would adhere to this and other relevant Supreme Court precedent.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court employs two "heightened" levels of scrutiny in reviewing classifications under the Equal Protection Clause: strict scrutiny and intermediate scrutiny. According to the Supreme Court, strict scrutiny applies to classifications based on race, alienage, and national origin as well as classifications that impermissibly infringe on fundamental rights and liberties. Intermediate scrutiny applies to "quasi-suspect" classifications, like 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: I have no expectation regarding whether the Supreme Court's prediction in *Grutter v. Bollinger* will prove true. But if confirmed and presented with an issue concerning the use of race in public university admissions, I would review it applying the strict scrutiny test most recently applied by the Supreme Court in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).

Senator Chuck Grassley
Questions for the Record

Nancy L. Moritz
Nominee, U.S. Circuit Judge for the Tenth Circuit

1. **In your hearing I asked you how you would distinguish between a fundamental right and a fundamental liberty interest. You made this distinction in *Harrison v. Tauheed*, 235 P.3d 547 (2010). I am not asking you to discuss that particular case, but would you please elaborate on these two concepts?**

   Response: In my dissent in *Harrison v. Tauheed*, 235 P.3d 547 (Kan. App. 2010), I did not intend to distinguish between a fundamental right and a fundamental liberty interest. Instead, I attempted to point out that because both an individual's right to the free exercise of religion and a parent's right to make decisions concerning the care, custody, and control of children have been recognized as fundamental, both rights should have been considered by the trial court in that particular custody case in determining the best interests of the child. *See* 235 P.3d at 564-65 ("Further, the majority has essentially judicially mandated a preference for one parent's fundamental right to the free exercise of religion over another parent's fundamental liberty interest in exercising the care, custody, and control of the child. This cannot be the import of our case law on this difficult issue."). In *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000), the Supreme Court characterized the right of parents to make decisions concerning the care, custody and control of their children both as "the oldest of the fundamental liberty interests recognized by this Court," and as a "fundamental right." *See also Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (noting that in addition to the specific freedoms protected by the Bill of Rights, the "liberty" specially protected by the Due Process Clause of the Fourteenth Amendment includes the right to direct the education and upbringing of one's children).

2. **From a judge's perspective, what is the appropriate manner to evaluate religious beliefs of an individual when considering the best interests of a child? What factors are considered and what weight do you give to those factors?**

   Response: An individual's religious beliefs, standing alone, should not be evaluated in considering a custody dispute involving the best interests of the child. Instead, in determining issues of child custody, residency and parenting time, courts generally consider all relevant factors. Those relevant factors may include religiously motivated behavior which impacts on a child's welfare. *See, e.g., Harrison v. Tauheed*, 256 P.3d 851, 864-65 (Kan. 2011) (recognizing that "[d]isapproval of mere *belief or nonbelief* cannot be a consideration in a

custody determination . . . .Yet consideration of religiously motivated *behavior* with an impact on a child's welfare cannot be ignored.") (emphasis in original).

3. **You once wrote an article on the admissibility of hypnotically refreshed testimony in court.**

   a. **What is your understanding of the admissibility of hypnotically refreshed testimony in court?**

   Response: This question references a law journal case comment assigned to me in 1984 concerning *People v. Hughes*, 59 N.Y. 2d 523, 453 N.E. 2d 484, 466 N.Y.S. 2d 555 (1983). *See* Comment, *Evidence: Placing Limits on the Admissibility of Hypnotically Refreshed Testimony*, 24 WASHBURN L.J. 697 (1984). Presently, my understanding of the admissibility of hypnotically refreshed testimony is that it depends, as it did in 1984, upon the jurisdiction as well as the context in which such testimony is offered.

   b. **What would your approach be as a federal trial judge, if confirmed, in dealing with hypnotically refreshed testimony?**

   Response: If I am confirmed as a federal circuit judge, and am presented with a question concerning a federal trial judge's admission or denial of admission of hypnotically refreshed testimony, I would apply the precedent of the United States Supreme Court and the Tenth Circuit. *See Rock v. Arkansas*, 483 U.S. 44, 60-61 (1987); *Robison v. Maynard*, 829 F.2d 1501, 1508 n.8 (10th Cir. 1987) *overruled on other grounds by Romano v. Gibson*, 239 F.3d 1156 (10th Cir. 2010).

4. **On page 7 of your questionnaire, section12c, you provided a link to an evaluation form to the Kansas Commission on Judicial performance for the Spring of 2010. The link no longer seems to be valid. Will you please provide the Committee a copy of that evaluation?**

   Response: I have attached to these responses a copy of the narrative profile of my self-evaluation for the Kansas Commission on Judicial Performance, which I referred to in my response to Question 12c.

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. The outcome of every case is dependent upon an application of the law to the facts at hand. A judge's gender, ethnicity, and other demographic factors have no role in that process.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: A judge's most important attribute is the ability to approach each case independently and with an open mind. I believe I possess that trait, and have demonstrated it throughout my nine years as an appellate court judge.

7. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge should be courteous, engaged, humble, fair-minded, intellectually honest, and have an abiding respect for the rule of law. The elements I consider most essential are fair-mindedness and a commitment to the rule of law. I believe I have demonstrated these traits during my nine-year tenure as an appellate jurist.

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: I would first examine the text of any relevant statute or provision. For example, if it is a question of first impression as to statutory interpretation, I would begin by considering the text of the entire statute, not just the provision at issue. If the statute is clear and unambiguous, my analysis would end there. If the statute is ambiguous on its face, I would apply rules of statutory construction and would look for guidance in analogous Supreme Court and Tenth Circuit precedent. Finally, I would consider any legislative history to discern the meaning of the statute.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: If confirmed as a federal circuit judge, I would be obligated to follow the precedent of the Supreme Court and Tenth Circuit regardless of my view of the correctness of the decision. The only possible exception would be the rare occasion in which the Tenth Circuit hears a case *en banc*, when the court could overturn its own precedent. In deciding whether to vote for *en banc* consideration, I would be guided by Fed. R. App. Proc. 35(a), which provides that *en banc* consideration is not favored unless: (1) it is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding involves a question of exceptional importance.

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 presumed constitutional. But if faced with an unavoidable constitutional issue, a federal court can declare a statute unconstitutional if Congress exceeds its authority under the Constitution or acts contrary to a constitutional provision.

12. Please describe your understanding of the workload of the Tenth Circuit. If confirmed, how do you intend to manage your caseload?

Response: I am not familiar with the specific caseload of the Tenth Circuit, but I expect it to be both demanding and constant. If confirmed as a federal circuit judge, I would initially confer with my colleagues to determine "best practices" in managing the caseload in order to give each case appropriate attention while expeditiously issuing decisions. I would also utilize procedures and practices I have implemented as a state appellate court judge to achieve these goals.

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: I am not aware of any circumstance in which it would be appropriate to consider foreign law or views of the "world community" in interpreting the Constitution.

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: I have served for nine years on the Kansas appellate bench, the last three of those years on Kansas' highest court. Throughout that time, I have never allowed my decisions to be influenced by political ideology or motivation, nor would I allow such factors to influence my decision-making if I am confirmed as a federal circuit judge.

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: I can point to my record of decision-making in nine years as a Kansas appellate court judge as evidence for the Committee and future litigants that I can successfully put aside any personal views I might have and that I am fair to all who appear before me. If confirmed as a federal circuit judge, I would remain firmly committed to the concept of a fair and independent judiciary.

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: A federal circuit can overturn its own precedent only in the rare circumstance in which the court sits *en banc*. As a federal circuit judge, I would vote in favor of *en banc* consideration only as permitted by Fed. R. App. Proc. 35: (1) to secure or maintain uniformity of the court's decisions; or because (2) the proceeding involved a question of exceptional importance. If an *en banc* rehearing is granted, I would consider the parties' arguments and relevant precedent, and carefully contemplate the importance of *stare decisis* before rendering a decision.

17. You have spent your judicial career as a state court judge. What do you expect to be most difficult part of this transition to being a federal judge for you?

Response: Because of my prior experience as a law clerk to a federal district court judge, a civil litigator in private practice, and as an Assistant United States Attorney specializing in civil litigation and appellate practice, I am familiar with federal evidentiary and procedural rules. While I would expect to update and refresh my knowledge of those rules, I anticipate my more difficult task will be to familiarize myself with substantive areas of federal law as well as the substantive law of the other five states in the Tenth Circuit. I anticipate that I would undertake this task gradually but thoroughly, on a case-by-case basis. As a state appellate judge the last nine years, I am familiar with the process of learning different areas of the law depending upon the circumstances that an individual case presents, and am confident in my ability to work hard.

18. 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: Before deciding a case with my colleagues, I read the briefs and review the record, paying particular attention to the lower court decision, how the issues were raised and ruled upon below, and any jurisdictional or other issues which may prevent the court from reaching the merits. Before oral argument, I also review any memoranda or work product prepared by court staff, and any relevant statutes and case law. I fully participate in the decision-making process, while striving to remain open-minded and respectful of the views of my colleagues. If I am the authoring judge, I seek to write a concise and cogent decision that is understandable regardless of the audience.

19. 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: Yes. Because members of a circuit court work collectively, collegiality is an essential element of that work. If confirmed, I would approach my interaction with my new colleagues as I have approached interaction with colleagues on the Kansas appellate bench – *i.e.*, eager to collectively work to achieve the correct result, respectful of their views, and determined to maintain the integrity and honor of the bench.

20. 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: I am unfamiliar with the speech referred to or the context in which Justice Scalia made the above-quoted statement, but I agree that when faced with interpreting a constitutional provision, a judge begins by examining the text of the Constitution. Further, I agree that any personal views I may or may not have about what the Constitution should say are irrelevant to that analysis.

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: No.

21. 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: No, judges should not consider society's preferences when ruling on constitutional challenges. Rather, they should look to binding precedent. If confirmed as a federal circuit judge, I would never be permitted to overrule Supreme Court precedent, and on the rare occasion when the Tenth Circuit considers an issue *en banc*, the current preferences of society should not be considered in deciding whether to overrule circuit precedent.

22. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: The Constitution can and must be applied to modern statutes and regulations, even though they may concern matters the Framers could never have anticipated. The Supreme Court recently reiterated the Constitution's continuing application to current concepts in *United States v. Jones*, 132 S. Ct. 945, 952 n.3 (2012), when it concluded that law enforcement's installation of a GPS tracking device to monitor the defendant's vehicle implicated the Fourth's Amendment's protection against unreasonable searches and seizures. In so holding, the Court found it "irrelevant whether there was an 18th-century analog" and concluded "[w]hatever new methods of investigation may be devised, our task, *at a minimum,* is to decide whether the action in question would have constituted a 'search' within the original meaning of the Fourth Amendment." (emphasis in original). Thus, if presented with an issue concerning the Constitution's application to modern statutes or regulations, I would look to the text and history of the Constitution and controlling Supreme Court and Tenth Circuit precedent.

23. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

Response: Generally, a judge should not consider societal norms and traditions in interpreting the text of the Constitution. The only circumstance in which I am aware that the Supreme Court has considered societal norms is in evaluating "evolving standards of decency" in the Eighth Amendment context. *See, e.g., Graham v. Florida*, 560 U.S. 48, 58 (2010). I would adhere to that Supreme Court precedent as I would all other Supreme Court precedent.

24. 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: While I have not had an opportunity to study or consider the scope of the "interplay" between the establishment and free exercise clauses of the First Amendment, my understanding is that the Supreme Court in *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005) reaffirmed that there was "room for play in the joints" between these two clauses. If I am confirmed as a federal circuit judge, and if a case came before me that presented this issue, I would study and apply Supreme Court and Tenth Circuit precedent regarding the nature and scope of the interplay between these two clauses to the facts in that particular case.

25. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has consistently found the death penalty to be an acceptable form of punishment with only a few limited exceptions. If confirmed I would faithfully apply that precedent.

26. 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 see the Constitution itself as a living or constantly evolving document. Instead, I think the beauty of the Constitution is that it was crafted such that it can apply to changing times and circumstances never anticipated by the drafters. *See, e.g.*, *United States v. Jones*, 132 S. Ct. 945 (2012) (applying Fourth Amendment protection against "unreasonable searches and seizures" to government's attachment and use of GPS device to monitor defendant's vehicle).

27. Do you believe there is a right to privacy in the U.S. Constitution?

Response: The Supreme Court has held that various guarantees in the Constitution create zones of privacy, including the First Amendment right of association, the Fourth Amendment's protection of the right of the people to be secure in their persons, houses, papers and effects from unreasonable searches and seizures, and the Fifth Amendment's Self-incrimination Clause. Further, the court has found that encompassed within the Fourteenth Amendment's Due Process Clause is a right to privacy that protects certain personal decisions relating to "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). I would follow this precedent.

a. Where is it located?

Response: Please see answer to Question 27.

b. From what does it derive?

Response: Please see answer to Question 27.

c. What is your understanding, in general terms, of the contours of that right?

Response: Please see answer to Question 27.

28. 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 as a federal circuit judge I would interpret the meaning of the Constitution by considering Supreme Court and Tenth Circuit precedent rather than by "reading between the lines."

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: No. If confirmed as a federal circuit judge, I would have no occasion or basis to search the Constitution for additional, unrecognized rights. Rather, my role would be to consider the text of the Constitution and applicable Supreme Court and Tenth Circuit precedent.

29. 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: As an appellate judge, in considering the facts of a particular case and in applying the rule of law to those facts, I am limited to consideration of items included in the record on appeal as designated by the parties and as limited by applicable procedural rules.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: Generally, if a psychological or sociological study is outside the appellate record, it would be inappropriate for an appellate judge to base a decision on such a study. If presented with circumstances in which a psychological or sociological study has been admitted into evidence below or is relevant to an issue on appeal, I would look to Supreme Court and Tenth Circuit precedent to guide me in considering the import of that study.

30. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: The Supreme Court has not specifically determined the appropriate standard of scrutiny to be applied to a challenge to a federal or state gun law. However, in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) and *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court ruled out application of a rational basis standard, thereby leaving either strict scrutiny or intermediate scrutiny as the permissible levels of scrutiny. In *United States v. Reese*, 627 F.3d 792, 801-802 (10th Cir. 2010), the Tenth Circuit applied intermediate scrutiny to an as-applied challenge to a statute prohibiting the possession of firearms by a person subject to a domestic protection order, although it appeared to leave open the possibility that a different level of scrutiny could apply depending on the type of law challenged and the type of restriction. 627 F.3d at 802-805. If confirmed as a federal circuit judge and faced with a Second Amendment challenge, I would interpret and apply Supreme Court and Tenth Circuit precedent to determine the appropriate level of scrutiny.

31. What would be your definition of an "activist judge"?

Response: To me, the term "activist judge" describes a judge who steps outside of his or her limited judicial role and allows personal views to influence the decision-making process or the outcome of the case.

32. What weight should a judge give legislative intent in statutory analysis?

Response: If the text of a statute is unambiguous, a court should give legislative intent no weight. If the text of a statute is ambiguous, the court should apply rules of statutory construction and consider applicable precedent to arrive at the meaning of the statute and should consider legislative intent only if other tools are not useful.

33. 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.

34. Please describe with particularity the process by which these questions were answered.

Response: After receiving the written questions I drafted my responses and submitted them to a Department of Justice attorney for review. After receiving his comments, I made additional final revisions to the draft and submitted it to the Department of Justice for submission to the Committee.

35. Do these answers reflect your true and personal views?

Response: Yes.



Honorable Nancy Landis Caplinger 2010 Review

Court of Appeals

The Kansas Commission on Judicial Performance recommends that Judge Nancy Landis Caplinger BE RETAINED.

Judge Caplinger was appointed to the Kansas Court of Appeals in 2004. Before her appointment to the bench, she served as Assistant United States Attorney for the District of Kansas from 1995 to 2004 and engaged in the private practice of law from 1989 to 1995. She has also worked as a law clerk for a United States District Court judge and as a research attorney for a Kansas Supreme Court Justice. Judge Caplinger is a graduate of Washburn University and Washburn University School of Law.

Judge Caplinger served on the Board of Editors of the Kansas Bar Association for nearly 20 years, including two years as Chair. She has co-authored three published articles for the KBA Journal and received the KBA's Outstanding Service Award. She has also served on the Kansas CLE Commission and the Board of Governors of the Washburn Law School Association. Judge Caplinger enjoys participating in professional educational activities, making presentations for numerous bar associations and schools. Her primary community involvement is focused on volunteering at and supporting her daughters' schools and their activities. Also, she has delivered Meals on Wheels for more than six years.

Judge Caplinger believes her greatest strengths are that she writes clear and concise opinions and respects the rule of law. She states that she comes prepared for oral argument and enjoys the "give and take" of that process. She also respects her colleagues on the bench and the attorneys who appear before her. Judge Caplinger acknowledges that she sometimes adopts an adversarial position with counsel at oral argument and with her colleagues during case conferences, and that she does not always use her time as effectively as possible especially when it comes to reviewing the large volume of briefs each month. Her professional goals are to consistently exhibit an appropriate demeanor on the bench, to more effectively manage her time, and to continue to be an emissary for the judiciary particularly with our youth across the state.

The Commission received survey responses from 59 attorneys and 128 district judges. Survey results showed that 92% of attorneys and 96% of district judges recommended that Judge Caplinger be retained in office. Judge Caplinger received an overall average score from attorneys of 3.64 on a 4.0 scale and an overall average score from district judges of 3.62. Judge Caplinger's scores exceed the required minimum average grade of 2.0 from each category of respondents. The Commission recommends that she BE RETAINED.

Questions for the Record
Senator Ted Cruz

Sheryl H. Lipman
Nominee, United States District Court for the Western 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: I do not have a judicial philosophy per se, but rather I have a philosophy on the best ways to efficiently and effectively approach the job of a district court judge. If confirmed, the greatest influence in how I would approach the work is the Honorable Julia S. Gibbons of the United States Court of Appeals for the Sixth Circuit. I clerked for Judge Gibbons when she presided in the Western District of Tennessee, and witnessed her respect for the litigants and their cases, dedication to hard work and fairness, tendency toward clear and plain spoken rulings, and the approachable yet professional manner in which she ran the courtroom. If confirmed, I would strive to emulate her approach.

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 used originalism to interpret the Second Amendment in *District of Columbia v. Heller*, 554 U.S. 570 (2008). As the Court explained, public meaning of the text at the time of its enactment guides the interpretation today. *Id.* at 605. If confirmed, I would follow this binding precedent, as I would 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: There are no circumstances under 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: *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), is binding Supreme Court precedent that I would follow if confirmed, regardless of whether I agree with the statement.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: Congress may rely upon its Commerce Clause power to regulate three 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. *See Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed, I will follow these binding Supreme Court cases, as well as any applicable Sixth Circuit cases.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The United States Supreme Court has 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.'" *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)). If confirmed, I will apply this precedent to evaluate executive orders or actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: Fundamental rights, for purposes of the substantive due process doctrine, are those rights that 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) (internal citations omitted). If confirmed, any analysis of a fundamental right would be founded upon this precedent as well as other Sixth Circuit and Supreme Court precedent in this area.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: When statutory classifications are based on race, alienage, national origin or gender, the statute is subject to heightened scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Generally, strict scrutiny is applied to race, alienage and national origin classifications while an intermediate level of scrutiny is applied to gender classifications.

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, my personal expectations in this area, or in any other area, would not be relevant. *Grutter v. Bollinger*, 539 U.S. 306 (2003), as well as *Fisher v. University of Texas*, 570 U.S. __ (2013), are binding Supreme Court precedent that I will follow, if confirmed to be a United States District Judge.

Senator Chuck Grassley
Questions for the Record

Sheryl H. Lipman
Nominee, U.S. District Judge for the Western District of Tennessee

1. **Please elaborate on your time at the Memphis Race Relations and Diversity Institute. What were your responsibilities and what kind of issues did you work on?**

   Response: The Memphis Race Relations and Diversity Institute (MRRDI) was a nonprofit organization founded by business leaders in Memphis to focus on the economic benefits that can accrue to businesses when they provide a welcoming environment for diverse employees and customers. As Vice President for Comprehensive Services for MRRDI, I assisted in all aspects of the organization's work, but focused on the delivery of fee-for-service programming that highlighted the economic value of all types of diversity. If a company is welcoming of all types of people as employees, it is more likely to attract and retain the best and the brightest employees. Likewise, the more diversified the customer/client base, the more likely the company is to be successful economically.

2. **At your hearing I asked where in the constitution you find the right to privacy. You responded that the Supreme Court has noted that there is a right to privacy. Is it your belief that there is a right to privacy or that one has been implied by the Supreme Court?**

   Response: The words "right to privacy" do not appear in the Constitution but the United States Supreme Court has held that several provisions of the Constitution, notably the Fourth and Fourteenth Amendments, protect certain privacy rights.

3. **I asked you to consider your approach to a case involving a law that requires physicians performing abortions to have hospital admitting privileges. You said that you would be bound by Supreme Court and 6th Circuit precedent. What are the factors that the 6th Circuit would require you to look at?**

   Response: The undue burden standard is used to assess whether an abortion regulation is to be upheld. *Gonzales v. Carhart*, 550 U.S. 124 (2007); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). As the Court reiterated in *Gonzales*, "[b]efore viability, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy. It also may not impose upon this right an undue burden, which exists if a regulation's purpose or effect is to place a substantial obstacle in the path of a woman seeking an

abortion before the fetus attains viability. On the other hand, regulations which do no more than create a structural mechanism by which the State, or the parent or guardian of a minor, may express profound respect for the life of the unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the right to choose." Gonzales, 550 U.S. at 146 (internal quotations and citations omitted). If confirmed, I would follow this binding precedent in this area of the law, just as I would in any other area of the law.

4. **A recent conflict between religious freedom and federal law is the mandate in the Affordable Care Act that employers provide contraception and abortion coverage as part of their employee health insurance plans. For some employers this presents a particularly difficult question of whether to abide by the law or go against their conscience. If a case were to come before you involving this question how would you take into consideration the first amendment rights of these employers and the mandate?**

   Response: The Supreme Court has recently accepted certiorari on this specific issue in two consolidated cases, *Hobby Lobby v. Sebelius* and *Conestoga Wood Specialties v. Sebelius*. If confirmed, I will follow the precedent which will be set by the Supreme Court in its consideration of these cases.

5. **You have spent a significant portion of your career as in-house counsel for the University of Memphis. Please explain how your experiences there have prepared you to be a federal judge.**

   Response: As University Counsel for the University of Memphis, I must often assess the best course of action for my client, in light of applicable legal constraints as defined by the numerous statutory and regulatory schemes which apply to higher education institutions. If I was fortunate to be confirmed, I would no longer evaluate legal issues from the perspective of an advocate for a client, but I nevertheless believe that constantly interpreting the statutory and regulatory provisions which apply to my work has given me extremely relevant experience for the work of a judge. In addition, the volume of work in our office is quite large, requiring "case management" to keep all matters on track for proper and timely resolution. I believe this experience also will serve me well, if confirmed.

6. **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 judge should never use empathy to tilt the scales in favor of one party over another.

7. What is the most important attribute of a judge, and do you possess it?

Response: It is difficult to pick just one attribute as the most important one for a judge. A judge should be open-minded and fair, and respectful to all who appear before the judge. A judge must listen carefully and exercise patience in dealing with all participants in the process. Finally, a judge must be hard-working, always prepared and decisive in handling cases, and driven by integrity. I do possess these qualities.

8. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be even-tempered, patient, and must listen attentively and respectfully to all participants in the system. A judge should be firm and confident, to ensure control of the courtroom, yet humble so as not to presume to know all of the answers. I do possess these qualities, and use them in my work at the University as I interact with many different constituents, always striving to treat them all with dignity, respect, and patience, while also ensuring that they adhere to the legal constraints under which we operate.

9. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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 have a deep belief in the rule of law, which dictates that the lower federal courts follow binding precedent. Our judicial system does not properly operate if the lower courts fail to follow precedent, regardless of personal opinion. I am deeply committed to the rule of law, including following precedent.

10. 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 any applicable text, whether the case involved a statute, regulation or Constitutional provision. If the plain meaning of the text is unambiguous, that plain meaning is then applied to the facts of the case. If the words are ambiguous, I would use the canons of statutory construction to determine their meaning. I would also be guided by Sixth Circuit and Supreme Court precedent interpreting analogous provisions. If necessary, I would look to the non-binding law of other circuits to assist in the interpretation and may also consider the legislative history of the particular provision at issue.

11. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: If confirmed, it would be my obligation to apply binding Supreme Court and Sixth Circuit precedent, regardless of my personal feelings about the decisions.

12. 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 statute should only be found unconstitutional where Congress clearly exceeded its constitutional authority in enacting the statute, or where the statute directly contradicts the Constitution.

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: It is never proper to use such sources.

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: I have a deep belief in the rule of law, which dictates that the lower federal courts follow binding precedent and the text of the law, as approved by Congress. Our judicial system does not properly operate if the lower courts fail to follow precedent and law, regardless of personal opinion. I am deeply committed to the rule of law, including following precedent.

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: If confirmed, my work would be guided by my belief that, in our system of justice, it is the role of the judge to be the fair and neutral arbiter, basing all decisions on the evidence presented in the courtroom and the application of the law, as found in precedent, to those facts. A judge's personal views do not play a role in the evaluation of the case.

16. If confirmed, how do you intend to manage your caseload?

Response: I believe the keys to successfully managing a caseload include setting reasonable but firm deadlines, based on a thorough knowledge of the case, and enforcing those deadlines. If confirmed, I will immediately familiarize myself with the cases assigned to me and insure that each case has an efficient and effective schedule in place. In addition, I would be committed to prompt resolution of pretrial matters pending before the court, strategically using my own time, the time of my law clerks, and the magistrate judges. Regular monitoring of the cases for adherence to the schedule is also vital.

17. 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 do believe that a judge plays a role in controlling the pace and conduct of litigation, and, if confirmed, I will use the case management system described in my response to question 16 to control the docket.

18. 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 will reach decisions based on a careful analysis of the facts of a case, and the application of the law as found in precedent and statutes to those facts. As for the transition, I believe that my natural tendency to see both sides of issues will serve me well. As University Counsel, I am responsible for protecting the legal interests of the University. In fulfilling that objective, I spend much of my time working to ensure that the University complies with the law and, at times, recommending that the University pursue a different course of action, given the law. In that manner, my advocacy for my client has been ensuring that my client is following the law. Given this experience, I do not think it will be difficult to transition into the role of examining the facts as presented within the litigation, and applying the law as found in precedent and statute, to arrive at a

decision. The most difficult part will probably be leaving the University, an institution whose mission I deeply believe in. The transition will be made easier by the fact that, if confirmed, I will be working within another institution - the judiciary - I also deeply believe in.

19. 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.

20. Please describe with particularity the process by which these questions were answered.

Response: I read through the questions, conducted legal research where appropriate, and drafted my answers. I then submitted my draft answers to Department of Justice officials for review, and revised my answers where I believed it was appropriate. I then submitted the answers to the Department of Justice for submission to the Senate.

21. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Stanley Allen Bastian
Nominee, U.S. District Court for the Eastern District of Washington

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: Judges should be committed to the rule of law, which means that all cases should be decided impartially by applying binding precedent to the relevant facts. Judges should be fair, patient, and open-minded and should treat all parties with respect and civility. If confirmed, I intend to follow this judicial approach. I have not studied the judicial philosophy of the Supreme Court Justices and therefore cannot identify a Justice 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 as a District Judge, I will follow Supreme Court precedent regarding the use of originalism to interpret the Constitution. For example, in the case of *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) the Supreme Court held that the public understanding of a legal text in the time after enactment plays a critical role in constitutional interpretation. I will follow this and all other Supreme Court 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 never overrule binding precedent if confirmed as a District 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: The case of *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) is binding precedent. If confirmed as a District Judge, I would be bound to follow *Garcia* and all other precedent from the Supreme Court and the Ninth Circuit, regardless of any disagreement I may or may not have.

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 recognized limits on the power of Congress to regulate non-economic activity pursuant to the Commerce Clause. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). However, in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia noted 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). If confirmed as a District Judge, I intend to follow all binding Supreme Court and Ninth Circuit precedent regarding the issue of Congressional regulatory powers.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: Federal courts should avoid reaching constitutional questions when possible. However, the Supreme Court has held that the President's authority to issue executive orders or take executive actions must be derived from either an act of Congress or the Constitution. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I will follow Supreme Court precedent on this issue.

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 for purposes of the substantive due process doctrine only if it is deeply rooted in our nation's history and tradition and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). *See also, Chavez v. Martinez*, 538 U.S. 760, 775 (2003). If confirmed, I will follow this and all other precedent from the Supreme Court and the Ninth Circuit concerning the substantive due process doctrine.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that heightened scrutiny under the Equal Protection Clause is appropriate when a classification burdens a fundamental right or when it differentiates categories such as race, national origin, or gender. *City of Cleburne v. Cleburne Living Center*, Inc., 473 U.S. 432, 440 (1985); *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). If confirmed, I will closely follow binding precedent on this issue.

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 as a District Judge, I would follow Supreme Court precedent on the use of racial preferences in university admissions without regard to my own personal expectations or opinions.

Senator Chuck Grassley
Questions for the Record

Stanley Allen Bastian
Nominee, U.S. District Judge for the Eastern District of Washington

1. **You said in 2007 that diversity is a journey not a destination. "The public must trust that justice will be delivered in a fair and impartial manner, but, this trust can be easily lost if lawyers and judges do not reflect the public they serve."**

   a. **Are you saying that the public cannot trust people who do not reflect their personal demographics?**

      Response: It was not my intent to imply that the public cannot trust people who do not reflect their personal demographics. My comment was intended to emphasize two points: (1) diversity within the legal profession is an important goal, and (2) the public trust in our system of justice is strengthened when the legal and judicial professions are perceived to be open and available to everyone regardless of their gender, ethnicity, or other demographic factors.

   b. **Do you think individuals who are not minorities are less capable of administering justice?**

      Response: No, I believe that fair and impartial judges can and should come from all backgrounds.

2. **In your hearing you said that you should consider the "vantage point of the defendant". Please explain what you mean by this. What consideration should a defendant's perspective be given by a judge in making judicial decisions?**

   Response: During my confirmation hearing, another district court nominee used the phrase "vantage point of the defendant." Although I am not sure what he meant by this phrase, if I were confirmed as a District Judge, I would consider the vantage point of both parties in neutrally applying the law to the facts.

3. **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, the judge's gender, ethnicity, or other demographic factors should not have any influence in the outcome of a case. All judges should be fair, patient, and impartial and should be committed to applying the rule of law in every case.

4. **In 2007 you used your position as President of the Washington State Bar Association to advocate for the "fundamental right" to government-provided counsel for low-income litigants in civil matters. You also said that, "[i]t will take time to convince the public and our lawmakers that the idea is worth the obvious expense. However, it is time that**

we recognize the importance of civil legal aid and treat it in a similar fashion as public defenders for criminal defendants."

a. As a judge you would preside over indigent pro se litigants. Would you remain impartial in those circumstances that you feel one party is being "denied equal justice" because they are not represented?

Response: Yes, if confirmed as a District Judge, I will remain impartial in all cases, even cases in which one or both parties are not represented by an attorney.

b. Would you be clear with the litigants that you are not an advocate for either party, regardless of their representation?

Response: Yes.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: Judges should adhere to the rule of law and decide each case by applying the binding precedent to the relevant facts. Judges should work hard and be fair, patient, impartial and open-minded. They should treat all parties with civility, respect, and dignity. I have these attributes and have applied them during my 30-year legal career.

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: The appropriate temperament of a judge includes fairness, patience, impartiality, and civility. I believe that I possess these attributes and that I have consistently applied them during my legal career.

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?**

Response: 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.

8. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In adjudicating a case of first impression, I would study and apply the text of the applicable statute or regulation. If the plain meaning of the statute was not clear then I would

review the statutory framework as a whole and resolve ambiguities by applying well established rules regarding statutory construction. I would also look to analogous precedents from the Supreme Court and the Ninth Circuit, as well as seek guidance from persuasive opinions of the other Courts of Appeals.

9. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I would apply binding precedents from the Supreme Court and the Ninth Circuit without regard to whether I believed the court erred in the decision.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Federal courts should avoid reaching constitutional questions when possible, and should always begin their analysis of a federal statute with the presumption that the statute is constitutional. Statutes enacted by Congress are presumed to be constitutional and federal courts should find them to be unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). If confirmed as a District Judge, I would follow binding Supreme Court precedent on this issue.

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.

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?

Response: I understand that, if confirmed as a District Judge, my duty will be to put aside any personal views, motivations, and political ideology when making rulings on cases. I am prepared to decide each case impartially by applying binding precedent to the relevant facts of the case at bar. During my 30-year career as a lawyer in private practice, I have never used my personal views or any political ideology to guide my work as an advocate for my clients.

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?

Response: I am prepared to decide each case impartially after a fair and open hearing by applying binding precedent to the relevant facts of the case at bar. My decisions as a District Judge will be made regardless of my personal views, motivations, and political ideology.

14. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will play an active role in the cases assigned to my court by scheduling case management conferences, promptly deciding motions, encouraging mediation or settlement conferences, and monitoring the cases when necessary to ensure the rules of discovery are not abused. I intend to actively monitor my caseload to help ensure the cases are resolved in a timely, efficient, and cost-effective manner.

15. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, District Judges should play a role in controlling the pace and conduct of litigation. This is important to help resolve disputes in a timely, efficient, and cost-effective manner. If confirmed, I will play an active role in the cases assigned to my court by scheduling case management conferences, promptly deciding motions, encouraging mediation or settlement conferences, and monitoring the cases when necessary to ensure the rules of discovery are not abused.

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?

Response: I will reach decisions in cases by determining the claims made by the parties, the issues that require a decision, and the applicable standard of review. These determinations will be made after reviewing the pleadings, testimony, and evidence submitted. I will then apply the binding precedent to the relevant facts of the case at bar. The most difficult part of the transition for me will be transitioning from serving as an advocate for my clients to serving as an impartial decision maker.

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: 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: I prepared my responses to these questions and submitted them to the Department of Justice. I then edited my responses after receiving comments from the DOJ. Finally, I authorized the DOJ to submit these responses to the Committee on my behalf.

19. Do these answers reflect your true and personal views?

Response: Yes.

Manish S. Shah
Nominee, United States District Court for the Northern District of Illinois
Responses to Questions for the Record
from 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: If confirmed, my judicial philosophy would be to approach each case with an open mind, consider carefully the arguments of the parties, and follow the text of the law as written and the binding precedent that applies. This technique may sound more mechanical than philosophical, but adherence to text and precedent is critical to the stability and predictability of our judicial system. Of the 29 different Justices who served on the Warren, Burger and Rehnquist Courts, I do not know which one had a philosophy most analogous to the one I have described, but I suspect most, if not all, of the Justices shared this approach.

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 meaning of the words as understood at the time of the ratification of a constitutional provision must be considered when interpreting the Constitution, as the Supreme Court has stated in cases such as *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008) (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)).

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 I were confirmed as a district court judge, I would be bound by the precedent of the Seventh Circuit and the Supreme Court, and I would not overrule any 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: In overruling *National League of Cities v. Usery*, 426 U.S. 833 (1976), the Court in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), observed that its earlier, judicially created limitation on the Commerce Clause power was unworkable. If confirmed, I would be bound by the Court's decision in *Garcia*, and I would apply it without regard to whether or not I personally agreed that State sovereign interests were protected by the inherent structure of the federal system.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: Congress may regulate the use of the channels of interstate commerce, the instrumentalities of interstate commerce (or persons or things in interstate commerce), and activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995); *United States v. Morrison*, 529 U.S. 598, 608-609 (2000). This power, in conjunction with the Necessary and Proper Clause power, was constitutionally applied to regulate intrastate, non-commercial marijuana cultivation in *Gonzales v. Raich*, 545 U.S. 1 (2005). Moreover, in describing the Supreme Court's precedents in this area, Justice Scalia has observed that it is possible for Congress to regulate "noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Id.* at 37 (Scalia, J., concurring). If confirmed, I would follow these and all other binding precedents.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's authority to act 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)). Assuming that a case presents a justiciable controversy involving a litigant with Article III standing to challenge Presidential orders or actions, the judiciary will review executive orders and actions by determining whether: (1) the President acted pursuant to express or implied authorization from Congress; (2) the President acted with support from congressional inertia, indifference or quiescence; or (3) the President acted in a manner incompatible with the expressed or implied will of Congress. *Id.* at 524-525. The judiciary is most likely to defer to the President under the first scenario, and less likely to sustain executive action under the third scenario.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has established a method for analyzing substantive due process claims, and under the Court's precedents, fundamental rights are ones that, as an objective matter, are "deeply rooted in this Nation's history and tradition" and are "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal quotations and citations omitted).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: "[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). Suspect classifications include classifications "by race, alienage, or national origin." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). In addition, legislative classifications based on gender and illegitimacy call for heightened scrutiny. *Id.*; *see also United States v. Virginia*, 518 U.S. 515, 531 (1996).

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 held that race-conscious admissions policies must be limited in time, and have a termination point. *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003). I have no expectation about the specific termination point appropriate for any particular admissions policy, and the Court held that "[c]ontext matters when reviewing race-based governmental action under the Equal Protection Clause." *Id.* at 327. If I were confirmed as a district court judge, I would be bound by and follow the Supreme Court's precedents.

Senator Chuck Grassley
Questions for the Record

Manish S. Shah
Nominee, U.S. District Judge for the Northern District of Illinois

1. **In 2008 you were panelist for an Asian Pacific American Law Students Association event where you discussed, "the role of political ideology in government services and the importance in legitimacy in federal law enforcement," as well as "the role of a prosecutor, the benefits and drawbacks of being a government prosecutor in contrast to a litigator in private practice, and the general difficulty of reconciling differences of opinion with the administration setting policy." You did not provide notes, transcript, or recording of the event.**
   a. **What is your view of the role of political ideology in government services?**

      Response: I was a panelist for a discussion of careers in government service in February 2008. Another member of the panel was a Deputy Assistant Attorney General for the Department of Justice, and he spoke about political ideology in Executive Branch decisionmaking. As I recall, my comments in response were that political ideology had no place in my position as an Assistant United States Attorney and that political neutrality was critically important to the legitimacy of federal law enforcement. I also discussed the U.S. Attorney's Office's well-developed culture of making prosecutorial decisions without regard to political influence.

      If confirmed as a district court judge, I would make decisions without regard to political ideology.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is open-mindedness. In order to fairly resolve disputes, the judge must be able to listen to all sides, appreciate the arguments being made, and fully understand the applicable legal regime. This requires an open mind and intellectual curiosity. I believe I possess these attributes.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge must be even-keeled and patient, in order to assure the litigants that they will have their day in court before a fair tribunal. I believe I have these qualities.

4. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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: Our legal system depends on the stability and predictability that come from adherence to precedent. If confirmed, I would be committed to following the precedents of higher courts faithfully and giving them full force and effect, without regard to my personal views.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If there were no controlling precedent on an issue, I would start first with the text of the legal provision before me and apply the text to the facts of the case. If the text were ambiguous, I would turn next to analogous precedent from the Court of Appeals and the Supreme Court in which similar issues were decided and employ the methods used by those higher courts.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If I were confirmed as a district court judge, I would apply the precedential decisions of the Court of Appeals and the Supreme Court without regard to any belief I may have about how the court rendered its decision.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Courts presume that statutes enacted by Congress are constitutional, and a court should declare a statute unconstitutional only when the issue has been presented in a proper case or controversy and only when it has been established that Congress exceeded its authority in enacting the statute.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: Unless directed otherwise by a decision of the Supreme Court or binding precedent from the Court of Appeals, a district court cannot determine the meaning of the United States Constitution by looking to contemporary foreign law, and therefore, judges should not rely on foreign law when interpreting the Constitution.

9. **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: Allowing political ideology or motivation to determine legal decisions would undermine the integrity of our judicial system. As a prosecutor, I have never made decisions based on political motives, and I believe the record of my service demonstrates my commitment to the rule of law.

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: A judge must put aside any personal views and apply the law as enacted by the legislature and interpreted by the Court of Appeals and the Supreme Court. The integrity of our legal system depends on litigants relying on fair and open-minded tribunals to resolve their disputes. Therefore, if confirmed, I would put aside my personal views and be fair to all who appear before me.

11. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would manage my caseload by setting reasonable deadlines, being prepared to discuss every case when it comes before me, and narrowing disputes as early as possible for prompt resolution.

12. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, judges have a role in controlling the pace and conduct of litigation. If confirmed, I would control my docket by setting appropriate deadlines for the parties and for the court to issue rulings. I would meet those deadlines set for rulings, be prepared to discuss every case when it comes before me, and expect the parties to be similarly prepared to address issues comprehensively and promptly. A judge can also monitor the progress of litigation to ensure that the litigants are engaging in pretrial discovery responsibly and efficiently, and narrowing the issues in dispute early.

13. You have spent your entire legal career as an advocate for your clients, primarily as an attorney representing the United States. 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 by: paying close attention to the arguments of the parties; ensuring that I fully understand the claims and arguments being made; researching the applicable law by reference to the text of the law and binding precedent; and finally, explaining my decision and its rationale so that the parties understand how and why the outcome was reached. I expect the most difficult part of the transition from advocate to judge will be to manage a busy caseload efficiently and to learn quickly and thoroughly those substantive areas of law that will be new to me.

14. 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.

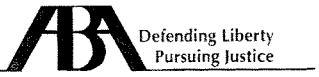
Response: No.

15. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on November 20, 2013. I had previously reviewed similar questions posed to other nominees, and drafted my answers to these questions on November 20 and 21. I submitted a draft of my responses to the Department of Justice Office of Legal Policy on November 21, 2013. I received comments, and then finalized my answers on December 3, 2013.

16. Do these answers reflect your true and personal views?

Response: Yes.



CHAIR
Judy Perry Martinez
New Orleans, LA

Mailing Address:
2980 Fairview Park Drive
Falls Church, VA 22042

FIRST CIRCUIT
Lisa G. Arrowood
Suite 3180 North
10 Post Office Square
Boston, MA 02109

SECOND CIRCUIT
Betsina B. Provan
11 Times Square
New York, NY 10036-8299

THIRD CIRCUIT
Robert C. Heim
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

FOURTH CIRCUIT
E. Fitzgerald Parnell, III
Suite 2300
301 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Costello Slovak
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
David L. Brown
5th Floor
U.S. Bank Building
520 Walnut Street
Des Moines, IA 50309-4119

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Goh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4536

ELEVENTH CIRCUIT
Ramón A. Abadin
Suite 1208
9155 South Dadeland Boulevard
Miami, FL 33156-2739

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

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
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 Nancy Louise Moritz to the United States Circuit Court for the Tenth Circuit

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Nancy Louise Moritz who has been nominated for a position on the United States Circuit Court for the Tenth Circuit. As a result of our investigation, the Committee is of the opinion that for this position Justice Nancy Louise Moritz is Unanimously Qualified.

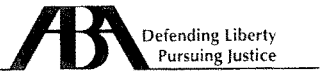
A copy of this letter has been provided to Justice Moritz.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Nancy L. Moritz (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.



CHAIR
Judy Perry Martinez
New Orleans, LA

Mailing Address:
2980 Fairview Park Drive
Falls Church, VA 22042

FIRST CIRCUIT
Lisa G. Arrowood
Suite 1180 North
10 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
E. Fitzgerald Parnell, III
Suite 2300
301 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Costello Slewak
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
David L. Brown
5th Floor
U.S. Bank Building
520 Walnut Street
Des Moines, IA 50309-4119

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Goh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Ramon A. Abadin
Suite 1208
9155 South Dadeland Boulevard
Miami, FL 33156-2739

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

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
Suite 400
7050 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 Sheryl H. Lipman to the United States District Court for the Western District of Tennessee

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Sheryl H. Lipman who has been nominated for a position on the United States District Court for the Western District of Tennessee. As a result of our investigation, the Committee is of the opinion that for this position Ms. Sheryl H. Lipman is Majority Well Qualified, Minority Qualified.

A copy of this letter has been provided to Ms. Lipman.

Sincerely,

Judy Perry Martinez
Chair

cc: Ms. Sheryl H. Lipman, 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.

LAMAR ALEXANDER
TENNESSEE

United States Senate

WASHINGTON, DC 20510

November 13, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Building

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Building

Chairman Leahy and Ranking Member Grassley,

I write today to introduce the Judiciary Committee to Ms. Sheryl Lipman, who has been nominated to fill a vacancy on U.S. District Court for the Western District of Tennessee.

Ms. Lipman is a native of Memphis, Tennessee who left for her schooling but has returned to her home state to establish herself in the Memphis legal community. She attended the University of Michigan, receiving a degree in 1984 before pursuing her legal studies at New York University School of Law. Upon her graduation in 1987, she clerked with the Honorable Julia Gibbons, US District Court Judge for the Western District of Tennessee. After a short stay with the law firm of Reed, Smith, Shaw & McClay in Washington DC, Ms. Lipman returned to Memphis where she has had a successful career. She currently serves as the University Counsel and Interim Chief of Staff to the President at the University of Memphis.

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

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
Paul T. Sumrall
Suite 2303
1 Post Office Square
Boston, MA 02109-2129

SECOND CIRCUIT
Jeh C. Johnson
1285 Avenue of the Americas
New York, NY 10019-6064

THIRD CIRCUIT
Karol Corbin Walker
1 Riverfront Plaza
Floor 16
1037 Raymond Boulevard
Newark, NJ 07102-5423

FOURTH CIRCUIT
Willis P. Whichard
501 Eastowne Drive #310
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
946 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 270
1101 College Street
Bowling Green, KY 42102-0270

SEVENTH CIRCUIT
Patricia Costello Sowiak
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
Charles A. Weiss
Suite 3600
211 N. Broadway
Saint Louis, MO 63102-2769

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl L. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Goh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Frank K. Argintar
Courthouse Tower
Floor 8
44 West Flagler Street
Miami, FL 33130-6802

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066-1743

FEDERAL CIRCUIT
Ellen L. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

STAFF COUNSEL
Denise A. Cardman
202-662-1761
denise.cardman@americanbar.org

AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

Please respond to:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

RECEIVED OCT 18 2013

VIA EMAIL AND FIRST-CLASS MAIL

September 20, 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 Stanley Allen Bastian to the United States District Court for the Eastern District of Washington***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Stanley Allen Bastian who has been nominated for a position on the United States District Court for the Eastern District of Washington. As a result of our investigation, the Committee is of the opinion that for this position, Mr. Bastian is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. Bastian.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Stanley Allen Bastian, Esq. (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 Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on August 29, 2013.

Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
Paul E. Summit
Suite 2300
1 Post Office Square
Boston, MA 02109-2129

SECOND CIRCUIT
Jeh C. Johnson
1285 Avenue of the Americas
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Karol Corbin Walker
1 Riverfront Plaza
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1037 Raymond Boulevard
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Willis P. Whichard
501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
544 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. Inglish, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Cesarffo Slovak
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
Charles A. Weiss
Suite 1680
211 N. Broadway
Saint Louis, MO 63102-2769

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

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Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Goh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Frank R. Angones
Courthouse Tower
Floor 8
44 West Flagler Street
Miami, FL 33130-6802

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066-1743

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:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

RECEIVED OCT 18 2013

VIA EMAIL AND FIRST-CLASS MAIL

September 20, 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 Manish Suresh Shah to the United States District Court for the Northern District of Illinois***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Manish Suresh Shah who has been nominated for a position on the United States District for the Northern District of Illinois. As a result of our investigation, a substantial majority of the Committee is of the opinion that Mr. Shah is Well Qualified, a minority of the Committee is of the opinion that Mr. Shah is Qualified, and one recusal recorded.

A copy of this letter has been provided to Mr. Shah.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Manish Suresh Shah, Esq. (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 Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on August 29, 2013.

Congressman Steve Cohen
Introducing Sheryl Lipman to the Senate Judiciary Committee
Statement for the Record
November 13, 2013

I thank the Committee for this opportunity to say a few words about Sheryl Lipman, the President's nominee for the District Court for the Western District of Tennessee.

I was proud to recommend Ms. Lipman to President Obama and I appreciate the Committee's consideration of her nomination today.

Her breadth of experience, strong work ethic, and unimpeachable integrity easily made her the overwhelming first choice of the diverse and bipartisan ad hoc screening committee that I convened to help me with the selection, which included attorneys from the Memphis Bar Association, the Women's Bar Association, the Federal Public Defender's office in Memphis, and prominent local attorneys.

Ms. Lipman, the Chief of Staff to University of Memphis Interim President R. Brad Martin, has been an attorney since 1987 and in that time has gained a wealth of legal experience.

Throughout her career, she has proven herself a stellar attorney and I am confident that she will be a superb judge.

After attending the University of Michigan for her undergraduate degree, Ms. Lipman received her J.D. from the New York University School of Law.

She first clerked for the Honorable Julia S. Gibbons, who now sits on the Sixth Circuit Court of Appeals, when Judge Gibbons was a District Court Judge.

Ms. Lipman was then an attorney at the Wyatt, Tarrant & Combs law office in Memphis for more than 4 years before practicing at the venerable Burch, Porter and Johnson law firm from 1997 to 1999.

From 1996 to 1997, she also served as Vice President of Comprehensive Services at the Memphis Race Relations & Diversity Institute.

And for the last 14 years, Ms. Lipman has worked at the University of Memphis—first as Senior Attorney, then serving as University Counsel for more than a decade before being named Chief of Staff to Interim President R. Brad Martin.

I am glad that President Obama took my recommendation into consideration and nominated such a skilled Memphis attorney to the federal bench, and I commend the Senate Judiciary Committee for holding this hearing and moving forward with her nomination.

When confirmed, Sheryl Lipman will serve the Western District of Tennessee with distinction.

Thank you.

NOMINATION OF DAVID JEREMIAH BARRON, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIRST CIRCUIT

WEDNESDAY, NOVEMBER 20, 2013

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:35 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Grassley, Lee, and Cruz.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Today we are going to welcome David Barron, a professor at Harvard Law School and President Obama's nominee to the U.S. Court of Appeals for the First Circuit. I had hoped to also include the five nominees for the judicial emergency vacancies in the District of Arizona in this hearing, but we have not yet received the blue slips from the Arizona Senators. So once they return those blue slips, we can include them.

Before we start the hearing, I would note that one of my heroes is here: Justice John Paul Stevens. He is here on behalf of Mr. Barron, his former law clerk, and if we were a couple minutes late, it is because Justice Stevens and I have to get caught up when we see each other and tell tales. But, Justice, it is always great to see you, and thank you for being here.

Do you wish to say something?

Senator GRASSLEY. Oh, are you ready for me?

Chairman LEAHY. Sure.

Senator GRASSLEY. Do you have a statement?

Chairman LEAHY. I just did.

Senator GRASSLEY. Then I will assume some of his time.

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

Senator GRASSLEY. Today we are holding the 17th judicial nomination hearing of the year, during which we will have considered a total of 58 judicial nominees. I would note this is the fourth nomination hearing in 4 weeks, so anyone who says Republicans are engaging in unprecedented obstruction is ignoring the cooperation that we Republicans have shown and I as Ranking Member trying to work with the Chairman.

Compare the record on hearings for President Obama this year with how President Bush was treated in the fifth year of his Presidency.

In 2005, the final judicial nomination hearing was held on November 15th. That was not the 17th hearing of the year, as we have done this year, but only the sixth hearing on lower court judges. During those six hearings we heard from not 58 judicial nominees, but only 15 district and circuit 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 eight Congresses. Our work in Committee last year contributed to that accomplishment when we held 10 hearings for 41 judicial nominees.

In addition, I would like to have everybody be reminded that we have now confirmed 38 lower court Article III 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 district and circuit nominees had been confirmed.

In total, the Senate has confirmed 209 lower court Article III judges. This includes a significant number of women and minority nominees. We could have confirmed more judges over the last couple of weeks, but the Senate majority decided to take precious floor time for a diversionary political exercise rather than confirming additional judges.

Now, as I explained earlier this week, the other side has been working diligently to manufacture a crisis on the D.C. Circuit. And in order to support their claim that the Republicans are obstructing nominees, it appears the other side is doing a sleight of hand on the data as well.

Recently, one of my colleagues stated that the Senate Republicans have filibustered 34 of President Obama's nominees. So if you pay attention, you would know that Republicans have filibustered only a handful of nominees. So what are the facts? How does the other side get to 34?

To begin with, fully one-half of these cloture petitions were filed by the majority on day one as a procedural gimmick and were totally unnecessary. None of those 17 cloture petitions required a vote. Every cloture petition was withdrawn, and every single one of these nominees was confirmed. So that was just another part of manufacturing a crisis.

So that leaves us 17 of the 34. But Republicans have not filibustered anywhere close to 17 nominees. So, again, the real story is:

Of the remaining 17 cloture petitions, 6 of those were also withdrawn. That leaves only 11 nominees who have actually faced a cloture vote. One of these nominees had 2 cloture votes, for a total of 12 cloture votes. Yet 6 of those 11 nominees were confirmed. That leaves only 5 nominees who have failed to achieve cloture vote.

So to sum up, the majority claimed earlier this week, with great fanfare, that Republicans had filibustered 34 nominees, when we have actually stopped 5 nominees. And of those five, three are still pending in the Senate, leaving only two nominees actually defeated by filibuster.

I suppose that is what one is required to do in order to overstate the record established during this administration compared to what it was during the Bush administration.

During the Bush administration, Senate Democrats truly were unprecedented in their use of cloture against judicial nominees. In fact, they forced 30 cloture votes on judicial nominees, including a Supreme Court nominee.

So that is the factual record: 30 cloture votes during the Bush administration, 12 cloture votes during President Obama's term. Of those 30 cloture votes faced by President Bush's nominees, Senate Democrats obstructed nominees 20 times.

So to emphasize a point, during the Bush administration 20 cloture motions failed. Senate Democrats continued to obstruct judicial nominees 20 times.

So I think it is clear which party holds the record on delaying or obstructing confirmation. The number of cloture votes demanded by Senate Democrats on President Bush's nominees is two and a half times the number of cloture votes on President Obama's nominees. The number of times Senate Democrats refused to end debate is nearly three times what Republicans have done. Democrats clearly hold the record on delaying and obstructing.

I think we have treated President Obama in a fair manner, and he enjoys an outstanding record for his judicial nominees.

One final point on this charge that Republicans obstruct has left the Federal judiciary with high vacancies. The fact is President Obama's initial delay in nominations was the primary factor in the lower number of confirmations during the first term, resulting in the high number of vacancies.

Even now, 42 of 93 vacancies have no nominee. That is 45 percent of the vacancies with no pending nomination before the Senate. While this percentage recently has been reduced, it was the case for most of the Obama Presidency that the majority of vacancies had no nominee. Of the 38 judicial emergencies, 18 have no nominee. That would be 47 percent. The Senate cannot be held responsible for these vacancies where almost half the seats have no nominee.

Having set the record straight, let me now address today's nomination. I welcome the nominee, his family, and guests. This nomination has been pending in the Senate just 55 calendar days. I would note that President Bush's circuit nominees waited an average of 246 days for a hearing, more than four times the wait of this nominee.

Mr. Barron has an extensive record as an academic. He has written on a wide range of subjects. I think it would be fair to say that I probably do not agree with much of what he has written. But that is not necessarily the standard for my review of his qualifications to sit on the Federal bench.

I am interested in hearing his views on executive authority; on his work while on the Office of Legal Counsel; on his judicial philosophy, particularly what he calls "progressive constitutional outcomes"; and on a variety of other topics. I expect to address some of these today and will likely have a significant number of questions for answer in writing.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

This discussion is so fascinating, I have almost forgotten that we are here for Mr. Barron's nomination. But I do share the Ranking Member's concern about the number of vacancies on the Federal bench, and I would note there are 17 nominations pending on the Senate floor waiting for clearance by the Republicans, and we can lower that vacancy number by 17 this afternoon just by allowing them to be voted on.

Mr. Barron, please step forward. Do you solemnly swear that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BARRON. I do.

Chairman LEAHY. Mr. Barron, I have had the opportunity to meet your family when I came in, but please, so that someday in the Barron family archives, when they go back and find the transcript of this hearing, you will want to know who was here. So would you please tell me who you have here with you?

Mr. BARRON. I just want to make sure I do not forget someone, if that is what is going to be——

Chairman LEAHY. If you do, you are the one that is going to have to answer to it, not me.

[Laughter.]

Chairman LEAHY. Please go ahead, sir.

STATEMENT OF DAVID JEREMIAH BARRON, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIRST CIRCUIT

Mr. BARRON. First, I just want to express my great thanks to you, Senator Leahy, for chairing the hearing today, and Ranking Member Grassley for convening it, Senator Lee for being here, to the President for nominating me, and I just would like to introduce my family to you.

Right behind me is my wife, Juliette Kayyem, and next to her are my three children: my oldest, my daughter, Cecelia; my oldest son, Leo; and my youngest son, Jeremiah. Jeremiah told me he had an awesome gym class that he had to miss, so I appreciate his sacrifice for being here. Then Mallory Heath, who helps us with the kids, but we hope not this afternoon.

And then over here is my parents. That is my father, Jerome Barron, who taught constitutional law for over half a century, much of it at George Washington, just retired last year. And then my mother, who is an attorney in her own right, Myra Barron.

And then back this way I have a contingent of in-laws who are enthusiastic, and they have come. And that is my father-in-law, Robert Kayyem, and my mother-in-law, Milly Kayyem. And then my sister-in-law and her husband, Marisa Kayyem and James Watts. And then my brother-in-law, John Kayyem.

And then if I may, one other guest that I would like to just say something about, which is Justice Stevens, who I had the honor of clerking for and who has come here today. He instilled in me, as he has instilled in all of his law clerks, a deep reverence for the role of the Federal judiciary, so it is a particular honor to be able to testify before you today with him present.

[The biographical information of Mr. Barron appears as a submission for the record.]

Chairman LEAHY. I might note that the very first Justice of the Supreme Court I got to vote on as a Member of the U.S. Senate was John Paul Stevens. That was a very difficult confirmation. I think he was confirmed on one day, heard on the next, and passed out of the Senate on the third. It was not quite that much, but it was not much longer than that. It was just a very few days, and I know that in later years hearing President Ford speak of his pleasure in appointing him, and he was also confirmed unanimously.

Did you have a statement you wished to make, Mr. Barron?

Mr. BARRON. No, Senator. I am fine.

Chairman LEAHY. Thank you.

Well, you have spent much of your career as a professor of law at Harvard Law School and a career that, by every report that we have, was a very distinguished one. But what is going to be the most difficult aspect if your transition from being a professor of law to a Federal court of appeals judge, if you are confirmed?

Mr. BARRON. Senator, thank you for the question. It is a very different job. The role of an academic in teaching has certain attributes to it that are, I think, relevant. They teach you to be open minded, to consider the weak points and arguments, but also to learn how to see arguments in their best light, and to teach students that.

But the role of an academic is to think about broad patterns of law in more abstract ways, and I know from my experience in the Government that the actual legal questions when you have to give advice on them is to think about them in their particularity in connection with precedent and the role of precedent. And so going to the Federal bench really will call upon those skills in particular.

Chairman LEAHY. There is the obvious precedents of your own circuit, the First Circuit, that you would agree should be ignored only—well, not ignored but reversed only in the most extraordinary circumstances. Is that correct?

Mr. BARRON. It is correct, and also never by a member of a panel.

Chairman LEAHY. That is right. And, of course, if it is a decision by the Supreme Court, as the circuit court you are bound by it, are you not?

Mr. BARRON. Absolutely.

Chairman LEAHY. You know, I am constantly in readings, as we all are, looking at, I think, the extraordinary wisdom of our Founders of this country and the three branches of Government—two of them, of course, political, elected and so forth. The judiciary is not. It is supposed to stay out of politics. It is an undemocratic branch of our Government in that sense. And in the Federal judiciary, unlike in some State courts, this is a lifetime position.

Like many on this panel, I have argued a lot of cases in a lot of different courts—State, Federal, courts of appeals. I have always felt that whoever the litigant is, when they come in there, they should look at the judge and figure that they are not going to be—their case is not going to ride on who they are, whether they are Republican, Democrat, plaintiff, defendant, State respondent, whatever, rich, poor, so on.

Now, obviously any judge has their own feelings, their own opinions on things, personal opinions. But can you tell us as a panel,

whether I am arguing before you or anybody else—well, take it out of the realm of me arguing—no matter who the person is arguing, no matter who the two sides are, no matter what the issue is, that you can take it squarely and say, "I will make this on the merits and on the law"?

Mr. BARRON. Absolutely, Senator. The reason our rule-of-law system works as well as it does is precisely because the judges that people appear before have an obligation to set aside their personal views and decide it solely on the law, and it is what I am committed to doing and pledge would to do.

Chairman LEAHY. You also have to decide when you have a conflict of interest. I had a man who was a part-time Vermonter. While we had differing views of things, we became, I believe, good friends. There was an area where I disagreed with him, and that was later Chief Justice William Rehnquist. But prior to becoming Associate Justice on the Court, he served as Assistant Attorney General of the Office of Legal Counsel, and after he was confirmed as Justice, he participated in a case called *Laird v. Tatum*, where he cast the deciding vote in a 5–4 decision and dismissed the plaintiff's claims regarding a domestic surveillance program.

The reason I mention this, he refused to recuse himself even though he testified before the Senate Judiciary Committee defending the program as constitutional while he was the head of the OLC. So he had worked on this for some time, testified in defense of it, but then decided a case and whether it was constitutional or not.

Now, many of us felt—and I heard this from both Republicans and Democrats—that this may have been a violation of judicial ethics.

Now, I know you cannot disclose all the issues while you worked at the Justice Department, but what do you see as a recusal standard? What type of cases are you going to recuse yourself from?

Mr. BARRON. Senator, the standards have been set forth by Congress and then also set forth in the Canons of Judicial Ethics, and the standard is not just that there be no conflict but that there not even be an appearance of a conflict, and that would be the standard that I would honor in making these decisions, on executive branch lawyers' privilege to have the trust of making a variety of difficult decisions on very sensitive matters, and I think it is incumbent upon people who have those roles to take seriously, if they do have the honor of becoming a judge, to consider in the precise factual circumstances whether an appearance of a conflict would arise, and if it would, to recuse oneself from the case.

Chairman LEAHY. I know that we did not ask Chief Justice Rehnquist or Justice Scalia or Judge Bybee of the Ninth Circuit about all the cases they worked on in the OLC, nor are we going to ask you. But I think we have to look for the most transparency as possible.

There was one very high profile—and I realize my time has gone over, but I just discussed this with Senator Grassley, and he has no objection. Because when you led the Office of Legal Counsel at the Justice Department, during that time the memo authorizing the targeted killings of U.S. citizens overseas was issued.

Now, I have some serious concerns about the legal justification for such targeted killings. What is your view—first, what is your view on the legal and constitutional grounds for the targeted killing of an American overseas using a drone? And, second, how imminent must the threat to national security posed by such an individual be in order to justify such a strike?

Mr. BARRON. Senator, thank you for the opportunity to address the questions that you have asked. On the advice that may have been given by the Justice Department, you know, because of classification issues and confidentiality obligations, I do not feel free to discuss that. But in terms of the legal principles and legal issues that one has to consider, I do have some things that I would like to say in that regard.

It is as weighty an issue as arises in the legal system when a U.S. citizen is involved in an overseas operation, and the issue concerns the use of lethal force. And in thinking through those questions, there are three considerations, I think, that at a general level are critical.

The first is to inquire into the source of authority that the President is relying on and, in particular, whether the President is relying on an authorization that Congress has provided in connection with an armed conflict so that the operation would be directed and not against a U.S. citizen abstractly but against a person who was thought to be an enemy in that armed conflict. It would also be critical to see whether Congress had in any manner, in any measure limited the scope of that authority through other statutes that, pursuant to their broad war powers, they may have enacted.

And in construing those authorities, it would also be important to consider the laws of war that inform the statutory grants of authority that had been given to the President. But that is only on the authority side. There is also a question of constitutional guarantees that citizens enjoy, and——

Chairman LEAHY. And due process.

Mr. BARRON. And the constitutional guarantees are both substantive due process, procedural due process, Fourth Amendment concerns, and all of those have to be considered as to how they may apply in that circumstance.

In considering those questions, there is a variety of things that are going to be relevant to it. It is an overseas operation in the circumstance that you are talking about, and it matters where it has happened and what alternatives might be available to the Government.

You would want to know a whole bunch of factual circumstances about the nature of the circumstances on the ground, who the actor was, who might be the subject of such an operation. And I cannot stress that last point enough. The type of questions that you are asking about is a question that can only be answered, it seems to me, with the full understanding of the specific factual circumstances that are at issue. And the decision about it cannot stray from those factual considerations.

And then the last point, Senator, would be that in all the authorities and limitations that I mentioned, one has to take account of the precedents and the body of precedents that has developed

giving shape and content to what the meaning of those provisions are.

Chairman LEAHY. Thank you. Thank you very much.

Senator Grassley, I thank you for your usual courtesy.

Senator GRASSLEY. Well, thank you very much.

My first question is approaching the issue he brought up just from a different standpoint, more from how it got public. And I do not expect you to comment on the fact that I happen to believe that this administration is not meeting its most—its comment that it is going to be the most transparent in history, but it seems ironic that in some accounts, the administration has pursued leakers and the media that publishes classified information more aggressively than any other administration in history. At the same time, however, the administration appears to selectively declassify certain information based upon some argument of political considerations. So I think you know what I am getting at.

I have some questions about the leaked Office of Legal Counsel memo on targeted killings. October 8, 2011, Dan Savage, New York Times, wrote an extensive article discussing the memo. February of this year, the Chairman and I sent a letter to the President requesting access to the memo. Eventually, as the Chairman noted, in April the administration made the memo available to Members of this Committee.

According to the Times, you authored the memo. The Times article was highly detailed and makes it clear that the author had access to the classified memo. One commenter pointed out that Mr. Savage had had access to each discrete agreement, knew who the principal authors of that document were, and even knew the memo's page length.

Please explain how Mr. Savage came to have access to this classified memo. And then I have a three-part along that line: A, who gave Mr. Savage access to the memo? B, whether or not any administration official was authorized to grant him access? C, whether or not any administration official gave access without authorization?

Mr. BARRON. Senator Grassley, I have no idea what source the reporter in question may have been relying on.

Senator GRASSLEY. Okay. I am going to continue my questioning, and that does not mean I do not believe what you just told me.

Did Mr. Savage or anybody else from the New York Times contact you before publishing this story?

Mr. BARRON. Yes, Senator.

Senator GRASSLEY. Did you discuss any part of the memo with him?

Mr. BARRON. No, Senator.

Senator GRASSLEY. Have you spoken to Mr. Savage or anyone from the New York Times about this memo at any point before or after the New York Times published this report?

Mr. BARRON. No, Senator.

Senator GRASSLEY. Have you ever spoken to any reporter about this memo?

Mr. BARRON. No, Senator.

Senator GRASSLEY. Have you participated in any way in the unauthorized disclosure of the memo to any third party?

Mr. BARRON. Absolutely no, Senator.

Senator GRASSLEY. One scholar criticized the administration for "their refusal to save"—let me start over—"their refusal to say anything about it"—meaning the memo—"and at the same time essentially conducting the foreign policy of the United States by leaked journalism."

What is the justification for giving this information to a reporter but not to the general public in a redacted format consistent with national security?

Mr. BARRON. Senator, I am not sure I am in a position to answer the question exactly as you posed.

Senator GRASSLEY. Why don't you ask the question of yourself and answer it, and I will see if that satisfies me.

[Laughter.]

Mr. BARRON. Okay. I appreciate the chance to do that.

Transparency is an important value. As your question suggests, classification is a critical value as well. As an attorney giving advice to the executive branch, the authority to decide when to declassify something or when to waive a privilege does not reside with the attorney. It resides ultimately with the executive branch itself. And I respect the process by which they make those decisions. As you suggest, they should be made with integrity.

Senator GRASSLEY. As I study this response you just gave to me, I may have a followup question for answer in writing.

Now I want to go to another issue. You have been highly critical of previous administration approaches to the war on terror. In fact, in a 2006 radio interview, you were asked whether John Yoo, who worked in the same OLC office that you did, was a war criminal. You said, "People who take positions saying that it is legal for U.S. personnel to engage in torture have to expect that they are going to be raising questions about whether they are authorizing war crimes."

You went on to say, "It is not my place to say whether anyone committed crimes."

So in 2006, you suggested John Yoo may have authorized war crimes. Yet according to the New York Times, you authored a memo authorizing targeted killings of U.S. citizens abroad without due process. How do you distinguish between these two scenarios from a constitutional standpoint?

Mr. BARRON. Thank you, Senator. I think I should just say, since there is a reference to this memo that is coming up repeatedly, that because of the classification issues and the attorney-client privilege and other forms of privilege that apply, I do not want to be taken to be in any sense confirming the existence of the particular memo that was reported in the New York Times. But I say that only just to make that clear.

On the question that you raise, I am familiar with the interview in which I said that I had every reason to believe that Professor Yoo was acting in good faith when he offered the legal judgments that he did. But I was objecting in particular, and did on a number of occasions, to one particular form of constitutional argument that was being made in that administration, and it was a view of the President's power to act in violation of a statute that Congress had enacted restricting the rights or the authorities of the President

during wartime. I thought that that claim that the President alone was entitled to make those decisions was an overly broad claim, and that position ultimately was withdrawn, limited by attorneys within the Bush administration itself.

Senator GRASSLEY. Yes. So I think what I heard you say is, just what you said is that distinguishing between your position as you stated it in the radio program and your memo versus what you said. Is that what you just told me?

Mr. BARRON. Senator, I cannot speak to the merits of the memo, but what I am saying is that the particular concern that I was raising was a concern about the President acting in contravention of a statute on the ground that Congress could not limit his wartime powers.

Senator GRASSLEY. To this very day, do you believe that Professor Yoo potentially authorized war crimes?

Mr. BARRON. Senator, I do not quite know how to answer that question in the following sense, which is I do not believe Professor Yoo, even though I disagree with his arguments, did anything unlawful in any respect. And if there is any suggestion that that is what I was suggesting, I regret it and do not take that as my position.

With respect to the question you asked and the way you pose it, I am just hesitant to ask because I think it is hard to answer it without taking a position as to what the particular meaning of a criminal statute is in a particularized case. And I think given the position that I am before you seeking, I do not think it is appropriate for me to take a view on whether particular conduct was or was not criminal in a specific circumstance.

Senator GRASSLEY. I will have to quite in a couple of minutes because I am over the time that you—well, I will just stop whenever—I think it is about 2 more minutes.

You have written about progressive and conservative constitutionalism. I would like to have you explain those terms and which of those terms best describes your own view.

Mr. BARRON. Senator, I am glad to have a chance to address the question. As I reviewed back on the writings, I confess it is not entirely clear what content those terms have. I think it is fair to say that in academic circles they are an attempt to give some label to what are widely understood divergences on the Supreme Court over a variety of issues in the split decisions, which often come out 5–4.

As I noted in those articles, and others have, that is a kind of crude split. Justices do not invariably line up in any particular way. And as I reflect on those labels, I do not think they are particularly helpful in articulating anyone who is a judge, what their philosophy would be. It is not the role of a judge to come into it with a preconceived vision. What you are supposed to do is decide individual cases consistent with the facts and the law and the precedents that apply to them, and that is how I would approach it.

Senator GRASSLEY. I will stop with this last question.

You have written that you were concerned with decisions that only looked at prior Supreme Court opinions, statutes, and regulations. You said that this kind of constitutional decisionmaking, one

without looking to law reviews, literature, treatises, and such, can be "awfully cramped and technical" and that "lost in this approach is any sense of a broader legal culture that produces authoritative legal statements or the way in which such legal statements in turn shape the culture."

What role would law reviews, literature, and treatises have in your judicial decisionmaking if you get to the court?

Mr. BARRON. Much less than law professors would wish, I am sure. And I want to just clarify on that comment. I am aware of the writing that you are talking about. It was a blog post, and in it I was making an observation, a very early observation about opinions from a Justice. And I noted in that same blog post that there was also much to be said for what I called, I think, in the blog post a "just-the-facts, just-the-law approach." And it was really to raise that issue rather than to take a position on it.

Certainly, as Justices sometimes do, treatises and law reviews can be relevant in the sense that they organize material, but they are not the authoritative sources of authority. The authoritative sources of authority are the text of the statutes, the text of the regulations, the text of the Constitution itself, and the material that gives insight into what the meaning of those was intended to be when they were enacted. And then, of course, the precedents, both the circuit court precedent that binds a circuit court judge and the Supreme Court precedent that binds all judges.

Senator GRASSLEY. I will submit questions for answer in writing.

Chairman LEAHY. Without objection.

[The questions of Ranking Member Grassley appear as submissions for the record.]

Chairman LEAHY. Senator Lee.

Senator LEE. Thank you very much, Mr. Chairman, and thank you, Professor, for being with us today.

I want to start by picking up where Senator Grassley left off. So you would agree, then, that the only authoritative legal statements, generally speaking, that you look to as a judge would be those that are actually produced by one of the three branches of Government. Correct?

Mr. BARRON. I absolutely agree with that.

Senator LEE. And yet that is not at all what you were saying in this blog post. I mean, what you were saying in this blog post is that lost in this approach, meaning lost in the approach taken by Chief Justice Roberts, whose opinion you were critiquing on that particular day, is any sense of the broader legal culture that produces authoritative legal statements, and so you were comparing and contrasting those two. And I understand that you are saying—you were raising a question, and you made some arguments for both sides. But I read through that post, and it looks like you made a lot more arguments on one side than the other. Regardless, you did indicate that you have your suspicions regarding this kind of practice, and you said, "I have my suspicions that this kind of practice is intentional."

Do you approach this sort of thing with suspicion?

Mr. BARRON. Senator, far from it, and I think, you know, I have supplied the published opinions that I signed when I was at the Office of Legal Counsel, and among them is a best practices memo-

randum that I gave to the attorneys who worked for me, the career attorneys in the office, as well as the deputies. In that document I made clear that the traditional sources of meaning are what one looks to. When one is dealing with a statute, it is the text and the traditional tools of construction of that text. When it is the Constitution, it is the text and the purposes that underlie it. And in the opinions that I signed when I was in that office, those were the sole sources that I relied on for authoritative legal determinations.

Senator LEE. Okay. So that is more the approach you would take if you were confirmed than the approach you suggested in this——

Mr. BARRON. Absolutely.

Senator LEE. Okay. I want to turn next to an article you wrote in Dissent Magazine in 2005. It is called "Reclaiming federalism." On page 66 of that article, you wrote as follows: "There is precious little in the Constitution's text or history of its adoption that compels the particular conservative allocation of national and local powers favored by the Rehnquist Court." Tell us what you mean by that, because as I see it, it is not just a feature. It was perhaps the single most important feature of the Constitution and to the generation that adopted it, that drafted it, that ratified it, was that we would have a national government whose powers would be few and defined, while those reserved to the States would be numerous and indefinite. This seems to be suggesting precisely the opposite.

Mr. BARRON. Senator, the reason that motivated me to write that article was that a number of professors were taking the position that the so-called federalism revival, *Morrison* and *Lopez*, were really inconsistent with the constitutional structure and that——

Senator LEE. And should that——

Mr. BARRON. And I do not share that view, and part of the reason I was writing at that time was to make plain that it did not seem to me that one could just dismiss the *Morrison* and *Lopez* arguments, that there are limits to the scope of national power. And in my writings, I have tried to make sense of what those limits are under *Lopez* and *Morrison* and the importance of them.

Senator LEE. Okay, but you did say in this that there is precious little in the Constitution or its history or its adoption that compels a particular conservative allocation of power between the Federal Government and State and local governments.

Mr. BARRON. I did—I did write that sentence——

Senator LEE. Do you mean that?

Mr. BARRON. Could I just clarify that for one moment, which is, when I—the precise allocation, part of a point that I have made in that writing, but I think in another writing, was that the shape of the limits that the Court has imposed as a matter of federalism have changed at times. The *National League of Cities* approach is different than the approach that was set forth in *Lopez* and *Morrison*, and I do not think you could read the constitutional—I was arguing in those academic writings. I do not think you could read the Constitution to make it clear that *National Cities* was wrong versus *Lopez* was wrong. That was the point I was trying to make in that setting about what the shape of the doctrine would look like.

But as to your basic point as to my beliefs, my personal beliefs would not be the guide for me as a judge, and my beliefs are that

federalism is a critical component of our constitutional structure, and that any judge is bound by the precedents of the Court as articulated.

Senator LEE. Okay. That is not consistent with the statement we just read, but let us move on. There is a different statement in the same article that I think sheds some further light on it. You conclude with the statement that, "federalism is what we make of it. Rehnquist and his conservative colleagues have been making the most of it for more than a decade. It is time for progressives to do the same." So when you say federalism is what we make of it, is federalism an ass that we drive to one way or another? Is federalism that which those wearing black robes happen to think that it ought to mean? Is it a means by which we achieve a particular outcome?

Mr. BARRON. Senator, I absolutely do not believe it is, and in that same piece, I made a point of saying that it has to have integrity as a doctrine and it cannot be just what is a good policy outcome. Judges should not be deciding issues in that regard. What their obligation is is to enforce federalism as manifest in the text of the Constitution and also in the precedents of the Court that have developed, and that is what I would do as a judge.

Senator LEE. Are we going to have time for another round?

Chairman LEAHY. We may have to come back this evening, but yes, if you want one.

Senator LEE. Could I have 2 more minutes on this round of questioning if we cannot get another round?

Chairman LEAHY. I am the easiest-going guy in the world.

Senator LEE. You are, you are. And we all love you for it.

Chairman LEAHY. Go right ahead.

Senator LEE. Thank you very much. We have a very benevolent Chairman. He is from Vermont, and the people of Vermont are well served by him.

Chairman LEAHY. He is saying that, hoping that with that endorsement there will be a recall petition on me in Vermont.

[Laughter.]

Chairman LEAHY. Go ahead, Senator Lee.

Senator LEE. Thank you.

There is another document here in which you have written that, "It has long been a precept of the progressive view that the Constitution is not frozen and even recent conservative judicial nominees seem hesitant to challenge that notion. Its provisions are in important respects simply too open-ended and forward-looking for that not to be the case, and the deficiencies of pure originalism are now too well known."

So do you—wouldn't you agree, though, Professor, that the whole point of having a Constitution is having some law that is in some very important, meaningful respects frozen—frozen and to a very significant degree taken off the table, rendered immune from the vicissitudes of changing public opinion, separated by a couple of degrees from changing public opinion and from the way voters vote? Isn't that the whole point of a Constitution, is to have something that is frozen?

Mr. BARRON. I do agree with that, and that is particularly true of a Constitution like ours, which is a written Constitution.

Senator LEE. And yet you were saying that an approach that focuses on textualism and originalism, trying to focus on what the language itself said, says, and how it was understood at the time it was drafted and ratified, you were saying that that is sort of a cramped, overly inflexible sort of approach.

Mr. BARRON. Senator, if I can just elaborate on it a bit, there are many instances in which the original intention and the text of the Constitution compel an answer. And when it does, a judge has no warrant to go beyond it. Even when it does not clearly compel it because the Framers themselves seemed divided on the issue, the precise technology that they were talking about at that time is so different than the technology that has developed, the obligation of a judge is to use as the foundation point of the analysis what evidence there is of what was the purpose and intention of the Framers; but there are circumstances in which the Court itself has made clear in which the practice of the branches over time with respect to an open issue can be determinative of legal decisionmaking. That is a point that has been made in the war powers context many times. It does not mean that the original intentions do not matter. It just means that when there is a general provision and the purposes it is hard to know from looking solely to those sources, as Justice Jackson said in the wartime context, they can be as hard to figure out as the dreams of Joseph, that we have no choice but to see how the branches themselves have operated over time. But that is a particular aspect of our constitutional jurisprudence, and, of course, the precedents of the Court guide judges as to when to use that mode of analysis as opposed to the originalist analysis you are discussing.

Senator LEE. Thank you, Professor, and I thank the benevolent Chairman.

Chairman LEAHY. Senator Cruz, you are next for the benevolence.

Senator CRUZ. Well, thank you, Mr. Benevolent Chairman.

Professor Barron, thank you for being here. Welcome. You and I have known each other a long time. We went to law school together, and we have always gotten along well. And I would note, then as now, that you have always been a man of the left, and you have emphatically and effectively advocated positions, very liberal positions, both as a policy matter and a legal matter. And I respect that consistency.

I would be less than candid if I did not confess that I have concerns that that life of advocacy is not consistent with the role of a lifetime Federal judicial appointment, and so I would like to spend some time discussing that. And I would like to just start with a general question. Do you embrace the notion of a living Constitution?

Mr. BARRON. As I said to Senator Lee, what I understand the Constitution to be is a written Constitution whose words cannot be changed by a judge and are in that sense frozen. And to the extent that the original intentions are not knowable in certain contexts or cannot be resolved clearly, the Court and the precedents of the Court make clear that in some instances it is appropriate to look to the practices of the branches to give shape and meaning to them.

Senator CRUZ. So is that a yes or no on a living Constitution?

Mr. BARRON. I think it is a no in the way that, if I am understanding, you are asking whether I agree with what a living Constitution is.

Senator CRUZ. You have also written in defense of what you have characterized as a progressive view of the Constitution, which is an altogether appropriate view for someone in the academy to advocate. But you have discussed that progressive view of the Constitution not from the perspective of an academic but from the perspective of how courts should enforce it. And, indeed, you have written in favor of what you described as "the progressive potential of a significant wielder of power," the courts. And you went on to embrace the notion that the courts should, as you described it, "conscientiously arrive at progressive constitutional outcomes." And I would like to ask if those are still your views and if you think it is appropriate for courts to conscientiously arrive at progressive constitutional outcomes.

Mr. BARRON. If the idea is that the task of a judge is to come to that outcome because it is a progressive outcome, I most emphatically disagree with that position. Any outcome that is reached has to be based not on the progressive or conservative impulses of the judge that they may have had in a life before they were a judge. The only thing that can be determinative is the legal position. And if I may, to try and give you some confidence that I truly do mean that, I guess I would point to a couple of things, which is the quality and content of the opinions that I wrote when I was entrusted with making decisions as a legal adviser on sensitive matters, and then in addition, I was gratified by the letters in support of my nomination by people who I think quite clearly reject the idea of a living Constitution, who know me from a variety of circumstances, and believe that the way I would conduct myself as a judge is in accord with what I am saying to you today.

Senator CRUZ. I would note that one criticism that has been leveled at you is that you were highly critical of Executive power when it was administered by a Republican, George W. Bush, and then very defensive of Executive power when it was exercised by Democratic President Barack Obama. And some have suggested that suggests less than consistency or the impartiality that we would hope to see in a Federal appellate judge.

In your view, are there instances in which President Obama has exceeded his Executive authority?

Mr. BARRON. Senator Cruz, I do not feel I am in a position to comment on that beyond the circumstances in which I gave advice about the particular questions that were presented to me.

Senator CRUZ. Let me help you on that. Setting aside your time at OLC, where you had the responsibility as a lawyer, I am asking for your view as an academic and commentator. When George W. Bush exceeded his legal power and ordered the State courts to obey the World Court, I spoke out loudly against that and, indeed, litigated the position against the President before the Supreme Court. I am asking, Have you publicly criticized President Obama in your capacity as an academic for ever exceeding Executive power?

Mr. BARRON. I have not written about Executive power since returning to academia, if I recall. But can I just answer the thrust of the question? Because I do think this is important.

There was a lot of criticism lodged against the prior administration by academics. The particular criticism that I lodged was one in particular, and it concerned the authority of the President of the United States as commander-in-chief to act in the conduct of war unrestricted by statute. That was the subject of the constitutional analysis—or it was not an analysis. It was the academic writing that I devoted myself to figuring out what the answer to that question was. But I tried to be tailored; though I felt strongly about that particular issue, that was the particular claim that I was focused on.

Senator CRUZ. And if I may ask one final question. What is your view of the critical legal studies movement in the legal academy?

Mr. BARRON. Senator, I have not thought about the critical legal studies movement in a long time. I just—in all honesty, I know it was a movement that, I think by the time you and I were in law school, was—"dead" is probably an unattractive word for it from the eyes of the people who were part of it, but I have no view about it.

Senator CRUZ. Thank you, Professor Barron.

Chairman LEAHY. I just want to put into the record—we have had a lot of letters as part of Mr. Barron's nomination, but among those, some from former Reagan administration Solicitor General Charles Fried, former George W. Bush administration head of Legal Counsel Jack Goldsmith, and I would just note that Professor Goldsmith writes, "David is one of the smartest lawyers I know and has deeply learned the law. He also has a great lawyer's capacity to see a problem from all angles, to see non-obvious connections between legal principles, and understand the second- and third-order effects of legal decisionmaking. These are all very important qualities in successful judging." And without objection, we will put those letters and the others in the record.

[The letters appear as submissions for the record.]

Chairman LEAHY. Senator Grassley.

Senator GRASSLEY. On May 16, 2003, you and other law professors wrote to then-Senators Bill Frist and Tom Daschle regarding the use of the filibuster. In that letter, which I will make part of the record, you stated that the filibuster "reflects the Senate's long-standing respect for minority views and underscores the unique role of the Senate as a part of American democracy."

You also wrote that, "With regard to nominations to an independent branch of Government, such as the judiciary, the filibuster encourages the President to find common ground with the Senate on nominating individuals who can garner consensus."

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

Senator GRASSLEY. Do you still agree with your assessment in that letter? And explain your answer.

Mr. BARRON. I do, Senator.

Senator GRASSLEY. Thank you. Well, I guess I better leave it there.

[Laughter.]

Mr. BARRON. Perhaps that gives some confidence that I am willing to make statements against interest, but . . .

Senator GRASSLEY. Yes. Now, I am going to lead into something that you think I am going to ask your opinion on what some other

judges have said. That is not my motive, but I want to give background for a question.

In 2011, the D.C. District Court ordered the Justice Department to release emails regarding then-Solicitor General Kagan's involvement with Obamacare litigation. In 2010, then-Solicitor General Kagan wrote you an email when you were Acting Assistant Attorney General for the Office of Legal Counsel. In that particular email, she asked whether you had seen former Judge Michael McConnell's "piece in the Wall Street Journal." She was referring to a March 15th op-ed in the Wall Street Journal in which Judge McConnell discussed the constitutionality of a proposal by House Democrats to avoid any additional votes on Obamacare legislation. The idea was to circumvent the vote on the exact language of the bill as passed by the Senate.

In response to that email, you replied, "Yes. He is getting this going." Presumably that was in caps.

Number one, what did you mean by that, "He is getting this going"?

Mr. BARRON. Senator, I want to just be hesitant in answering you for the only reason that I am not sure if that email has been publicly disclosed, and I would hate to say anything that might waive a privilege that I am not in a position to be able to waive. One possibility is I could——

Senator GRASSLEY. It is public.

Mr. BARRON. So one possibility is I could try and give you an answer in a written followup, if I could see the email.

Senator GRASSLEY. That is okay.

Mr. BARRON. Okay. I appreciate that. Thank you.

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

Senator GRASSLEY. But on the same line then, I have an A and B. Did you provide political guidance or legal counsel, either formally or informally, to anyone in the pending Obamacare legislation? I am not asking for you to disclose the specific counsel, advice, or opinion you may have offered, but I am asking you to identify what issue you may have addressed. Specifically did you provide, formally or informally, any advice on the following topics: the constitutionality of Obamacare; and, B, an assessment or judgment regarding possible litigation based on any proposed or actual procedural event that occurred in either chamber concering Obamacare?

Mr. BARRON. Senator, I appreciate the question, but I really—I think I can say this: It is the ordinary task of the Office of Legal Counsel to review legislation that is pending in Congress. But as to the substance of any information or advice that I gave while serving as an executive branch lawyer, I just do not feel that I am at liberty to say that without waiving a privilege that is not mine to waive.

Senator GRASSLEY. Thank you.

Chairman LEAHY. On the question of the Affordable Care Act, the Supreme Court has ruled on it, has it not?

Mr. BARRON. It has, Senator.

Chairman LEAHY. And you are bound by that ruling no matter how—whatever you felt one way or the other prior to the time of the ruling. Is that correct?

Mr. BARRON. Absolutely.

Chairman LEAHY. Thank you very much. No further questions. We stand in recess.

[Whereupon, at 3:31 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 20, 2013
Dirksen Senate Office Building, Room 226
2:30 p.m.

David Jeremiah Barron, to be United States Circuit Judge for the First Circuit

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   David Jeremiah Barron

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

   Circuit Judge for the United States Court of Appeals for the First 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.

   Harvard Law School
   1563 Massachusetts Avenue
   Cambridge, MA 02138

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

   1967; Washington, D.C.

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

   1991 – 1994, Harvard Law School; J.D. (*magna cum laude)*, 1994

   1985 – 1989, Harvard College; B.A. (*magna cum laude* with highest distinction in history), 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.

   1999 – present
   Harvard Law School
   1563 Massachusetts Avenue
   Cambridge, MA 02138

Chair of the Electronic Communications Policy Task Force (2013 – present)
Honorable S. William Green Professor of Public of Public Law (2011 – present)
Professor (2004 – 2011)
Assistant Professor (1999 – 2004)

1996 – 1999, 2009 – 2010
Office of Legal Counsel, United States Department of Justice
950 Pennsylvania Avenue, NW
Washington DC 20530
Consultant (July 2010 – December 2010)
Acting Assistant Attorney General (2009 – 2010)
Principal Deputy Assistant Attorney General (2009 – 2010)
Attorney Advisor (1996 – 1999)

1995 – 1996
Associate Justice John Paul Stevens
Supreme Court of the United States
One First Street, NE
Washington, DC 20543
Law Clerk

1994 – 1995
The Hon. Stephen Reinhardt
United States Court of Appeal for the Ninth Circuit
United States Courthouse
312 North Spring Street, Suite 1747
Los Angeles, CA 90012
Law Clerk

July – August 1993
N.A.A.C.P. Legal Defense and Educational Fund, Inc.
1444 I Street, NW, # 1000
Washington, DC 20005
Summer Legal Intern

June – July 1993
Covington & Burling, LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Summer Associate

January – May 1993
Harvard University
1563 Massachusetts Avenue
Cambridge, MA 02138
Teaching Fellow for Professor Morton Horwitz

Summer 1992
Ferguson, Stein and Watt (now, Ferguson, Chambers, and Sumter PA)
741 Kenilworth Ave.
Suite 300
Charlotte, NC 28204
Summer Legal Intern

January – May 1992
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138
First-Year Lawyering Instructor

1989 – 1991
The News and Observer
215 South McDowell Street
P.O. Box 191
Raleigh, NC 27602
Reporter (1989 – 1991)
Summer Intern (1989)

Other affiliations (uncompensated):

2013 – present
Massachusetts State College Building Authority
253 Summer Street #3
Boston, MA 02210
Board Member

2012 – present
Massachusetts Board of Higher Education
Massachusetts Department of Higher Education
One Ashburton Place Room 1401
Boston, MA 02108
Board Member (2012 – present)
Chair, Task Force on For-Profit Institution Oversight and Online Learning (2012 – present)

2008 – present
Rappaport Center for Law and Public Service at Suffolk University Law School
Suffolk University Law School
120 Tremont Street, Suite 110
Boston, MA 02108
Member, Advisory Board

1989 – present
The Harvard Crimson Graduate Board
The Harvard Crimson
14 Plympton St.
Cambridge, MA 02138
Member, Graduate Board

2007 – 2009
Harvard Law and Policy Review, Official Journal of the American Constitution Society
Harvard Law School
Cambridge, MA 02138
Member, Board of Advisors

Approximately 2007
American Society for Law and Policy, Harvard Law School Student Chapter
Harvard Law School
Cambridge, MA 02138
Faculty Advisor

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.

   None. 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.

   Scholar-in-Residence, Columbia Law School (January 2012)

   The Office of the Secretary of Defense Medal for Exceptional Public Service (November 2010)

   National Intelligence Exceptional Achievement Medal, from the Acting Director of National Intelligence (July 2009)

   Mark DeWolfe Howe Fellowship (1994)

   Harvard Law Review Articles Editor (1993 – 1994)

   Harvard Law Review Editor (1992 – 1993)

   Walter Spearman Award, North Carolina Press Association (1991)

President, The Harvard Crimson (1987 – 1988)

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 American Law Schools
Chair, Section on State and Local Government Law (2000)

American Bar Association

American Society of International Law
Roundtable of Experts on International Law and National Security (2011 – present)

Executive Session for: State Court Leaders in the 21st Century, Harvard Kennedy School of Government
Steering Committee (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.

New York, 1996

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.

New York, Third Appellate Division, 1996

There have been no lapses in membership.

11. **Memberships**:

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

American Constitution Society for Law and Policy, Harvard Law School Student Chapter (approximately 2007)
Faculty Advisor

Botanic Garden Children's Center (2006)
By-Laws Review Committee

The Harvard Crimson Graduate Board (1989 – present)

Harvard Journal of Real Estate (2012 – present)
Member, Faculty Advisory Board

Harvard Law and Policy Review, Official Journal of the American Constitution Society (2007 – 2009)
Member, Board of Advisors

Harvard Kennedy School of Government/Harvard Law School Joint Degree Program (2010 – present)
Co-Faculty Director

Harvard University Center for the Environment (2010 – present)
Faculty Associate

Harvard Urban Law Association, Local Government Law Forum, Harvard Law School (2000 – 2008, 2010 – present)
Faculty Advisor

Neiman Foundation (2002)
Fellows Selection Committee

Rappaport Center for Law and Public Service at Suffolk University Law School (2008)
Member, Advisory Board

Real Estate Academic Initiative, Harvard University
Core Faculty member

South Asia Institute, Harvard University
Member, Steering Committee

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 listed organizations currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

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

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

In Defense of Big Waiver, 113 Colum. L. Rev. 265 (March 2013) (with Todd D. Rakoff). Copy supplied.

Keith and the Good City, 45 U.C. Davis L. Rev. 1945 (June 2012). Copy supplied.

Judicial Independence and the State Court Funding Crisis, 100 Kent. L. J. 755 (2011-2012). Copy supplied.

Local Government Law (West 2010) (5th ed., 4th ed., 3rd ed.) (with Gerald Frug and Richard Ford). Hard copy of fifth edition supplied.

Teacher's Manual to Local Government Law (West 2010) (5th ed., 4th ed., 3rd ed.) (with Gerald Frug and Richard Ford). Hard copy of fifth edition supplied.

Foreword: Blue State Federalism at the Crossroads, 3 Harv. L. & Policy Rev. 1 (2009). Copy supplied.

The Dirty Dozen's Dirty Secret: The Conservative Legal Movement's Legitimacy Crisis – Part II, ACSblog, August 12, 2008. Copy supplied.

The Dirty Dozen's Dirty Little Secret: The Conservative Legal Movement's Legitimacy Crisis – Part I, ACSblog, August 11, 2008. Copy supplied.

From Takeover to Merger: Reforming Administrative Law in an Age of Agency Politicization, 76 Geo. Wash. L. Rev. 1095 (August 2008). Copy supplied.

M/Box, C/Box and the Old Logic vs. Experience Chestnut, Slate Convictions, July 2, 2008. Copy supplied.

Roe and Heller and the Limits of Partisan Entrenchment, Slate Convictions, July 1, 2008. Copy supplied.

Roe, Heller, Politics, and Jack, Slate Convictions, June 28, 2008. Copy supplied.

Of Heller, Roe, and Politics, Slate Convictions, June 27, 2008. Copy supplied.

Super-Duper Exclusive!, Slate Convictions, June 20, 2008. Copy supplied.

McCain Reacts . . ., Slate Convictions, June 13, 2008. Copy supplied.

The President Reacts, Slate Convictions, June 12, 2008. Copy supplied.

First Thoughts on Boumediene, Slate Convictions, June 12, 2008. Copy supplied.

More on the Times FISA Story, Slate Convictions, June 10, 2008. Copy supplied.

Enough With Superdelegates, What About the Electoral College, Slate Convictions, June 6, 2008. Copy supplied.

The Guantanamo Cases – Suppose the Supreme Court Gives Congress Advice . . ., Slate Convictions, June 2, 2008. Copy supplied.

Beating a Dead Horse With a New Stick – Once More on Wiretapping, Slate Convictions, May 23, 2008. Copy supplied.

Who Says Legislation Threatens Property Rights..., Slate Convictions, May 23, 2008. Copy supplied.

McCain Speech on Judges, Slate Convictions, May 6, 2008. Copy supplied.

Most Intriguing Author Line Ever, Slate Convictions, April 28, 2008. Copy supplied.

Voter ID: Nobody Knows Nothing and That Might Be Good, Slate Convictions, April 28, 2008. Copy supplied.

World Warms, EPA Chills, Slate Convictions, April 15, 2008. Copy supplied.

The Joke That Is Home Rule: A New York Story, April 9, 2008. Copy supplied.

Radicals in Robes? Check Out This Story on Whether Illegal Immigrants Can Sue?, Slate Convictions, April 1, 2008. Copy supplied.

And Now for Something Completely Different – Inclusionary Zoning, March 30, 2008. Copy supplied.

Eric's Surprising Argument for Why Bush Acted Irresponsibly in the FISA case, Slate Convictions, March 28, 2008. Copy supplied.

There May be Hard Cases But . . . the FISA Story Isn't One of Them, Slate Convictions, March 27, 2008. Copy supplied.

What's in a Name? Medellin, and the Many Meanings of Binding, Slate Convictions, March 26, 2008. Copy supplied.

Binary Executive – Take II, Slate Convictions, March 20, 2008. Copy supplied.

Heller, Casey and Party Politics, Slate Convictions, March 20, 2008. Copy supplied.

Binary Executive Redux, Slate Convictions, March 17, 2008. Copy supplied.

The Binary Executive?, Slate Convictions, March 17, 2008. Copy supplied.

City Bound: How States Stifle Urban Innovation (Cornell 2008) (with Gerald E. Frug). Hard copy supplied.

The Commander in Chief at the Lowest Ebb – A Constitutional History, 121 Harv. L. Rev. 941 (February 2008) (with Martin S. Lederman). Copy supplied.

The Commander in Chief at the Lowest Ebb – Framing the Problem, Doctrine, and Original Understanding, 121 Harv. L. Rev. 689 (January 2008) (with Martin S. Lederman). Copy supplied.

The Promise of Tribe's City: Self-Government, the Constitution, and a New Urban Age, 42 Tulsa. L. Rev. 811 (Summer 2007). Copy supplied.

City Limits, The Boston Globe, February 25, 2007 (with Gerald Frug). Copy supplied.

Joint Statement of Principles to Guide the Office of Legal Counsel, Dec. 21, 2004, *reprinted in* 81 Ind. L. J. 1348 (2006). Copy supplied.

A Rejoinder from Professor Barron, Harvard Law and Policy Review Online (Sept. 2006). Copy supplied.

Big Box Rules, LawCulture, August 14, 2006. Copy supplied.

Boxed Out, The Boston Globe, August 13, 2006. Copy supplied.

Untangling the Debate on Signing Statements, Georgetown Law Faculty Blog, July 31, 2006. Copy supplied.

Hamdan, Schamdan, LawCulture, July 11, 2006. Copy supplied.

What's Wrong With Conservative Constitutionalism: Two Styles of Progressive Critique and the Choice They Present, Harvard Law and Policy Review Online (July 2006). Copy supplied.

Hamdan and the NSA Issue: How Congress Should Respond to Yesterday's Ruling. LawCulture, June 30, 2006. Copy supplied.

Eminent Domain is Dead; Long Live Eminent Domain, The Boston Globe, April 16, 2006. Copy supplied.

Solving the Constitutional Crisis – Part III, LawCulture, March 31, 2006. Copy supplied.

It's Not Just Foreign Law They Don't Like..., LawCulture, March 6, 2006. Copy supplied.

Fighting Federalism With Federalism: If It's Not Just a Battle Between Federalists and Nationalists, What Is It?, 74 Ford. L. Review 2081 (March 2006). Copy supplied.

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Solving the Constitutional Crisis, LawCulture, January 19, 2006. Copy supplied.

So Much for the Kelo Backlash, LawCulture, January 16, 2006. Copy supplied.

Why (and When) Cities Have A Stake in Enforcing the Constitution, 115 Yale. L. J. 2218 (2006). Copy supplied.

"*Privatizing the Constitution: State Action and Beyond*" in The Rehnquist Legacy 345 (Craig Bradley ed., Cambridge University Press, 2006). Copy supplied.

International Local Government Law, 38 Urb. Lawyer 1 (Winter 2006) (with Gerald Frug). Copy supplied.

Make Eminent Domain Fair for All, The Boston Globe, Aug. 12, 2005 (with Gerald Frug). Copy supplied.

New London Case Not a Ruling to Condemn, Hartford Courant, June 26, 2005. (reprinted in multiple outlets under different titles) (reprinted version supplied).

Debate Pits Private Property Against Powers of the State, econoblog, WSJonline.com, May 19, 2005. Copy supplied.

Defensive Localism: A View of the Field from the Field, XXI J. of Law & Pol. 261 (Spring-Summer 2005) (with Gerald Frug). Copy supplied.

Reclaiming Federalism, Dissent, Spring 2005. Copy supplied.

Making Planning Matter: A New Approach to Eminent Domain, Harvard Design Magazine 71 (2005) (with Gerald Frug). Copy supplied.

Two Thoughts About the Future: One Concerning Courts, the Other Geography, American Constitution Society @ YLS blog, Nov. 29, 2004. Copy supplied.

Dispelling the Myth of Home Rule: Local Power in Greater Boston (Rappaport Institute for Greater Boston 2004) (with Gerald Frug and Rick Su). Copy supplied.

"*Dispelling the Myth of Home Rule: Local Power in Greater Boston*," Rappaport TODAY blog (March 16, 2004). Copy supplied.

Overruling Home Rule, 9 Commonwealth Magazine 15 (Winter 2004) (with Rick Su and Gerald Frug). Copy supplied.

Reclaiming Home Rule, 116 Harv. L. Rev. 2255 (June 2003). Copy supplied.

The Community Economic Development Movement: A Metropolitan Perspective, 56 Stan. L. Rev 701 (December 2003). Copy supplied.

After 9/11: Cities, 34 Urb. Lawyer 583 (Summer 2002) (with Gerald Frug). Copy supplied.

The Census As a Call to Action, XXIX Ford Urb. L. J. 1387 (April 2002) (with Gerald E. Frug). Copy supplied.

When Local Control Goes Out of Control; Ouch! A Taxing Lesson for the Nation's States, The Washington Post, July 15, 2001 (with Eric M. Zolt). Copy supplied.

A Localist Critique of the New Federalism, 51 Duke L. J. 377 (October 2001). Copy supplied.

Chevron's Nondelegation Doctrine, 2001 Sup. Ct. Rev. 201 (2001) (with Elena Kagan). Copy supplied.

Constitutionalism in the Shadow of Doctrine: The President's Non-enforcement Power, 63 J. Law & Contemp. Probs. 61 (Winter-Spring 2000). Copy supplied.

The Promise of Cooley's City: Traces of Local Constitutionalism, 147 U. Pa. L. Rev. 487 (January 1999). Copy supplied.

Civic Republican Administrative Theory: Bureaucrats as Deliberative Democrats," 107 Harv. L. Rev. 1401 (1994). Copy supplied.

Race-Based Districting and Minority Voting Rights, 107 Harv. L. Rev. 194 (1993). Copy supplied.

Book Note, Democracy and Dishonesty, 106 Harv. L. Rev. 792 (1993). Copy supplied.

Through on-line database searches, and a review of my own files, including a partial file of clips I had retained, I have identified a number of articles that I authored as a reporter for The News and Observer in Raleigh, North Carolina. However, I have not been able to locate other articles from the time period during which I was employed as a reporter at The News and Observer, and I was unable to obtain them from The News and Observer.

"Hoke Sheriff Fights for Job After Accusations of Bungling," The News and Observer, June 17, 1991. Copy supplied.

"POW-MIA Dispute May Aid N.C. Group," The News and Observer, June 10, 1991. Copy supplied.

"Repayment Waived on Error in Social Security," The News and Observer, June 7, 1991. Copy supplied.

"Saving Investors from Themselves," The News and Observer, June 3, 1991. Copy supplied.

"Pros, Cons of ILN's Legal Status," The News and Observer, June 3, 1991. Copy supplied.

"Tobacco Defended, Foes Roasted at Annual Meeting," The News and Observer, June 1, 1991. Copy supplied.

"Two Sons," The News and Observer, May 27, 1991. Copy supplied.

"Immigrant Scorpions not Welcome in Raleigh," The News and Observer, May 18, 1991. Copy supplied.

"Firm Closed as Pyramid Ploy Alleged," The News and Observer, May 17, 1991. Copy supplied.

"Day Care Parents Resent Implications of Hysteria," The News and Observer, May 15, 1991. Copy supplied.

"Parent Says PBS Show was Biased," The News and Observer, May 9, 1991. Copy supplied.

"Edenton Day-Care Mother Tells of Prosecutor's Threat," The News and Observer, May 8, 1991. Copy supplied.

"Arms Charge Foiled Supremacist's Goals," The News and Observer, May 6, 1991. Copy supplied.

"Raids on Bootleggers Seldom Plug the Flow," The News and Observer, April 28, 1991. Copy supplied.

"Friendly Undercover Visit – All in a Day's Work," The News and Observer, April 28, 1991. Copy supplied.

"When Life's a Beach, N.C. Ranks High," The News and Observer, April 28, 1991. Copy supplied.

"Body Sparks Chase on I-95," The News and Observer, April 18, 1991. Copy supplied.

"Thousands of Loved Ones Find the Waiting's Over," The News and Observer, April 16, 1991. Copy supplied.

"Lejeune, Pope Gain from Base Closings," The News and Observer, April 13, 1991. Copy supplied.

"USS Raleigh, Latest Ship Bearing City's Name, on Final Voyage," The News and Observer, April 10, 1991. Copy supplied.

"Shooting of Officer Baffling," The News and Observer, April 10, 1991. Copy supplied.

"Detective Gunned Down; 8 Charged," The News and Observer, April 6, 1991. Copy supplied.

"Videotape, Suspect's Help Lead to Arrest in Assaults," The News and Observer, April 5, 1991. Copy supplied.

"Sex-Abuse Trial Delayed; Charges Stand," The News and Observer, April 4, 1991. Copy supplied.

"Child Sex Abuse Trial Might be Delayed for Two Months," The News and Observer, April 3, 1991. Copy supplied.

"Wild Stories Cited as Sex Abuse Trial Starts," The News and Observer, April 2, 1991. Copy supplied.

"Tender Witnesses, Delicate Testimony," The News and Observer, March 31, 1991. Copy supplied.

"Homeless Deliver in Winston-Salem," The News and Observer, March 25, 1991. Copy supplied.

"Bulldogs Critically Maul Johnston County Boy, 2," The News and Observer, March 21, 1991. Copy supplied.

"Eagle Fliers Recall Sky Lit by Fire," The News and Observer, March 16, 1991. Copy supplied.

"Sudafed-Poisoning Response Questioned," The News and Observer, March 14, 1991. Copy supplied.

"82nd Makes Triumphant Return," The News and Observer, March 9, 1991. Copy supplied.

"Bragg Troops Return Today," The News and Observer, March 8, 1991. Copy supplied.

"POW's Wife Sees Husband Live on TV," The News and Observer, March 7, 1991. Copy supplied.

"Wife Says Seeing Airman Released was 'Like a Dream,'" The News and Observer, March 5, 1991. Copy supplied.

"Maker Recalls Sudafed," The News and Observer, March 4, 1991. Copy supplied.

"Gulf War Lifts Vietnam's Cloud from Fayetteville," The News and Observer, March 1, 1991. Copy supplied.

"Tears, Cheers Greet News 'War is Over,'" The News and Observer, February 28, 1991. Copy supplied.

"Ground War Weighs Heavy on Churchgoers around North Carolina," The News and Observer, February 25, 1991. Copy supplied.

"Families on N.C. Bases Feel Relief, Anxiety," The News and Observer, February 24, 1991. Copy supplied.

"Bragg Hospital Prepares Extra Beds for Casualties," The News and Observer, February 24, 1991. Copy supplied.

"Families Concern Officer," The News and Observer, February 23, 1991. Copy supplied.

"Peace Proposal Fails to Impress N.C. Military Circles," The News and Observer, February 22, 1991. Copy supplied.

"Military Bombing Range Gives Pilots a Realistic View of Iraqi Air Defenses," The News and Observer, February 19, 1991. Copy supplied.

"Families at N.C. Bases React Skeptically to Peace Rumor," The News and Observer, February 16, 1991. Copy supplied.

"Northampton Board Refuses to Overturn Incinerator Vote," The News and Observer. February 12, 1991. Copy supplied.

"N.C. Guard Apache Unit Put on Alert for Gulf Duty," The News and Observer, February 8, 1991. Copy supplied.

"Aid Sought for Towns Near Bases," The News and Observer, February 7, 1991. Copy supplied.

"Special Operations Soldiers Set Stage for Allied Victories," The News and Observer, February 1, 1991. Copy supplied.

"Departing Soldiers Leave Sperm in Banks," The News and Observer, January 29, 1991. Copy supplied.

"Quayle Offers Encouragement, Cheer to Pope, Bragg Families," The News and Observer, January 24, 1991. Copy supplied.

"F-15E Bristles with Equipment to Help Downed Pilots Survive," The News and Observer, January 23, 1991. Copy supplied.

"Prisoners a Grim Side of Gulf War," The News and Observer, January 22, 1991. Copy supplied.

"Children of Troops Struggle to Cope with Arrival of War," The News and Observer, January 18, 1991. Copy supplied.

"Role of 82nd Airborne Debated," The News and Observer, January 17, 1991. Copy supplied.

"News of the Attack Jolts the Home Front," The News and Observer, January 17, 1991. Copy supplied.

"N.C. Bases Step Up Security as Gulf War Starts," The News and Observer, January 17, 1991. Copy supplied.

"Waging Peace is Tough Battle for Student, Soldier's Wife," The News and Observer, January 16, 1991. Copy supplied.

"Troops' Early Return Brings Sense of Guilt," January 16, 1991. Copy supplied.

"Spouses Pray for Loved Ones," The News and Observer, January 15, 1991. Copy supplied.

"Families of Troops in Gulf Seek Their Peace in Prayer," The News and Observer, January 14, 1991. Copy supplied.

"Services Prepare for Families' Grief," The News and Observer, January 13, 1991. Copy supplied.

"Mother Asserts Innocence," The News and Observer, January 7, 1991. Copy supplied.

"Gulf Crisis Shows What Military Service Means," The News and Observer, January 1, 1991. Copy supplied.

"Wake Officers Gear for DWI Record," The News and Observer, December 30, 1989. Copy supplied.

"Raleigh Man Found Shot to Death in Chavis Park," The News and Observer, December 29, 1989. Copy supplied.

"Companies Say Prices May Rise," The News and Observer, December 25, 1989. Copy supplied.

"Cold Sends Triangle Folks Scurrying for Shelter, Heat," The News and Observer, December 23, 1989. Copy supplied.

"Car Device Will Check Some DWI Offenders," The News and Observer, December 22, 1989. Copy supplied.

"Explosion Destroys Day-Care Center; Children Escape," The News and Observer, December 21, 1989. Copy supplied.

"26 Indictments Scuttle Drug Ring, Police Say," The News and Observer, December 19, 1989. Copy supplied.

"N.C. Ranks High on Bad Rankings List," The News and Observer, December 17, 1989. Copy supplied.

"Museum Receiving More Trophy Heads," The News and Observer, December 15, 1989. Copy supplied.

"Offenders Still Drive After DWI," The News and Observer, December 14, 1989. Copy supplied.

"July Incident Linked to Crabtree Dispute," The News and Observer, December 9, 1989. Copy supplied.

"Colleges' Rivalry Hits Full Boil," The News and Observer, December 7, 1989. Copy supplied.

"Garner Man Killed When Train Hits Car," The News and Observer, December 1, 1989. Copy supplied.

"Fire Razes Fuquay Flea Market; Guard Injured," The News and Observer, December 1989. Copy supplied.

"Suspect Says Student 'Silently Insulting' Him," The News and Observer, November 30, 1989. Copy supplied.

"Traffic Survey Causes a Jam," The News and Observer, November 29, 1989. Copy supplied.

"Suspect in Maryland Slaying Skipped Probation in Wake," The News and Observer, November 28, 1989. Copy supplied.

"Oil Spills at School Offices," The News and Observer, November 28, 1989. Copy supplied.

"A Man's Personal Footnote to History," The News and Observer, November 22, 1989. Copy supplied.

"Police Look Closely at Whether Chases Are Worth the Risk," The News and Observer, November 21, 1989. Copy supplied.

"Toasts Mark Ratification of Constitution," The News and Observer, November 18, 1989. Copy supplied.

"Troopers Net More for DWI," The News and Observer, November 16, 1989. Copy supplied.

"DWI Arrests Soar Under Operation Eagle," The News and Observer, November 14, 1989. Copy supplied.

"Truck Driver Gets DWI Charge in 7-Vehicle Wreck," The News and Observer, November 10, 1989. Copy supplied.

"4 Willow Springs Teenagers Charged with Defacing Graves, School's Roof," The News and Observer, November 8, 1989. Copy supplied.

"3-vehicle Accident on I-40 Nets Charges," The News and Observer, November 7, 1989. Copy supplied.

"S.C. Man Found in Car's Trunk near Selma," The News and Observer, November 4, 1989. Copy supplied.

"Man on the Run Gets Ride from Deputy," The News and Observer, November 2, 1989. Copy supplied.

"Advocate Urges More Oversight of Museum," The News and Observer, November 1, 1989. Copy supplied.

"Some Think Hunters' Ties to Museums Unethical," The News and Observer, October 28, 1989. Copy supplied.

"Trophy Probe now Involves Two Coasts," The News and Observer, October 27, 1989. Copy supplied.

"Investigators Seeking Records, Gifts," The News and Observer, October 26, 1989. Copy supplied.

"Officials Learn Trophies Scattered Throughout City," The News and Observer, October 26, 1989. Copy supplied.

"N.C. Museum Curator Retires Amid Probe," The News and Observer, October 25, 1989. Copy supplied.

"N.C. Curator Investigated Over Endangered-Species Law," The News and Observer, October 24, 1989. Copy supplied.

"Wildlife Agents Investigate Curator," The News and Observer, October 24, 1989. Copy supplied.

"State Crime Up by 12 Percent," The News and Observer, October 24, 1989. Copy supplied.

"Cessna Crashes Near Knightdale," The News and Observer, October 24, 1989. Copy supplied.

"Stolen Safe Was Just Over His Head," The News and Observer, October 21, 1989. Copy supplied.

"Police Group Protests Searches," The News and Observer, October 21, 1989. Copy supplied.

"Baby Hurt in Bathtub Accident Dies," The News and Observer, October 19, 1989. Copy supplied.

"Memo Says Crabtree Mall Sought Cuts in Bus Service to Keep Black Teens Away," The News and Observer, October 14, 1989. Copy supplied.

"22 Drivers Face Charges in Cab Company Probe," The News and Observer, October 12, 1989. Copy supplied.

"Random Drug-Testing Plan to Begin for N.C. Inmates," The News and Observer, October 8, 1989. Copy supplied.

"Raleigh Family Homeless After Fire Guts Apartment," The News and Observer, October 7, 1989. Copy supplied.

"Body of Raleigh Clerk Found in Johnston Field," The News and Observer, October 6, 1989. Copy supplied.

"Police Have No Leads in Crown Clerk's Slaying," The News and Observer, October 6, 1989. Copy supplied.

"Body Thought to Be Missing Crown Worker," The News and Observer, October 5, 1989. Copy supplied.

"Police Benevolent Association Endorses Meeker for Mayer," The News and Observer, October 4, 1989. Copy supplied.

"Hostage Incident Resolved Peacefully," The News and Observer, October 3, 1989. Copy supplied.

"Wake Teenager Held After Shots Fired at Deputy Answering Domestic Call," The News and Observer, October 3, 1989. Copy supplied.

"Deputy Fired Upon; Wake Teenager Held," The News and Observer, October 2, 1989. Copy supplied.

"Portable Breath Analyzers Help Officers," The News and Observer, October 1989. Copy supplied.

"Wake Deputies Getting Semiautomatic Pistols," The News and Observer, September 28, 1989. Copy supplied.

"2 Inmates Escape Prison by Climbing Over Fence," The News and Observer, September 28, 1989. Copy supplied.

"2 Inmates Escape Prison by Climbing Over Fence," The News and Observer, September 28, 1989. Copy supplied.

"Officers' Complaints Fail to Sway Panel," The News and Observer, September 27, 1989. Copy supplied.

"Man Shot in Dispute in His Home," The News and Observer, September 27, 1989. Copy supplied.

"Law Officers' Group to Air Qualms About Management of Raleigh Police," The News and Observer, September 25, 1989. Copy supplied.

"Detectives Say Downtown Patrols a Pain," The News and Observer, September 22, 1989. Copy supplied.

"Lightning Strikes, Setting Two Fires in North Raleigh," The News and Observer, September 13, 1989. Copy supplied.

"Lightning Jolts Raleigh; Apartment, House Burn," The News and Observer, September 13, 1989. Copy supplied.

"Police Charge 15-Year-Old in Rash of Vandalism in Cary," The News and Observer, September 8, 1989. Copy supplied.

"Teen Charged in Cary Vandalism," The News and Observer, September 8, 1989. Copy supplied.

"Candidate's Brother Facing Tax Charges," The News and Observer, September 7, 1989. Copy supplied.

"N.C. Reaction to Bush's Proposal Mixed," The News and Observer, September 6, 1989. Copy supplied.

"Raleigh Man Charged with Bludgeoning Death on Bloodworth," The News and Observer, September 1, 1989. Copy supplied.

"Longtime House Leader Watkins Dies at Age 68," The News and Observer, August 27, 1989. Copy supplied.

"Players Suggest Their Own Team Rules on Drugs, Eligibility and Conduct," The News and Observer, August 26, 1989. Copy supplied.

"Man Charged With Forgery Arrested in Stabbing Case," The News and Observer, August 25, 1989. Copy supplied.

"Man Charged With Forgery Arrested in Stabbing Case," The News and Observer, August 25, 1989. Copy supplied.

"Raleigh Man Charged in Boylan Ave. Slaying," The News and Observer, August 24, 1989. Copy supplied.

"Raleigh Man Is Charged in Slaying," The News and Observer, August 24, 1989. Copy supplied.

"6 Hurt As Scaffold Falls at NCSU," The News and Observer, August 24, 1989. Copy supplied.

"Elderly Man Slain At His Home," The News and Observer, August 23 1989. Copy supplied.

"Raleigh Man Found Slain at His Home," The News and Observer, August 23, 1989. Copy supplied.

"GOP's Scarcity in City, County Offices Debated," The News and Observer, August 21, 1989. Copy supplied.

"Supercomputer Director Removed," The News and Observer, August 18, 1989. Copy supplied.

"State Supercomputer Director Is Removed," The News and Observer, August 18, 1989. Copy supplied.

"Sierra Club Wants New Look at Outer Loop," The News and Observer, August 17, 1989. Copy supplied.

"Sierra Club Seeks New Study on Outer Loop," The News and Observer, August 17, 1989. Copy supplied.

"Legislative Building Face-Lift Starts," The News and Observer, August 16, 1989. Copy supplied.

"Legislative Building Renovations Start," The News and Observer, August 16, 1989. Copy supplied.

"100-Foot Crane Tips at Raleigh Building Site," The News and Observer, August 15, 1989. Copy supplied.

"Group Spawned By Drug Sentence Hopes Concert's Message Clear," The News and Observer, August 13, 1989. Copy supplied.

"Pilot Loved Challenge of Flying," The News and Observer, August 13, 1989. Copy supplied.

"'Fast Eddie Lived for Flying – And Died for It," The News and Observer, August 12, 1989. Copy supplied.

"State Chills Out as Cold Air Mass Moves Through," The News and Observer, August 11, 1989. Copy supplied.

"Mix-up Is Taxing For Many," The News and Observer, August 10, 1989. Copy supplied.

"Council Opinions Divided on Impact of Coliseum Funds," August 10, 1989. Copy supplied.

"Council Opinions Divided on Impact of Coliseum Funding," August 10, 1989. Copy supplied.

"Accountants, Lawyers Find Goof Taxing," The News and Observer, August 10, 1989. Copy supplied.

"Officials Want $2 Million To Fix Up Executive Mansion," The News and Observer, August 8, 1989. Copy supplied.

"Make-Over Is Sought for Governor's House," The News and Observer, August 8, 1989. Copy supplied.

"Council Says Towing Firms Must Meet Regulations Or Lose Contracts With City," The News and Observer, August 3, 1989. Copy supplied.

"Heat Is On For Workers in Archdale Building," The News and Observer, August 2, 1989. Copy supplied.

"Temperatures Are Rising in High-Rise," The News and Observer, August 2, 1989. Copy supplied.

"Zebulon Declares War on Tap Water That Runs Brown," The News and Observer, August 1, 1989. Copy supplied.

"Zebulon Discussing 'War' on Brown Water," The News and Observer, August 1, 1989. Copy supplied.

"Gas Tax Hike Means Price Rises Tuesday," The News and Observer, July 29, 1989. Copy supplied.

"Triangle Roars for The Who," The News and Observer, July 28, 1989. Copy supplied.

"Aging Who Still With It, Say Fans of 60s, 80s," The News and Observer, July 28, 1989. Copy supplied.

"Many Tar Heels Favor Law Against Flag Desecration," The News and Observer," July 25, 1989. Copy supplied.

"Death Sparks Push for Skateboard Park," The News and Observer, July 23, 1989. Copy supplied.

"Cornerstone Yields Pieces of the Past," The News and Observer, July 21, 1989. Copy supplied.

"Cornerstone Holds Pieces of the Past from 130 Years Ago," The News and Observer, July 21, 1989. Copy supplied.

"Children Learn Rules of Roadway," The News and Observer, July 20, 1989. Copy supplied.

"Children Learn Rules of Road," The News and Observer, July 20, 1989. Copy supplied.

"Requests for Lead Tests Flood Raleigh Agency," The News and Observer, July 20, 1989. Copy supplied.

"Rolesville Names Mayor," The News and Observer, July 15, 1989. Copy supplied.

"'Bull Man' A Big Hit at Ballpark," The News and Observer, July 10, 1989. Copy supplied.

"Former Manager of Raleigh to Head State Retiree Group, "The News and Observer, July 8, 1989. Copy supplied.

"Family Footing It 600 Miles for Fun," The News and Observer, July 7, 1989. Copy supplied.

"Man, 73, Dies As Car Crashes, Catches Fire," The News and Observer, June 29, 1989. Copy supplied.

"Old-Time Cars Stroll Down Raleigh Lane," The News and Observer, June 28, 1989. Copy supplied.

"Old-Time Cars Stroll Down Raleigh Lane," The News and Observer, June 28, 1989. Copy supplied.

"Beer Ban Should Go, Panel Says," The News and Observer, June 27, 1989. Copy supplied.

"Bust Beer Ban, Council Panel Says to Raleigh," The News and Observer, June 27, 1989. Copy supplied.

"Mickey Mouse Will Lead Old Cars in Raleigh Today," The News and Observer, June 27, 1989. Copy supplied.

"Showcase Draws 19,000," The News and Observer, June 25, 1989. Copy supplied.

"Study Stirs Hope for Clearing Zebulon Water," The News and Observer, June 23, 1989. Copy supplied.

"Examination Stirs Up Hope for Clearing Zebulon Water," The News and Observer, June 23, 1989. Copy supplied.

Through on-line database searches, and a review of my own files, I have identified a number of articles that I authored while a student in college as a reporter and editorial writer for The Harvard Crimson, although there may be others in the archives of The Harvard Crimson that I have not been able to locate:

"Why We Need a Student Center," The Harvard Crimson, April 6, 1989. Copy supplied.

"A Parting Shot," The Harvard Crimson, Feb. 1, 1989. Copy supplied.

"Michigan, Coach Bo and The Game: A Game Reunion," The Harvard Crimson, Nov. 19, 1988. Copy supplied.

"Who's Helping Whom?" The Harvard Crimson, Sept. 27, 1988. Copy supplied.

"A Paranoid Pledge," The Harvard Crimson, Sept. 20, 1988. Copy supplied.

"Is Quayle a Boom or a Bust?" The Harvard Crimson, Aug. 19, 1988. Copy supplied.

"The Murder-Suicide of Abe Fortas' Political Career," The Harvard Crimson, Aug. 12, 1988. Copy supplied.

"Yeah, Gimme a Light," The Harvard Crimson, Aug. 8, 1988. Copy supplied.

"The Search for Czars: Campaign 88," The Harvard Crimson, Aug. 2, 1988. Copy supplied.

"Revealing the Private," The Harvard Crimson, July 6, 1988. Copy supplied.

"What Jesse Has to Do," The Harvard Crimson, July 1, 1988. Copy supplied.

"Making 'A Risk for Peace' Pay Off: Commencement Speaker," The Harvard Crimson, June 9, 1988. Copy supplied.

"Questioning Motives," The Harvard Crimson, June 7, 1988. Copy supplied.

"What More Do They Want on Jesse?" The Harvard Crimson, Apr. 6, 1988. Copy supplied.

"Freedom of the Press: For Whom? Roaming the Real World," The Harvard Crimson, Jan. 25, 1988. Copy supplied.

"Why Johnny Can't Rule: Roaming the Real World," The Harvard Crimson, Jan. 13, 1988. Copy supplied.

"An Awkward Situation," The Harvard Crimson, Dec. 7, 1987. Copy supplied.

"Foner Says No to Harvard; Columbia Prof Will Stay Put," The Harvard Crimson, Dec. 5, 1987. Copy supplied.

"For Whom the Bell Tolls: On Books," The Harvard Crimson, Nov. 16, 1987. Copy supplied.

"Movement That Didn't Move: Roaming the Real World," The Harvard Crimson, Nov. 9, 1987. Copy supplied.

"Dispute Ends Artifact Exchange," The Harvard Crimson, Oct. 28, 1987. Copy supplied.

"Geertz Serious! Campus Critic," The Harvard Crimson, Oct. 26, 1987. Copy supplied.

"A Friendly Artist Makes Cambridge His Gallery: Slice of Life," The Harvard Crimson, Oct. 21, 1987. Copy supplied.

"The Affluent Classroom: Business School Critic," The Harvard Crimson, Oct. 19, 1987. Copy supplied.

"A Question of Right and Wrong: Roaming the Real World," The Harvard Crimson, Oct. 14, 1987. Copy supplied.

"Up With People: Campus Critic," The Harvard Crimson, Sept. 30, 1987. Copy supplied.

"College Secures VIPs Records," The Harvard Crimson, Sept. 26, 1987. Copy supplied.

"A New Course in History: Campus Critic," The Harvard Crimson, Sept. 23, 1987. Copy supplied.

"A New Era in Education Begins at Medical School," The Harvard Crimson, Aug. 21, 1987. Copy supplied.

"The Left's Adoption of States' Rights," The Harvard Crimson, Aug. 7, 1987. Copy supplied.

"Profs Say Hearings Helpful," The Harvard Crimson, Aug. 4, 1987. Copy supplied.

"Beanball," The Harvard Crimson, Aug. 4, 1987. Copy supplied.

"La Bamba: Cinema Veritas," The Harvard Crimson, July 31, 1987. Copy supplied.

"Colleagues Set Up Fund For Hit-and-Run Victim," The Harvard Crimson, July 21, 1987. Copy supplied.

"About Those Telegrams," The Harvard Crimson, July 21, 1987. Copy supplied.

"Crimebusters Galore," The Harvard Crimson, July 17, 1987. Copy supplied.

"B-School Tenures Its Fourth Woman Ever: School Adds Finance Specialist to Senior Faculty," The Harvard Crimson, July 7, 1987. Copy supplied.

"Racism Red Herring in Goetz Verdict," The Harvard Crimson, June 28, 1987. Copy supplied.

"Will Departmental In-fighting Affect Educational Quality? Departments in Trouble," The Harvard Crimson, June 11, 1987. Copy supplied.

"The Marshall Plan: Then and Now: 40 Years Ago," The Harvard Crimson, June 11, 1987. Copy supplied.

"NAS Rejects Huntington For Second Straight Year," The Harvard Crimson, Apr. 29, 1987. Copy supplied.

"Lee Takes War College's Offer; History Prof to Teach Officers," The Harvard Crimson, Apr. 11, 1987. Copy supplied.

"Making the Final Break: Campus Critic," The Harvard Crimson, Mar. 27, 1987. Copy supplied.

"CAPITOL IDEAS: The Health of the Presidency," The Harvard Crimson, Mar. 24, 1987. Copy supplied.

"Medievalist Takes Tenured Post: Visiting British Scholar Joins English Department," The Harvard Crimson, Mar. 20, 1987. Copy supplied.

"Princeton Eyes Skocpol; Final Offer Still Pending," The Harvard Crimson, Mar. 3, 1987. Copy supplied.

"The March of Racism: The Forsyth Saga," The Harvard Crimson, Feb. 5, 1987. Copy supplied.

"What Other Colleges Require: St. John's Great Books Program and U. of Chicago's Core," The Harvard Crimson, Nov. 10, 1986. Copy supplied.

"Literacy Expert Calls for Federal Aid to Help Grass Roots Reading Groups," The Harvard Crimson, Nov. 6, 1986. Copy supplied.

"Politics of Frustration: Brass Tacks," The Harvard Crimson, Oct. 25, 1986. Copy supplied.

"An Unimpressive Showing: Taking Note," The Harvard Crimson, Oct. 18, 1986. Copy supplied.

"Soviet Official Responds to Foreign Policy Attack," The Harvard Crimson, Oct. 2, 1986. Copy supplied.

"An Unhappy Birthday," The Harvard Crimson, Sept. 30, 1986. Copy supplied.

"Not a Precedent: Hill Spill," The Harvard Crimson, Apr. 16, 1986. Copy supplied.

"Playing the Lottery: Number 457," The Harvard Crimson, Mar. 8, 1986. Copy supplied.

"CUE Delays Submitting Buffer Idea to Fac. Vote," The Harvard Crimson, Mar. 7, 1986. Copy supplied.

"A Different Sort of Pre-Professionalism," The Harvard Crimson, Mar. 7, 1986. Copy supplied.

"Crisis After Cruse: Taking Note," The Harvard Crimson, Mar. 1, 1986. Copy supplied.

"Where Has All the Unity Gone? Brass Tacks," The Harvard Crimson, Feb. 22, 1986. Copy supplied.

"No Way to Treat a Hero: Taking Note," The Harvard Crimson, Feb. 12, 1986. Copy supplied.

"Brandeis Students Build Shanty: Protest School's South Africa-Linked Stock," The Harvard Crimson, Feb. 7, 1986. Copy supplied.

"Remembering to Forget: Taking Note," The Harvard Crimson, Feb. 6, 1986. Copy supplied.

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

I am a member of the Massachusetts Board of Higher Education. In that role, I assisted in the review of *Time to Lead: The Need for Excellence in Higher Education, A Report to the People of Massachusetts* from the Massachusetts Department of Higher Education (September 2012). Copy supplied.

Executive Summary, *Boston Bound: A Comparison of Boston's Legal Powers with Those of Six Other Major American Cities*, Boston Foundation, Policy Brief (Feb. 2007) (with Gerald Frug). Copy supplied.

Boston Bound: A Comparison of Boston's Legal Powers with Those of Six Other Major American Cities, Boston Foundation, Policy Brief (Feb. 2007) (with Gerald Frug). Copy supplied.

I was a participant in a forum convened in July 2006 in Washington, D.C. by the Urban Land Institute (ULI) that issued a ULI Current Issues Report entitled, *Eminent Domain: An Important Tool for Community Revitalization* (2007). 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.

Published Opinions of the Office of Legal Counsel:

Memorandum for Attorneys of the Office, *Best Practices for OLC Legal Advice and Written Opinions*, July 16, 2010. Copy supplied.

Memorandum Opinion for the Chairman, Administrative Conference of the United States, *Applicability of the Emoluments Clause to Nongovernmental Members of ACUS*, June 3, 2010. Copy supplied.

Memorandum Opinion for the Acting Deputy Attorney General, *Whether the Criminal Provisions of the Violence Against Women Act Apply to Otherwise Covered Conduct When the Offender and Victim Are the Same Sex*, Apr. 27, 2010. Copy supplied.

Memorandum Opinion for the Attorney General, *The Attorney General's Authority in Certifying Whether a State Has Satisfied the Requirements for Appointment of Competent Counsel for Purposes of Capital Conviction Review Proceedings*, Dec. 16, 2009. Copy supplied.

Memorandum Opinion for the Counsel to the President, *Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President's Receipt of the Nobel Peace Prize*, Dec. 7, 2009. Copy supplied.

Memorandum Opinion for the Deputy General Counsel, Department of Housing and Urban Development. *Applicability of Section 163 of Division B of Public Law 111-68 to Payments in Satisfaction of Pre-Existing Contractual Obligations*, Oct. 23, 2009. Copy supplied.

Memorandum Opinion for the Principal Deputy Counsel to the President, *Removability of the Federal Coordinator for Alaska Natural Gas Transportation Projects*, Oct. 23, 2009. Copy supplied.

Letter Opinion for the Assistant Secretary for Financial Institutions, U.S. Department of Treasury, *Constitutionality of Mandatory Registration of Credit Rating Agencies*, Oct. 22, 2009. Copy supplied.

Memorandum Opinion for an Associate Deputy Attorney General, *Legality of Intrusion-Detection System to Protect Unclassified Computer Networks in the Executive Branch*, Aug. 14, 2009. Copy supplied.

Memorandum for the Attorney General, *Withdrawal of Office of Legal Counsel Opinion*, June 11, 2009. Copy supplied.

Memorandum Opinion for the Acting Legal Adviser, Department of State, *Constitutionality of Section 7054 of the Fiscal Year 2009 Foreign Appropriations Act*, June 1, 2009. Copy supplied.

Memorandum Opinion for the Attorney General, *Validity of Statutory Rollbacks As a Means of Complying with the Ineligibility Clause*, May 20, 2009. Copy supplied.

Memorandum for the Attorney General, *Withdrawal of Office of Legal Counsel CIA Interrogation Opinions*, Apr. 15, 2009. Copy supplied.

Legislative Testimony:

Joint Statement to the Senate, Committee on the Judiciary, Subcommittee on the Constitution, "Restoring the Rule of Law," Hearing, Sept. 16, 2008. Copy supplied.

Testimony by Speakerphone to the Vermont Senate Committee on Economic Development, Housing and General Affairs, "Regularly Scheduled Hearing of Committee," Feb. 26, 2008. My testimony concerned a pending bill, S.362, The Withdrawal of Vermont National Guard Military Forces from Iraq and the Federal Deployment of the National Guard. Video supplied.

Testimony to the Senate, Committee on the Judiciary, "Exercising Congress's Constitutional Power to End a War." Hearing, Jan. 30, 2007. Copy of testimony, written statement, and questions for the record supplied.

Letters:

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Stuart Delery to be Assistant Attorney General, Civil Division, United States Department of Justice (May 13, 2013). Copy supplied.

Joint Letter from Former Law Clerks to Congressional Leaders in Support of the Confirmation of Paul Watford to be Circuit Judge, U.S. Court of Appeals for the Ninth Circuit (May 15, 2012). Copy supplied.

Joint Letter to the Senate Judiciary Committee in Support of the Nomination of Virginia Seitz to be Assistant Attorney General, Office of Legal Counsel (Mar. 15, 2011). Copy supplied.

Letter from Constitutional Scholars to United States Senators Concerning Statement of Administration Policy ("SAP") on H.R. 1592, The Local Law Enforcement Hate Crimes Prevention Act of 2007. (July 2007). Copy supplied.

Letter from Constitutional Law Scholars to Congressional Leaders Concerning Constitutionality of Statutory Limitations on Troop Increase in Iraq, (Jan. 17, 2007.) Copy supplied.

Letter from Members of University Faculties in Law, International Relations, Diplomacy, and Public Policy to Members of the U.S. House of Representatives and the U.S. Senate Concerning Congressional Oversight of Reports of Abuse of Detainees in Iraq, (June 16, 2004.) Copy supplied.

Letter from Law Professors to Senators Frist and Daschle Concerning Constitutionality of the Filibuster, (May 16, 2003.) Copy supplied.

State Board Proceedings:

Since April 2013, I have served as a board member of the Massachusetts State College Building Authority. In that capacity, I have participated in meetings of the Board and its committees. Minutes supplied where available.

Since March 2012, I have served as a board member of the Massachusetts Board of Higher Education. In that capacity, I have participated in meetings of the Board and its committees. Minutes supplied where available.

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 the speeches or talks or remarks that I have delivered. To compile the list, I consulted my own files and internet sources. There may, however, have been speeches or talks or remarks that I have been unable to recall, or identify, and I have occasionally spoken at informal events for which I did not retain any record.

October 9, 2013: Presenter, Harvard University Electronic Communications Policy Task Force Open Forum, Harvard University, Cambridge, MA. I discussed the questions that the task force will be considering. I have no notes, transcript or recording, but press coverage is supplied. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

September 18, 2013: Remarks, Harvard Law School Office of Public Interest Advising Public Service Orientation, Harvard Law School, Cambridge, MA. I have given a number of these speeches annually since 2000, except when I was on a leave of absence. Representative notes from 2011 and representative video from 2010 supplied.

July 30, 2013: Moderator, "Separation of Powers in the 21st Century: The Rules of Engagement," Annual Meeting, Conference of Chief Justices and Conference of State Court Administrators. Burlington, VT. As best I can recall, I discussed the challenges of the role of the chief justice of a state supreme court. I have no notes, transcript, or recording. The address of the sponsoring organization is Conference of Chief Justices, c/o Association and Conference Services, 300 Newport Avenue, Williamsburg, VA 23185.

July 30, 2013: Presenter, "Judicial Independence and the State Court Funding Crisis," National Center for State Courts, Burlington, VT. Video available at: http://vimeo.com/76525810.

May 20, 2013: Interviewer, "John Paul Stevens in Conversation," Kennedy Library Forum. Boston, MA. Video available at: http://www.youtube.com/watch?v=XhNm0IuwYfo.

May 9, 2013: Panelist, "Bridging Theory and Practice: Real Estate and the Built Environment at the University," Harvard Real Estate Academic Initiative, International Advisory Board Meeting, Harvard University, Cambridge, MA. As best I can recall, my remarks discussed the Gateway Cities course described in response to question 19. I have no notes, transcript, or recording. The address of the sponsoring organization is the Harvard Real Estate Academic Initiative, Seven Sumner Road, Room 303, Cambridge, MA 02138.

May 3, 2013: Panelist, "The Administrative Process: 75th Anniversary Conference," "Delegation -- Positive and Negative," Harvard Law School, Cambridge, MA. As best I can recall, my remarks were based on my

article, "In Defense of Big Waiver," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

April 16, 2013: Panelist, "Resilience + Sustainability," at Harvard Real Estate Academic Initiative Conference on Resilience, Adaptability, and Sustainability of the Built Environment, Harvard University, Cambridge, MA. As best I can recall, I discussed governance challenges of adapting to sea level rise in urban areas. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is the Harvard Real Estate Academic Initiative, Seven Sumner Road, Room 303, Cambridge, MA 02138.

April 12, 2013: Presenter, Boston College Law School Faculty Workshop. I discussed my article, *In Defense of Big Waiver*. I have no notes, transcript, or recording, but a copy of the article on which the presentation was based has been supplied in response to 12a. The address of the sponsoring organization is Boston College Law School, 885 Centre Street, Newton, MA 02459.

April 9, 2013: Presenter, Morning Prayers at Harvard Memorial Church, Harvard University, Cambridge, MA. Audio available at: https://soundcloud.com/harvard/david-barron-tuesday-april-9.

April 5, 2013, Moderator, Panel entitled "Problem; Is There a Lack of Intellectual Diversity in Law School Faculties," Harvard Federalist Society Conference on "Intellectual Diversity and the Legal Academy," Harvard Law School, Cambridge, MA. Video available at: http://www3.law.harvard.edu/orgs/fedsoc/intellectual-diversity-conference/.

March 27, 2013: Panelist, "To EIP or not to EIP," Office of Public Interest Advising, Harvard Law School. Cambridge, MA. Video available at: http://www.law.harvard.edu/media/2013/03/27_opia.mov.

March 9, 2013: Panelist, "New Ideas in Urban Planning and Disaster Response in an Era of Global Climate Change," Harvard Leadership Conference at Harvard University, Cambridge, MA. As best I can recall, I discussed the governance challenges of adapting to sea level rise in urban areas. I have no notes, transcript, or recording. The sponsoring organization is the Harvard Graduate Council, Harvard University, 1350 Massachusetts Avenue, Cambridge, MA 02138.

March 5, 2013: Moderator, "Preparing Massachusetts for Climate Change: Do State and Local Governments Have a Role and What are They Doing?," Rappaport Center for Law and Public Policy, Suffolk University Law School, Boston, MA. Video available at: mms://media2.law.suffolk.edu/OnDemand/Rappaport_PreparingMassForClimate Change_030513.mp3.

March 2, 2013: Panelist, "Crime and Urban Development in Cities," Harvard Black Law Students Association Spring Conference, Harvard Law School, Cambridge, MA. As best I can recall, I discussed the limits states place on city powers. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138

February 28, 2013: Moderator, "What is Urban Law," 40th Urban Law Journal Symposium, Fordham Law School, New York, NY. Video available at: http://vimeo.com/62187086.

January 8, 2013: Presenter, University of Chicago Law School Public Law Workshop, Chicago, IL. I discussed my article, *In Defense of Big Waiver*. I have no notes, transcript or recording, but a copy of the article on which my talk was based has been supplied in response to 12a. The sponsoring organization is the University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637.

December 3, 2012: Presenter, Harvard Environmental Law Society, Harvard University, Cambridge, MA. I discussed the governance challenges of adapting to sea level rise in urban areas. I have no notes, transcript or recording, but press coverage is supplied. The sponsoring organization is the Harvard Environmental Law Society, Harvard Law School, Wasserstein Hall, Cambridge, MA 02138.

November 18, 2012: Interviewer, "Obama and the Supreme Court," Interview with Jeffrey Toobin, John F. Kennedy Library Forum, John F. Kennedy Library. Boston, MA. Transcript supplied.

November 16, 2012: Panelist, "Separation of Powers," Federalist Society National Lawyers Convention. Washington, D.C. Video available at: http://www.youtube.com/watch?v=xnNntEqNZB0.

November 5, 2012: Presenter, Harvard Law Society of Illinois, Chicago, IL. As best I can recall, I discussed my experience as the Acting Assistant Attorney General for the Office of Legal Counsel, United States Department of Justice. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

October 31, 2012: Introduction, Law and Government Program of Study, Kickoff Event Featuring Solicitor General Donald Verrilli, Jr., Harvard Law School, Cambridge, MA. Video available at: http://www.law.harvard.edu/news/2012/11/06_solicitor-general-verrilli-greatest-legal-job.html.

September 28, 2012: Presenter, American Constitution Society for Law and Policy, Harvard Law School, Cambridge, MA. As best I can recall, I discussed my experience as the Acting Assistant Attorney General for the Office of Legal Counsel, United States Department of Justice. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

June 1, 2012: Commenter, Harvard, Stanford, and Yale Law School Junior Faculty Forum, "Constitutional Law I & II," Harvard Law School, Cambridge, MA 02138. As best I can recall, I discussed two papers by junior faculty on constitutional law. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

May 20, 2012: Interviewer, "Conversation with Retired Justice John Paul Stevens," Harvard Law School, Cambridge, MA. Video available at: http://www.law.harvard.edu/news/spotlight/constitutional-law/hls-celebrates-justice-john-paul-stevens.html.

May 18, 2012: Remarks on behalf of the Massachusetts Board of Higher Education, Roxbury Community College Commencement, Boston, MA. I have no notes, transcript or recording. As best I can recall, my remarks extended congratulations to the graduates on behalf of the Massachusetts Board of Higher Education. The address of the sponsoring organization is Roxbury Community College, 1234 Columbus Avenue, Roxbury Crossing, MA 02120.

March 28, 2012: Panelist, "To EIP or not to EIP," Office of Public Interest Advising. Harvard Law School. Cambridge, MA. Video available at: http://www.law.harvard.edu/media/2012/03/28_opia.mov.

March 5, 2012: Panelist, "*The Odd Clauses: Understanding the Constitution through Ten of Its Most Curious Provisions* by Jay Wexler, Professor of Law," Boston University School of Law, Boston, MA. As best I can recall, my remarks discussed the book that was the subject of this symposium. I have no notes, transcript, or recording. The address of the sponsoring organization is Boston University School of Law, 765 Commonwealth Avenue, Boston, MA 02215.

March 2, 2012: Panelist, "The Rule of Law and the Administrative State," at the Federalist Society National Student Symposium, "Bureaucracy Unbound: Can Limited Government and the Administrative State Co-Exist?," Stanford Law School, Stanford, CA. Video available at: http://www.youtube.com/watch?v=t3njQn0ls9c.

September 27, 2011: "The Constitution and National Security," Boston University Law School talk sponsored by the National Security Law Society, The Federalist Society, The American Constitution Society, and the Office of Student Affairs,

Boston University School of Law, Boston, MA. As best I can recall, my remarks discussed legal developments concerning counterterrorism since the Supreme Court's decision in *Boumediene v. Bush*, 553 U.S. 723 (2008). I have no notes, transcript, or recording. The address of the sponsoring organization is the Office of Student Affairs, Boston University School of Law, 765 Commonwealth Avenue, Boston, MA 02215.

September 27, 2011: Panelist, "The Case for Local Constitutional Enforcement," Harvard Civil Rights-Civil Liberties Law Review, Harvard Law School, Cambridge, MA. Video available at: http://www.law.harvard.edu/news/spotlight/constitutional-law/18_kathleen-morris-local-constitutional-law-crcl.html.

September 23, 2011: Panelist, "Court Funding: Autonomy, Access, and Accountability," Kentucky Law Journal, American Bar Association, National Center for State Courts Symposium on Court Funding. As best I can recall, my remarks addressed threats to judicial independence posed by limited state court funding. I have no notes, transcript or recording. The address of the sponsoring organization is the Kentucky Law Journal, University of Kentucky College of Law, Lexington, KY 40506.

September 17, 2011: Moderator, "The Presidency in the Post-9/11 World," Conference on "Law, Security & Liberty After 9/11: Looking to the Future," Harvard Law School-Brookings Project on Law and Security, Harvard Law School, Cambridge, MA. Video available at: http://www.law.harvard.edu/media/2011/09/17_blum3.mov.

June 6, 2011: Presenter, "What We Talk About When We Talk About Integration: Three Distinctions That Matter for Europe and the United States," John F. Kennedy Lecture, TiasNimbas Business School, Tilburg University, Tilburg, Netherlands. As best I can recall, my remarks discussed the current federalism debate, including the debate over the Affordable Care Act, in the United States and its relationship to debates over subsidiarity in the European Union. I have no notes, transcript, or recording. The address of the sponsoring organization is TiasNimbas Business School, Tilburg University, Postbus 90153, 5000 LE Tilburg, The Netherlands.

March 29, 2011: Panelist, "To EIP or not to EIP," Office of Public Interest Advising, Harvard Law School. Cambridge, MA. Video available at: http://www.law.harvard.edu/media/2011/03/29_opia_1.mov.

November 11, 2010: Panelist, "The Executive in Crisis: Constitutional Capabilities," at Stanford Law School conference, "The Constitution in the Financial Crisis," Stanford Law School, Stanford, CA. Video supplied.

November 9, 2010: Presenter, "Views From Washington: The First 18 Months of the Obama Administration," Harvard Law School, Cambridge, MA. As best I can recall, I described some of the legal issues the administration confronted in the first 18 months. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

October 29, 2010: Panelist, "Symposium on Federalism, Preemption and State Law," the Uniform Law Commission and George Washington University Law School, Washington, D.C. As best I can recall, I discussed the law of preemption generally. I have no notes, transcript, or recording. The address of the sponsoring organization is Uniform Law Commission, 111 North Wabash Avenue, Suite 1010, Chicago, IL 60602.

October 7, 2010: Panelist, Forum on *Laws, Outlaws and Terrorists* by Professors Philip Heymann and Gabriella Blum, Harvard Law School, Cambridge, MA. Video supplied.

October 2010: Keynote, "Views from Washington: The First 18 Months," Langdell Dinner for Harvard Law School, New York, NY. Notes supplied.

April 26, 2009: Panelist, "Boston Bound: A Comparison of Boston's Legal Powers With Those of Six Other Major American Cities," Rappaport Institute for Greater Boston, Harvard University, Cambridge, MA 02138. As best I can recall, I discussed the report "Boston Bound," which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is The Rappaport Institute for Greater Boston, Harvard Kennedy School, 79 John F. Kennedy Street, Cambridge, MA 02138.

October 24, 2008: Panelist, "Supreme Insights: Examining the Future of America's Highest Court," Harvard Law School, Cambridge, MA. Video supplied.

September 26, 2008: Panelist, "War Powers in Historical Perspective," Conference in Honor of Professor Morton, Harvard Law School, Cambridge, MA. Video supplied.

September 24, 2008: Panelist, "The 2008 Election: What is at Stake for the Judiciary," Federalist Society and the American Constitution Society chapters at the University of Pennsylvania Law School, Philadelphia, PA. As best as I can recall, my remarks addressed the potential for changes on the Supreme Court of the United States. I have no notes, transcript, or recording. The address of the sponsoring organizations is University of Pennsylvania Law School, 3501 Sansom Street, Philadelphia, PA 19104.

July 31, 2008: Panelist, "A Debate on Cato's 'The Dirty Dozen': The Worst Supreme Court Cases in the Modern Era?," Cato Institute and the American Constitution Society, Cato Institute, Washington, D.C. Video supplied.

June 3, 2008: Participant, Governor Deval L. Patrick's Listening Tour, Fitchburg State University, Fitchburg, MA. As best I can recall, my remarks discussed restrictions on home rule in Massachusetts. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is Fitchburg State University, 160 Pearl Street, Fitchburg, MA 01420.

May 7, 2008: Participant, Mayors Roundtable, at the U.S.-Arab Economic Forum in Washington, D.C. with mayors from cities in the United States and Arab countries concerning the powers of cities in different countries. As best as I can recall, my remarks focused on home rule in the United States and how states limit city powers. I have no notes, transcript or recording. The address of the sponsoring organization is American Middle East Economic Affairs Committee, 12740 West Warren Avenue, Suite 300, Dearborn, MI 48126.

May 2008: Presenter, Conference on "The Role of State Court Leaders in Supporting Public Policy For Chief Justices and State Court Administrators," National Center for State Courts, Philadelphia, PA. Notes supplied.

April 10, 2008: Panelist, "Takings and Environmental Regulation: When Is Compensation Warranted?," The Harvard Law School Federalist Society, Harvard Law School, Cambridge, MA. Video supplied.

Spring 2008: Presenter, "Commander-in-Chief at the Lowest Ebb," Duke Law School Faculty Workshop, Durham, NC. As best I can recall, my remarks were based on the Harvard Law Review articles on the commander in chief power, copies of which have been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Duke University School of Law, 201 Science Dr., Durham, NC 27708.

January 18, 2008: Presenter, "City Structures," Emory Law School faculty colloquium, Emory Law School, Atlanta, GA. As best I can recall, my remarks were based on *City Bound: How States Stifle Urban Innovation*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Emory University School of Law, Gambrell Hall, 1301 Clifton Road, Atlanta, GA 30322.

January 3, 2008: Panelist, "Cooperative or Clashing Federalism," Association of American Law Schools Annual Convention, New York, NY. As best as I can recall, my remarks focused on local government law and immigration. I have no notes, transcript, or recording. The address of the sponsoring organization is the Association of American Law Schools, 1201 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036.

November 29, 2007: Panelist, "The Mukasey Hearings Reconsidered," Harvard Law School, Cambridge, MA. Recording available at: https://www.law.georgetown.edu/webcast/eventDetail.cfm?eventID=455.

November 3, 2007: Presentation, "Substantive Fault Lines in Constitutional War Powers," Harvard Law School Colloquium on the Commander in Chief Power, Harvard Law School, Cambridge, MA. Notes supplied.

October 25, 2007: Presenter, "George Washington University Law Review's Annual Review of Administrative Law," George Washington University Law School, National Press Club, Washington, D.C. Notes supplied.

October 12, 2007: Presenter, George Washington Law School Symposium, "Access to the Media – 1967 to 2007 and Beyond," Washington, D.C. As best as I can recall, my remarks were introductory in nature and focused on my father, Professor Jerome A. Barron, who was being celebrated in this symposium. I have no notes, recording, or transcript. The address of the sponsoring organization is George Washington University Law School, 2000 H Street, NW, Washington, D.C. 20052.

September 11, 2007: Introductory Remarks, Speech by Hon. Stephen Reinhardt, Harvard Law School American Constitution Society for Law and Policy, Harvard Law School, Cambridge, MA. As best as I can recall, my remarks were introductory in nature. I have no notes, recording, or transcript. The address of the sponsoring organization is Harvard Law School American Constitution Society for Law and Policy, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Fall 2007: Presenter, Debate on Adrian Vermeule, "Terror in the Balance: Security Liberty, and the Courts," sponsored by the Harvard Federalist Society and the National Security & Law Society, Harvard Law School, Cambridge, MA. As best I can recall, my remarks focused on the arguments contained in Professor Vermeule's book of the same title as the debate. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Federalist Society, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Fall 2007: Presenter, Lecture on American Administrative Law, Harvard Law School European Law Research Center, J&A Garrigues, S.L. Barcelona, Spain. As best as I can recall, my remarks provided a general introduction to American administrative law. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Fall 2007: Presenter, Lecture on American Federalism, Harvard Law School European Law Research Center, J&A Garrigues, S.L. Seville, Spain. As best as I can recall, my remarks provided a general introduction to American federalism. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

August 2007: Panelist, "Reversing the Alito Effect: Mobilizing for 2008 to Take Back the Supreme Court," YearlyKos, Chicago, IL. As best as I can recall, my remarks focused on legal issues likely to come before the Supreme Court of the United States in upcoming years. I have no notes, transcript, or recording. The sponsoring organization, Yearlykos, is no longer in operation.

July 2007: Panelist, "Civil Liberties and Human Rights in the War on Terror," Harvard University Weatherhead Center for International Affairs, "Democracy in Contemporary Global Politics: Global Governance, Foreign Policies, Domestic Politics," Talloires, France. As best as I can recall, my remarks focused on recent court cases concerning law-of-war detention and military commissions. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard University Weatherhead Center for International Affairs, 1737 Cambridge Street, Cambridge, MA 02138.

April 26, 2007: Panelist, "Boston Bound: A Comparison of the Legal Powers of Boston with Those of Six Other Major American Cities," The Boston Foundation, Boston, MA. As best as I can recall, my remarks concerned the report I co-authored, *Boston Bound*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is The Boston Foundation, 75 Arlington Street, Boston, MA 02116.

April 24, 2007: Panelist, Northwestern University Law School Conference on Originalism, Northwestern University Law School, Chicago, IL. As best I can recall, my remarks discussed originalism and textualism and the relationship between the two. I have no notes, transcript, or recording. The address of the sponsoring organization is Northwestern University Law School, 375 East Chicago Avenue, Chicago, IL 60611.

March 16, 2007: Panelist, "How Can Congress Stop the War -- And Should It Be Able To?," Harvard Law School Chapter of the American Constitution Society and the Harvard Law and Policy Review, Harvard Law School, Cambridge, MA. As best I can recall, my remarks focused on the history and practice of congressional efforts to limit the president's war powers. I have no notes, transcript or recording, but press coverage is supplied. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

March 14, 2007: Panelist, "Harvard Law School Discussion of U.S. Attorney Firings," Harvard Law School, Cambridge, MA. Recording available at: http://wilkins.law.harvard.edu/podcasts/AudioBerkman/2007_03_14_heymann_usattorneyfir.mp3.

Spring 2007: Presenter, Harvard Law School Colloquium on Constitutional Law, Harvard Law School, Cambridge, MA. I discussed a draft of my Harvard Law Review articles on the commander-in-chief power, copies of which were supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

February 23, 2007: Introductory Remarks, Event Launching the Harvard Law and Policy Review, Harvard Law School, Cambridge, MA. As best I can recall, my remarks were introductory in nature. I have no notes, transcript, or recording. The address of the sponsoring organization is The Harvard Law and Policy Review, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

February 2007: Moderator, Panel at the UCLA Law Review Symposium, "Constitutional 'Niches': The Role of Institutional Context in Constitutional Law," UCLA Law School, Los Angeles, CA. As best I can recall, my remarks consisted of comments and questions about the other papers presented on the panel. I have no notes, transcript, or recording. The address of the sponsoring organization is the UCLA Law Review, UCLA School of Law, 71 Dodd Hall, Los Angeles, CA 90095.

January 6, 2007: Panelist, Conference on "International Workshop on the Legalization of Central-Local Relations," sponsored by The China Law Center at Yale Law School and The Constitutional and Administrative Law Center at Peking University, Beijing, China. As best I can recall, my remarks provide a general introduction to the various aspects of central-local relations under American law. I have no notes, transcript or recording. The address of the sponsoring organization is The China Law Center, Yale Law School, P.O. Box 208215, New Haven, CT 06520.

Winter 2007: Participant, "Liberties and Communities," The Constitution in 2020 Conference, American Constitution Society for Law and Policy, Yale Law School, New Haven, CT. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the sponsoring organization is Yale Law School, 127 Wall Street, New Haven, CT 06520.

December 12, 2006: Moderator, "The Unitary Executive: Approaches, Politics, and Current Implications," Harvard Law School Chapter of American Constitution Society for Law and Policy, Harvard Law School, Cambridge, MA. I have no notes, transcript, or recording, and I do not recall the substance of my

remarks I made in my role as moderator. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

November 15, 2006: Panelist, "Signing Statements," Frank J. Murray American Inn of Court, Boston, MA. As best I can recall, my remarks concerned the historical and legal basis for the use of signing statements. I have no notes, transcript, or recording. The Frank J. Murray Inn of Court has no physical address.

November 2, 2006: Panelist, "Progressive Constitutionalism," Sponsored by Harvard Law School American Constitution Society of Law and Policy, Harvard Law School, Cambridge, MA. As best I can recall, my remarks were based on *What's Wrong With Conservative Constitutionalism: Two Styles of Progressive Critique and the Choice They Present*, a copy of which is supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

September 28, 2006: Presenter, "International Local Government Law," Yale Legal Theory Workshop, New Haven, CT. As best I can recall, my remarks were based on my article, *International Local Government Law*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Yale Law School, 127 Wall Street, New Haven, CT 06511.

August 2006: Presenter, Sun Valley Writer's Conference. Sun Valley, Idaho. As best I can recall, my remarks discussed the history of efforts by Congress to limit the powers of the Commander in Chief. I have no notes, transcript, or recording. The address of the sponsoring organization is Sun Valley Writer's Conference, P.O. Box 957, Ketchum, ID 83340.

August 2006: Presenter, Sun Valley Writer's Conference, Sun Valley, Idaho. As best I can recall, my remarks discussed the Supreme Court's *Kelo v. City of New London* decision on eminent domain. I have no notes, transcript, or recording. The address of the sponsoring organization is Sun Valley Writer's Conference, P.O. Box 957, Ketchum, ID 83340.

June 20, 2006, Panelist, "Eminent Domain One Year After *Kelo*, Implications for Community Development," National City Network, Harvard University's Government Innovators Network and KnowledgePlex, Washington, D.C. Video supplied.

April 24, 2006: Panelist, "Lawyers (Can) Have Families Too: Balancing the Demands of Career and Family," Harvard Law School Association for Law and Family Matters and the Harvard Law School Couples Association, Harvard Law

School, Cambridge, MA. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

April 10, 2006: Presenter, Comments on Gerald Frug's article, "The City As a Legal Concept." Harvard Law School, Cambridge, MA. As best I can recall, my remarks described the arguments of Professor Frug's article and how the field of local government law has changed in the decades that followed its publication. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

April 2006: Presenter, Boston University School of Law Faculty Workshop, Boston University School of Law, Boston, MA. As best I can recall, the paper I presented was "Why (and When) Cities Have a Stake in Enforcing the Constitution," a copy of which has been supplied in response to 12a. I have no notes, recording, or transcript. The address of the sponsoring organization is Boston University School of Law, 765 Commonwealth Avenue, Boston, MA 02215.

April 2006: Presenter, Conference entitled, "Reinventing Older Communities: People, Places, Markets," Federal Reserve Bank of Philadelphia, Philadelphia, PA. As best I can recall, I discussed the Supreme Court's decision in *Kelo v. City of New London*. I have no notes, transcript, or recording. The address of the sponsoring organization is Ten North Independence, Mall W, Philadelphia, PA 19106.

March 31, 2006: Interviewer, Conversation with the Hon. Stephen Reinhardt, United States Court of Appeals for the Ninth Circuit, Ninth Annual Liman Colloquium, Yale Law School, New Haven, CT. I do not recall the substance of my remarks, but the event was an interview about Judge Reinhardt's career. I have no notes, transcript, or recording. The address of the sponsoring organization is The Arthur Liman Public Interest Program, Yale Law School, 127 Wall Street, New Haven, CT 06511.

March 31, 2006: Panelist, "Organizing and Reorganizing: The Challenges for Immigrants and Labor," Ninth Annual Liman Colloquium, Yale Law School, New Haven, CT. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the sponsoring organization is The Arthur Liman Public Interest Program, Yale Law School, 127 Wall Street, New Haven, CT 06511.

March 17, 2006: Presenter, "Why (and When) Cities Have a Stake in Enforcing the Constitution," George Washington University Law School Faculty Colloquium, Washington, D.C. As best as I can recall, my presentation was based on my article "Why (and When) Cities Have a Stake in Enforcing the Constitution," a copy of which has been supplied in response to 12a. I have no

notes, transcript, or recording. The address of the sponsoring organization is The George Washington University Law School, 2000 H St., NW, Washington, D.C. 20052.

March 3, 2006: Presenter, "International Local Government Law," University of Texas School of Law Faculty Workshop, Austin, TX. As best as I can recall, my presentation was based on my article, *International Local Government Law*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is University of Texas School of Law, 727 East Dean Keeton Street, Austin, TX 78705.

March 2006: Panelist, Yale Law Journal Symposium on Executive Power. As best I can recall, the paper I presented was "Why (and When) Cities Have a Stake in Enforcing the Constitution," a copy of which has been supplied in response to 12a. I have no notes, recording, or transcript. I have no notes, transcript, or recording. The address of the sponsorship organization is Yale Law School, 127 Wall Street, New Haven, CT 06511.

2006: Panelist, "The Scholarship of Laurence Tribe," Tulsa Law Review, College of Law, Tulsa University, Tulsa, OK. As best I can recall, my remarks were based on my article, "The Promise of Tribe's City," which has been provided in response to 12a. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsoring organization is College of Law, Tulsa University, 3120 East Fourth Place, Tulsa, OK 74104.

November 2005: Panelist, "Working to Ensure the Fundamental Principles of Equality and Justice," American Constitution Society for Law and Policy, Northeast Regional Student Leadership Conference, Harvard Law School, Cambridge, MA. I do not recall the substance of my remarks. I have no notes, transcript, or recording, but press coverage is supplied. The address of the sponsorship organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

October 3, 2005: Panelist, Dean's Forum, Discussion of the Supreme Court's upcoming term, Harvard Law School, Cambridge, MA. Video available at: http://www.law.harvard.edu/media/2005/10/03_do.mov.

October 1, 2005: Panelist, "The Jurisprudence of Justice Stevens," Fordham Law School, New York, NY. As best I can recall, my remarks discussed Justice Stevens's view of federalism. I have no notes, transcript, or recording. The address of the sponsoring organization is Fordham Law School, 140 West 62nd Street, New York, NY 10023

July 30, 2005: Moderator, Can Federalism Be Progressive, 2005 American Constitution Society National Convention, American Constitution Society, Washington, D.C. Transcript supplied.

April 2, 2005: Panelist, "Privatizing the Constitution," Indiana University Mauer School of Law Conference, "The Rehnquist Legacy," Bloomington, IN. Video supplied.

Spring 2005: Panelist, "Defensive Localism: A View of the Field from the Field," Conference sponsored by the Journal of Law and Politics entitled, "Democracy in Action?: The Law and Politics of Local Government," University of Virginia School of Law, Charlottesville, VA. As best I can recall, my remarks were based on "Defensive Localism: A View of the Field From the Field," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Journal of Law and Politics, University of Virginia School of Law, 580 Massie Road, Charlottesville, VA 22903.

2004 or 2005: Panelist, "International Local Government Law," Conference sponsored by the Harvard Law School Institute for Global Law and Policy, Harvard Law School, Cambridge, MA. As best I can recall, my remarks addressed how international law treats cities. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

September 17, 2004: Panelist, Roundtable on the Commander-in-Chief Power, Executive Power and Interrogation, Detention and the Powers of the Executive – a Series of Roundtables Sponsored by the Program on Public Law at Duke Law School, Durham, NC. Video supplied.

September 2004: Panelist, "Dispelling the Myth of Home Rule: Local Power in Greater Boston," Boston Foundation Forum, Rappaport Institute for Greater Boston Training Session for Municipal Officials, Cambridge, MA. As best I can recall, my remarks were based on *Dispelling the Myth of Home Rule*, a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is The Rappaport Institute for Greater Boston, Harvard Kennedy School, 79 John F. Kennedy Street, Cambridge, MA 02138.

September 2004: Remarks, Orientation Dinner for First-Year Students, Harvard Law School, Cambridge, MA. Notes supplied.

August 2004: Presenter, "Gay Marriage in America: A Constitutional View," Sun Valley Writer's Conference, Sun Valley, ID. Notes supplied.

July 2004: "Home Rule Then and Now," Massachusetts Appellate Judges Conference. Weston, MA. Notes Supplied.

June 20, 2004: Panelist, "Gay Marriage, Federalism, and Amending the Constitution," American Constitution Society's Annual Conference, Washington, D.C. Video supplied.

May 2004: Presenter, "Separation of Powers and the War on Terror: A Look at the Current Cases," Harvard Law School Association of Mexico, Mexico City, Mexico. As best as I can recall, my remarks discussed recent court cases concerning law-of-war detention. I have no notes, transcript, or recording. There is no physical address for this organization.

March 2004: Presenter, "Dispelling the Myth of Home Rule: Local Power in Greater Boston," Boston Foundation Forum, Boston, MA. As best as I can recall, my remarks were based on "Dispelling the Myth of Home Rule," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is The Boston Foundation, 75 Arlington Street, Boston, MA 02116.

February 5, 2004: Panelist, Dean's Forum, Harvard Law School, Cambridge, MA. Video supplied.

November 14, 2003: Commentator, "Localism in 20th Century American Society," American Society for Legal History Annual Meeting, Washington, D.C. Notes supplied.

October 25, 2003: Panelist, "How Should Progressives Think About the Constitution," Georgetown University Law Center, Washington, D.C. I have no notes, transcript or recording, but, as best I can recall, my remarks were based on an earlier version of *What's Wrong With Conservative Constitutionalism: Two Styles of Progressive Critique and the Choice They Present*, a copy of which has been supplied in response to 12a. The address of the sponsoring organization is Georgetown Law School, 600 New Jersey Avenue, NW, Washington, D.C. 20001.

April 26, 2003: Introductory remarks for speech by Attorney General Janet Reno, sponsored by the Harvard Law School American Constitution Society, Harvard Law School, Cambridge, MA. As best as I can recall, my remarks were introductory in nature. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

January 2003: Panelist, "Local Government Law and the 2000 Census," Association of American Law Schools Annual Convention, Washington, D.C. As best as I can recall, my remarks addressed local government law and findings from the recent census. I have no notes, transcript, or recording. The address of the sponsoring organization is Association of American Law Schools, 1201 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036.

Winter 2002: Presenter, "The Home Rule Project," Board Meeting of the Rappaport Institute for Greater Boston, Kennedy School of Government, Cambridge, MA. As best I can recall, my remarks described a course I co-taught at Harvard Law School on home rule. I have no notes, transcript, or recording. The address of the sponsoring organization is The Rappaport Institute for Greater Boston, Harvard Kennedy School, 79 John F. Kennedy Street, Cambridge, MA 02138.

Fall 2002: Presenter, "Reclaiming Home Rule," University of Virginia School of Law Faculty Workshop, Charlottesville, VA. As best I can recall, my remarks discussed the history and practice of home rule in American law. I have no notes, transcript, or recording. The address of the sponsoring organization is University of Virginia School of Law, 580 Massie Road, Charlottesville, VA 22903.

Fall 2002: Presenter, "Rethinking Home Rule," Stanford Law School, Colloquium on Distributive Justice, Stanford, CA. As best as I can recall, my remarks discussed the history and practice of home rule in American law. I have no notes, transcript, or recording. The address of the sponsoring organization is Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610.

Summer 2002: Presenter, "The Home Rule Project," Harvard Law School Summer Faculty Workshop, Harvard Law School, Cambridge, MA. As best I recall, my remarks described a course I co-taught at Harvard Law School on home rule. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Spring 2002: Presenter, "Rethinking Home Rule," Georgetown University Law School, Colloquium on Constitutional Theory, Washington, D.C. As best I can recall, my remarks discussed the history and practice of home rule in American law. I have no notes, transcript, or recording. The address of the sponsoring organization is Georgetown Law School, 600 New Jersey Avenue, NW, Washington, D.C. 20001.

January 2002: Panelist, "The Use of Intellectual Property in My First Year Property Class," Association of American Law Schools Annual Convention, New Orleans, LA. As best I can recall, I discussed cases involving the misappropriation doctrine and the copyrighting of factual compilations. I have no notes, transcript, or recording. The address of the sponsoring organization is Association of American Law Schools, 1201 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036.

November 8, 2001: Panelist, "Rethinking Home Rule," American Society for Legal History Annual Meeting, Chicago, IL. As best I can recall, my remarks discussed the history and practice of home rule in American law. I have no notes,

transcript, or recording. The address of the sponsoring organization is American Society for Legal History, 4301 Friedmann Hall, Western Michigan University, Kalamazoo, MI 49008.

Summer 2001: Presenter, "Inclusionary Localism and the Doctrine of Home Rule," Harvard Law School, Summer Faculty Workshop, Cambridge, MA. As best I can recall, my remarks addressed the history and practice of home rule in American law. I have no notes, transcript, or recording. The address of the sponsoring organization is Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Fall 2000: Panelist, "A Localist Critique of the New Federalism," Duke Program in Public Law Conference, "The Constitution in Exile," Durham, NC. As best I can recall, my remarks were based on views similar to those in my article, "A Localist Critique of the New Federalism," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Duke Program in Public Law, Duke University School of Law, 210 Science Drive, P.O. Box 90362, Durham, NC 27708.

May 10, 2000: Presenter, "Local Government Law in a World of Limited Growth," Tucson, AZ. Metropolitan Housing Commission Conference. Tucson, AZ. Notes supplied.

March 2000: Introductory remarks to speech by Hon. Stephen Reinhardt, United States Court of Appeals for the Ninth Circuit, Harvard Civil Rights-Civil Liberties Law Review "Conference 2000," Harvard Law School, Cambridge, MA. As best I can recall, my remarks were introductory in nature. I have no notes, transcript or recording. The address of the sponsoring organization is Harvard Civil Rights-Civil Liberties Law Review, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

January 2000: Moderator, "The City in the 21st Century," State and Local Government Section, Association of American Law Schools' Annual Conference, Atlanta, GA. I do not recall the substance of my remarks. I have no notes, transcript, or recording. The address of the sponsoring organization is Association of American Law Schools, 1201 Connecticut Avenue, NW, Suite 800, Washington, D.C. 20036.

Fall 1999: Panelist, "Constitutionalism in the Shadow of Doctrine: The President's Nonenforcement Power," Duke Program in Public Law, Conference on "The Constitution Under Clinton," Durham, NC. As best I recall, my remarks were based on an early version of my article, "Constitutionalism in the Shadow of Doctrine," a copy of which has been supplied in response to 12a. I have no notes, transcript, or recording. The address of the sponsoring organization is Duke Program in Public Law, Duke University School of Law, 210 Science Drive, P.O. Box 90362, Durham, NC 27708.

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 on-line database searches, and a review of my own files, I have found records of the following instances in which I have been quoted from an interview in a publication, as well as records of the following radio and television broadcasts I appeared on as a law professor. In addition to the materials I have listed below, I also believe I was interviewed for an article in *The New England Monthly* published in the spring of 1989 on the election of the president of The Harvard Crimson, but I have not been able to locate the article. I believe I may have appeared on additional radio and television broadcasts including one on NPR concerning the litigation concerning the disclosure of materials from the Energy Task Force chaired by Vice President Richard Cheney and other ones on MSNBC during the litigation over *Bush v. Gore*, as well as a radio broadcast concerning the Supreme Court's decision in that case, but I have no notes and records in my calendar identifying them, and I have not been able to find them through on-line searches:

Nicholas P. Fandos and Samuel Y. Weinstock, "At Longwood Forum, Email Privacy Policy Task Force Details Challenges Ahead," The Harvard Crimson, Oct. 10, 2013. Copy supplied in response to 12d.

Steven S. Lee, "UC Leaders Present Student Opinion Survey to Email Privacy Policy Task Force," The Harvard Crimson, Oct. 9, 2013. Copy supplied.

"Barron Task Force Launches Consultation Forums," Harvard Gazette, Oct. 7, 2013. Copy Supplied.

"Where Law and Public Policy Meet: The HLS/HKS Connection," Spotlight at Harvard Law School, Summer 2013. Copy supplied.

"Lawyers as Advisers," Harvard Law Bulletin, Summer 2013. Copy supplied.

Colleen Walsh, "Q&A with David Barron," Harvard Gazette, May 7, 2013. Copy supplied.

Dev A. Patel, "Once Home to Kagan and Warren, HLS Faculty Still Only 20 Percent Female," The Harvard Crimson, May 6, 2013. Copy supplied.

Nicholas P. Fandos and Samuel Y. Weinstock, "With President's Charge, Email Policy Group Meets for the First Time," The Harvard Crimson, May 6, 2013. Copy supplied.

Nate Rawlings, "Was Boston Actually on Lockdown?," Time.com, Apr. 19, 2013. Copy supplied.

Quinn D. Hatoff, "Harvard Profs Tapped to Join Mass. Board of Higher Ed." The Harvard Crimson, Mar. 7, 2012. Copy supplied.

"Governor Patrick Appoints Two New Members to the Board of Higher Education," Mass.gov, Mar. 5, 2012. Copy supplied.

Elaine McArdle, "Stories from the West Wing," Harvard Law Bulletin, Winter 2011. Copy supplied.

Corydon Ireland, "Rising Seas, Imperiled Cities," Environment@Harvard, Vol. 3, Issue 2, 2011. Copy supplied.

Farah Stockman, "Harvard Scholar Ends Justice Job Quickly," The Boston Globe, Nov. 29, 2010. Copy supplied.

Jonathan M. Hansen, "Guantanamo: An American History" (2011). Phone interview, Oct. 13, 2010. Relevant pages from book supplied.

Charlie Savage, "Key Job Changing Hands at Justice," The Caucus Blog, June 24, 2010. Copy supplied.

Charlie Savage, "White House Deputy Counsel Resigns," The Caucus Blog, May 7, 2010. Copy supplied.

"The Power of City Hall is a Myth Sometimes, Say Barron and Frug – and They Explain Why," Harvard Law School Webpage, Spotlight – Faculty Research, Fall 2008. Copy supplied.

"Impeachment," Here and Now, NPR, June 23, 2008. As best I can recall, I discussed the case against the impeachment of President George W. Bush. Audio available at http://www.hereandnow.org/2008/06/23/show-rundown-for-6232008.

Michael Gardner, "New Twist to Old Issue of 'Taking' of Property," Copley News Services, May 4, 2008. Copy supplied.

Charlie Savage, "Bush Asserts Authority to Bypass Defense Act," The Boston Globe, Jan. 30, 2008. Copy supplied.

Kris Hudson, "Rising Use of 'Impact' Fees Rankles New-Home Buyers," The Wall Street Journal, Nov. 21, 2007. Copy supplied.

"Mukasey Confirmation for Attorney General to Start," NPR, Oct. 17, 2007. Transcript supplied.

Francesca Jarosz, "Before You Grab That Property," GP/Solo, Law Trends and News, Sept. 2007. Copy supplied.

"Presidential Secrecy," On Point with Tom Ashbrook, WBUR, Sept. 2007. Audio available at: http://www.onpointradio.org/2007/09/presidential-secrecy.

"Justice Department Investigators Stay the Course," NPR, Aug. 28, 2007. Transcript supplied.

"Attorney General Has a Second Date With Congress," NPR, July 23, 2007. Audio available at: http://www.npr.org/templates/story/story.php?storyId=12185245.

Dan Froomkin, "Bush's Middle Eastern Folly," Washington Post, July 17, 2007. Copy supplied.

Charlie Savage, "In Iraq Bills, A Vietnam Echo," The Boston Globe, July 16, 2007. Copy supplied.

Ian Master, "Background Briefing," July 1, 2007. Audio available at http://ianmasters.com/content/2007-program-archive.

Robb London, "Battlegrounds," Harvard Law Bulletin (Summer 2007). Copy supplied.

Kevin Zhou, "Sitkoff to Join HLS Faculty," The Harvard Crimson, May 25, 2007. Copy supplied.

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Javier C. Hernandez, "Alumnus Announces Governor Bid," The Harvard Crimson, Apr. 15, 2005. Copy supplied.

"Ask the Professor: Not-So-Eminent Domain," Harvard Law Bulletin, Spring 2005. Copy supplied.

Kate Moran, "Testing Eminent Domain's Limits," The (New London CT) Day, Feb. 20, 2005. Copy supplied.

Michael M. Grynbaum and Jessica R. Rubin-Wills, "Campus Reacts to Failure of Gay Marriage Appeal," The Harvard Crimson, Dec. 2, 2004. Copy supplied.

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Warren Richey, "The Quiet Ascent of Justice Stevens," Christian Science Monitor, July 9, 2004. Copy supplied.

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Joan Biskupic, "Prisoners Test Legal Limits of War on Terror," USA Today, Apr. 19, 2004. Copy supplied.

Erik Arvidson, "Headlines," Lowell Sun, Mar. 14, 2004. Copy supplied.

Michael M. Grynbaum and Jessica R. Rubin-Wills, "City Council Will Not Speed Gay Marriage," The Harvard Crimson, Nov. 25, 2003. Copy supplied.

Matt Viser, "Tired of Driving, Ready To Walk," The Boston Globe, Oct. 26, 2003. Copy supplied.

Matt McDonald, "Driving 'Spares' Out of Town Owners Challenge Limits on Old Autos They Keep for Parts," The Boston Globe, Aug. 28, 2003. Copy supplied.

Bob Montgomery, "Watershed Trail May Be Test Case," Greenville News (S.C.), Dec. 23, 2002. Copy supplied.

Anthony Flint, "Growing Issue in Campaign; Romney O'Brien Outline Steps to Control Sprawl, Traffic Jams in Suburbs," The Boston Globe, Sept. 22, 2002. Copy supplied.

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Jeanne Sahadi, "Making Sense of Estate Tax Cuts," CNN Money, July 13, 2002. Copy supplied.

Scott W. Helman, "Mass.-Only Discount Not Legal, Some Say," The Boston Globe, July 3, 2002. Copy supplied.

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"Was Florida Court's Decision Right? Experts on the Constitution Sound Off," Investor's Business Daily, Nov. 24, 2000. Copy supplied.

"After 31 Years, Sorrento Supervises Last Closeout at the Crime," The Harvard Crimson, Sept. 18, 1998. Copy supplied.

Barbara E. Martinez, "Full-Time Employees Give 14 Plympton a Sense of Continuity, History," The Harvard Crimson, Jan. 24, 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 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.

2009 – 2010
Principal Deputy Assistant Attorney General, Office of Legal Counsel, United States Department of Justice. On January 20, 2009, I was appointed by the Attorney General. I became the Acting Assistant Attorney General for the Office

of Legal Counsel on January 20, 2009 by operation of law, pursuant to the Vacancies Reform Act.

March 2012 – present
Member, Massachusetts Board of Higher Education
(Appointed by Governor)

April 2013 – present
Member, Massachusetts School Construction Building Authority
(Appointed by Governor)

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.

From November 2008 to January 2009, I served on the President-Elect's Transition Team as a member of the Department of Justice Agency Review Team.

From September 2008 to November 2008, I did volunteer work as part of an informal group for the Obama-Biden presidential campaign that analyzed potential election law issues in anticipation of the November 2008 presidential election.

From October 2007 to May 2008, I did volunteer work as part of an informal group advising the Hillary Clinton presidential campaign on legal policy matters.

In 2005 through 2006, I served as a member of the finance committee for Deval Patrick's campaign for Governor of Massachusetts. I served as the host or co-host of a number of fundraisers in connection with that volunteer position.

In October 2004, I did volunteer work as part of the Research, Analysis and Writing team for the Kerry-Edwards presidential campaign. I analyzed potential election law issues in anticipation of the November 2004 presidential election.

In June 2002, I served as a Delegate to the Massachusetts Democratic Party Convention.

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 1995 to 1996, I served as law clerk to Justice John Paul Stevens for the Supreme Court of the United States.

From 1994 to 1995, I served as law clerk to the Hon. Judge Stephen Reinhardt, Circuit Judge for the United States Court of Appeals for the Ninth Circuit.

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

I have not practiced alone. I have received compensation for providing legal consultation on occasion while serving as a law professor at Harvard Law School. In 2003 or 2004, I provided a few hours of consultancy services to Professor Richard Fallon in connection with memoranda he was preparing on constitutional issues relating to the Fuller Austin Settlement Trust and proposed legislation that would have taken money from existing trusts for asbestos-related illness. In February 2002, I provided consultancy services on a constitutional matter to the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority. In 2001, I provided consultancy services to Professor Richard Fallon in connection with his preparation for oral argument on behalf of the appellee in *Starlight Sugar v. Soto*, 253 F.3d 137 (1st Cir. 2001). The case concerned issues of qualified immunity. In 2001, I provided compensated consultancy services to One Page, Inc., concerning copyright and other intellectual property issues. I also served as a counsel on two amicus briefs in the Supreme Court of the United States, which I have listed below.

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

1996 – 1999, 2009 – 2010
Office of Legal Counsel, United States Department of Justice
950 Pennsylvania Avenue, NW
Washington DC 20530
Consultant (July 2010 – December 2010)
Acting Assistant Attorney General (2009 – 2010) (on leave from Harvard Law School)
Principal Deputy Assistant Attorney General (2009 – 2010) (on leave from Harvard Law School)
Attorney Advisor (1996 – 1999)

1999 – present
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138
Honorable S. William Green Professor of Public of Public Law (2011 – present)
Professor (2004 – 2011)
Assistant Professor (1999 – 2004)

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 in such a position.

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 served as an Attorney Advisor in the Office of Legal Counsel, United States Department of Justice, from 1996 to 1999. In that role, I worked on a wide variety of legal matters concerning federal law, drafting memoranda for the office and providing advice on litigation about which the office was consulted.

From 1999 through the fall of 2008, I was a law professor, in which I did occasional legal consulting and served as counsel on two amicus briefs in the Supreme Court of the United States, each of which is listed below.

Beginning in January 20, 2009, I became the Acting Assistant Attorney General for the Office of Legal Counsel. I continued to serve as a consultant to that Office after departing until December 2010. I then returned to law teaching at Harvard Law School.

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

While engaged in the practice of law at the Department of Justice, I viewed my client as the United States. I served as a counsel on two Supreme Court amicus briefs representing members of Congress, and I served on the President Elect's Transition Team as a member of the Department of Justice Agency Review Team. My other work has been as a consultant on both litigation and non-litigation related 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.

The majority of my legal career has been spent teaching. In that capacity, I have served as a counsel on two amicus briefs and signed on to three other amicus briefs. Of those briefs, one concerned a state court matter. While serving in the Office of Legal Counsel, I was not counsel for the United States in any litigation, but in my role as an Attorney Advisor and as the Acting Assistant Attorney General I was frequently asked to advise upon matters in litigation. My involvement in these matters exclusively concerned issues arising in the federal courts, at all levels, including the Supreme Court of the United States.

i. Indicate the percentage of your practice in:
   1. federal courts: 99%
   2. state courts of record: 1%
   3. other courts: 0%
   4. administrative agencies: 0%

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

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

I have not tried any cases.

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

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

Randall v. Sorrell, Brief for Senator John McCain, Senator Russell Feingold, Representative Christopher Shays, and Representative Martin Meehan As Amici Curiae in support of respondents, 2006 WL 325180.

Wisconsin Right to Life v. Federal Election Commission, Brief of Amici Curiae Senator John McCain, Representative Chris Shays, and Representative Martin Meehan in support of Appellee, 2005 WL 3543096.

Rumsfeld v. F.A.I.R., Brief of Amici Curiae Professor William Alford, et al., in support of Respondents, 2005 WL 2367595.

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. *Wisconsin Right to Life, Inc. v. Federal Election Commission*, 546 U.S. 410 (2006). I was a counsel for Amici Curiae Senator John McCain, Representative Christopher Shays, and Representative Martin Meehan in support of appellee. The brief argued that section 441b of the Bipartisan Campaign Reform Act of 2002, which required the use of segregated political action committee funds to pay for certain advertisements in advance of a federal election, could be constitutionally applied to three advertisements run by Wisconsin Right to Life, Inc. The Supreme Court in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 546 U.S. 410 (2006) (per curiam), reversed the lower court and held that an as applied challenge could be brought.

    Co-counsel:
    Grant A. Davis-Denny
    Bradley S. Phillips
    Munger, Tolles & Olson LLP
    355 South Grand Avenue
    35th Floor
    Los Angeles, CA 90071
    (213) 683-9100

    Randolph D. Moss
    Seth P. Waxman
    Wilmer Hale LLP
    2445 M Street, NW
    Washington, D.C. 20037
    (202) 663-6000

Roger M. Witten
Wilmer Hale LLP
399 Park Avenue
New York, NY 10022
(212) 230-8800

Fred Wertheimer
Democracy 21
2000 Massachusetts Ave., NW
Washington, DC 20036
(202) 355-9600

Donald J. Simon
Sonosky, Chambers, Sachse, Endreson & Perry, LLC
1425 K Street, N.W.
Suite 600
Washington, DC 20005
(202) 682-0240

Alan Morrison
George Washington University Law School
2000 H Street, NW
Washington, D.C. 20052
(202) 994-5157

Trevor Potter
Paul Ryan
Campaign Legal Center
215 E Street, NW
Washington, D.C. 20002
(202) 736-2200

Charles G. Curtis, Jr.
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, D.C. 20004
(202) 942-6462

David L. Anstaett
Perkins Coie, LLP
1 East Main Street
Madison, WI 53703
(608) 663-5408

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street, NW
Washington, D.C. 20009
(202) 588-1000

Counsel for appellant:
James Bopp Jr.
The Bopp Law Firm
One South Sixth Street
Terre Haute, IN 47807
(812) 232-2434

Counsel for appellee:
Paul Clement (formerly Acting Solicitor General)
1919 M Street, NW, Suite 470
Washington, D.C. 20036
(202) 234-0090

2. *Randall v. Sorrell*, 548 U.S. 230 (2006). I was a counsel in this case for Amici Curiae Senator John McCain, Representative Christopher Shays, and Representative Martin Meehan in support of respondents. The case concerned whether the court of appeals correctly upheld Vermont's campaign contribution limits under applicable First Amendment standards and whether the court of appeals had properly remanded to the district court the issue of whether Vermont's expenditure limits were constitutional. The brief argued that the contribution limits should be upheld and that the court of appeals' remand should be affirmed, thereby staying the Supreme Court's hand pending further development of the issue by the lower courts. The Supreme Court in *Randall v. Sorrell* held that both the expenditure limits and the contribution limits were unconstitutional and remanded the case for further proceedings.

Co-counsel:
Randolph D. Moss
Seth Waxman
Wilmer Hale LLP
2445 M Street, NW
Washington, D.C. 20037
(202) 663-6000

Roger M. Witten
Wilmer Hale LLP
2445 M Street, NW
Washington, D.C. 20037
(202) 663-6000

Grant A. Davis-Denny
Bradley S. Phillips
Munger, Tolles & Olson LLP
355 South Grand Avenue
35th Floor
Los Angeles, CA 90071
(213) 683-9100

Donald J. Simon
Sonosky, Chambers, Sachse, Endreson & Perry, LLC
1425 K Street, NW
Suite 600
Washington, D.C. 20005
(202) 682-0240

Alan Morrison
George Washington University Law School
2000 H Street, NW
Washington, D.C. 20052
(202) 994-5157

J. Gerald Herbert
Trevor Potter
Paul Ryan
Campaign Legal Center
215 E Street, NW
Washington, D.C. 20036
(202) 736-2200

Charles G. Curtis, Jr.
Arnold & Porter LLP
555 Twelfth Street, NW
Washington, D.C. 20004
(202) 942-6462

Fred Wertheimer
Democracy 21
2000 Massachusetts Avenue, NW
Washington, D.C. 20036
(202) 355-9600

Scott L. Nelson
Public Citizen Litigation Group
1600 20th Street, NW
Washington, D.C. 20009
(202) 588-1000

Counsel for petitioners:
Mitchell L. Pearl
Langrock Sperry & Wool, LLP
P.O. Drawer 351
Middlebury, VT 05753
(802) 388-6356

James Bopp Jr.
The Bopp Law Firm
One South Sixth Street
Terre Haute, IN 47807
(812) 232-2434

Counsel for respondents:
Judge Timothy B. Tomasi (formerly at the Vermont Office of Attorney General)
Superior Court of Vermont
P.O. Box 570
Hyde Park, VT 05655
(802) 888-3887

3. *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006). In 2005, as a law professor, I joined an amicus brief in the Supreme Court with many of my faculty colleagues in support of respondent Forum for Academic and Institutional Rights, Inc. (FAIR) in an action against Secretary Rumsfeld challenging the Solomon Amendment, which governs universities' treatment of military recruiters. I also participated in the drafting of this brief. The main brief in the case presented a constitutional argument. The amicus brief presented a statutory argument – that the Amendment did not require universities to exempt the military from generally applicable anti-discrimination rules governing employers. The Supreme Court unanimously rejected all claims, constitutional and statutory alike, in *Rumsfeld v. FAIR*, 547 U.S. 47 (2006).

Co-counsel:
Walter Dellinger
O'Melveny and Myers, LLP
1625 Eye Street, NW
Washington, D.C. 20006
(202) 383-5300

Pamela Harris
Georgetown Law School
600 New Jersey Avenue, NW
Washington, D.C. 20001
(202) 662-9000

Toby Heytens
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903
(434) 924-3229

Nicole Saharsky
Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
(202) 514-2203

Counsel for petitioners:
Paul Clement (formerly Acting Solicitor General)
1919 M Street, NW, Suite 470
Washington, D.C. 20036
(202) 234-0090

Counsel for respondents:
E. Joshua Rosenkranz
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5380

4. *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 390 F. 3d. 219 (3d. Cir. 2004). In 2004, as a law professor, I joined an amicus brief in the United States Court of Appeals for the Third Circuit with many of my faculty colleagues in support of respondent Forum for Academic and Institutional Rights, Inc. (FAIR) in an action against Secretary Rumsfeld challenging the Solomon Amendment, which governs universities' treatment of military recruiters. I also participated in the drafting of this brief. The main brief in the case presented a constitutional argument. The amicus brief presented a statutory argument – that the Amendment did not require universities to exempt the military from generally applicable anti-discrimination rules governing employers. A divided panel of the Third Circuit concluded that plaintiffs had shown a significant likelihood of success on the merits of their First Amendment challenge and reversed and remanded to the district court to enter a preliminary injunction against enforcement of the Solomon Amendment.

Co-counsel:
Walter Dellinger
O'Melveny and Myers, LLP
1625 Eye Street, NW
Washington, D.C. 20006
(202) 383-5300

Pamela Harris
Georgetown Law School
600 New Jersey Avenue, NW
Washington, D.C. 20001
(202) 662-9000

Toby Heytens
University of Virginia School of Law
580 Massie Road
Charlottesville, VA 22903-1738
(434) 924-3229

Nicole Saharsky
Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
(202) 514-2203

Counsel for appellant:
E. Joshua Rosenkranz
Orrick, Herrington & Sutcliffe LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5380

Counsel for appellee:
Peter D. Keisler (then Assistant Attorney General)
Sidley Austin LLP
1501 K Street, NW
Washington, D.C. 20005
(202) 736-8027

5. *New Mexicans for Free Enterprise v. City of Santa Fe*, 126 P. 3d 1149 (2005). In 2005, as a law professor, I joined an amicus brief in the Court of Appeals of the State of New Mexico with other scholars of local government law and the New Mexico Municipal League in support of the City of Santa Fe in defense of its living wage ordinance. I also participated in the drafting of the brief. The amicus brief explained why the ordinance constituted a valid exercise of the city's state law home rule powers and why it was not preempted. The Court of Appeals upheld the ordinance as a valid exercise of local home rule authority in *New Mexicans for Free Enterprise v. City of Santa Fe*, 126 P. 3d 1149 (2005).

Co-counsel:
Richard Briffault
Columbia Law School
435 West 116th Street

New York, New York 10025
(212) 854-2638

Maureen Sanders
Duff Westbrook
Sanders and Westbrook, P.C.
102 Granite Avenue, NW
Albuquerque, New Mexico 87102
(505) 243-2243

Counsel for appellant:
Paul K. Sonn
National Employment Law Project
75 Maiden Lane, Suite 601
New York, NY 10038
(212) 285-3025

Counsel for appellee:
Kathrin Kinzer-Ellington
Ellington & Ellington LLC
1322 Paseo De Peralta
Santa Fe, NM 87501
(505) 986-0677

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.)

Upon completing my clerkships, I served as an Attorney Advisor in the Office of Legal Counsel for three years. As an Attorney Advisor in the Office of Legal Counsel from 1996 to 1999, I was involved in a wide range of legal activities pertaining to all aspects of the Office's work. In that capacity, I provided advice and drafted opinions concerning a number of matters of constitutional, statutory and regulatory interpretation. I also advised on a wide range of litigation. The work I performed in my role as an Attorney Advisor for the Office was confidential and/or classified.

The majority of my legal career has been spent in law teaching. I have served as an assistant professor of law and as professor of law at Harvard Law School since 1999, with a leave of absence from January 2009 through July 2010. I am presently the Honorable S. William Green Professor of Public Law at Harvard Law School, where I have taught a number of courses, including a number with a clinical component. During my time as a professor, I have engaged in occasional consulting work and litigation,

including advising on a constitutional issue for the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority and assisting in preparation for an oral argument in the United States Court of Appeals for the First Circuit in the case of *Starlight Sugar v. Soto*, 253 F.3d 137 (1st Cir. 2001). I also advised Senators Edward Kennedy and Charles Schumer on constitutional issues during the confirmation hearings on the nominations of Samuel Alito and John Roberts to be associate justices of the Supreme Court of the United States.

After serving on the President Elect's Transition Team as a member of the Department of Justice Agency Review Team in 2009, I returned to the Office of Legal Counsel as the Principal Deputy Assistant Attorney General and Acting Assistant Attorney General, and I served as a consultant to the Office after leaving in July 2010, providing occasional advice through December of that year. As the Acting Assistant Attorney General for the Office of Legal Counsel, I was responsible for all operations of the Office, both legal and administrative. I provided confidential legal advice on a wide range of federal litigation concerning constitutional and statutory matters at all levels of the federal court system, including the Supreme Court. In carrying out these duties and functions, I participated in a wide range of legal activities concerning matters of regulatory, statutory, constitutional, and international law interpretation in both the domestic and national security areas. I also advised on a wide range of litigation. A number of memoranda that I signed in my tenure have been made public on the Office's website, and they are listed above in answer to question 12c. Other legal work I did in that capacity is confidential and/or classified.

I have not performed any lobbying activities.

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

I taught Administrative Law in Spring 2000, Spring 2001, Fall 2002, Spring 2005, and Spring 2007, at Harvard Law School. The course covered basic federal administrative law. Representative syllabus supplied.

In Spring 2005 and Spring 2007, I offered a clinical component to the Administrative Law course in which a limited number of students received placements in the law offices of federal agencies in Massachusetts. No syllabus available.

I co-taught the course, Gateway Cities Field Study, with Ann Forsyth and Nicolas Retsinas, in Spring 2012, at Harvard Law School. The course placed students from Harvard Law School, Harvard Business School, and the Harvard Graduate School of Design in interdisciplinary teams and assigned them to various gateway cities in Massachusetts to advise on redevelopment challenges facing them. Syllabus supplied.

I co-taught a yearlong combined seminar and clinical, Green Cities: New York, with Gerald Frug, in 2009, 2010, and 2011, at Harvard Law School. The course examined New York City's efforts to implement PlaNYC and placed students in the Corporation Counsel's Office of the City of New York through a distance clinical. I taught the combined seminar and clinical by myself in 2012. Representative syllabus supplied.

I co-taught a year-long field study, Home Rule in Massachusetts, with Gerald Frug, in 2001, at Harvard Law School. The course examined home rule in Massachusetts. I have been unable to locate the syllabus.

I have been the faculty supervisor for a number of independent clinical offerings at Harvard Law School in which individual students have been placed in law offices in Massachusetts and across the country. No syllabi available.

I co-taught a seminar, International Local Government Law, with Gerald Frug, in Spring 2005, at Harvard Law School. The course examined the role international law plays in determining the power of cities. Syllabus supplied.

I taught a first-year reading group, Lawyering for the President, in 2010, 2011, 2012 and 2013, at Harvard Law School. The first-year reading group examined the role of executive branch lawyers. Representative syllabus supplied.

I co-taught a reading group, Lawyering for the President, with Jack Goldsmith, in Fall 2005, and I taught on my own a substantially similar version of this course as a reading group in Spring 2008 and as a seminar in Fall 2010 and Spring 2012, at Harvard Law School. The course examined the role of executive branch lawyers. Representative syllabus supplied.

I taught Legislation and Regulation in Spring 2008, Fall 2011, and Fall 2012, at Harvard Law School. The course covered basic statutory interpretation and administrative law. Representative syllabus supplied.

I taught Local Government Law in Spring 2001, Fall 2003, Spring 2007, Fall 2008, and Fall 2010, at Harvard Law School. The course is a survey of state and local government law. Representative syllabus supplied.

In Fall 2003, Spring 2004, Spring 2007, Fall 2008, and Winter 2009, I offered a clinical component to the Local Government Law course in which a limited number of students received clinical placements in the law offices of state and municipal governments and agencies in Massachusetts. No syllabus available.

I co-taught a first-year reading group, Social Capital and Cities, with Archon Fung, at Harvard Law School for a number of years before going on leave in 2008. The first-year reading group examined the importance of social capital to cities and suburbs and how local government law can create or undermine social capital. Representative syllabus supplied.

I taught Property in Fall 1999, Fall 2000, Spring 2002, Spring 2003, Spring 2004, Fall 2004, Fall 2005, and Fall 2006, at Harvard Law School. The course covered basic property law. Representative syllabus supplied.

I co-taught a seminar, Public Problems: Advice, Strategy, Analysis, with Archon Fung, in Fall 2012 and Spring 2013, at Harvard Law School. The course is required of all students enrolled in the joint J.D./M.P.P. program between Harvard Law School and Harvard Kennedy School. The course introduced students to case studies of public problems that raise issues of law and policy. Representative syllabus supplied.

I co-taught a seminar, Thinking About Cities, with Gerald Frug, in Fall 2002 and Spring 2003, at Harvard Law School. The seminar brought in guest speakers from practice and academia to discuss urban theories and issues. I have been unable to locate the syllabus.

I co-taught a seminar, Urban Responses to Sea Level Rise with Gerald Frug, Daniel Schrag, Jerrold Kayden, and Charles Waldheim, in Spring 2012, at Harvard Law School. The course examined the responses of cities to rising sea levels and the legal issues raised by those responses. Syllabus supplied.

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

    None.

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

    No, except for the possibility of law teaching.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

The main conflicts of interest that I would confront would arise from my service at the Office of Legal Counsel. The only other significant source of potential conflicts of interest arising from my professional work would arise from my affiliation with Harvard Law School and with the Massachusetts Board of Higher Education and the Massachusetts State College Building Authority. In addition, my wife is employed by the Harvard Kennedy School of Government and is a candidate for Governor of Massachusetts. My wife and I also have financial holdings listed in my Net Worth Statement. I would handle all matters concerning recusal by consulting the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Judicial Conduct for United States Judges. In close cases, I also would consult other judges and any person designated by the court or judicial organizations to provide advice on such questions as they arise.

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

In order to avoid any potential conflict of interest, I would consult the rules and decisions that address what constitutes a conflict of interest, including 28 U.S.C. § 455 and the Code of Judicial Conduct for United States Judges. Based on such sources, I would compile a comprehensive list of matters, clients or other persons so that I could readily identify potential conflicts of interest, and in close cases, I also would consult other judges and any person designated by the court or judicial organizations to provide advice on such questions as they arise.

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

Since April 2013, I have served without compensation on the Massachusetts State College Building Authority, which is charged with financing, designing, constructing, and overseeing the management of revenue-funded facilities for the nine state universities. Since March 2012, I have served without compensation on the Massachusetts Board of Higher Education, which provides an oversight role on behalf of the state's universities and community colleges and focuses on efforts to increase access to quality public higher education throughout the Commonwealth.

Since 2008, I have served on the advisory board of the Rappaport Center for Law and Public Service at Suffolk University Law School, which is devoted to promoting emerging leaders who are committed to public service and pro bono work.

Throughout my time in teaching, I have been a faculty supervisor for student clinical work for the disadvantaged both in conjunction with my course on Local Government Law, including clinical placements concerning community economic development, and as part of independent clinical projects. I have also promoted public interest and pro bono work as a faculty member through committee service, individual advising, and through appearances at public interest advising events.

26. **Selection Process**:

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

In the fall of 2010, I was contacted by an official from the White House Counsel's Office, inquiring whether I would be interested in being considered to serve as a Federal Circuit judge should a vacancy arise. I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice since that time. Although my contact was limited from late 2011 through early 2013, when a vacancy arose on the United States Court of Appeals for the First Circuit this summer, an official from the White House Counsel's Office inquired whether I was still interested, and I have been in more frequent contact since then. On August 27, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 24, 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
Barron, David J.	United States Court of Appeals for the First Circuit	09/24/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States Circuit Judge, Active	**5a. Report Type (check appropriate type)** ☑ Nomination Date 9/24/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	**6. Reporting Period** 01/01/2012 to 08/31/2013
7. Chambers or Office Address Griswold 307 Harvard Law School 1533 Massachusetts Avenue Cambridge, MA 02139		

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	Massachusetts State College Building Authority
2.	Board member	Massachusetts Board of Higher Education
3.	Professor	Harvard Law School
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 Barron, David J.	Date of Report 09/24/2013

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	Harvard University -- faculty member, salary	$206,233.34
2. 2012	Harvard University -- faculty member, salary	$279,800.00
3. 2011	Harvard University -- faculty member, salary	$252,628.00
4. 2013	International Center for Sport Security, consulting fee	$9,846.00
5. 2012	The Wylie Agency, book advance	$21,000.00
6. 2012	West Services, book royalties	$2,458.29
7. 2012	National Center for State Courts, honrarium	$5,000.00
8. 2012	University of Kentucky, Kentucky Law Journal, honorarium	$500.00
9. 2011	West Services, book royalties	$1,599.95
10. 2011	CBMO-Tias-Nimbas Business School, consulting fee	$20,495.00

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	The Boston Globe, salary
2. 2012	The Boston Globe, salary
3. 2013	Harvard University, salary
4. 2012	Harvard University, salary
5. 2013	Simon & Schuster, book advance
6. 2013	CNN, analyst, wages
7. 2013	International Center for Sport Security, Board member, wages
8. 2012	International Center for Sport Security, Board member, wages
9. 2012	MAC Consulting Services, consulting fee

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Barron, David J.	Date of Report 09/24/2013

10. 2012	Northeastern University, Honrarium, $1000
11. 2012	xfact, inc., consulting fee

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Barron, David J.	Date of Report 09/24/2013

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 5 of 7

Name of Person Reporting	Date of Report
Barron, David J.	09/24/2013

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. CREF Inflation-Linked Bond Fund	A	Dividend	K	T	Exempt				
2. CREF Stock Fund	A	Dividend	M	T					
3. Fidelity Massachusetts Municipal Money Market Fund	A	Interest	J	T					
4. Fidelity Select Biotechnology Portfolio	A	Dividend	M	T					
5. Fidelity OTC Portfolio	A	Dividend	K	T					
6. TIAA Traditional Annuity	A	Dividend	K	T					
7. Vanguard Prime Money Market Fund	A	Interest	J	T					
8. Vanguard Target Retirement 2035 Fund	A	Dividend	N	T					
9. Vanguard Total Bond Market Index Fund	A	Dividend	K	T					
10. The Girls, LLC	F	Dividend	P1	T					
11. Mars-B, Inc.	A	Dividend	M	T					
12. Bank of America, cash accounts	A	Interest	L	T					
13. U.S.Government Securities -- Series EE Bonds	A	Interest	J	T					
14. New York Times Company Stock	A	Interest	K	T					
15. Vanguard Target Retirement 2035 Trust II	A	Interest	K	T					
16. Note -- Juliette Kayyem for MA		None	K	T					
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 - $ 5,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$15,001 - $50,000
J =$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 Barron, David J.	Date of Report 09/24/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Barron, David J.	Date of Report 09/24/2013

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/ David J. Barron

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		74	188	Notes payable to banks-secured			
U.S. Government securities–Series EE bonds		2	800	Notes payable to banks-unsecured			
Listed securities – see schedule		810	396	Notes payable to relatives			
Unlisted securities – see schedule	1	520	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		30	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule	1	101	953
Real estate owned – personal residence	1	730	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:							
				Total liabilities	1	101	953
				Net Worth	3	115	431
Total Assets	4	217	384	Total liabilities and net worth	4	217	384
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax		30	000				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
CREF Inflation-Linked Bond Fund	$ 21,507
CREF Stock Fund	153,159
Fidelity Massachusetts Municipal Money Market Fund	460
Fidelity Select Biotechnology Portfolio	130,847
Fidelity OTC Portfolio	43,061
N.Y. Times Co. stock	5,672
TIAA Traditional Annuity	20,190
Vanguard Prime Money Market Fund	9,286
Vanguard Target Retirement 2035 Fund	374,763
Vanguard Target Retirement 2035 Trust II	24,862
Vanguard Total Bond Market Index Fund	26,589
Total Listed Securities	$ 810,396
Unlisted Securities	
The Girls, LLC	$ 1,370,000
Mars-B, Inc.	150,000
Total Unlisted Securities	$ 1,520,000
Real Estate Mortgages Payable	
Personal residence	$ 946,953
Home Equity loan	155,000
Total Real Estate Mortgages Payable	$ 1,101,953

AFFIDAVIT

I, David Jeremiah Barron, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Sept. 30, 2013
(DATE)

David J Barron
(NAME)

Chloe V Bush
(NOTARY)

CHLOE VICTORIA BUSH
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 21, 2019

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

David Jeremiah Barron
Nominee, U.S. Circuit Judge for the First Circuit

1. During your hearing, I asked you about a leaked OLC memo that you are reported to have authored. I asked why the memo would be leaked to a reporter and not to the general public in a redacted format consistent with national security. I understand that you told me that you had no part in leaking the memo or in authorizing the memo to be shared with anyone, but the question of why was the memo not shared with the general public in a redacted format consistent with national security considerations still remains unanswered. You said the decision stands with the Executive Branch. However, you were part of the Executive Branch when that decision was made. So, please explain why the public was not notified in a limited fashion.

2. I also asked you about an interview you gave concerning John Yoo's actions and I have some follow-up questions on that. (I realize that you stated that you cannot confirm or deny the existence of the OLC memo. For purposes of these questions, please assume that one exists.)

    a. How do you distinguish between authorizing targeted killings and engaging in torture in a legal sense?

    b. In a constitutional sense?

    c. What factors should be considered in determining whether one of these practices is acceptable?

    d. You wrote a letter in the wake of Abu Ghraib misconduct that Congress should identify all those involved and be held accountable for their actions. Please explain how this is legally different from targeted killing of American citizens without due process.

3. I asked you at your hearing whether or not Mr. Savage, or anyone else from the New York Times, contacted you before publishing his story. You replied "Yes." Please provide the circumstances of that contact, including dates, location, manner of contact and subject matters discussed. Also describe any documents that might have been made available to Mr. Savage for review.

4. In response to a question from Senator Leahy regarding your view on the legal and constitutional grounds for the targeted killing of an American overseas using a drone you discussed in a general sense the legal principles and legal issues "that one has to consider". In your response you indicated the source of authority the President is relying on, any Congressional limitations on the scope of that authority, and how the laws of war inform the grants of authority that had been given to the President. You noted there are also constitutional guarantees that citizens enjoy, as well as precedents. Please explain how the criminal statute found at 18 USC 1119 is part of that equation.

5. You have written about progressive and conservative constitutionalism. I asked you to explain those terms and which of those terms best describes your own view. You replied that as you have reviewed your writings it is not entirely clear what content those terms have. I was surprised at your response, given your academic background and reputation as well as how frequently you used these terms in your numerous academic writings. I would like a more complete answer on how you use these terms.

    a. If, as you say, those labels "are not particularly helpful in articulating anyone who is judge, what their philosophy would be" then for what purpose did you write on this topic?

    b. As an academic, do you think judges ever demonstrate a conservative or a progressive tilt?

    c. As a judge, if confirmed, how will you ensure that you do not apply any preconceived vision or approach to constitutional interpretation?

6. When I asked you how much you would consider law reviews, literature, and treatises in your judicial decision making you said, "Much less than law professors would wish". So, how much is this? Will you turn to them to help in your decision making process when the statute or precedent is unclear?

7. Do you think that there is a "conservative agenda" at the Supreme Court and how is it manifested?

8. You wrote that "Roberts and Alito have a project… but they don't have a jurisprudential project in the way Scalia and Thomas did". Please explain what the "projects" of these Justices are, in your view.

9. You once said that "Federalism is what we make of it. Rehnquist and his conservative colleagues have been making the most of it for more than a decade. It's time for progressives to do the same."

a. How should progressives do this?

b. You have spoken about liberal/conservative agendas on the Court, and about precedent being able to be used however one sees fit. What will you make of federalism, as a judge?

10. In a panel in 2004 you said that the "living constitution will seem much more respectable in terms of constitutional theory when the issue of same-sex marriage becomes a part of the legal framework of this country".

a. Is the living constitution concept more respectable in terms of constitutional theory in 2013?

b. If so, is this a good thing?

11. You have written that the Constitution is not "frozen" and that it is a "dynamic document." What do you mean by this and how will this affect your judicial decision-making process, if confirmed?

12. What factors should a judge look to in custody disputes when there are three parents involved in the custody battle? How strong should the biological factor be?

13. Every nominee who comes before this Committee tells me they are committed to "following precedent". But you have said that "any good lawyer knows how to distinguish a precedent, if you need to". This sentiment can work for a judge as well.

a. Can you please share your general views on the principle of *stare decisis* and how you will approach following precedent, if you are confirmed?

b. What examples have you seen where a judge has followed one precedent he or she prefers while ignoring one that does not suit the outcome he or she wants?

14. I asked you some questions during your hearing that I would like to repeat to get a fuller and better answer to my question. In 2011, the D.C. District Court ordered the Justice Department to release emails regarding then-Solicitor General Kagan's involvement with ObamaCare litigation. In 2010, then-Solicitor General Kagan wrote you an email when you were Acting Assistant Attorney General for the Office of Legal Counsel. In that particular email she asked whether you had seen former Judge Michael McConnell's "piece in the wsj." She was referring to a March 15th op-ed in the Wall Street Journal in which Judge McConnell discussed the constitutionality of a proposal by House Democrats to avoid any additional

votes on ObamaCare legislation. The idea was to circumvent a vote on the exact language of the bill as passed by the Senate.

In response to that email, you replied: "YES – HE IS GETTING THIS GOING."

What did you mean by that reply – He is getting this going? Who is the "He" and what is he "getting going?"

15. How has your time at the Office of Legal Counsel prepared you to be a Circuit Court judge?

16. How has your time as a law professor prepared you to be a Circuit Court judge?

17. Please elaborate for the Committee any experience you have with appellate courts.

18. Senate Democrats ignored your counsel, first given back in 2003 and which you subsequently reaffirmed before this committee at your nomination hearing, by invoking the nuclear option, breaking Senate rules governing changes to the rules, and silencing the right of the minority to exercise a check on the majority and the executive. What is your view on this action taken by the Senate in terms of protecting minority rights and in terms of the balance between the executive branch and Congress?

19. Please define "originalism" and discuss the merits of and problems with judges using this philosophy in deciding constitutional issues.

20. I am interested in your views on NSA wiretapping.

    a. What is your understanding of the current state of law regarding the legality of the NSA wire-tapping?

    b. Where is the authority for this program found?

    c. You once said that this issue will be resolved by the courts and that the previous Administration was afraid they would lose in the courts. Please compare and contrast the handling of NSA wiretapping issues by previous and current administration.

21. You wrote a letter that argued that Congress has the authority to use the prohibition of slavery under the Thirteenth Amendment to make federal offenses those crimes motivated by gender, sexual orientation, gender identity or disability. Please elaborate to the Committee how sexual orientation should receive the same legal protections as race or gender.

22. In 2006, you co-authored an article posted to the Georgetown Law Faculty Blog concerning President Bush's use of signing statements. In that article, you refer to an OLC opinion written during the Clinton Administration that stress that "the President is to act in ways that respect the important roles of Congress and the courts in the process of constitutional interpretation and the resolution of constitutional controversy."

    a. Do you believe that this statement is still true today?

    b. You also criticized President Bush and his administration for relying on non-enforcement as "a strategy of first-resort." Do you believe that a strategy of non-enforcement as a first-resort is inappropriate no matter who is President?

23. Your questionnaire indicates you were a board member of the official law journal of the American Constitution Society for Law and Policy. There is nothing wrong with associating with 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?"

24. During the Bush Presidency, you co-authored an article critical of the administration's use of signing statements. One of the four concerns you raised was that the increased use of signing statements permitted the administration to conduct "non-enforcement" as a "strategy of first-resort." You argued that this strategy ignored the proper constitutional roles of the legislative and judicial branches. In my opinion, the current administration has made non-enforcement a strategy of first-resort. This is clearly evident in a number of legal challenges over the past several years. Most recently, just last week we saw the President use non-enforcement as a strategy of first-resort when he decided to suspend enforcement of his own ObamaCare provision that required insurance companies to drop coverage to their customers despite the President's repeated assurances that "if you like your plan, you can keep it." I think it is a fair assumption that this administration will continue to use non-enforcement as a strategy of first-resort which leads me to this next series of questions:

    a. As an appellate judge, how do you plan to approach a case that calls into question the President's declination to enforce a specific law?

    b. What are the applicable standards of law in reviewing such a case?

    c. What assurances can you offer this committee that you would approach such a case without regard to your political affiliation or personal legal philosophies?

25. In a 2008 NPR interview, you said that impeachment articles against former President Bush were justified by charges that the President had misled the American people into the Iraq War. What, in your view, would have been the principle justification for bringing impeachment proceedings against the former president?

26. According to your questionnaire, you have never tried a case and have only participated in three briefs to appellate level courts. Please discuss any other experience that has prepared you to serve as a Federal Circuit Court judge.

27. In your questionnaire, you listed three Supreme Court cases in which you have submitted amicus briefs. All of these involved highly political issues. Why did you choose these three cases?

28. Please describe any substantive legal pro bono work that you have contributed to during your legal career.

29. In *Rumsfeld v. FAIR* you argued that the Solomon Amendment's equal access requirement is satisfied when an institution applies to military recruiters the same policy it applies to all other recruiters. Chief Justice Roberts disagreed with this argument stating that "a school excluding military recruiters would comply with the Solomon Amendment so long as it also excluded any other employer that violates its nondiscrimination policy."

    a. When interviewed about this decision you said that you think "the court's decision is incorrect and that our brief had it right."

    b. Do you still believe that you had it right and the court was wrong?

    c. Can you name some other cases where you think the "court's decision is incorrect?"

30. I have some questions about your work on the *Wisconsin Right to Life v. Federal Election Commission* case:

    a. Do you see a non-profit's expenditure on electioneering communications in the same manner as a corporation expending money from its corporate treasury in order to influence an election?

    b. Do "corporations" have a right to political expression or any other speech rights?

31. With regard to another case, *Randall v. Sorrell*.

    a. Do you believe that expenditure limits can be constitutional?

    b. Do you think that expenditure limits impede one's First Amendment rights?

    c. Taking into consideration the Supreme Court's decision in this case, what is your view of what the Court did in Buckley v. Valeo in terms of expenditure limits?

32. 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]

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[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).
[2] *Id.*, Para. 90.

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?

33. 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.

34. What is the most important attribute of a judge, and do you possess it?

35. 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?

36. 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?

37. 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?

38. 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?

39. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

40. Please describe your understanding of the workload of the First Circuit. If confirmed, how do you intend to manage your caseload?

41. 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.

42. 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?

43. 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?

44. 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?

45. You have spent your legal career as an advocate for your clients, or as an academic commenting on the law. 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?

46. 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?

47. 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?

48. 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?

49. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

50. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

51. 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?

52. Do you believe that the death penalty is an acceptable form of punishment?

53. 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?

54. 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?

55. 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?

56. 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?

57. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

58. What would be your definition of an "activist judge"?

59. What weight should a judge give legislative intent in statutory analysis?

60. 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.

61. Please describe with particularity the process by which these questions were answered.

62. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Follow-Up Questions for the Record

David Jeremiah Barron
Nominee, U.S. Circuit Judge for the First Circuit

1. During your hearing, I asked you about your role in providing guidance regarding the Affordable Care Act. You said it is the ordinary task of the Office of Legal Counsel to review legislation that is pending in Congress. But you would not answer my questions because you did not want to waive a privilege.

   To be clear, I am not asking you to detail specific conversations, but as you know, answering my questions regarding what you worked on while at OLC does not implicate any privilege. With that in mind, while at OLC, did you provide, formally or informally, any advice on the following topics:

   a. The constitutionality of Obamacare?

   b. An assessment or judgment regarding possible litigation based on any proposed or actual procedural event that occurred in either chamber concerning Obamacare?

2. Please describe your involvement with the Obamacare legislation and/or the administration's preparation or planning for potential litigation regarding that legislation, including but not limited to your attendance at meetings, whether you provided any opinions, views or comments, and whether you reviewed and/or approved any documents with respect to the foregoing.

3. Would you commit to providing the Committee with any documentation of the foregoing?

4. In your responses to my questions, you stated that it was "not accurate or useful to ascribe the outcome of a particular decision to a judge's conservative or progressive 'tilt,'" and proceeded to suggest that a judge only decides cases at hand in accord with the facts particular to that case. If a judge is to rely only on the relevant legal texts and judicial precedent reflecting them, how do you account for varying opinions within the federal judiciary?

5. You also said that a judge should not base a decision on whether an outcome could be classified as "progressive" or "conservative." Rather than focusing on an outcome, is it not true that judges do, in fact, interpret constitutional provisions according to some preconceived theory of interpretation?

6. When you stated that "Federalism is what we make of it," and "It's time for progressives" to do so, did you mean progressives should "make the most of Federalism," in an outcome-centered way or in an interpretative way?

7. In response to one of my questions related to the above quote, you said that you would simply "apply all relevant Supreme Court and First Circuit precedent to the particular facts," and nothing more. Certainly every judge or Justice presumes he or she is doing simply that when deciding cases. How would you differentiate yourself from those who do, in fact, espouse a certain judicial philosophy or theory of interpretation?

8. If it is not accurate or useful to describe divergences on the federal bench as "progressive" or "conservative," why have you followed the practice of other commentators in using the terms with respect to the Supreme Court?

9. In my Questions for the Record, I asked you to identify any "'right-wing distortions of the Constitution' you are concerned about of feel need to be countered" and you responded that you were not familiar with Mr. Edelman's article. His article aside, my questions remain. Do you believe there are <u>any</u> right-wing distortions of the Constitution? If so, please identify them.

10. In my Questions for the Record, I also asked you to identify decisions where you found a court's decision to be incorrect. You told me that you would follow precedent faithfully. But I am trying to understand how you analyze cases. Are there federal cases outside of the Supreme Court or the First Circuit that in your view have been incorrectly decided? Please list them and explain why the legal reasoning is faulty.

11. You told me that you submitted your answers to my original questions to an attorney at OLP then revised your draft answers before submitting them in final form. What did you change after speaking to an attorney at OLP? Please submit the answers you drafted before their content was edited by OLP.

Questions for the Record
Senator Ted Cruz

David Jeremiah Barron
Nominee, U.S. Circuit Judge for the First Circuit

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 do not have a judicial philosophy as such. Instead, I have a view about the proper approach to judging. That approach is based on the understanding that judges decide cases on the basis of particular facts and only in properly presented cases or controversies. That approach is also rooted in a recognition that the rule of law depends on judges being impartial, faithful in their adherence to precedent, and committed to the use of traditional methods of legal interpretation of authoritative legal texts, whether statutory, constitutional or regulatory. There is no single Justice from the Warren, Burger, or Rehnquist Courts whose judicial philosophy I would feel comfortable characterizing, given the full range of opinions that each of them has issued. In particular, I would be remiss if I did not mention my great respect for Justice John Paul Stevens, for whom I clerked. He served on both the Burger and Rehnquist Courts, and he instilled in me, as he has instilled in all his clerks, a great reverence for the role that the federal judiciary plays in maintaining the rule of law.

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 intentions of those involved in drafting constitutional provisions, as well as the public meaning of those provisions at the time of their ratification, supply important, and potentially dispositive, evidence of their proper interpretation. Circuit court judges are bound by applicable Supreme Court and Circuit precedents in deciding when and how to use such evidence in interpreting particular provisions of the Constitution. Thus, I would be guided by the precedents of the First Circuit and of the Supreme Court regarding the proper weight to give to originalist evidence in any particular case that came before me.

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 court of appeals judge, I would have no authority to overrule a decision of the Supreme Court. While serving on a panel of the Circuit, I also would have no authority to overrule a precedent of the Circuit, at least absent intervening Supreme Court precedent that was directly controlling. In deciding whether to vote *en banc* to overrule a precedent of the Circuit, I would be required to make that decision in a manner consistent with applicable precedents regarding the doctrine of *stare decisis*. That doctrine sets forth the limited considerations – such as whether a prior line of case law has become "unworkable" or whether it has generated reliance -- that may bear on the decision to 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: Federalism is a cornerstone of the constitutional structure, and the Supreme Court has made clear that there are judicially enforceable, federalism-based limits on federal governmental power in a number of cases that were decided after *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985). *See, e.g.*, *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995); *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 488 U.S. 1041 (1992). I would faithfully apply all of these precedents, and any others that were relevant, in deciding any case that came before me that sought to enforce federalism-based limits on federal governmental power.

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, 610-611, 613 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court invalidated statutes that it held went beyond Congress's commerce power. In doing so, the Court stressed the non-economic nature of the activity that Congress sought to regulate in those cases. The Supreme Court did not hold in either case that Congress's power under the Commerce Clause could never reach non-economic activity. In a concurring opinion in *Gonzalez v. Raich*, 545 U.S. 1 (2005), Justice Scalia reviewed the Supreme Court's precedents in this area, including *Morrison* and *Lopez*. He stated "Congress may regulate even non-economic activity if that regulation is a necessary part of a more general regulation of interstate commerce." Id. at 37 (Scalia, J., concurring). In reviewing any case that might come before me concerning Congress's commerce power, as with any other issue, I would carefully review the precedents of the Supreme Court and of my Circuit. I would faithfully apply them to the particular facts at issue in that case.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: Any executive order or executive action that is undertaken by the President must be premised on a valid grant of authority, whether constitutional or statutory. *See Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring). In making such determinations, it is important to inquire whether the President is acting (1) with express or implied authorization from Congress, (2) on the basis of his independent constitutional powers in the face of congressional silence, or (3) in a manner that is incompatible with the express or implied will of Congress. *Id.* at 635-638. In addition, even if an executive order and executive action is otherwise authorized by statute or the Constitution, it will still be invalid if, for example, it infringes a constitutional limitation on governmental power, such as a provision of the Bill of Rights.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court reviewed its prior precedents in this area in *Chavez v. Martinez*, 538 U.S. 706 (2003). It stated that the Court had held that "the Due Process Clause also protects certain 'fundamental liberty interest[s]' from deprivation by the government, regardless of the procedures provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Id.* at 715. The *Chavez* Court further stated that the only "fundamental rights and liberties" qualifying for such protection are those "which are 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty[.]'" *Id.* at 716 (quoting *Washington* v. *Glucksberg*, 521 U.S. 702, 721 (1997)). *Chavez* further stated that *Glucksberg* requires a "'careful description'" of the asserted fundamental liberty interest for the purposes of substantive due process analysis; vague generalities . . . will not suffice. 521 U.S., at 721." If confirmed, I would apply this precedent, and any other applicable Supreme Court and First Circuit precedent, in deciding a properly presented case or controversy, based on the particular facts at issue, that claims protection of a fundamental right for purposes of the substantive due process doctrine.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has subjected a limited set of classifications to heightened scrutiny. For example, in the case of gender discrimination, the Court has held that "intermediate" scrutiny applies. *See, e.g., Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 730-31 (2003), while in the case of race discrimination, the Court has held that "strict" scrutiny applies. *See, e.g., Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995). If confirmed, on this issue, as on any issue, I would follow the precedents of the Supreme Court and of the First 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: The decision in *Grutter v. Bollinger*, 539 U.S. 343 (2003) is binding Supreme Court precedent, and a Circuit judge must apply it faithfully in any case that implicates it. If confirmed, any expectations I might have in this area would not be relevant to my judicial decisionmaking. If any case concerning the constitutionality of such preferences were to come before me as a Circuit judge in a properly presented case or controversy, I would determine their lawfulness by faithfully applying the precedents of the Supreme Court, including its recent decision in *Fisher v. University of Texas*, 570 U.S. __ (2013), and of the First Circuit.

Senator Chuck Grassley
Questions for the Record

David Jeremiah Barron
Nominee, U.S. Circuit Judge for the First Circuit

1. **During your hearing, I asked you about a leaked OLC memo that you are reported to have authored. I asked why the memo would be leaked to a reporter and not to the general public in a redacted format consistent with national security. I understand that you told me that you had no part in leaking the memo or in authorizing the memo to be shared with anyone, but the question of why was the memo not shared with the general public in a redacted format consistent with national security considerations still remains unanswered. You said the decision stands with the Executive Branch. However, you were part of the Executive Branch when that decision was made. So, please explain why the public was not notified in a limited fashion.**

   Response: Transparency is an important means of ensuring public confidence in the legal basis for executive branch action. Decisions regarding the disclosure of confidential executive branch legal advice, however, must weigh the benefits of disclosure in light of classification restrictions as well as applicable privileges, such as the attorney-client privilege. Traditionally, determinations about the disclosure of classified legal advice internal to the executive branch, including memoranda from the Office of Legal Counsel (OLC), are made in accord with those responsible for making determinations about what information should be classified in order to protect national security and in accord with those who hold various legal privileges, such as the attorney-client privilege. Due to classification requirements and applicable privileges, I am not at liberty to discuss confidential advice I may have given while serving in the executive branch, including any advice I may have given regarding the merits of disclosure. Additionally, since I am no longer serving in the executive branch, I am not in a position to assess any ongoing determinations regarding the disclosure of any particular classified executive branch legal advice that may have been given while I was serving in OLC.

2. **I also asked you about an interview you gave concerning John Yoo's actions and I have some follow-up questions on that. (I realize that you stated that you cannot confirm or deny the existence of the OLC memo. For purposes of these questions, please assume that one exists.)**

   a. **How do you distinguish between authorizing targeted killings and engaging in torture in a legal sense?**

Response: Congress has made torture a federal crime pursuant to 18 U.S.C. §§ 2340-2340A. By contrast, Congress has not similarly made criminal a targeted use of lethal force abroad against a leader of enemy forces in the course of an authorized armed conflict that is carried out in accord with the laws of war.

b. In a constitutional sense?

Response: An exercise of presidential power stands on stronger constitutional footing, in general, when undertaken pursuant to a grant of congressional power than when undertaken in conflict with a congressional restriction. *See Dames & Moore v. Regan*, 453 U.S. 645, 668-669 (1981). Congress, pursuant to its Article I powers, is constitutionally empowered to prohibit torture, and it has done so pursuant to 18 U.S.C. §§ 2340-2340A. An exercise of executive authority in contravention of that criminal statute would thus have to be premised on the assertion of a President's constitutional power to act in disregard of such a statutory prohibition. By contrast, pursuant to its Article I powers, Congress is constitutionally empowered to authorize the use of lethal force abroad against enemy forces in the course of an armed conflict, and it has done so in response to the attacks of September 11, 2001. *See* Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40, 115 Stat. 224 (2001). Accordingly, an exercise of lethal force pursuant to such a grant of congressional power, when carried out in accord with the laws of war, would not rest on a claim that the President possessed a constitutional power to act in contravention of a statutory limitation. Instead, such an assertion of executive power would be premised on a grant of authority from Congress.

c. What factors should be considered in determining whether one of these practices is acceptable?

Response: The determination of the lawfulness of an exercise of executive authority of the kind referenced in the question cannot be determined in the abstract. Among the factors that would be relevant are whether, given the particular facts at issue, such an exercise of authority is premised on a grant of valid statutory or constitutional power, and whether it complies with all applicable statutory and constitutional limitations. Interpretations of those legal provisions should take account of the laws of war that may inform them, consistent with applicable judicial precedents construing them.

d. You wrote a letter in the wake of Abu Ghraib misconduct that Congress should identify all those involved and be held accountable for their actions. Please

explain how this is legally different from targeted killing of American citizens without due process.

Response: Congress, pursuant to its Article I powers, criminalized the abusive treatment of detainees through the Torture Act, 18 U.S.C. §§ 2340-2340A; the Uniform Code of Military Justice, 10 U.S.C. § 893 (2000); *id.* § 928 (2000); and the War Crimes Act, 18 U.S.C. § 2441. Congress has not similarly criminalized the use of lethal force abroad against a leader of enemy forces in the course of an authorized armed conflict when such force is exercised in accord with the laws of war.

3. **I asked you at your hearing whether or not Mr. Savage, or anyone else from the New York Times, contacted you before publishing his story. You replied "Yes." Please provide the circumstances of that contact, including dates, location, manner of contact and subject matters discussed. Also describe any documents that might have been made available to Mr. Savage for review.**

Response: To the best of my recollection, Charles Savage contacted me by phone regarding the story you asked about at the hearing. I believe the phone call occurred either the day before, or very near the date of, that story's publication. I told him that I had no comment. I was living in Cambridge, Massachusetts at that time, after having resumed my professorship at Harvard Law School. I am not aware of any documents that may have been made available to Mr. Savage for his review, and I provided him no such documents.

4. **In response to a question from Senator Leahy regarding your view on the legal and constitutional grounds for the targeted killing of an American overseas using a drone you discussed in a general sense the legal principles and legal issues "that one has to consider". In your response you indicated the source of authority the President is relying on, any Congressional limitations on the scope of that authority, and how the laws of war inform the grants of authority that had been given to the President. You noted there are also constitutional guarantees that citizens enjoy, as well as precedents. Please explain how the criminal statute found at 18 USC 1119 is part of that equation.**

Response: As I emphasized in my response to Senator Leahy at the hearing, the determination of whether a use of lethal force abroad would be lawful must be made in relation to the particular facts of an operation and cannot be resolved in the abstract. That said, certain general considerations would be relevant. In particular, in determining whether such a use of force is lawful, it would be important to assess whether the President would be acting pursuant to an authorization to use force, such as Congress enacted after the attacks of September 11, 2001. *See* Authorization for Use of Military Force (AUMF), Pub. L. No. 107-40, 115 Stat. 224 (2001). In making that legal determination, it would be important to examine whether Congress had imposed any limits on such an otherwise lawful use of force in other statutes, such as the prohibition against the unlawful killing of a United States citizen that is contained in 18 U.S.C. § 1119. In construing that provision, it would be important to consider, as in construing any statute, not only its text and purpose, but also any judicial

precedents interpreting it, to determine its applicability in light of the facts at issue.

5. **You have written about progressive and conservative constitutionalism. I asked you to explain those terms and which of those terms best describes your own view. You replied that as you have reviewed your writings it is not entirely clear what content those terms have. I was surprised at your response, given your academic background and reputation as well as how frequently you used these terms in your numerous academic writings. I would like a more complete answer on how you use these terms.**

   a. **If, as you say, those labels "are not particularly helpful in articulating anyone who is judge, what their philosophy would be" then for what purpose did you write on this topic?**

      Response: The terms "progressive constitutionalism" and "conservative constitutionalism" are often used in academic debates. As I noted at the hearing, they are somewhat crude labels and may be over- or under-inclusive as applied to any particular decision, but I have drawn on those terms as a law professor in the course of entering into academic debates. In particular, I have used those terms in the course of arguing against the academic position that, to promote more "progressive" outcomes, the traditional role of the courts in interpreting the Constitution should be substantially diminished. I have also used those terms in the course of arguing in my academic writings that it is wrong to suggest both that the judicial protection of federalism necessarily supports "conservative" outcomes and that judicially enforceable federalism-based limits on congressional power are unwarranted.

   b. **As an academic, do you think judges ever demonstrate a conservative or a progressive tilt?**

      Response: Although as an academic commentator I have followed the practice of other commentators in using the terms "progressive" and "conservative" in describing divergences on the Supreme Court in closely divided cases, I do not think it is accurate or useful to ascribe the outcome of a particular decision to a judge's conservative or progressive "tilt." A judge is obliged to decide the case at hand, in accord with the facts particular to that case, pursuant to the relevant legal texts and the judicial precedents that interpret them. Judges should not be motivated by personal beliefs, whether "conservative" or "progressive" or something else, in carrying out their judicial functions. In that regard, as I have noted, it is instructive that many Supreme Court decisions do not neatly line up with the "progressive" and "conservative" labels that are often used in commentary on the Supreme Court.

c. As a judge, if confirmed, how will you ensure that you do not apply any preconceived vision or approach to constitutional interpretation?

Response: The judicial obligation is to set aside whatever personal views one may have and to decide the particular case at issue. A judge must base the decision in any case solely on the facts and the law, while respectfully considering the arguments of the litigants. I would take that obligation to be an inexorable one, just as I felt obliged to set aside any personal views I may have had in providing legal advice within the executive branch while serving as the Acting Assistant Attorney General for the Office of Legal Counsel and as a career lawyer in that Office. I believe the best way to ensure one honors that obligation is to immerse oneself fully in the particular facts of the case and the law relevant to it and then to apply the law faithfully to those facts.

6. **When I asked you how much you would consider law reviews, literature, and treatises in your judicial decision making you said, "Much less than law professors would wish". So, how much is this? Will you turn to them to help in your decision making process when the statute or precedent is unclear?**

Response: As I stated at the hearing, law reviews, literature, and treatises do not represent authoritative legal statements. It is not appropriate for judges to rely on such materials as if they are authoritative statements of the law in their own right. Judges may rely on these materials only as supplementary support for faithful interpretations of authoritative legal texts, such as judicial precedents, constitutional provisions, statutes, and regulations.

7. **Do you think that there is a "conservative agenda" at the Supreme Court and how is it manifested?**

Response: The Supreme Court is charged with deciding properly presented cases or controversies. It would misconceive the Court's role were it to have an "agenda" of any kind. Considering the range of cases the Supreme Court decides, I do not believe it would be accurate to characterize the Supreme Court as manifesting a "conservative agenda," or an agenda of any kind.

8. **You wrote that "Roberts and Alito have a project... but they don't have a jurisprudential project in the way Scalia and Thomas did". Please explain what the "projects" of these Justices are, in your view.**

Response: The statement was made in the course of a 2008 academic panel discussion on the Supreme Court and compared the Justices along certain dimensions. Justices Scalia and Thomas have received prominent attention in academic debates for their support for

originalist and textualist constitutional interpretation, and I believe that was the "jurisprudential project" to which I was referring in making the comparison.

9. **You once said that "Federalism is what we make of it. Rehnquist and his conservative colleagues have been making the most of it for more than a decade. It's time for progressives to do the same."**

   a. **How should progressives do this?**

   Response: In my academic writings, I have argued that federalism is an important component of our constitutional structure, and I have criticized the suggestion that the judicial protection of federalism necessarily supports outcomes that one might call "conservative." I have also argued in other academic writing that state and local governments can be sources of policy initiatives that might be classified as "progressive." I do not believe that judges, when deciding cases concerning federalism, as when deciding any cases, should base their decision on whether an outcome could be classified as "progressive" or "conservative." Judicial decisions should be based on the text of the constitutional, statutory, or regulatory provision at issue, as considered in light of the applicable facts and judicial precedents. No other considerations are relevant.

   b. **You have spoken about liberal/conservative agendas on the Court, and about precedent being able to be used however one sees fit. What will you make of federalism, as a judge?**

   Response: I do not believe a judge may use precedent however one sees fit. A judge has an obligation to apply precedent faithfully. With respect to federalism, the Supreme Court has enforced federalism-based limits on federal governmental authority in a number of recent cases. *See, e.g.*, *United States v. Morrison*, 529 U.S. 598 (2000); *Printz. v. United States*, 521 U.S. 898 (1997); *United States v. Lopez*, 514 U.S. 549 (1995); *New York v. United States*, 505 U.S. 144 (1992). As a judge, I would faithfully apply all relevant Supreme Court and First Circuit precedent to the particular facts that are properly presented in any case or controversy, including in any case or controversy concerning federalism.

10. **In a panel in 2004 you said that the "living constitution will seem much more respectable in terms of constitutional theory when the issue of same-sex marriage becomes a part of the legal framework of this country".**

   a. **Is the living constitution concept more respectable in terms of constitutional theory in 2013?**

Response: The statement was a comment about how the debate among constitutional theorists might be affected by a decision of the Supreme Court that declared bans on same-sex marriage unconstitutional. The Supreme Court had not issued such a ruling at that time, and it has not issued one in the nine years since. As a result, I am not aware that the terms of that debate about constitutional theory have been altered.

b. If so, is this a good thing?

Response: Please see response to 10a.

11. You have written that the Constitution is not "frozen" and that it is a "dynamic document." What do you mean by this and how will this affect your judicial decision-making process, if confirmed?

Response: The Constitution is a written text, and as such, judges are not free to change its words or its meaning. In construing that text, evidence of its meaning at the time of a provision's ratification can be dispositive. In addition, the Supreme Court and Circuit court precedents are binding on federal appellate court judges. Those precedents may be conclusive of a constitutional question. They may also instruct judges to attend to subsequent technological developments in interpreting the meaning and purposes of certain provisions of the Constitution such as the Fourth Amendment, *see Katz v. United States*, 389 U.S. 347 (1967), or those precedents may instruct judges to attend to the longstanding practices of the political branches in resolving certain separation of powers disputes, *see Dames & Moore v. Regan*, 453 U.S. 645, 686 (1981) (quotations and citation omitted) ("a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned . . . may be treated as a gloss on 'Executive Power' vested in the President by § 1 of Art. II."). As a Circuit judge, if confirmed, I would rely on the constitutional text and the precedents interpreting that text in deciding the Constitution's meaning in light of the relevant facts in connection with particular cases or controversies.

12. What factors should a judge look to in custody disputes when there are three parents involved in the custody battle? How strong should the biological factor be?

Response: I have not had occasion during the course of my career as a law professor or as an executive branch lawyer to consider this legal question. In general, the biological factor is an important legal consideration, but in determining precisely how much weight to give it in any particular case, I would be bound as a judge to apply the relevant precedents of the First Circuit and the Supreme Court, in light of the particular factual record presented.

13. Every nominee who comes before this Committee tells me they are committed to "following precedent". But you have said that "any good lawyer knows how to distinguish a precedent, if you need to". This sentiment can work for a judge as well.

a. Can you please share your general views on the principle of *stare decisis* and how you will approach following precedent, if you are confirmed?

Response: The doctrine of *stare decisis* is foundational to the rule of law. It ensures consistency and predictability over time, enables people to plan their affairs so they may comply with legal requirements, and places an important check on judicial discretion. As a Circuit judge, the doctrine of *stare decisis* is especially constraining. A Circuit judge may never vote to overrule a precedent of the Supreme Court, and a Circuit judge could only vote to overrule a decision of the Circuit, absent directly controlling intervening Supreme Court precedent, in limited circumstances when sitting *en banc*. *See* Fed. R. App. P. 35. The doctrine of *stare decisis* also provides important guidance as to the considerations that should inform a decision whether to overturn prior Circuit precedent in limited circumstances when sitting *en banc*, including whether the prior doctrine has proved to be unworkable and whether it has given rise to reliance interests.

b. What examples have you seen where a judge has followed one precedent he or she prefers while ignoring one that does not suit the outcome he or she wants?

Response: No examples come to mind.

14. I asked you some questions during your hearing that I would like to repeat to get a fuller and better answer to my question. In 2011, the D.C. District Court ordered the Justice Department to release emails regarding then-Solicitor General Kagan's involvement with ObamaCare litigation. In 2010, then-Solicitor General Kagan wrote you an email when you were Acting Assistant Attorney General for the Office of Legal Counsel. In that particular email she asked whether you had seen former Judge Michael McConnell's "piece in the wsj." She was referring to a March 15th op-ed in the Wall Street Journal in which Judge McConnell discussed the constitutionality of a proposal by House Democrats to avoid any additional votes on ObamaCare legislation. The idea was to circumvent a vote on the exact language of the bill as passed by the Senate.

In response to that email, you replied: "YES – HE IS GETTING THIS GOING."

What did you mean by that reply – He is getting this going? Who is the "He" and what is he "getting going?"

Response: I understand that the email was disclosed pursuant to Freedom of Information Act litigation. While I do not recall the specifics of the email exchange, I believe, to the best of my recollection, that the email I sent was referring to Michael McConnell and the debate he was engaging through his op-ed regarding the constitutional concerns he raised with respect to the reported legislative proposal.

15. How has your time at the Office of Legal Counsel prepared you to be a Circuit Court judge?

Response: As the Acting Assistant Attorney General for the Office of Legal Counsel and before that a career attorney in that Office, I was entrusted with the responsibility for providing legal advice within the executive branch on a wide range of legal matters. In that role, I was obliged to apply prior precedent in resolving legal disputes within the executive branch concerning the meaning of federal law and to do so without regard to any personal beliefs about the matter at issue. In a number of instances, I also prepared written legal opinions, many of which were published and have been provided to the Committee. Although the role of an executive branch lawyer is distinct from that of a federal appellate judge, I believe my experience heading that Office prepares me for the role of serving as a Circuit judge.

16. How has your time as a law professor prepared you to be a Circuit Court judge?

Response: As a law professor, I have become familiar through my teaching, research, and writing about areas of the law that are regularly the subject of cases arising in the Circuit courts, particularly federal administrative law. In addition, I have learned the importance of fairly considering all sides of a legal issue and spotting the strengths and weaknesses of legal arguments. Finally, my career as a law professor has placed a premium on being able to clearly explain legal concepts and materials. I believe that these skills and experiences have all provided me with valuable preparation for what I know is the very different role of being a Circuit judge.

17. Please elaborate for the Committee any experience you have with appellate courts.

Response: During my service at the Office of Legal Counsel, both as the Acting Assistant Attorney General, and, before that, as an attorney-advisor, I was called upon to advise on a wide range of litigation in federal courts of appeals and at the Supreme Court. While a law professor, I served as a counsel for amici in two Supreme Court cases. I have also been an

amicus in litigation before the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit, and the Court of Appeals of New Mexico. In addition, I served on a steering committee of the "Executive Session for: State Court Leaders in the 21st Century," a multi-year project conducted in conjunction with the Harvard Kennedy School and the National Center for State Courts, that brought together chief justices of state supreme courts from across the country. Finally, I have taught appellate court precedents, and written about them, as a law professor for more than a decade.

18. Senate Democrats ignored your counsel, first given back in 2003 and which you subsequently reaffirmed before this committee at your nomination hearing, by invoking the nuclear option, breaking Senate rules governing changes to the rules, and silencing the right of the minority to exercise a check on the majority and the executive. What is your view on this action taken by the Senate in terms of protecting minority rights and in terms of the balance between the executive branch and Congress?

Response: The letter I signed stated that the filibuster was a constitutionally permissible exercise of the Senate's authority to establish rules for its operation. In supporting the conclusion that the filibuster was constitutional, the letter referenced the historical practice regarding its use, and stated that it "reflects the Senate's longstanding respect for minority views and underscores the unique role of the Senate as a part of American democracy. It has the salutary effect of giving an incentive to all sides to seek compromise on issues where points of view are sharply divided. With regard to nominations to an independent branch of government such as the judiciary, the filibuster encourages the President to find common ground with the Senate by nominating individuals who can garner consensus." I continue to adhere to the views expressed in that letter.

19. Please define "originalism" and discuss the merits of and problems with judges using this philosophy in deciding constitutional issues.

Response: As an academic theory, originalism has a number of variants. Some originalist scholars have advocated giving weight to the intentions of those involved in drafting constitutional provisions, while others have emphasized the importance of determining the public meaning the constitutional text had at the time of its ratification. Judicial decisions across a broad range of constitutional doctrine make clear that the intentions of those involved in drafting constitutional provisions, as well as the public meaning of those provisions at the time of their ratification, supply important, and potentially dispositive, evidence regarding the Constitution's proper interpretation. Those precedents also identify cases in which those provisions must be considered in light of unforeseen technological developments or when it is unclear what the original intentions or public meaning was of a particular provision in application. In determining how to use such originalist evidence in a particular case if I were confirmed as a judge, I would apply the applicable Supreme Court and First Circuit precedents interpreting the particular constitutional provision at issue.

20. I am interested in your views on NSA wiretapping.

a. What is your understanding of the current state of law regarding the legality of the NSA wire-tapping?

Response: I am aware in a general way of the public debate concerning the lawfulness of activities reportedly undertaken by the National Security Agency under Section 215 of the Patriot Act and Section 702 of the Foreign Intelligence Surveillance Act. To determine the legal basis for a particular national security program, it would be necessary to know with specificity which program was at issue and the facts relating to its operation.

b. Where is the authority for this program found?

Response: Please see my response to 20a.

c. You once said that this issue will be resolved by the courts and that the previous Administration was afraid they would lose in the courts. Please compare and contrast the handling of NSA wiretapping issues by previous and current administration.

Response: I was referring in the referenced statement to reports that, for a certain period of time, the previous Administration based certain surveillance activities on the legal claim that the President was constitutionally empowered as Commander in Chief to take action in contravention of the Foreign Intelligence Surveillance Act (FISA). I am not aware that, given existing statutory grants of authority, any surveillance activities are currently being undertaken pursuant to a similar claim regarding the executive's constitutional authority to act in contravention of FISA.

21. You wrote a letter that argued that Congress has the authority to use the prohibition of slavery under the Thirteenth Amendment to make federal offenses those crimes motivated by gender, sexual orientation, gender identity or disability. Please elaborate to the Committee how sexual orientation should receive the same legal protections as race or gender.

Response: The Supreme Court has held that laws that discriminate on the basis of race or gender should be subject to heightened scrutiny. In the case of gender discrimination, the Court has held that "intermediate" scrutiny applies. *See, e.g., Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 730-31 (2003). In the case of race discrimination, the Court has held that "strict" scrutiny applies. *See, e.g., Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995). The Court has not held that similarly heightened scrutiny applies to laws that

discriminate on the basis of sexual orientation. The letter referenced in the question did not argue that the Thirteenth Amendment would be a source of authority for Congress to make federal offenses crimes motivated by the gender, sexual orientation, gender identity, or disability of the victim. The letter discussed two separate provisions of H.R. 1592, The Local Law Enforcement Hate Crimes Prevention Act of 2007. The letter explained that one of these provisions, the proposed addition of § 249(b) to Title 18 of the United States Code, would have prohibited violent crimes motivated by religion, national origin, gender, sexual orientation, gender identity or disability, but only if the crime were committed with some connection to interstate commerce, such as during interstate travel or in a way that affects interstate commerce. The letter defended the constitutionality of that provision solely on the basis of Congress's commerce power and without reference to the Thirteenth Amendment. The letter addressed the Thirteenth Amendment as a possible source of congressional authority only in connection with the other provision, the proposed addition of Section 249(a) to Title 18 of the United States Code, which would have prohibited violent crimes motivated by the race, color, religion, or national origin of the victim. The letter concluded that the Thirteenth Amendment provided a source of congressional power for that proposed provision on the basis of the Supreme Court's decisions in *Runyon v. McCrary*, 427 U.S. 160 (1976); *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975); *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971); and *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), as well as on the basis of the Second Circuit's decision in *United States v. Nelson*, 277 F.3d 164 (2d Cir. 2002).

22. In 2006, you co-authored an article posted to the Georgetown Law Faculty Blog concerning President Bush's use of signing statements. In that article, you refer to an OLC opinion written during the Clinton Administration that stress that "the President is to act in ways that respect the important roles of Congress and the courts in the process of constitutional interpretation and the resolution of constitutional controversy."

a. Do you believe that this statement is still true today?

Response: Yes.

b. You also criticized President Bush and his administration for relying on non-enforcement as "a strategy of first-resort." Do you believe that a strategy of non-enforcement as a first-resort is inappropriate no matter who is President?

Response: I made that statement in the context of a discussion of the President's assertion of a right to issue signing statements announcing an intention to decline to enforce a statute on the ground that the statute was unconstitutional. The legal authority to exercise such a power, like the legal authority of the President to exercise any power, is not dependent on, or related to, the particular President who claims

such authority. Such authority must instead rest on a valid grant of power conferred by a statutory or constitutional provision.

23. Your questionnaire indicates you were a board member of the official law journal of the American Constitution Society for Law and Policy. There is nothing wrong with associating with 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 comments by Peter Edelman to which the question refers, or the context in which those comments were made. With respect to my own views regarding the judicial role in improving the lives of everyday citizens, it is simple. The role of the judge is to decide individual cases impartially and on the basis of the facts and the law. By honoring that traditional judicial role as faithfully as possible, a judge promotes the rule of law and thereby benefits all 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?"

Response: I am not familiar with the article by Peter Edelman that contains the phrases quoted in the question and so cannot comment on it.

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 quotation from Peter Edelman or how he meant to use that term. In my academic writings, as noted in response to question 5, I have used the term "progressive constitutionalism" in the course of participating in certain

academic debates. In those debates, the term has been used, albeit in a crude way, to describe the divergence on the Supreme Court in certain closely divided cases.

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 quotation from Peter Edelman or how he meant to use that term, and so I cannot comment on it.

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: While I am not familiar with the context for the quotation referenced in the question, judges should faithfully apply the Constitution and not promote an ideological agenda. My role as a judge would be to decide particular cases or controversies on the basis of the facts at issue, the relevant legal texts, and the precedents construing them.

24. During the Bush Presidency, you co-authored an article critical of the administration's use of signing statements. One of the four concerns you raised was that the increased use of signing statements permitted the administration to conduct "non-enforcement" as a "strategy of first-resort." You argued that this strategy ignored the proper constitutional roles of the legislative and judicial branches. In my opinion, the current administration has made non-enforcement a strategy of first-resort. This is clearly evident in a number of legal challenges over the past several years. Most recently, just last week we saw the President use non-enforcement as a strategy of first-resort when he decided to suspend enforcement of his own ObamaCare provision that required insurance companies to drop coverage to their customers despite the President's repeated assurances that "if you like your plan, you can keep it." I think it is a fair assumption that this administration will continue to use non-enforcement as a strategy of first-resort which leads me to this next series of questions:

a. As an appellate judge, how do you plan to approach a case that calls into question the President's declination to enforce a specific law?

Response: The President has no general dispensing power, *see Kendall v. United States ex Rel. Stokes*, 37 U.S. 524 (1838), and he is obliged to ensure that "the laws be faithfully executed." *See* U.S. Const., Article II, cl. 1. In any properly presented case or controversy challenging a President's assertion of a right to decline to enforce a

statute, I would consider the relevant facts and asserted sources of executive authority, as well as the precedents construing them. I would then base my judgment solely on the facts and the law, as I would do in all cases.

b. What are the applicable standards of law in reviewing such a case?

Response: Cases challenging a President's decision to decline to enforce a statute may arise in a range of contexts. A President may assert such a power on the ground that the statute at issue is itself unconstitutional and may not be enforced for that reason. Alternatively, a President may decline to enforce a statute in certain instances on the basis of what he claims is enforcement discretion that has been conferred on him either by statute or the Constitution. With respect to decisions to decline to enforce a statute on the ground that it is unconstitutional, the most recent Supreme Court decision to address that issue is *United States v. Windsor*, 570 U.S. __ (2013). The Supreme Court has addressed the executive's authority to decline to enforce a statute as a matter of enforcement discretion in, among other cases, *Heckler v. Chaney*, 470 U.S. 821 (1985).

c. What assurances can you offer this committee that you would approach such a case without regard to your political affiliation or personal legal philosophies?

Response: If confirmed, I would decide such a case as I would decide any case that came before me as a judge: impartially, on the basis of the facts and the law, and without regard to any personal views. As the Acting Assistant Attorney General for the Office of Legal Counsel and as a career lawyer in that Office, I was charged with providing honest, straight, legal advice about the extent of executive branch authorities, and I believe that I did so. In the very different role of a Circuit judge, I would also decide any such cases solely on the basis of the facts and the law.

25. In a 2008 NPR interview, you said that impeachment articles against former President Bush were justified by charges that the President had misled the American people into the Iraq War. What, in your view, would have been the principle justification for bringing impeachment proceedings against the former president?

Response: I did not argue in that interview that impeachment proceedings against President Bush were justified. I did say that, as a general matter, an allegation that a President had taken steps to create a false predicate for a war was a very serious one, and that it could potentially form the basis for an impeachment charge. With respect to President Bush, however, I expressed doubts that impeachment proceedings were appropriate.

26. According to your questionnaire, you have never tried a case and have only participated in three briefs to appellate level courts. Please discuss any other experience that has prepared you to serve as a Federal Circuit Court judge.

Response: In addition to my experience in preparing appellate briefs in the Supreme Court, and serving as an amicus in other litigation, the most directly relevant experience would be my service as the Acting Assistant Attorney General for the Office of Legal Counsel (OLC) and before that, as an attorney-advisor in OLC. In those capacities, I advised on a wide-range of federal appellate litigation, as is commonly the case for persons in such positions. In addition, my work in that Office involved advising the executive branch on a broad range of legal questions concerning federal law, such as those that federal courts of appeals are regularly called upon to decide. My responsibilities as the acting head of OLC also included issuing signed opinions resolving questions of federal constitutional, statutory, and regulatory law, many of which were published and have been provided to the Committee. I also believe my career in teaching law has helped prepare me for federal judicial service. Over more than a decade of teaching, I have become very familiar with areas of the law that regularly come before federal courts. In addition, my close work with academic colleagues provides me with experience for engaging in the collegial relations that are central to the effective functioning of a Circuit court.

27. In your questionnaire, you listed three Supreme Court cases in which you have submitted amicus briefs. All of these involved highly political issues. Why did you choose these three cases?

Response: I do not recall the precise circumstances that led to my participation in *Wisconsin Right to Life v. Federal Election Commission* or *Randall v. Sorrell*. I believe I was asked to assist as a counsel in those cases through former colleagues of mine from the Department of Justice who were handling them at the time, and I agreed to do so. With respect to my participation along with other faculty members and my dean as amici in *Rumsfeld v. FAIR*, I believed it was important as a faculty member at Harvard Law School to help in the effort to ensure that gay and lesbian students at my institution continued to have equal opportunities to seek legal employment.

28. Please describe any substantive legal pro bono work that you have contributed to during your legal career.

Response: I participated without compensation as a counsel for amici in *Wisconsin Right to Life v. Federal Election Commission* and *Randall v. Sorrell* in briefs submitted to the Supreme Court. I also was an amicus in briefs submitted to the Third Circuit and the Supreme Court in *Rumsfeld v. FAIR* and in a brief submitted to the Court of Appeals of New

Mexico in *New Mexicans for Free Enterprise v. City of Santa Fe*. I have also been a faculty supervisor for student clinical work for the disadvantaged both in conjunction with my course on Local Government Law, including clinical placements concerning community economic development, and as part of independent clinical projects. I have further described my other pro bono service in response to question 25 of my Senate Judiciary Committee questionnaire, including my uncompensated service as a member of the Massachusetts Board of Higher Education, a member of the Board of the Massachusetts State College Building Authority, and a member of the advisory board of the Rappaport Center for Law and Public Service at Suffolk University Law School.

29. In *Rumsfeld v. FAIR* you argued that the Solomon Amendment's equal access requirement is satisfied when an institution applies to military recruiters the same policy it applies to all other recruiters. Chief Justice Roberts disagreed with this argument stating that "a school excluding military recruiters would comply with the Solomon Amendment so long as it also excluded any other employer that violates its nondiscrimination policy."

a. When interviewed about this decision you said that you think "the court's decision is incorrect and that our brief had it right."

b. Do you still believe that you had it right and the court was wrong?

Response: No. As a participant in a litigated dispute, I was persuaded by the statutory argument that I, along with fellow professors and my dean, had advanced in the amicus brief submitted on our behalf. It is clear that the statutory argument does not reflect the settled meaning of that statute, as authoritatively determined by the Supreme Court.

c. Can you name some other cases where you think the "court's decision is incorrect?"

Response: If I were confirmed as a judge, my view of the correctness of a Supreme Court decision would be of no moment. My only obligation would be to apply the Court's precedent faithfully.

30. I have some questions about your work on the *Wisconsin Right to Life v. Federal Election Commission* case:

a. Do you see a non-profit's expenditure on electioneering communications in the same manner as a corporation expending money from its corporate treasury in order to influence an election?

Response: In *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the Supreme Court did not distinguish between non-profit and for-profit corporations in evaluating the constitutionality of the prohibition Congress had imposed on a corporation making expenditures from its corporate treasury. I would faithfully apply the Court's decision in *Citizens United*, as well as any related Supreme Court and First Circuit precedents, to any case that were to come before me presenting issues concerning election-related expenditures by corporations, non-profit or otherwise.

b. Do "corporations" have a right to political expression or any other speech rights?

Response: The Supreme Court affirmed the First Amendment speech rights of corporations in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

31. With regard to another case, *Randall v. Sorrell*.

a. Do you believe that expenditure limits can be constitutional?

Response: The Supreme Court has distinguished between contribution limits and expenditure limits in evaluating campaign finance regulations in *Buckley v. Valeo*, 424 U.S. 1 (1976), and it has continued to invoke that distinction in subsequent cases. In doing so, it has invalidated expenditure limits, most recently in its decision invalidating a campaign finance prohibition against corporations using corporate treasuries to fund expenditures. *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). If I were confirmed as a judge, I would apply those precedents, as well as any related Supreme Court and First Circuit precedent, to the particular facts at issue if a case came before me regarding the constitutionality of any expenditure limitation.

b. Do you think that expenditure limits impede one's First Amendment rights?

Response: The Supreme Court has held in a number of cases that expenditure limitations are unconstitutional because they impermissibly impede First Amendment rights. *See, e.g.*, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010); *Buckley v. Valeo*, 424 U.S. 1 (1976).

c. Taking into consideration the Supreme Court's decision in this case, what is your view of what the Court did in Buckley v. Valeo in terms of expenditure limits?

Response: In *Buckley v. Valeo*, the Supreme Court held that expenditure limitations in a federal campaign finance law were unconstitutional because they impermissibly impeded First Amendment rights. The Court has, in subsequent cases, invalidated other expenditure limitations in campaign finance laws, such as in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). If I were confirmed as a judge, I would apply these, and any other applicable precedents, including those of the First Circuit, in deciding any cases concerning the constitutionality of an expenditure limitation. I would do so in such cases, as in all cases, without regard to any personal views I might have.

32. 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?

Response: I am not familiar with the New Mexico Supreme Court case referenced above. In a particular case or controversy raising such a claim, I would carefully consider the briefing of the parties and the factual record in applying the applicable law, and in doing so I would faithfully apply the applicable precedents of the Supreme Court and the First Circuit, including those concerning the First Amendment.

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: The Supreme Court has addressed issues concerning compelled speech in a number of cases, and I would apply those precedents, as well as any other applicable precedents of the Supreme Court and the First Circuit, in deciding any

[1] *Elane Photography, LLC v. Willock*, 2013 WL 4478229 (N.M. Aug. 22, 2013).
[2] *Id.*, Para. 90.

case raising such an issue that might come before me if I were confirmed as a Circuit judge.

c. How would you respond if an individual or company in this circumstance raised a Free Exercise claim?

Response: If I were confirmed as a judge, I would decide any case presenting such a claim consistent with the Free Exercise Clause and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq., and all applicable Supreme Court and First Circuit precedent.

33. 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. The parties to a dispute are entitled to an impartial resolution of the case by the judge before them, on the basis of the facts and the law and independent of any personal characteristics of the judge.

34. What is the most important attribute of a judge, and do you possess it?

Response: I think the most important attribute of a judge is impartiality and open-mindedness – a willingness to consider the arguments of the parties with care and respect so that they may be considered thoroughly in light of the facts and the law and so that litigants to a dispute know that their arguments have been heard without any preconceived views regarding the strength of their positions. I believe I would be an impartial and open-minded judge.

35. 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 even-tempered and respectful of the litigants in a case and the judges with whom they serve. Consistent with that temperament, judges must be open-minded and impartial and capable of setting aside any personal views that they may have in order to focus on the facts and the law. I believe I have the temperament to meet that standard.

36. 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. As a Circuit judge, a decision of the Supreme Court is controlling and must be given full force and effect.

37. 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 examine the text of the relevant provision. The precedents of the Supreme Court and of the Circuit would provide persuasive authority in interpreting that text in cases in which there was no controlling precedent directly on point. I would apply those precedents to interpret the text of the constitutional, statutory, or regulatory provision at issue, relying on them as well for guidance as to the sources that may properly be relied upon in determining the meaning of those texts.

38. 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: With respect to any precedent of the Supreme Court, I would, if confirmed as a Circuit judge, apply it faithfully regardless of whether I believed the Supreme Court had seriously erred in issuing it. I would be similarly bound by First Circuit precedent while serving on a panel, and I would consider voting to overrule a Circuit precedent, absent directly controlling intervening Supreme Court precedent, only in appropriately limited circumstances when sitting *en banc*, *see* Fed. R. App. P. 35, and in accord with the doctrine of *stare decisis* and the considerations that it instructs judges to rely upon in deciding whether to overturn a precedent.

39. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Congressional statutes carry with them a presumption of constitutionality, but in a properly presented case or controversy, judges act consistent with their assigned role in declaring a statute unconstitutional where the relevant provision, considered in light of applicable precedent, compels the conclusion that Congress exceeded its constitutional authority or violated a constitutional limitation. In making constitutional rulings, it is important for courts to decide no more than is necessary and to follow doctrines counseling against the unnecessary resolution of constitutional questions.

40. Please describe your understanding of the workload of the First Circuit. If confirmed, how do you intend to manage your caseload?

Response: I understand that the work of a Circuit judge is substantial, and that it is the obligation of a Circuit judge to manage that caseload so that decisions are made in a timely manner. If confirmed, I would be diligent in fulfilling my responsibilities and in organizing my chambers to ensure the efficient and timely resolution of my assigned caseload. I would consult with my fellow judges on the Circuit in determining how best to ensure that processes were in place to make such timely resolution possible.

41. 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 Constitution is a domestic legal text, and it must be interpreted as such. As a result, neither "foreign law" nor the "views of the world community" can be determinative of its meaning. Where relevant precedents of the Supreme Court or the Circuit instruct judges to consult other than domestic sources, however, whether such sources are English common law or the laws of war, I would be bound to do so.

42. 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 can assure this Committee that my decisions as a judge, were I confirmed, would not be based on any underlying ideology or motivation. In support of that pledge, I would point to the reliance on text and precedent in the opinions I signed while serving as the Acting Assistant Attorney General of the Office of Legal Counsel. I would also point to the support I have received for my nomination from those with whom I have worked throughout my legal career, including career lawyers who served in the Office during my tenure, including many who had served in that same capacity in the prior administration; distinguished lawyers who served in Administrations other than the ones in which I served; and the former Chief Justices of the California and Texas Supreme Courts.

43. 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: If confirmed, I would put aside any personal views and decide all cases only on the basis of the facts and the law. In support of that assurance, I would point to the same evidence that I referenced in my response to question 42.

44. 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: An appellate court may overturn precedent within the Circuit, absent a directly controlling intervening decision by the Supreme Court, by sitting *en banc* and then only in limited circumstances. *See* Fed. R. App. P. 35. Any decision to overrule a precedent must also be made in accord with the doctrine of *stare decisis*, which identifies the considerations that should be made before overturning precedent, including, among others, an assessment of whether the prior precedent has proved to be unworkable and whether it has given rise to reliance interests.

45. You have spent your legal career as an advocate for your clients, or as an academic commenting on the law. 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 base my decisions in properly presented cases on the precedents of the Supreme Court and the First Circuit and apply them to the text of the legal provision at issue in light of the particular facts presented. In doing so, I would rely solely on those legal materials, and would not base my decision on any personal views that I may have. The responsibility of serving on a Circuit court is a great one. It is also a very different one from that of an academic, as I am fully aware. I do believe that my prior work as the Acting Assistant Attorney General for the Office of Legal Counsel and as a career lawyer in that Office, which, by tradition, seeks to provide unvarnished legal advice and not to advocate on behalf of a client, provides me with valuable preparation for the unique role of service on a federal court of appeals. A challenge will be organizing chambers to ensure their effective and smooth functioning, although there is no one aspect of serving as a Circuit judge that stands out for me in thinking about the challenge presented by such a transition in my career. I would consult with my colleagues about how best to manage the special demands presented by serving as a Circuit judge.

46. 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: I believe collegiality is a critical trait in a judge on a Circuit Court. The smooth functioning of, and effective decision making by the Circuit, depend on the ability of its members to treat each other civilly and respectfully. I have placed a high value on

collegiality in all my work experiences, and I would work to ensure that I lived up to the strong tradition of collegiality that has long defined the First Circuit.

47. 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: I am not familiar with the quotation or the context for it, but I agree that a judge should interpret the Constitution and apply binding precedent regardless of the judge's personal views, if any.

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: No.

48. 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: If confirmed as a Circuit judge, I would have no authority to overrule Supreme Court precedent, longstanding or otherwise. With respect to overturning a Circuit precedent, I would do so, absent directly controlling intervening Supreme Court precedent, only in appropriately limited circumstances when sitting *en banc*. *See* Fed. R. App. P. 35. In making such a decision, I would be bound to apply the doctrine of *stare decisis*, which sets forth the considerations that should go into such a judgment, including whether reliance interests have developed in the prior precedent. With respect to whether the "current preferences of the society" should be considered in the course of a constitutional challenge, the Constitution was designed to place limitations on governmental action, regardless of whether such action enjoys contemporary popular support or accords with the current preferences of the society.

49. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: The Constitution applies equally as a source of authority for, and limitation on, all statutes and regulations, no matter their vintage. Thus, just as a new statute or regulation is

not constitutionally suspect for that reason, neither is it entitled to special deference on account of its recent passage or enactment.

50. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

Response: The text and the meaning of the Constitution are not subject to change by judges on the basis of their view of evolving norms and traditions of our society. The Supreme Court has in discrete areas looked to the practices of the political branches in connection with certain separation of powers disputes. *See, e.g., Dames & Moore v. Regan*, 453 U.S. 645, 686 (1981). It has also looked to "evolving standards of decency" in connection with certain questions arising under the Eighth Amendment. *See, e.g., Estelle v. Gamble*, 429 U.S. 97 (1976). If confirmed as a Circuit judge, I would be bound to apply those precedents, as well as any other applicable Supreme Court and First Circuit precedent, to the facts at issue in any properly presented case or controversy.

51. 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: My understanding is that, as the Supreme Court stated in *Cutter v. Wilkinson*, 544 U.S. 709 (2005), "'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," id. at 713-714 (citation omitted). If confirmed, I would apply the Court's precedent in *Cutter*, as well as any applicable Supreme Court and First Circuit precedent in analyzing the particular facts at issue in the case presented.

52. Do you believe that the death penalty is an acceptable form of punishment?

Response: Ever since *Gregg v. Georgia*, 428 U.S. 153 (1976), the Supreme Court has held that the death penalty may lawfully be used as a form of punishment in certain circumstances, and I would faithfully apply all relevant Supreme Court and First Circuit precedent in any case implicating the death penalty, as I would in any case. My personal views, if any, would have no bearing on how I would decide such a case, just as they would have no bearing on any other case I would be called upon to decide if I were confirmed.

53. 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: The Constitution is a written text, and judges have no warrant to change its words or meaning. In that respect, I do not agree with the contrary suggestion that may be implicit

in the view that the Constitution is "constantly evolving" as society interprets it. The Supreme Court has interpreted the Constitution to account for new developments, such as the rise of unforeseen technology in the connection with its Fourth Amendment jurisprudence, or the longstanding practices of the political branches in connection with separation of powers doctrine. If confirmed as a Circuit judge, I would faithfully apply all applicable Supreme Court and First Circuit precedent in interpreting the constitutional text in any properly presented case or controversy.

54. 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?

Response: The Supreme Court has recognized privacy rights in different contexts, including with respect to the liberty component of the Due Process Clause in connection with "marital privacy," *see Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), and in connection with the Fourth Amendment, *see Kentucky v. King*, 131 S. Ct. 1849, 1862 (2011). The Court has stated, though, "the Fourth Amendment cannot be translated into a general constitutional 'right to privacy.' That Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all." *See Katz v. United States*, 389 U.S. 347, 350 (1967). Accordingly, my understanding is that the contours of a privacy right must be examined in connection with the particular facts of the case at issue as they pertain to the particular constitutional provision that is claimed to be the source of the specific protection sought. In resolving any case that sought the protection of a right of privacy premised on the Constitution, I would, if confirmed, faithfully apply the applicable precedents of the Supreme Court and the First Circuit to the particular facts at issue.

55. 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: My understanding of the Supreme Court's precedents is that the rights secured by the Constitution are to be found in its textual provisions and not "between the lines" of those provisions. In determining whether, in a particular case, on the

facts presented, the constitutional text provides the protection claimed by a litigant, I would apply the precedents of the Supreme Court and of the First Circuit.

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: No.

56. 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: The parties to a dispute are responsible for developing the factual record of the case, and judges rely on them to do so. To the extent that issues arise regarding possible reliance on evidence outside the record, I would apply the precedents of the First Circuit, and of the Supreme Court, in deciding how those issues should be resolved.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: If in the course of deciding a case as a Circuit judge an issue arose regarding the propriety of relying on such studies, I would base my decision on the standards set forth in the Federal Rules of Evidence, as well as any applicable precedents of the First Circuit and the Supreme Court.

57. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

Response: The Supreme Court has set forth standards for evaluating Second Amendment challenges to federal and state gun laws in *District of Columbia v. Heller*, 554 U.S. 570, 628 n.27 (2008), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). In those cases, the Court has made clear that the Second Amendment codifies a personal and fundamental constitutional right, and it stated in *Heller* that "[i]f all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect." If confirmed, I would apply those precedents, along with any applicable Supreme Court and First Circuit precedent, in deciding any Second Amendment challenge to a state or federal gun law that came before me.

58. What would be your definition of an "activist judge"?

Response: I believe an activist judge is one who decides cases on the basis of their personal beliefs rather than on the basis of the particular facts at issue and the applicable law, including prior judicial precedent. I also believe an activist judge is one who ignores the various doctrines and rules that ensure that judges do not decide issues, constitutional or otherwise, unnecessarily.

59. What weight should a judge give legislative intent in statutory analysis?

Response: From the earliest days of the Republic, the Supreme Court has made clear that "it is the duty of the court to effect the intention of the legislature." *The Schooner Paulina's Cargo v. United States*, 11 U.S. (7 Cranch) 52, 60 (1812) (Marshall, C.J.). In performing that task, Circuit judges are required to apply relevant precedents of the Supreme Court and of the Circuit court. The plain meaning of the statutory provision controls in the absence of judicial precedent regarding the proper interpretation of a particular statutory provision. In determining plain meaning, the text, standing alone, may be clearly determinative. Where it is not, courts must use traditional tools of statutory construction, consistent with applicable precedent, in determining the provision's meaning. *See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

60. 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.

61. Please describe with particularity the process by which these questions were answered.

Response: I received these written questions by email on Wednesday, November 27, 2013 from the Office of Legal Policy in the Department of Justice. I then prepared draft answers to them, after consulting my own papers and relevant judicial decisions, and returned them in draft form to an attorney at the Office of Legal Policy, revised my draft answers, and then submitted them in final form to the Committee via the Office of Legal Policy.

62. Do these answers reflect your true and personal views?

Response: Yes.

Senator Chuck Grassley
Follow-Up Questions for the Record

David Jeremiah Barron
Nominee, U.S. Circuit Judge for the First Circuit

1. **During your hearing, I asked you about your role in providing guidance regarding the Affordable Care Act. You said it is the ordinary task of the Office of Legal Counsel to review legislation that is pending in Congress. But you would not answer my questions because you did not want to waive a privilege.**

   To be clear, I am not asking you to detail specific conversations, but as you know, answering my questions regarding what you worked on while at OLC does not implicate any privilege. With that in mind, while at OLC, did you provide, formally or informally, any advice on the following topics:

   a. **The constitutionality of Obamacare?**

   b. **An assessment or judgment regarding possible litigation based on any proposed or actual procedural event that occurred in either chamber concerning Obamacare?**

      Response: While information about whether or not a client asked a particular question is confidential, I can say that one function of the Office of Legal Counsel (OLC) is to review virtually all pending federal legislation for constitutional issues, and I have been authorized by the Department of Justice to confirm that I did so here in my role as the Acting Assistant Attorney General for the Office.

2. **Please describe your involvement with the Obamacare legislation and/or the administration's preparation or planning for potential litigation regarding that legislation, including but not limited to your attendance at meetings, whether you provided any opinions, views or comments, and whether you reviewed and/or approved any documents with respect to the foregoing.**

   Response: As indicated in response to question 1, OLC regularly reviews pending legislation for constitutional issues and did so for the Affordable Care Act. In addition, it is not unusual for Department of Justice litigators to solicit and consider OLC's input on legal issues that arise in litigation, and I have been authorized by the Department to say that in my role as head of OLC I participated in the Department's process for developing a response to litigation challenging the constitutionality of aspects of the Affordable Care Act.

3. **Would you commit to providing the Committee with any documentation of the foregoing?**

   Response: I am no longer employed by the Department of Justice, and I have no documentation relating to the foregoing in my possession.

4. **In your responses to my questions, you stated that it was "not accurate or useful to ascribe the outcome of a particular decision to a judge's conservative or progressive 'tilt,'" and proceeded to suggest that a judge only decides cases at hand in accord with the facts particular to that case. If a judge is to rely only on the relevant legal texts and judicial precedent reflecting them, how do you account for varying opinions within the federal judiciary?**

   Response: I believe it is a judge's obligation to decide a case on the basis of the facts and the law, including precedent. While judges do at times disagree about what the facts and the law and precedent require in some specific cases, statistically they agree more often than they disagree. I do not believe there is any single explanation that accounts for the differing judgments of judges in particular cases. There are no Justices on the Supreme Court, for example, who vote the same in every case.

5. **You also said that a judge should not base a decision on whether an outcome could be classified as "progressive" or "conservative." Rather than focusing on an outcome, is it not true that judges do, in fact, interpret constitutional provisions according to some preconceived theory of interpretation?**

   Response: Assuming the phrase "preconceived theory of interpretation" also encompasses a commitment to use traditional methods of interpretation as explicated by applicable precedent then it would be accurate to say that judges likely have such theories.

6. **When you stated that "Federalism is what we make of it," and "It's time for progressives" to do so, did you mean progressives should "make the most of Federalism," in an outcome-centered way or in an interpretative way?**

   Response: I made that statement at the conclusion of an article I wrote as an academic. In that statement, I cautioned critics of the Rehnquist Court's federalism decisions not to assume that defenses of unlimited national power would promote what might be called "progressive" outcomes. In doing so, I did not argue that judges should decide a particular case implicating federalism on the basis of whether the outcome could be classified as "progressive" or "conservative." I also argued in that article that, outside the courts, state and local governments were important sources of policymaking, including

for what might be considered "progressive" policies, and the quoted statement was also referring to that point.

7. **In response to one of my questions related to the above quote, you said that you would simply "apply all relevant Supreme Court and First Circuit precedent to the particular facts," and nothing more. Certainly every judge or Justice presumes he or she is doing simply that when deciding cases. How would you differentiate yourself from those who do, in fact, espouse a certain judicial philosophy or theory of interpretation?**

   Response: My own view is that a judge is bound to apply traditional methods of legal interpretation in light of applicable judicial precedent in resolving particular cases on the basis of the facts at issue. I do not feel I am in a position to characterize how that approach to judging may differ from the approach that others may espouse.

8. **If it is not accurate or useful to describe divergences on the federal bench as "progressive" or "conservative," why have you followed the practice of other commentators in using the terms with respect to the Supreme Court?**

   Response: While I do not believe it is accurate or useful to use the terms "progressive" or "conservative" to ascribe the basis for the divergences on the Court in any particular case that is at issue, I have used those terms in the course of academic debates to challenge arguments that some scholars have made regarding the need to substantially diminish the traditional role of the Supreme Court in resolving constitutional controversies in order to promote what might be called "progressive" outcomes. I have also joined in the academic practice of using those terms in discussing divergences on the Court in certain types of closely divided cases, such as cases concerning federalism.

9. **In my Questions for the Record, I asked you to identify any "'right-wing distortions of the Constitution' you are concerned about of feel need to be countered" and you responded that you were not familiar with Mr. Edelman's article. His article aside, my questions remain. Do you believe there are <u>any</u> right-wing distortions of the Constitution? If so, please identify them.**

   Response: In our history, persons of various views have surely made claims about the Constitution that have distorted its meaning, but I do not know what is meant by the phrase "right-wing distortions," as it is not a phrase I believe I have ever used, and so cannot offer any examples that might fall within it. In any event, I do not believe the appropriate role of a judge would be to "counter" any distortions that might be put forward. The role of a judge is to decide the particular case at issue in light of the factual record and the applicable law.

10. In my Questions for the Record, I also asked you to identify decisions where you found a court's decision to be incorrect. You told me that you would follow precedent faithfully. But I am trying to understand how you analyze cases. Are there federal cases outside of the Supreme Court or the First Circuit that in your view have been incorrectly decided? Please list them and explain why the legal reasoning is faulty.

Response: Although as an academic there have been instances in which I have raised concerns about the reasoning in a federal court's opinion, I recognize that in doing so I did not have the benefit of the briefing of the parties, discussion with fellow judges hearing the case, and consideration of the full factual record. The role of a federal judge is very different from that of an academic; if I were fortunate enough to be confirmed as a federal judge, I would apply precedent without regard to any personal views I might have, if any, regarding the correctness of a particular case. In terms of indications of my approach to analyzing cases, I would point to the opinions I have given to the Committee that I signed while serving as Acting Assistant Attorney General of the Office of Legal Counsel.

11. You told me that you submitted your answers to my original questions to an attorney at OLP then revised your draft answers before submitting them in final form. What did you change after speaking to an attorney at OLP? Please submit the answers you drafted before their content was edited by OLP.

Response: The answers I provided to the Committee on December 9, 2013 are solely my own, and they are based on my own judgments. For that reason, I believe only those answers, and not any earlier drafts, accurately reflect my true and personal views about the questions that you asked.

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
Paul J. Sannicol
Suite 2300
1 Post Office Square
Boston, MA 02109-2129

SECOND CIRCUIT
Jeh C. Johnson
1285 Avenue of the Americas
New York, NY 10019-6064

THIRD CIRCUIT
Karol Corbin Walker
1 Riverfront Plaza
Floor 16
1037 Raymond Boulevard
Newark, NJ 07102-5424

FOURTH CIRCUIT
Willis P. Whichard
501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne T. Lee
746 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles F. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Costello Nowak
Suite 1600
211 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
Charles A. Weiss
Suite 1800
211 N. Broadway
Saint Louis, MO 63102-2769

NINTH CIRCUIT
Edith R. Matthai
Suite 1530
300 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jon Cole
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4536

ELEVENTH CIRCUIT
Frank R. Angones
Courthouse Tower
Floor 8
44 West Flagler Street
Miami, FL 33130-6802

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066-1743

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

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

Defending Liberty
Pursuing Justice

Please respond to:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

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VIA EMAIL AND FIRST-CLASS MAIL

September 24, 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 Professor David Jeremiah Barron to the United States Court of Appeals for the First Circuit***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Professor David Jeremiah Barron who has been nominated for a position on the United States Court of Appeals for the First Circuit. As a result of our investigation, a substantial majority of the Committee is of the opinion that Professor Barron is Well Qualified for this position and a minority of the Committee is of the opinion that Professor Barron is Qualified.

A copy of this letter has been provided to Professor Barron.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Professor David Jeremiah Barron
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 Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on September 24, 2013.

GW | LAW

Bradford R. Clark
William Cranch Research Professor of Law
202.994.2073
bclark@law.gwu.edu

Sept. 24, 2013

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of David Barron to the First Circuit

Dear Senators Leahy and Grassley:

I am writing to express my support of David Barron's nomination to the United States Court of Appeals for the First Circuit. Professor Barron is a distinguished lawyer and law professor. Throughout his career, he has taken the law, legal history, precedent, and legal materials seriously. He is a careful and thoughtful lawyer, and would bring these essential qualities to the bench. Although Professor Barron and I may not agree on all legal issues, I am confident that he has the qualifications, judicial temperament, and impartiality to be an excellent member of the First Circuit.

Before I provide my reasons for supporting Professor Barron's nomination, let me tell you something about my background. I clerked for Judge Robert H. Bork on the United States Court of Appeals for the District of Columbia Circuit, and Justice Antonin Scalia on the Supreme Court of the United States. I generally share their philosophy of judicial restraint.

In my opinion, Professor Barron is extremely well qualified to be a Circuit Court judge. He graduated *Magna Cum Laude* from Harvard College and Harvard Law School, and served as an Articles Editor of the *Harvard Law Review*. Following law school, he clerked on the United States Court of Appeals for the Ninth Circuit for Judge Stephen Reinhardt, and on the Supreme Court of the United States for Justice John Paul Stevens. He served as an Attorney-Adviser in the Office of Legal Counsel at the Department of Justice from 1996-99. He returned to the Office of Legal Counsel from 2009-10 to serve as the Acting Assistant Attorney General. Finally, since 1999, he has been a member of the Harvard Law School faculty. All of these experiences make Professor Barron highly qualified to be a judge on the Circuit Court.

Throughout Professor Barron's academic career, I have been impressed with his dedication to careful legal analysis and respect for legal materials. He has been an outstanding and innovative scholar in several fields. I was particularly impressed with his work on the President's Commander-in-Chief power. *See* David J. Barron & Martin S. Lederman, *The Commander In Chief at the Lowest Ebb – Framing the Problem, Doctrine, and Original Understanding*, 121 Harv. L. Rev. 689 (2008); David J. Barron & Martin S. Lederman, *The Commander In Chief at the Lowest Ebb – A Constitutional History*, 121 Harv. L. Rev. 941 (2008). In these two book-length articles, Professor Barron makes a compelling case that claims by modern Presidents to expansive unilateral power to initiate and conduct military actions rest on dubious historical grounds. These articles represent the best kind of legal scholarship because they uncover and bring together a wealth of historical, legal, and judicial materials previously unavailable in one place to lawyers and judges interested in the topic. These articles also suggest that Professor Barron is a scholar who values history and original understanding in interpreting the Constitution. Finally, this scholarship reveals that he understands the importance of checks and balances under the Constitution.

In sum, I support Professor Barron's nomination to the First Circuit, and I urge your Committee to approve him.

Sincerely,

Bradford R. Clark

CHARLES FRIED
[redacted]
Cambridge, MA 02138

September 24, 2013

Senator Patrick Leahy
437 Russell Senate Building
United States Senate
Washington, DC 20510

Senator Charles Grassley
135 Hart Senate Office Building
United States Senate
Washington, DC 20510

Dear Senators Leahy and Grassley,

It is a privilege to write you and your colleagues in support of the nomination of David J. Barron to be on the Court of Appeals for the First Circuit. I have known David since he was first my colleague at the Harvard Law School in 1999. I was on the appointments committee that recommended his promotion to full professor and in that capacity I not only studied his academic writing, but visited his classes and learned about his standing among his students as a teacher and his reputation as a scholar among other specialists in his several fields. There can be no doubt that his work is highly regarded by his professional peers. It is his reputation among his students that I think is especially telling. He teaches in a number of difficult, demanding fields, and our students are used to and insist on teaching that is both clear and engaging. He is a beloved and respected teacher. What that shows is that not only is he highly knowledgeable but that he is a clear expositor of some very technical subjects and that he is unfailingly respectful and fair in his treatment of his students. I think this is a disposition that would make him a very fine judge. The lawyers appearing before him would come away with a sense that he has heard and understood their arguments and that he has treated them with dignity and respect.

The subjects—administrative law, regulation and legislation—in which he has specialized are especially relevant to the work of a federal court of appeals. Questions of administrative law and statutory interpretation come up in the largest number of cases on the federal appellate docket. He is a master of these fields. His work in the Department of Justice Office of Legal Counsel is real lawyer's work, and he did it for a good three years. He evidently did it very well, as he was then chosen to lead that office for his last year and a half in government. That role requires not only skill and knowledge, but tact, because as head of that office he had to tell his client, essentially the President of the United States, not what he wants to hear but what he has to hear. It is striking that in his writing he has been far from an advocate for an imperial presidency, but rather has emphasized the degree to which the President and his office are subject to the law. This is a disposition and habit of mind that is particularly suitable in a judge.

Finally, I would say how fitting it would be to have him, an eminent academic, as a judge of the First Circuit. That court has long included distinguished scholars and teachers of law in its number. I think back to Calvert Magruder, to Stephen Breyer, to Michael Boudin, who has just taken senior status but will I hope long continue to sit on that court. There is among the active judges now no academic in that succession and it would be fine if David were confirmed to continue that tradition.

If I can be of any further assistance to you or the committee please do not hesitate to let me know.

Respectfully,

Charles Fried
Beneficial Professor of Law
Harvard Law School

HARVARD LAW SCHOOL
CAMBRIDGE • MASSACHUSETTS • 02138

RECEIVED OCT 2 1 2013

JACK GOLDSMITH
Henry L. Shattuck Professor of Law

September 24, 2013

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Leahy and Grassley:

I write in enthusiastic support of the nomination of my colleague David Barron to be a judge on the United States Court of Appeals for the First Circuit.

I am a professor at Harvard Law School. I previously served in the George W. Bush administration as Assistant Attorney General, Office of Legal Counsel from 2003-2004, and as the Special Counsel to the General Counsel of the Department of Defense from 2002-2003. My teaching and scholarship focus on national security law, international law, presidential power, foreign relations law, and internet law.

I have gotten to know David well during my nine years at Harvard Law School. I have read a good deal of his scholarship, I taught a seminar with him, I have served with him on committees, I have spent dozens of hours discussing the law with him, and I have observed his time as the Acting Assistant Attorney General in the Office of Legal Counsel (where, as noted above, I served as AAG from 2003-2004). David has outstanding qualifications, and qualities, to be a judge, and I urge this Committee to approve his nomination and the entire Senate to confirm him.

David is a *magna cum laude* graduate of Harvard College and Harvard Law School who clerked for Justice Reinhardt on the Ninth Circuit and Justice Stevens on the Supreme Court. He has taught at Harvard Law School for over a decade, where he has established a record as a very successful scholar and teacher, and has also been involved in numerous important administrative and advisory roles. David also has extensive experience as a practicing attorney, especially in his service in the Office of Legal Counsel, most recently as the Acting Assistant Attorney

TEL: 617-384-8159 • FAX: 617-496-4866 • jgoldsmith@law.harvard.edu

General. These and other experiences and accomplishments have thoroughly prepared David to be a federal judge, and they indicate why he will be such a good one.

David is a wide-ranging scholar who is expert on topics that regularly come before federal courts, including administrative and regulatory law, legislation and legislative interpretation, constitutional law, property law, and local government law. Perhaps David's most influential scholarship is a pair of articles he wrote with Marty Lederman in the *Harvard Law Review* on one of the most contested issues after 9/11: the President's power to disregard federal statutes under the Commander in Chief clause. The articles were groundbreaking in their demonstration that such claims are of relatively recent origin, in their definitive analysis of how to think about executive branch exclusivity in this context, and in their articulation of a relatively narrow conception of exclusive presidential power under the Commander-in-Chief clause. These articles are characteristic of all of David's legal scholarship, and of his work more generally. David's work is intelligent, careful, and nuanced. It is sensitive to the legal limits on governmental (and especially executive branch) power. And, unlike much legal scholarship, it is firmly grounded in legal doctrine and sensitive to real-world practice and consequences.

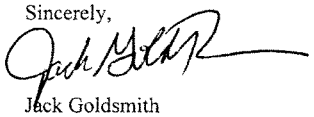
David's scholarly grounding in the real world of legal practice – which distinguishes him from many in the legal academy – reflects his extensive experience as an attorney, most notably in OLC. David's more than eighteen months as the Acting Assistant Attorney General in charge of the Office was especially outstanding preparation to be a federal judge. The head of OLC is necessarily expert in the details of federal law and regulation that often come before courts. The head of OLC presides over an office that serves in effect as the "Supreme Court for the Executive branch," resolving legal disputes among federal agencies much (though not entirely) as a court would resolve legal disputes between parties. And perhaps most importantly, the head of OLC must make hard decisions under pressure, and success at the job requires independence, excellent judgment, and superb legal craft skills.

David did a great job as the head of OLC. His published decisions are models of careful and precise legal reasoning, and are perhaps the best single indicator of his potential to be a great judge. Newspaper reports indicate that David advised the President or the Attorney General against the legality of proposed courses of action on issues ranging from the D.C. Voting Rights Bill to complex issues in the armed conflict against al Qaeda and affiliates. These are the hardest calls an executive branch lawyer can make, and David showed great integrity, and commitment to the law, in this advice (and, I am confident, in much of the advice he gave about which the public is unaware). More generally, David led OLC during a difficult transition period from the Bush to Obama administrations during a time in which OLC's decisions and decision-making had become controversial and politicized in the public eye. I have spoken to many executive branch officials and outside observers about David's stewardship of OLC during this period, and they all concur with my assessment that he exercised outstanding judgment in his decision-making and leadership of the Office.

Speaking of good judgment, it is no accident that David is (as his resume indicates) in great demand as an advisor to so many different types of organizations. Most recently, for example, Harvard President Drew Faust chose David to lead the University's study of the confidentiality of electronic communications at Harvard University. David is well known for his ability to ask the right questions, including hard questions, and to forge intelligent group deliberation and decision-making. These are obvious virtues in a judge.

Finally, a word about David's lawyerly temperament. David is one the smartest lawyers I know and is deeply learned in the law. He also has the great lawyer's capacity to see a problem from all angles, to see non-obvious connections between legal principles, and to understand the second and third-order effects of legal decision making. These are all very important qualities in successful judging. When these qualities are combined with David's smarts, his intellectual range, and his proven independence and good judgment under pressure, they add up, I think, to an easy case for confirmation for a judgeship on the First Circuit.

Sincerely,



Jack Goldsmith

John F. Manning
[redacted]
Cambridge, MA 02138

September 24, 2013

Hon. Patrick J. Leahy
Chairman
U.S. Senate Committee
On the Judiciary
United States Senate
Washington, D.C. 20510

Hon. Charles Grassley
Ranking Member
U.S. Senate Committee
On the Judiciary
United States Senate
Washington, D.C. 20501

Dear Senators Leahy and Grassley:

I write in strong support of David J. Barron's nomination to serve as a Judge on the U.S. Court of Appeals for the First Circuit. I have known Mr. Barron for fifteen years and been his colleague on the Harvard Law School faculty for almost a decade. He has the intelligence, talent, and judicial temperament necessary to serve with distinction on the court of appeals.

Before I elaborate on my reasons, let me give you some of my background so that you will have a basis for evaluating my assessment. I should say, at the outset, I am not a member of Mr. Barron's political party; I have been a Republican all my adult life. I clerked for Judge Robert Bork on the U.S. Court of Appeals for the D.C. Circuit and for Justice Antonin Scalia on the Supreme Court. I served for two years (1986-88) in the Office of Legal Counsel under Assistant Attorney General Charles Cooper and for almost three years (1991-94) as an assistant to the Solicitor General, first under Solicitor General Starr and then under Solicitor General Days.

I know Mr. Barron extremely well. I first met him when he was an attorney-adviser in the Office of Legal Counsel. I was co-chair of the Columbia Law School hiring committee that recommended Mr. Barron's appointment to the Columbia faculty. I was an enthusiastic proponent of his appointment, and I tried my level best to convince him to join the faculty after my colleagues and I voted him an offer. He chose to go to Harvard instead. When I joined the Harvard faculty several years later, it was a pleasure to have Mr. Barron as my colleague. We have worked together closely on many things and become close friends. He served on the lateral appointments committee of which I was chair; we both served as section leaders of 1L sections; and we served together on the Law School's strategic planning committee. I have

observed him closely as a scholar, as a teacher, and as a participant in the life of the law school. Accordingly, I have a strong basis for assessment.

Mr. Barron is undeniably brilliant. His mind is quick. His judgment is sound. His thinking is deep. He is an unusually talented and careful lawyer. He cares about law and the lawyer's craft. In an age in which legal academia has moved sharply in the direction of interdisciplinary studies, he remains squarely focused on inquiring into what the Constitution and laws of the United States mean. His (co-authored) articles on the Commander-in-Chief Power are a *tour de force*. The articles' painstaking attention to text, structure, history, and tradition in construing the U.S. Constitution reflects the traditional and, in my view, appropriate way to decide the Constitution's meaning. Those articles have contributed mightily to our understanding of constitutional law at a critical time. I have also spent many hours speaking with Mr. Barron about our shared subject of administrative law. I have always found his judgment to be careful and well-grounded, even when I do not agree with it. Mr. Barron's scholarship makes plain that he is a careful and thorough lawyer. That gives strong assurance that he will understand and faithfully carry out the duties of a circuit judge. Indeed, he will excel at the job.

Finally, Mr. Barron is a dedicated public servant. In fact, the instinct to serve is part of his DNA. In his role as a circuit judge, I am confident that Mr. Barron will carefully follow the law and the precedents of his circuit and those of the Supreme Court. And he will do so with great distinction. I urge you to confirm him to the First Circuit.

Best regards,



Supreme Court of California

November 6, 2013

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of David J. Barron to the U.S. Court of Appeals, First Circuit

Dear Chairman Leahy and Ranking Member Grassley,

I am very pleased to add my enthusiastic endorsement to those of the many other persons who have known David J. Barron, in support of his nomination as Judge of the United States Court of Appeals for the First Circuit.

You are well aware that Mr. Barron has an outstanding academic record both as a student and as a current member of Harvard Law School faculty. Having known him well for several years, I also closely followed his career as a high-ranking member of the Office of Legal Counsel of the U.S. Department of Justice, where his experience preparing legal opinions on extremely significant matters bears directly and positively on his qualifications to perform the duties of a federal appellate judge.

As a person who served for 38 years in a state court system, the last 14 years as Chief Justice of California and of its high court, I have been particularly impressed by Mr. Barron's understanding and respect for the critical role played by the states and their

courts in our federal system of government. In this regard I have had occasion to read some of his brilliant scholarly writings, in particular those dealing with the role of local and state government in enforcing our Constitution (one of which featured an opinion I authored for the California Supreme Court.)

Significantly, Mr. Barron's abilities encompass an understanding of the practical effects and consequences of rulings rendered by the courts on the lives of individuals and private institutions.

Of course, another essential quality for an appellate judge is the ability to work well and closely with one's fellow judges on a collegial decision-making body, and I cannot imagine anyone better suited in this regard as well as in the other requisites of judicial temperament and high moral character. His role as a devoted husband and father also speak to his strong commitment to family and community values.

I strongly urge the Committee on the Judiciary to give favorable consideration to the nomination of David Barron and would be pleased to respond to any questions that the Committee might direct to me.

Respectfully yours,

Ronald M. George

[redacted]
Chevy Chase, Maryland 20815
[redacted]

November 11, 2013

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

Via Staff Email

Re: Nomination of David Barron

Dear Senators Leahy and Grassley:

I write in support of the nomination of David Barron to be a judge on the United States Court of Appeals for the First Circuit. I have known Professor Barron for many years, and can attest that his broad legal experience and his fidelity to principle make him an ideal candidate for the appellate bench.

By way of background, I co-chair the Appellate and Supreme Court Practice at Paul Hastings LLP, a leading international law firm. I have briefed and argued many cases in the appellate courts, including most notably two recent constitutional victories in the United States Supreme Court. In *Padilla v. Kentucky*, the Court held that the Sixth Amendment guarantees criminal defendants a right to competent legal advice on the deportation consequences of a guilty plea, and in *Peugh v. United States*, the Court held that retroactive amendments of the U.S. Sentencing Guidelines that increase advisory sentencing ranges violate the Ex Post Facto Clause. Before joining Paul Hastings, I was a partner in the appellate practice of Sidley Austin LLP. Prior to private practice, I clerked for Associate Justice Anthony M. Kennedy of the United States Supreme Court and Judge John M. Walker Jr. of the United States Court of Appeals for the Second Circuit.

Professor Barron has a wonderful mix of experience for an appellate judge. As an appellate practitioner, I cannot emphasize enough the importance of having jurists on the courts of appeals who are scholars of the law. Because of the infrequency of

Supreme Court review, the circuit courts are often the last word on the most important and difficult federal legal questions. Professor Barron is not only a highly regarded legal scholar, but his scholarship is also leavened by his experience at the highest levels of the Department of Justice as the Principal Deputy and Acting Assistant Attorney General in the Office of Legal Counsel. He has wrestled with some of the toughest legal and constitutional questions that arise in government, and his pragmatic understanding of how government works and how the law operates will be invaluable in his judicial deliberations.

What sets Professor Barron apart as a candidate is his principled approach to the law. I clerked for Justice Kennedy at the Supreme Court in the same term that Professor Barron clerked for Justice Stevens. Clerks, although not at liberty to disclose the positions of their Justices or confidences of chambers, were encouraged to discuss pending cases with the clerks of other chambers. I always made David Barron my first port of call. He stood out intellectually among a very able group of clerks. He saw doctrinal distinctions and problems with the arguments of the parties that others failed to perceive. I never detected dogmatism or an ideological cast to his legal thinking; he was a lawyer's lawyer. I have found the same to be true when discussing legal issues with him in recent years. Professor Barron is among the finest legal minds I have ever encountered, and his steadfast allegiance to the law will make him one of the great judges on the federal bench. I recommend him for confirmation without hesitation.

Sincerely,

Stephen B. Kinnaird

HARVARD LAW SCHOOL
CAMBRIDGE • MASSACHUSETTS • 02138

ALLEN FERRELL
Greenfield Professor of Law
GRISWOLD HALL 303
CAMBRIDGE, MASSACHUSETTS 02138

PHONE: (617) 495-8961
FAX: (617) 496-4863
fferrell@law.harvard.edu

November 13, 2013

Hon. Patrick J. Leahy
Chairman
U.S. Senate Committee
On the Judiciary
United States Senate
Washington, D.C. 20510

Hon. Charles Grassley
Ranking Member
U.S. Senate Committee
On the Judiciary
United States Senate
Washington, D.C. 20501

Dear Senators Leahy and Grassley:

I write in strong support of David J. Barron's nomination to serve as a Judge on the U.S. Court of Appeals for the First Circuit. I have known David for the last fifteen years as a colleague. Indeed, David and I joined the faculty at Harvard Law School at the same time in 1999 as assistant professors. I know David quite well.

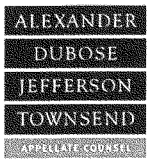
I write in support not out of any sense of party or ideological loyalty. I was on President Bush's legal advisory committee in the 2004 election, John McCain's committee in 2008 and Mitt Romney's committee in 2012. After law school I clerked for Judge Silberman on the D.C. Circuit and Justice Kennedy on the Supreme Court. I am an advisor to the Federalist Society's Corporations, Securities and Antitrust Practice Group.

Regardless of our differences in outlook, I am confident that David would make an outstanding judge. He is fair-minded, respectful of different points of view, and highly able. He is not an ideologue or someone that would ignore relevant circuit or Supreme Court case law. David is particularly well-suited to being a judge as he cares not only about abstract legal principles but how best to apply these principles to particular facts and circumstances.

I very much hope that David Barron is confirmed. The fact that highly able, motivated and public-spirited minded individuals such as David wish to serve is too good an opportunity to pass up.

Sincerely,

Allen Ferrell



www.adjtlaw.com

November 13, 2013

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

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Nomination of Professor David Barron to the United States Court of Appeals for the First Circuit

Dear Chairman Leahy and Ranking Member Grassley:

I write in support of the nomination of Professor Barron to the U.S. Court of Appeals for the First Circuit. Although I have recently retired as Chief Justice of the Supreme Court of Texas, my direct observations of this exceptional nominee took place during my tenure as Chief. I attended a three-year course at Harvard from 2008-2011. Professor Barron was one of several professors who participated in this Executive Session, which was designed to help public officials, judges, and administrators improve the justice system in our state courts.

Professor Barron's presentations to the Harvard Executive focused on the tension between judicial independence and the reliance courts must place in the other branches of government for funding. He observed that an increasingly utilized source of revenue for state courts has been the assessment of fees, which may perversely incentivize courts to favor those cases that generate fees. His observations carried great weight among the Session's participants as it quickly became clear that he cared deeply about preserving the decisional independence of judges. For my part, the professor's perspectives persuaded me to de-emphasize fees as a judicial revenue source in Texas.

The Harvard Session encouraged frank discussions among individuals with forceful points of view. In that setting, I was impressed with Professor Barron's measured arguments, his firmly expressed convictions, and his overall pleasant temperament. I can well see him engaging productively with his colleagues on the First Circuit.

AUSTIN
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
TEL 512.482.9300 FAX 512.482.9303

DALLAS
4925 Greenville Avenue, Suite 717
Dallas, Texas 75206-4087
TEL 214.369.2358 FAX 214.369.2359

HOUSTON
1844 Harvard Street
Houston, Texas 77008-4342
TEL 713.523.2358 FAX 713.522.4553

In Texas, the judiciary is chosen through partisan elections. I have won statewide office as a Republican three times since 2001. I have served with 21 Justices on the Supreme Court during that tenure. From my personal observation of Professor Barron's demeanor, intellect, open-mindedness, and knowledge of the judge's unique role in society, I can say without reservation that I would have been proud to call him a colleague on the bench. I believe the First Circuit and the country would benefit from his service as an Article III judge.

Sincerely,

Wallace B. Jefferson

Wallace B. Jefferson

November 15, 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 collectively in support of David J. Barron's nomination for a seat on the U.S. Court of Appeals for the First Circuit.

Each of us served as a career attorney-advisor in the Office of Legal Counsel (OLC) at the Department of Justice under David's leadership. As a group, we have served in both Democratic and Republican Administrations and clerked for six Supreme Court justices.

During our time at OLC, we witnessed firsthand David's brilliant legal intellect, exceptional character, and considered judgment on the most pressing legal issues facing the Executive Branch. David immersed himself deeply in both the analytical underpinnings and practical implications of OLC's legal advice. He actively sought out and respected the views of the career staff in the Office. He pushed each of us to be open-minded and to consider all sides of an argument before reaching a final conclusion. And he set the most rigorous professional standards for the Office to ensure that OLC's advice was of the highest possible quality and represented the best possible view of the law.

Simply put, we have no doubt that, if confirmed, David will be an outstanding appellate judge. We recommend him without reservation and urge his timely consideration by this Committee and his swift confirmation by the U.S. Senate.

Sincerely,

Amit Agarwal
Assistant U.S. Attorney, U.S. Attorney's Office for the Southern District of Florida*
Attorney-Advisor 2007-2009

Kwaku A. Akowuah
Attorney-Advisor 2009-2012

Trisha B. Anderson
Associate Deputy Attorney General, U.S. Department of Justice
Attorney-Advisor 2007-2010

Jessica Bulman-Pozen
Associate Professor, Columbia Law School
Attorney-Advisor 2009-2011

Allison Marston Danner
Judge, Superior Court of California, County of Santa Clara
Attorney-Advisor 2009-2010 (on detail from the U.S. Attorney's Office for the Northern District of California)

Kelly P. Dunbar
Counsel, Wilmer Cutler Pickering Hale and Dorr LLP
Attorney-Advisor 2010-2012

Brianne J. Gorod
Appellate Counsel, Constitutional Accountability Center
Attorney-Advisor 2009-2011

Kelley Brooke Hostetler
Attorney-Advisor 2009-present

Allon Kedem
Associate, Skadden, Arps, Slate, Meagher & Flom LLP
Attorney-Advisor 2007-2009

Daniel B. Kirschner
SVP, Corporate Affairs & Counsel, Activision Blizzard
Attorney-Advisor 2009-2011

Iris Lan
Associate Deputy Attorney General, U.S. Department of Justice
Attorney-Advisor 2010-2011

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* For all signatories, institutional affiliations are provided for identification purposes only.

Thomas S. Lue
Former Acting General Counsel, White House Office of Management and Budget
Attorney-Advisor 2008-2010

Jeremy C. Marwell
Associate, Vinson & Elkins LLP
Attorney-Advisor 2007-2009

Michael Paisner
Attorney-Advisor 2008-2010

Zachary S. Price
Visiting Assistant Professor, University of California Hastings College of the Law
Attorney-Advisor 2009-2012

Pankaj Venugopal
Associate General Counsel, Facebook Inc.
Attorney-Advisor 2009-2011

November 19, 2013

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Nomination of David J. Barron to the U.S. Court of Appeals for the First Circuit

Dear Chairman Leahy and Ranking Member Grassley:

We write in strong support of the President's nomination of David Barron to be a Judge on the United States Court of Appeals for the First Circuit.

The undersigned all served as law clerks at the Supreme Court during the same year that David clerked for Justice John Paul Stevens (the October 1995 Term of the Court). During that time, some of us worked with David directly in Justice Stevens' chambers, others of us worked with David on cases that we were assigned to in common, and all of us got to know David as a colleague. Based on what we saw then, and what we know of David's career in the years since, we are confident that David has the temperament, the intellect, and the impartiality needed to serve with distinction on the First Circuit. We encourage you to support his nomination, and to work together to move it out of the Committee with a favorable recommendation to the full Senate.

Sincerely,

Julia C. Ambrose
Clerk to Justice O'Connor, OT'95

Yochai Benkler
Clerk to Justice Breyer, OT'95

Stuart Benjamin
Clerk to Justice Souter, OT'95

Steven L. Chanenson

Nancy Combs
Clerk to Justice Kennedy, OT'95

Jeff Dobbins
Clerk to Justice Stevens, OT'95

Charles S. Duggan

Shawn Fagan
Clerk to Chief Justice Rehnquist, OT'95

...Continued on page 2

Ward Farnsworth
Clerk to Justice Kennedy, OT'95

Sean Gallagher
Clerk to Justice O'Connor, OT'95

Heather Gerken
Clerk to Justice Souter, OT'95

Craig Goldblatt
Clerk to Justice Souter, OT'95

Mark D. Harris
Clerk to Justices Powell and Stevens, OT'95

Julie Katzman
Clerk to Justice Breyer, OT'95

Joseph D. Kearney

Steven B. Kinnaird
Clerk to Justice Kennedy, OT'95

Kelly Klaus
Clerk to Justice Kennedy, OT'95

Kathleen Beecher Moore
Clerk to Justice Scalia, OT'95

Eileen Mullen
Clerk to Justice Stevens, OT'95

Gretchen Rubin
Clerk to Justice O'Connor, OT'95

Kevin Russell
Clerk to Justice Breyer, OT'95

Maria Simon
Clerk to Justice Ginsburg, OT'95

Simon Steel
Clerk to Justice O'Connor, OT'95

Phil Weiser
Clerk to Justices White and Ginsburg, OT'95

Mike Wishnie
Clerk to Justices Blackmun and Breyer, OT'95

Michael Li-Ming Wong
Clerk to Justice Ginsburg, OT'95

May 16, 2003

Senators Bill Frist and Tom Daschle
U.S. Capitol
Washington, DC 20510

Dear Senators Frist and Daschle:

As law professors, we write to express our opinion that the Senate's use of the filibuster with respect to both legislation and nominations is constitutional. Both the text of the Constitution and historical practices strongly support the constitutionality of the filibuster. Article I, Section 5 expressly provides, "Each House may determine the Rules of its Proceedings." Article I, Section 5 plainly authorizes the Senate to make procedural rules. It empowers the Senate as well to delegate what is sometimes final authority over the fate of legislation and nominations to committees and their chairs. The textual authority for the filibuster is precisely the same as those for these other measures. If these measures are constitutional, then so too is the filibuster.

The Supreme Court has repeatedly emphasized the relevance of historical practices for determining constitutionality. The filibuster, understood as protracted debate precluding final Senate consideration of a legislative matter, began early in the history of the Republic. It has been used frequently by senators from both parties with respect to nominations as well as legislation. In fact, it has been used effectively to defeat presidential nominations, including the nominations of Abe Fortas to be Chief Justice of the United States in 1968, Sam Brown to be Ambassador in 1994, and Henry Foster to be Surgeon General in 1995. This longstanding historical practice weighs heavily in support of the filibuster's constitutionality.

The filibuster reflects the Senate's longstanding respect for minority views and underscores the unique role of the Senate as a part of American democracy. It has the salutary effect of giving an incentive to all sides to seek compromise on issues where points of view are sharply divided. With regard to nominations to an independent branch of government such as the judiciary, the filibuster encourages the President to find common ground with the Senate by nominating individuals who can garner consensus.

For these and other reasons, we conclude the filibuster is constitutional.

Very truly yours,

Professor Vikram Amar
University of California
Hastings College of the Law

Anthony G. Amsterdam
University Professor and Professor of Law
New York University School of Law

Frank Anechiarico
Visiting Scholar, New York University
School of Law
Maynard-Knox Professor of Government
And Law, Hamilton College

Frank Askin
Professor and Robert Knowlton Scholar
Rutgers Law School - Newark

David Barron
Assistant Professor
Harvard University Law School

Vincent Blasi
D. Lurton Massee, Jr. Professor and Hunton
& Williams Res. Prof.
University of Virginia School of Law
and Corliss Lamont Professor of Civil Liberties, Columbia Law School

Ira Mark Bloom
Justice David Josiah Brewer Distinguished
Professor of Law
Albany Law School

Vincent M. Bonventre
Professor of Law
Albany Law School

Sarah E. Burns
Professor of Law
New York University School of Law

Oscar G. Chase
Professor of Law
New York University School of Law

Erwin Chemerinsky
Sydney M. Irmas Professor of Public Interest
Law, Legal Ethics & Pol. Sci.
University of Southern California Law School

Stephen Clark
Associate Professor of Law (as of 5/30/2003)
Albany Law School

Michael Kent Curtis
Professor of Law
Wake Forest University School of Law

Christine Desan
Professor of Law
Harvard Law School

Laura Dickinson
Associate Professor
University of Connecticut Law School

Norman Dorsen
Stokes Professor of Law and Counselor to the President
New York University School of Law

David R. Dow
Professor of Law
University of Houston Law Center

Mary L. Dudziak
Judge Edward J. and Ruey L. Guirado Professor of Law and History
University of Southern California Law School

Garrett Epps
Associate Professor
University of Oregon Law School

Martin S. Flaherty
Professor of Law
Co-Director, Joseph R. Crowley Program in International Human Rights
Fordham Law School

Michael J. Gerhardt
Arthur B. Hanson Professor
The College of William and Mary Law School

Charles G. Geyh
Professor of Law
Indiana University School of Law-Bloomington

Rachel Godsil
Associate Professor
Seton Hall Law School

Stephen E. Gottlieb
Professor of Law
Albany Law School

H. Kent Greenfield
Associate Professor
Boston College Law School

Joel Goldstein
Professor and Associate Dean,
Saint Louis University Law School

Martin Guggenheim
Clinical Professor & Director, Clinical &
Advocacy Program
New York University School of Law

Peter Halewood
Professor of Law
Albany Law School, Union University

Lynne N. Henderson
Professor of Law
Boyd School of Law – University of Nevada,
Las Vegas

Dawn E. Johnson
Associate Professor
Indiana University School of Law-Bloomington

Pamela S. Karlan
Kenneth & Harle Montgomery Professor of Public Interest Law
Stanford University School of Law

Joseph E. Kennedy
Assistant Professor
University of North Carolina School of Law

Larry D. Kramer
Samuel Tilden Professor
New York University Law School

Sylvia A. Law
Elizabeth K. Dollard Professor of Law
Medicine and Psychiatry
New York University Law School

Timothy D. Lytton
Professor of Law
Albany Law School

Hugh Macgill
Professor of Law
University of Connecticut School of Law

Michael T. Madison
Professor of Law
Fordham University School of Law

Deborah C. Malamud
Professor of Law
The University of Michigan Law School

William P. Marshall
Kenan Professor
University of North Carolina School of Law

Victoria F. Nourse
Visiting Professor, New York University
School of Law
Professor, University of Wisconsin

John B. Oakley
Professor of Law
University of California-Davis School of Law

Todd D. Peterson
Professor of Law
George Washington University Law School.

Richard A. Primus
Assistant Professor
The University of Michigan Law School

Martha Rayner
Associate Clinical Professor of Law
Fordham University School of Law

Judith Resnik
Arthur Liman Professor
Yale Law School

David A.J. Richards
Edwin D. Webb Professor of Law
New York University School of Law

Kermit Roosevelt
Assistant Professor
University of Pennsylvania Law School

Thomas D. Rowe, Jr.
Elvin R. Latty Professor of Law
Duke University Law School

Thomas O. Sargentich
Professor of Law
American University-Washington College of Law

Leo Schmolka
Professor of Law
New York University School of Law

Christopher H. Schroeder
Charles S. Murphy Professor & Professor, Public Policy Studies
Duke University School of Law

Herman Schwartz
Professor of Law
American University-Washington College of Law

Stephen J. Schulhofer
Professor of Law
New York University School of Law

Aviam Soifer
Professor of Law
Boston College Law School

Girardeau A. Spann
Professor of Law
Georgetown University Law Center

Juliet Stumpf
Acting Assistant Professor of Lawyering
New York University Law School

Andrew E. Taslitz
Professor of Law
Howard University Law School

Kim Taylor-Thompson
Professor of Law
New York University School of Law

Ruti G. Teitel
Ernst Stiefel Professor of Comparative Law
New York Law School

William J. Turner
Willie Person Mangum Professor
University of North Carolina School of Law

Kathryn R. Urbonya
Professor of Law
The College of William and Mary Law School

Stephen Wermiel
Associate Professor of Law
American University Washington College
of Law

Robin West
Professor of Law
Georgetown University Law School

Adam Winkler
Acting Professor of Law
University of California at Los Angeles
School of Law

NOMINATIONS OF HON. CYNTHIA ANN BASHANT, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA; HON. JON DAVID LEVY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MAINE; THEODORE DAVID CHUANG, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND; GEORGE JARROD HAZEL, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND; AND DANIEL D. CRABTREE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF KANSAS

THURSDAY, DECEMBER 19, 2013

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to other business, at 10:25 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Whitehouse, Feinstein, Schumer, Durbin, Blumenthal, Grassley, and Lee.

Senator WHITEHOUSE. Let me call the hearing to order, if I may, and welcome the colleagues who have come to introduce and speak for their nominees. And let me begin, if I may, by recognizing the senior Member of the Judiciary Committee present on our side, Senator Feinstein, the distinguished Chairman of the Intelligence Committee, to make some remarks concerning Judge Bashant.

PRESENTATION OF HON. CYNTHIA ANN BASHANT, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA, BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. I really appreciate this, and I thank my colleagues for allowing this as well.

I would like to introduce Judge Cynthia Bashant, who has been nominated to serve on the United States District Court for the Southern District of California. That is the court in San Diego. She

is a product of a bipartisan judicial selection committee, and they have given her a very strong recommendation. I think when you learn of her experience you will see why.

She earned her bachelor's degree from Smith in 1982, her law degree from the University of California, Hastings College of the Law in 1986. She spent 3 years practicing civil litigation at the law firm of MacDonald, Halsted and Laybourne, which later became part of the firm Baker and McKenzie.

In 1989, Judge Bashant joined the United States Attorney's Office in the Southern District of California, where she tried at least 15 cases in Federal court. She prosecuted numerous important cases, including a major drug-trafficking case that involved the Sinaloa drug cartel, a 1,600-foot tunnel under the southern border, 23 defendants, wiretaps in Chicago, San Antonio, Los Angeles, and San Diego, and she got a conviction.

She prosecuted an individual who was responsible for robbing more than 20 banks, a local record in San Diego at the time. The defendant was convicted, and the Ninth Circuit upheld the conviction.

She prosecuted the first Federal interstate domestic violence case in the Southern District of California and one of the first in the Nation. The defendant was accused of luring his wife, who had just filed for divorce, into their car, after which he took her to Mexico against her will and committed acts of domestic violence against her. This was precisely the situation we meant to address in a criminal provision of the Violence Against Women Act. The defendant pled guilty.

Judge Bashant served as Deputy Chief of the Narcotics Unit in San Diego from 1995 to 1997 and as Chief of Border Crimes Unit from 1997 to 1998.

She has won numerous awards for her performance in the United States Attorney's Office, including the Director's Award for Superior Performance, the Victim Witness Award, and special commendations several years in a row.

In 2000, she was appointed to the San Diego Superior Court, where she has served with distinction for the last 13 years, and presided over more than 1,000 cases that have gone to verdict or judgment, including more than 100 criminal jury trials. She spent 4 years in criminal, more than 5 years presiding over juvenile dependency cases. She has been a leader of the San Diego Superior Court for the last 5 years, serving on the Court Executive Committee from 2008 to 2013, and as presiding judge of the juvenile court from 2009 to 2012.

Judge Bashant has also been an active part of the San Diego community. She has done many things. She is highly respected. As you can see, Mr. Chairman, this judge is superbly qualified to be a Federal judge. And I thank you for the privilege.

Senator WHITEHOUSE. Thank you very much, Senator Feinstein.

I will next recognize the very distinguished Chairman of the Appropriations Committee, who has not one but two terrific nominees who she will speak for. Senator Mikulski.

PRESENTATION OF THEODORE DAVID CHUANG, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, AND GEORGE JARROD HAZEL, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, BY HON. BARBARA A. MIKULSKI, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you very much, Senator Whitehouse, and I want to thank the Members of the Judiciary Committee for allowing this hearing to go forth today, because my two nominees are really American success stories, and their families have traveled extensively in order to be here, along with their children, to see this process unfold. So we appreciate this.

I have had the opportunity to recommend several judicial nominees over my career in Congress, and I and Senator Cardin take our responsibilities of advise and consent very seriously. Our criteria is that our nominees must have absolute integrity, judicial competence and temperament, a commitment to the core constitutional principles, and a history of civic engagement in Maryland. I believe it is important that candidates have deep connections to both the legal community and the greater community. The people that I am recommending to the Committee today to support President Obama's nomination meet and exceed these standards.

First I would like to talk about Mr. Theodore Chuang, a graduate of Harvard University, both as an undergraduate and the Harvard Law School. He has extensive legal experience, serving first—an extensive background in private practice with firms like the Wilmer, Cutler, Pickering, Hale firm. But he has also been outstanding in the field of public law, clerking for Judge Dorothy Nelson to working at the United States Department of Justice Civil Rights Division in housing and law enforcement, a U.S. Attorney, and even doing a stint in Congress with the House Committees on Oversight and Government Reform and Energy and Commerce. He is now currently serving as the Deputy General Counsel of Homeland Security overseeing many very important Federal legal issues and compliance. So he has an extensive background.

At the same time, he brings quite a compelling life story. His family came to America from Taiwan. They came very modestly, as most of our families do come from abroad. It is the typical and what we hope continues to be the typical American success story. They opened a pizza shop in New Hampshire, hard work, long hours, dedication to this country and that their children get an education. And now when you talk to Mr. Chuang as a second-generation, he wants to give back to the country that gave so much to he and his country. He has done that both as a professional and also pro bono work, working for the Asian Pacific American Legal Community, the nonprofit legal service organization that helps so many Asian Americans and immigrants with limited English proficiency. And he brings again a complete dedication to public service, to the Constitution of this United States, and to maintain and be a proper judge in our third branch of Government.

I think he would make a terrific judge. He comes with a great education, a great legal background, and a real commitment to the community. And I know he and his family that he will introduce, you will be very excited to hear them.

I would also like to bring to the Committee's attention Mr. George Hazel. He, too, has a compelling personal narrative, growing up in not the most easy circumstances. He is a graduate of Morehouse University and comes with, as I said, an extensive legal background.

One of the things that we talk about in his legal background is though he could be at some of the toniest law firms in Maryland, he is currently serving as the Chief Deputy State's Attorney for Baltimore City, in which he oversees really tough felony units. But what he brought there was a spirit of reform. We had a State's Attorney's Office that was old, dated, and needed reform. He has come to this and really has helped modernize and make sure that the bad guys are prosecuted but at the end of the day they felt that they got a fair trial and a fair shake from their own Government.

He also worked as an Assistant U.S. Attorney, and he also worked as a U.S. Attorney. His commitment to justice and personal integrity are outstanding. He is deeply involved with his church. He is deeply involved with his community. And I think when you hear him present his own case to you, you are going to see that, in addition to being a U.S. Attorney in both the district, working again for a very leading law firm like Weil, Gotshal and Manges, that he will be a great judge. He brings legal background, community involvement, and a real commitment to equal justice under the law.

I would like to now have Senator Cardin be able to testify.

Senator WHITEHOUSE. Thank you, Chairman Mikulski, and we know how very busy you are. Now that we have a budget, the role of the Appropriations Committee is vital, and the time pressure on you is immense, so please feel free to take your leave of this Committee as your schedule demands.

I will now recognize Senator Cardin to add whatever he wishes to your thoughtful and thorough remarks.

PRESENTATION OF THEODORE DAVID CHUANG, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, AND GEORGE JARROD HAZEL, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND, BY HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Well, first, Chairman Whitehouse, it is good to be back to the Judiciary Committee. It is good to be here with my colleague——

Senator WHITEHOUSE. It is nice to have you back.

Senator CARDIN. It is good to be here with my colleague Senator Mikulski.

I notice we have five nominees for the district court, and I thank all of them for their willingness to be able to step forward to serve in the public. It is not an easy time, and obviously the process is not easy, and I thank all five of them for their willingness to serve in the public at personal sacrifice, and their families for being willing, because this is a family effort, and we thank the families.

Let me just also comment briefly. I am sure it is true in Maine, I am sure it is true in Kansas and California. The process that Senator Mikulski as the senior judge has put together to screen——

Senator MIKULSKI. I am not the senior judge.

[Laughter.]

Senator CARDIN. Senior Senator. Excuse me—the senior Senator has put together in order to screen candidates for a judgeship is one that I am very proud of. It allows us to put out a way in which we can get the best talented, the most competent people to go through the process to apply for judgeships. And I am just very proud to be part of that, and I want to thank Senator Mikulski for the manner in which she has done that. And the proof is the two people that we present to you today: George Hazel and Theodore Chuang. Both are eminently qualified, both are of unquestioned credibility and integrity, and both will make outstanding members of the District Court of Maryland.

Senator Mikulski has already talked about both these individuals. George Hazel is being appointed to fill the vacancy of Judge Williams, who took senior status in May of this year, so it is important to get these confirmations advanced. He is a graduate from Morehouse College, got his J.D. from Georgetown University Law Center. He became a Government prosecutor as an Assistant U.S. Attorney in the District of Columbia. He also, as Senator Mikulski pointed out, is currently in the State's Attorney's Office of Baltimore City, where he is the Chief Deputy Assistant State's Attorney. That is hard, hard work, dealing with the most difficult parts of our criminal justice system in an urban center. He helps oversee 200 prosecutors and 200 support staff, and he has fought tirelessly to keep our community safe and make them even safer.

Theodore David Chuang also brings very impressive qualifications. He is being appointed to fill the vacancy of Judge Titus, who will take senior status next month. So both of these are very timely. Mr. Chuang got his J.D. in 1994 from Harvard Law School, his B.A. from Harvard University. He began his career as a law clerk for Judge Dorothy Nelson of the United States Court of Appeals for the Ninth Circuit. He has served this country in so many different capacities, at the Department of Justice, U.S. Attorney, but I particularly want to mention that he served as Deputy Chief Investigative Counsel for the U.S. House Committee on Oversight and Government Reform from 2007 to 2009. So he has served in the legislative branch, and he has served also in the executive branch, and he brings a wide range of experience.

Let me just share with you, on all the nominees that come forward, I ask the question about their pro bono and their commitment to access to justice. In Mr. Hazel and in Mr. Chuang, we have two individuals who have demonstrated their understanding of access to justice in what the have done in their own life.

Mr. Hazel has assisted members of his church pro bono in helping them with their legal issues, and Mr. Chuang has also been very impressive in what he has done on the Board of Directors of the Asian Pacific American Legal Resource Center. That group provides legal representation and referral services involving domestic violence, family law, immigration law, employment law, and a variety of other areas. So, Mr. Chairman, Senator Grassley, we strongly recommend these two nominees, that they be favorably recommended to the full Senate and confirmed by the full Senate.

Senator WHITEHOUSE. Let me thank you, Senator Cardin, and also make clear both you and your senior Senator if you wish to go on to the other pressing business that you face. There is no need for you to remain here, and we appreciate your testimony in support of your candidates.

And now I have the pleasure to recognize Senator Collins of Maine to speak on behalf of her candidate.

Senator COLLINS. Thank you, Mr. Chairman.

Mr. Chairman, I know this is unusual for a senior Senator of a State to defer to the junior Senator of the State, but Senator King has a long relationship with our nominee, having appointed him to Maine Supreme Judicial Court. So I would respectfully ask that he be recognized first, and then I would give my comments after him.

Senator WHITEHOUSE. Without objection.

Senator King, you are recognized.

PRESENTATION OF HON. JON DAVID LEVY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MAINE, BY HON. ANGUS S. KING, JR., A U.S. SENATOR FROM THE STATE OF MAINE

Senator KING. Thank you. Thank you, Senator Collins.

I must say, this is the first time I have sat on this side of the table. It is more fun sitting up there, I think.

Senator WHITEHOUSE. We have questions for you.

[Laughter.]

Senator KING. That is what I am afraid of.

I am here to present the nomination of Justice Jon Levy, who is now an Associate Justice of our Maine Supreme Court. He was one of my first judicial appointments as Governor of Maine in 1995, and I think it is important to say that I never knew him before he went through our judicial selection process. He was not a contributor, a political supporter, or a friend, but he was found, in effect, by our judicial selection as an outstanding legal practitioner. I appointed him to Maine's District Court, which is one our trial-level courts, and within just a few years he became chief justice of that court, which indicated his leadership.

Subsequently, in 2002, I was fortunate enough to be able to appoint him to our Maine Supreme Judicial Court, and he is the first person in the history of Maine to go directly from the district court to our Supreme Court without serving as a superior court justice.

Most simply put, he is a judge's judge. He is incredibly smart, analytical, has good judgment, is decisive—which is an important quality in a judge; he is not afraid of making decisions—and also has a wonderful judicial temperament. I observed this in action as I went to our hearing of our Supreme Court about 5 years ago when he was presiding over the admission of new lawyers, and so I sat in the back of the courtroom and watched him work through this process, and was respectful, courteous, not intimidating, but at the same time dignified and analytical. And it was very impressive, as I remember vividly as a young lawyer the unpleasantness of appearing before a judge who would be intimidating or sort of hard to—be undignified, and Justice Levy has avoided that.

He has enormous respect among the bar and the bench in Maine. I am going to submit letters for the record, including one from our

chief justice, who talks about his enormous skill that he has demonstrated now in over 10 years on that court. In fact, her principal comment is that she is a little irritated that we are taking him away from her court. And if you knew Leigh Saufley, you would know that that is exactly—she says what she means. But support from lawyers, from other judges, our former Attorney General.

As I say, Jon Levy is a judge's judge, and he has the breadth of experience that I think is really important to be appointed to a trial-level court. He has been a private practitioner for a dozen years, a trial-level court judge for 7 years, and an appellate judge. So he really has an enormous breadth of experience, and he has the combination of intellectual ability which is positively dazzling combined with a temperament that is courteous, thoughtful, relates to the issues of the litigants, and has really done a wonderful job in Maine.

My leadership philosophy can be summed up in one sentence. It is to hire good people and take credit for what they do. And in Jon Levy's case, that is exactly what I did twice. I am honored that the President has chosen to put his name forward for this important district judgeship in Maine and am delighted to be able to provide my most enthusiastic support.

And I would ask unanimous consent that the letters I mentioned be submitted for the record.

Senator WHITEHOUSE. Without objection, they will be.

[The letters appear as submissions for the record.]

Senator WHITEHOUSE. Thank you very much, Senator King.

And we turn now to your senior Senator, Senator Collins.

PRESENTATION OF JON DAVID LEVY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MAINE, BY HON. SUSAN M. COLLINS, A U.S. SENATOR FROM THE STATE OF MAINE

Senator COLLINS. Thank you, Mr. Chairman, Senator Grassley. As you have just heard, Justice Levy has had a long and illustrious career as an attorney and a judge in the State of Maine. Senator King has pointed out that he was the one who started Justice Levy on the judicial track, where he currently serves as an Associate Justice on the Maine Supreme Judicial Court, a position that he has held for more than a decade.

While I know that Senator King has outlined Jon's many qualifications, let me just add a little more background for the benefit of the Committee.

Justice Levy in law school was an editor of the Law Review. He clerked for a judge in the Southern District of West Virginia. In 1981, he was appointed to the position of Special Monitor in the U.S. District Court for Southern Texas, a position that signaled the court's confidence in his legal abilities early in his career.

In 1982, Jon and his wife had the good sense to relocate to the State of Maine, where he entered private practice in the town of York. Although his practice spanned a range of civil and criminal matters, he quickly distinguished himself in the area of family law. In fact, Jon literally wrote the book on family law. In 1988, he authored "Maine Family Law," which has become the resource for practitioners.

As both an attorney and a judge, Jon has remained very active with the local bar associations and several State committees working to improve the administration of justice in our State. He was selected by his peers to serve as president of the York County Bar Association back in 1991 and received its Outstanding Member Award in 2006 as well as the Maine State Bar Association's Family Law Achievement Award in 2001.

As Chair of the Maine Justice Action Group, Justice Levy championed initiatives to improve pro bono representation for Maine's elderly and low-income citizens as well as affordable representation for other Mainers in need of legal assistance.

In the same vein, he helped launch the Katahdin Council Recognition Program, an annual statewide program that honors Maine attorneys who provide more than 50 hours of pro bono service per year. Justice Levy has also advocated for these efforts at the national level and this past August was appointed to serve as a judicial member of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

Justice Levy's work with both juvenile justice and drug courts has helped to shape the judicial process in our State. In 1997, he started the York County Juvenile Court Pilot Project, a program that brings together judges, lawyers, prosecutors, police officers, and social service workers to redefine and shape how justice is administered to young people. Drawing on his experience with the juvenile system, he also helped to initiate the juvenile drug treatment court in York County.

Justice Levy's extensive experience as a State judge and in private practice make him extremely well qualified for Maine's Federal district court. His contributions to Maine's legal community and the juvenile justice system will give him a very valuable perspective on the Federal bench.

Mr. Chairman, Senator Grassley, I am confident that, if confirmed, Jon Levy will serve the people of Maine and this Nation with great intelligence and integrity and impartiality.

Thank you.

Senator WHITEHOUSE. Thank you very much, Senator Collins, and thank you again, Senator King. I know that the press of business on you both is very intense, so please feel free to excuse yourselves from this Committee hearing, and thank you very much for your testimony in favor of your candidates.

Which brings us to Senator Moran of Kansas. Senator, please proceed.

PRESENTATION OF DANIEL D. CRABTREE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF KANSAS, BY HON. JERRY MORAN, A U.S. SENATOR FROM THE STATE OF KANSAS

Senator MORAN. Chairman Whitehouse, thank you very much, Ranking Member Grassley, Senator Klobuchar. It is an honor to be here in front of this Committee today. I am very pleased to be here with the purpose of outlining to you the support that Senator Roberts and I have for Dan Crabtree as a result of President Obama's nomination of him to be a Federal district judge in our State.

I have known this nominee for more than 30 years and have worked hard to see that we have good nominees and that good nominees are confirmed. I am particularly pleased that this hearing is occurring today and want this process to work in a very straightforward manner with great integrity.

I consider, as I would guess all of my colleagues do, one of the highlights, one of the greatest opportunities and responsibilities as a Member of the U.S. Senate to assist in finding qualified individuals to serve as judges. And we have worked closely with the staff of the White House, the administration, in accomplishing that goal in this and other positions associated with our State. And I am very pleased that Dan Crabtree has received the nomination of the President, and I ask this Committee and the full Senate to confirm his nomination.

As I look at individuals that I would want to serve in a capacity of providing justice, Dan Crabtree meets all those criteria and excels in every category. Certainly I think in all aspects of life one's personal characteristics are perhaps the most important thing about that person, and so I would want a judge that has integrity and compassion for others, that is respectful, that understands the importance of trying to find the right answer to every circumstance, and in the case of a judge, I want somebody who understands the desirability of justice, that all people are treated fairly, that the law is evenly applied. And as a human being, I have no doubt that Dan Crabtree meets that criteria.

Of course, for a judge, you would want someone with significant legal expertise and intelligence. And, again, Dan Crabtree's intellect, his thoughtfulness, his experience all lend themselves—if someone in their 50s can be wise—and I hope that they can—Dan Crabtree certainly qualifies as somebody with wisdom.

His legal experience following his graduation from law school was at a firm titled Stinson, Mag and Fizzell, now Stinson Morrison Hecker. It is one of the premier firms in Kansas City, and Dan has been with that firm since he arrived as an associate and became a partner. In that experience, he has received significant recognition for his legal skills and, as recently as 2013, in the publication Best Lawyers, was the Lawyer of the Year in 2013 as a lawyer participating or actively engaged in antitrust law. And the following year, 2014, he was Kansas City's Best Lawyer in Banking and Finance Litigation. I am proud of that recognition, and it exemplifies again what the community and the legal community see in Dan Crabtree.

I also know Dan as a father and a husband, and I am delighted that his wife, Maureen, and daughter, Colleen, are here. Colleen is a seventh grader. I was worried yesterday when this hearing was delayed that she would have to return to her middle school for the Christmas program and miss the opportunity to see her father testify and seek confirmation of this Committee for this very important position.

It just seems to me that, as a member of the bar and a Member of the U.S. Senate, as an American citizen, as a Kansas citizen, I want to do my part to make certain that the judicial positions in our State and across our country are filled with highly qualified, exceptionally intelligent, wise individuals filled with character and

integrity, and I have no doubt that this applicant meets every one of those criteria, and I look forward to his confirmation.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. Thank you very much, Senator Moran.

The process that we go through traditionally involves the input of United States Senators to make recommendations to the President for these nominees, and that is a very important part of the process, and it is exemplified by those Senators coming forward to speak publicly about the nominees that they have recommended. So it has great impact, and I appreciate that all of my colleagues have been here today, and I would now dismiss the panel, and we will call up the nominees.

Please be seated. I will make a brief opening statement and then turn to the distinguished Ranking Member for his opening statement, and then we will swear you in and turn to each of you for your statements, and then there will be a round of questioning.

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

Senator WHITEHOUSE. I want to welcome each of you to the Senate Judiciary Committee. I want to welcome your family members and friends who are here to the U.S. Senate. I want to thank my colleagues for lifting the procedural barrier to the hearing yesterday so that we can proceed forward now. And I would say that I think all of us in the Senate believe that voting to confirm an individual to the Federal bench is one of the most important and lasting decisions that we can make.

Every day we see Federal judges make decisions that affect, sometimes in dramatic ways, the lives of our constituents and our fellow Americans. As they wield that extraordinary power, judges must respect the role of Congress as the duly elected representatives of the American people. They must decide cases based on the law and the facts. They must not prejudge any case but listen to every party that comes before them with equal attention. They must respect the precedent that the higher courts have left them. And they must limit themselves to the issues that the court properly must decide in that case.

I hope very much that each judicial nominee we hear from today understands the importance of those principles.

Judicial nominees also must have the requisite legal skill to serve as a Federal judge, and I am delighted to see that each of today's nominees has a very impressive record of achievement. As a result, I believe that each of the nominees deserves prompt consideration. We need good judges in place for our system of justice to function and continue to be a system of justice that is an example to the rest of the world.

With that, I will turn to our distinguished Ranking Member, Senator Grassley.

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

Senator GRASSLEY. I am just going to highlight part of my statement and put the entire statement in the record. You folks that are here today would be attending our 18th judicial nomination hear-

ing this year, which has been for a total of 62 judicial nominees. You hear sometimes that there is unprecedented obstruction going on in the Senate toward this President's nominees. We have approved 215 of the President's lower-court nominees since he became President. We have disapproved of three—I mean five, of which three of those have since been approved. That is a 99-percent approval rating, so I do not think that there can be any accusation of "unprecedented obstruction." And also, if there is any reference to vacancies, today in the court system they do have to be—there does happen to be 89 vacancies, but there has only been 43 nominees submitted to the Senate for consideration of those 89 vacancies. So 48 percent are vacant because the President has not yet sent up a nominee.

In addition to what I just said, I will put my statement in the record. Thank you.

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

Senator WHITEHOUSE. Rather than belabor these proceedings with an ongoing discussion on that subject, let me just say that for present purposes we may agree to disagree on that subject. But we can reserve that discussion to another forum.

Senator GRASSLEY. We can, but you understand that in the previous meeting, somebody else put up the word "unprecedented," and I am responding to that.

Senator WHITEHOUSE. Understood. Understood.

Senator GRASSLEY. And I would rather not, so if you do not want the discussion, let us never talk about it.

[Laughter.]

Senator WHITEHOUSE. I welcome all of you here. I know that—first let me start by asking you to stand and be sworn. Let me do that piece of business.

Do you affirm 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. CRABTREE. I do.

Judge BASHANT. I do.

Justice LEVY. I do.

Mr. CHUANG. I do.

Mr. HAZEL. I do.

Senator WHITEHOUSE. Thank you very much. Please be seated. We are just going to go right across the row with no particular order other than who is where on the table, so let me start and invite Judge Bashant—have I pronounced that correctly?

Judge BASHANT. That is fine.

Senator WHITEHOUSE. Fine or correct?

Judge BASHANT. "Bashant."

Senator WHITEHOUSE. "Bashant."

Judge BASHANT. Yes.

Senator WHITEHOUSE. Okay—Judge Bashant to make her statement and recognize which family members or friends you would care to. Please proceed.

STATEMENT OF HON. CYNTHIA ANN BASHANT, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Judge BASHANT. Thank you. First of all, I want to thank Senator Feinstein for her kind remarks and for recommending my nomination to the President. And I want to thank the Judiciary Committee for going forward with the hearing today and both of you Senators for being here. I know it is a busy time of year, and I appreciate your time.

I want to give a special thank you to friends and family who have been supporting me through this process.

First of all, to my husband, Kevin Hyle, who is back in California holding down the fort; and to my son, Brian Hyle, who has been here in Washington for the past couple of days supporting me, and I hope is boarding a plane at Dulles as we speak to go back to California, and I know he is very chagrined not to be here. To my daughter, Anna Hyle, who is taking her last final exam of the semester at Colgate University as we speak. And to my parents, who are back in California, Dr. and Mrs. Gordon and Nancy Bashant. Again, my mother is very unhappy that she is not here, and I know she wishes she could be here in person.

I want to thank my sister, Kathy Knapp, who took the train down from Connecticut yesterday and was here all afternoon—and we had a nice dinner together—and took the train back last night, so I am sorry she cannot be here. She had to go back to her family, and she, I am sure, is watching the Web cam with my brother-in-law, Jeff Knapp, and my two sweet nieces, Emily and Katie, who are beaming that I have mentioned their names today.

To my other sister, Dr. Wendy Bashant, who is the dean of students at UC-SD Marshall School, and her husband, Dr. David Bittleman; to my in-laws in Kansas City, Missouri; and to the many people who provided texting support over the past 24 hours, particularly my colleagues on the superior court bench; and to my son's roommate at Vassar College who held a—he is a political science major, and he held a confirmation hearing party at Vassar College yesterday afternoon with a live Webcast so they could know more about the confirmation process, and in the process they learned all about the 2-hour rule and maybe more about politics than they cared to, but I thought it was a good experience. I appreciate their enthusiasm and excitement about the process.

Finally, I want to thank President Obama. I am honored by the nomination and, if confirmed, I hope I can live up to the faith he has placed in me.

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

Senator WHITEHOUSE. Thank you very much, Your Honor, and let me offer a general apology on behalf of the Senate as an institution to all of those who were inconvenienced by yesterday's activities. That is just an unfortunate byproduct of an unfortunate circumstance that we find ourselves in right now, but those who took the trouble to travel yesterday I think are entitled to an apology from us for the sudden change in timing of the hearing that they in some cases traveled great distances with some inconvenience to attend. But it is good to be going forward now.

So let me turn to Judge Levy.

STATEMENT OF HON. JON DAVID LEVY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MAINE

Justice LEVY. Thank you, Mr. Chairman, Ranking Member Grassley. It is an honor to be here. I am very grateful to the Committee for convening this hearing.

I would like to begin by expressing my gratitude to President Obama for the honor of this nomination. I am also very grateful to Maine Senator Susan Collins and Senator Angus King for the strong support they have given me throughout and for their kind words this morning.

My wife, Miriam Levy, was unable to be here this morning. I know that she is watching over the Web. She is a psychologist in Portland, Maine, and that is where she is right now. And we are the proud parents of two daughters, neither of whom could be here this morning either.

Our daughter Anna recently graduated from the University of Chicago with a master's degree in international relations, and she just got married. And so we have a brand-new son-in-law, Adam Prager, whom we are all very proud of.

And my other daughter, Rachel, just graduated from Northeastern with a degree in environmental science, and she is now working in education.

With me today I have several guests. My sister and brother-in-law, Jan and Ken Fein, came from New York; my cousin, Leonard Taylor, from Maryland; and my very good friend, Ann Newman, is here. She is also from Maryland.

I have many friends and colleagues and family members who are watching over the Web this morning. Of course, all of my colleagues from the Maine judicial branch, the appellate judges, the State judges, all of our clerks, marshals, administrators, the people that make justice happen who I wish to acknowledge.

And, finally, I would like to acknowledge Judge John T. Copenhaver, Jr. Judge Copenhaver is a U.S. District Judge in the Southern District of West Virginia who I clerked for out of law school. He is my professional mentor. It has been his example that has inspired me throughout my career.

Thank you.

[The biographical information of Justice Levy appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Judge Levy.

And let me now turn to Mr. Chuang. Welcome to the Committee. Please proceed with your statement.

STATEMENT OF THEODORE DAVID CHUANG, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Mr. CHUANG. Thank you very much. Mr. Chairman, Ranking Member Grassley, thank you very much for the opportunity to appear before this very distinguished Committee.

I would like to begin by thanking the President of the United States for the high honor of this nomination. I would also like to thank Senator Mikulski and Senator Cardin for recommending me

to the President, for supporting me throughout this process, and for the very generous introductions they provided today.

I would also like to thank the Senate Judiciary Committee itself not only for holding this hearing and for considering my nomination, but also because 25 years ago this coming summer, I had the privilege of coming to Washington, DC, as a college student and serving as an intern on this Committee. That was a formative experience for me. That was one of the reasons that I chose to pursue a career in the law and in public service. And so I thank this Committee for the role it played in setting me on a path to come back here before you today.

I would like to also introduce family and friends who have joined me here today.

First, let me introduce my wife, Jacinta, who has been my partner in life and in raising our family for the past 15 years. She is also an inspiration for my professional career because she is an accomplished attorney who has devoted her entire career to serving the public interest and the community, and in so doing has set an example which I strive to follow in making sure that in whatever I do professionally I am also doing some good for our country and for our community.

I would also like to introduce our two daughters: Kalia, who is 12 years old and in seventh grade; Kiara, who is 9 years old and in third grade. They are both in the Montgomery County Public Schools.

Senator WHITEHOUSE. And who, for the record, are behaving wonderfully.

[Laughter.]

Mr. CHUANG. Thank you.

Also, I am very appreciative of having my sister Karen Chuang Harris here, who came from California. It means a lot to me that she made the trip. And I would like to say hello to her husband, Scott, and her daughter, our niece, Caitlin, who may be watching on the Webcast.

I would also like to say hello to my mother-in-law and father-in-law, also in California, who are watching on the Webcast.

I have a few cousins who are here today. David Su, Jennifer Hu, Stephanie Hu and her husband, Bill, are here today. I appreciate that very much.

I also have some friends, a very close friend, my oldest friend in the world with whom I have been friends since fourth grade, Chris Weaver, is here. Tacey Yune is here, a friend from here in Washington, DC.

And I would also like to recognize several friends and relatives who had been here yesterday and have been unable to return today, including my cousin Jessica Mach and her husband, Arthur, and their children, Kate and Christopher; my very good law school friend, Brian Caplan, who came down from New Jersey; a friend from college, Brian Sonnfield and his wife; and also a friend from Washington, Chris Carter.

Finally, I would like to end by introducing my parents, Ying and Kari Chuang, and I would like to note that this has been a very special year in the life of our family for reasons unrelated to today's proceeding, because it was 50 years ago this past summer

that my father first set foot on American soil in search of American freedom and the American dream. And it was 40 years ago this very month that my mother and father stood up in a courtroom and took the oath as United States citizens. Those moments have always inspired me and driven me to want to serve this great Nation and give back to this Nation that has given so much to our family, and I know that no matter what happens with this nomination, those will always be the proudest moments in the history of our family.

Thank you, and I look forward to answering your questions.

[The biographical information of Mr. Chuang appears as a submission for the record.]

Senator WHITEHOUSE. Thank you, Mr. Chuang.

Mr. Hazel, you are welcome in this Committee and welcome to proceed with your statement.

STATEMENT OF GEORGE JARROD HAZEL, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND

Mr. HAZEL. Thank you, Senator. First I would like to just say thank you to this Committee for holding this hearing, certainly special thanks to the Chairman and Ranking Member for your attendance here today.

I would certainly like to say thank you to the President for nominating me to the Federal bench. It is certainly the greatest honor of my professional life thus far, and so it is with great gratitude that I wish to extend my thanks for that.

I would also like to thank Senator Mikulski and Senator Cardin for recommending me to the President. I also thank them for their very generous and kind words today.

I do have a few family members here with me today that I would like to introduce.

First, to my far left is my wife of 10½ years, Nikki Hazel, who is joining us here today. Our children, George Joshua and Lauren Grace, are in school today, thus staying on track for their perfect attendance awards.

[Laughter.]

Mr. HAZEL. My mother, Brenda Hugo Hazel, has come down from New Jersey to attend this hearing. My father, George A. Hazel, was not able to make it here in person. I am sure he is watching on the Webcast from his home in Las Vegas, Nevada. And, finally, my uncle, Raymond Huger, is joining us here today, and so I appreciate him attending as well. I certainly know that and want to recognize I have many in Baltimore, DC, New York, and other places joining us both in spirit and through the Webcast today, and so I certainly also say hello to them.

Thank you.

[The biographical information of Mr. Hazel appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Mr. Hazel.

Mr. Crabtree, welcome. Please proceed with your statement and welcomes.

STATEMENT OF DANIEL D. CRABTREE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF KANSAS

Mr. CRABTREE. Thank you, Senator, and thank you, Senator Grassley and Members of the Committee, for inviting me here today.

I express my gratitude to President Obama for the honor of this nomination. I am especially grateful to Senator Moran and Senator Roberts for their support through this process. I am particularly grateful for Senator Moran taking time to come over today and speak on my behalf.

With your permission, I would love to introduce my family to you.

Senator WHITEHOUSE. Of course.

Mr. CRABTREE. The row of dark-haired women all belong to me. First, my wife of 29 years, Maureen Mahoney, she is a distinguished lawyer for children in our home State, and she is my best friend and my closest adviser, and it means the world to me for her to be here today.

Our daughter, Colleen, a seventh grader, has graciously rearranged her final exam schedule to be with us today, and I might say that she took her civics exam on Tuesday, so she, too, is prepared for some questions.

[Laughter.]

Mr. CRABTREE. And my sister-in-law, Molly Mahoney, now a resident of Philadelphia, but there is a lot of Kansas in her, and she came down from Philadelphia for the hearing today.

I do want to recognize my colleagues at my law firm in Kansas City, Stinson Morrison Hecker, who I trust some are watching over the Webcast, and the others are probably doing my work for me.

And, last, I just would like to honor my parents. They are no longer in this world, but I am mindful, especially today, of all that they have done for me and my brother, Mike, and I just would like to honor them by placing their names, Charlie and Lois Crabtree, in the record.

Thank you very much for inviting me, and I look forward to your questions.

[The biographical information of Mr. Crabtree appears as a submission for the record.]

Senator WHITEHOUSE. Thank you very much, Mr. Crabtree.

For the record, I have been notified that the minority party intends to invoke the 2-hour rule again. That is the bad news. The good news is that we have 45 minutes left, so unless there is a sudden flood of Judiciary colleagues, we will be well done before that time horizon is reached. And for those of you who feel that there is a small turnout with just the Chairman and the Ranking Member here, trust me, that is a good sign. And I hope it is a signal of continuing smooth sailing for these nominees through an increasingly tempestuous process, and certainly we would like very much to make sure that all of you are confirmed speedily.

You may have listened to my opening statement. I have a relatively standard question that I ask of all of the nominees that represents what I think to be the basic parameters for appropriate conduct of judicial responsibilities. They include that judges must respect the role of Congress as representatives of the American

people; that you all decide cases based on the law and the facts; that no one prejudge any case; and that you provide an equal and fair ear to every party that comes before you; that you will respect the precedent that should guide your decisionmaking; and that you as judges would limit yourselves to the issues that are properly before you.

I trust that each of you agree with those principles, but if anybody does not, I would be eager to hear from them now as to where they disagree.

The record will reflect no disagreement with those, which is terrific.

There is another issue that I think it is important for judicial nominees to address, and it is particularly important for you who will be district court nominees, and that is the important role of the jury not just in our system of justice but also in our system of Government. Those of you who are students of history will know that the jury was an essential part of the core political structure that was brought over from England. The jury has its roots back in the 12th century. And when our relations with the Crown became strained, one of the key causes of that strain was the effort by the Crown to limit American access to American civil juries.

The casus belli of the Revolution included that denial, that effort to restrict. The jury was prominent in all of the expressions by the Founding Fathers and that revolutionary generation who pledged their lives, their fortunes, and their sacred honor to that battle, to protect the civil jury, to see that it was maintained, and they did so for, I think, a pretty good reason. And I could hazard my own ideas, but I do not need to because I can turn to people like de Tocqueville and Blackstone, whose knowledge and expertise is pretty much uncontested.

De Tocqueville described the jury as "one of the means of the sovereignty of the people" and "an essential institution of Government."

Blackstone describe it as "a means for resisting the encroachments of the wealthy and the powerful," which is an interesting observation because much of the Constitution is dedicated to protecting the individual from abuse of the power of Government.

The jury rather uniquely has, according to Blackstone, the additional responsibility to protect the ordinary individual from the more wealthy and powerful citizens, as he described it. And since we live in a time in which the most wealthy and powerful citizens of the United States tend to be corporate citizens and we also live in a time when the corporate citizenry is embarked pretty enthusiastically in an effort to diminish and deprecate the civil jury and access to it, I think it is important that we bear in mind that there is more to a civil jury than just a fact-finding appendage of the court, that it has a long tradition from the very founding of this Republic, that it has an essential role within our separation of powers, the markedly American system of Government that we enjoy, that has protected us through civil wars and world wars and great depressions and all kinds of upheavals, and, therefore, it is entitled to special, I think, solicitude.

And I would like to ask each of you for a comment on how you would see the role of the jury in your courtroom. We will begin with Judge Bashant.

Judge BASHANT. Well, as a trial court judge for the past 13 years, I have had the opportunity to preside over quite a few jury trials, and I believe there is something special about requiring 12 people from different backgrounds to come together and discuss things and reach a verdict. I am a fan, I am supportive of the jury system. And I would continue to be supportive if confirmed as a district court judge.

Senator WHITEHOUSE. Thank you very much.

Judge Levy.

Justice LEVY. Senator, the jury trial is really a central feature of our justice system as the Founders envisioned it, enshrining the right both in civil cases and criminal cases in the Bill of Rights. It is really central to our notion of what justice is. It seems to me that it is critically important that members of the public play that role, be in courthouses and be decisionmakers.

It is important for judges. I think judges are very much continually educated and affected by the public decisionmaking process that they steward, that they witness, in effect.

And I think it is also important for citizens. It is really one of the most important responsibilities of an American citizen, is to serve on the jury and have that experience of direct democracy in the truest sense. Absolutely critical.

Senator WHITEHOUSE. Thank you, Judge Levy.

Mr. Chuang.

Mr. CHUANG. Senator, I have always believed in the essential goodness and fairness of the American people, and the experiences I have had as a prosecutor trying cases before juries has validated that belief. I have always found juries to be very conscientious, dedicated, and serious about the work that they need to do.

I have also come to understand how much of an important part of the American system of checks and balances a jury is. And certainly if I am confirmed to be a judge, I would do everything I could to ensure that that system continues in the courtroom that I serve in or within the system in general.

Senator WHITEHOUSE. Thank you.

Mr. Hazel.

Mr. HAZEL. Senator, it is my feeling that juries in many ways are, in fact, the backbone of our judicial system. From my experience as a trial lawyer, I have always been impressed at how 12 people from various backgrounds, often with little or no experience in the matters which they are dealing with, are able to come together, listen conscientiously to the evidence, gather together, and then reach a verdict. Some of the greatest lessons I have learned as a lawyer have come from conversations I have had with jurors at the end of trials.

So I can certainly assure you, Senator, that I share your concerns, I share your thoughts and views of the importance of the jury system.

Senator WHITEHOUSE. And, finally, Mr. Crabtree?

Mr. CRABTREE. Senator, I agree with much of what my fellow panelists have said, and I will not repeat it here. I will simply add

that one of the more rewarding experiences I have had as a citizen was being called to jury duty in my home county of Wyandotte County, Kansas, and being selected to serve and watch from the inside and see the collective wisdom of a jury of 12 at work and watch the seriousness of purpose that people brought to the task.

Senator WHITEHOUSE. Thank you all very much.

I turn to our Ranking Member, Senator Grassley.

Senator GRASSLEY. Mr. Crabtree, a process question. I would like to have you explain what steps you took to ensure that you did not practice the unauthorized practice of law during the period of time after you took the Kansas State bar exam in 1982 and your taking the oath in 1988.

Mr. CRABTREE. Yes, Senator, thank you for permitting me to explain. I took the bar, the Kansas bar exam in February 1982, thinking that someday I might return to my home State. I was already admitted to practice and practicing in Missouri when I took the exam. At that time a lawyer whose office was located outside the State of Kansas, whether a member of the Kansas bar or not, could not practice in Kansas and could not appear. And so that rule changed in January 1988 when lawyers who were members of the Kansas bar but had offices elsewhere were permitted for the first time to appear in Federal court. And so I went ahead and completed the process and signed the rule of attorneys and took the oath and was admitted.

During that period of time, I was practicing predominantly in the State of Missouri where my office was located, and I do remember appearing in two Kansas cases, appearing under the supervision of Kansas local counsel and following the procedures that the court used at that time.

Senator GRASSLEY. A similar question for you, Mr. Hazel. You became Deputy State Attorney in December 2010. It is my understanding you had not been barred or licensed to practice law in Maryland. I do not know exactly when you were admitted to the Maryland bar. But could you also explain for the Committee the steps that you took to ensure that you did not practice the unauthorized practice of law during that period?

Mr. HAZEL. Thank you for the opportunity to address that issue, Senator. When then State's Attorney-Elect Glenn Burnstein and I first met to discuss the prospect of my moving from the U.S. Attorney's Office to take the position of Deputy State's Attorney in Maryland, one of the very first things we discussed was the fact that at that time I was a member of the Virginia bar, I was a member of the DC bar; I was not then a member of the Maryland bar. So we took time and did some research to see what was required and what was not required. The first thing we learned is that a Deputy State's Attorney does not have to be under law a member of the State bar of Maryland.

We then began to discuss the parameters of what my job would and would not entail, and I did not appear in court, I did not sign documents, I did not appear in front of the grand jury.

I did consult on cases. One of the things that we had looked at in our research is that under the Maryland Rules of Professional Conduct for Lawyers, as long as I was doing that in association with attorneys who were members of the bar themselves and who

were themselves actively involved in the case, that that was permitted under the Maryland rules. So those were the steps we took and ultimately decided that the way in which we were handling the situation was appropriate.

Senator GRASSLEY. Okay. Mr. Chuang, I am going to ask about something that you wrote in 1999, a profile about your former boss, Judge Nelson, Ninth Circuit. In this profile, you wrote that, "Some of Judge Nelson's most noteworthy opinions embody the principle that the courts must be vigilant in protecting the rights of weaker minority interests when they have been unjustifiably violated by the most powerful majority interest."

Would you take this approach to the administration of justice in your courtroom if you are confirmed?

Mr. CHUANG. Senator, thank you for the question. The approach I would take would be, regardless of who the parties are, to look at the law and the facts of the case and to apply the law to that case without any outside considerations. I definitely understand that there are cases in which the different parties come from different places in society, but the role of a judge is to make a decision evenhandedly based solely on the law and the facts, and that is how I would approach any case.

Senator GRASSLEY. On a 2006 panel that you participated in, one of your talking points was that, "In its legitimate zeal to root out white-collar crime, the Government has overreached with its tactics." Could you elaborate on what you meant by that statement?

Mr. CHUANG. Senator, if I recall, the panel discussion at the time was one that occurred when I was in private practice serving as a white-collar criminal defense attorney. I believe the references involved some of the efforts by the Justice Department at that point in time to seek to use the—to persuade parties to waive the attorney-client privilege in order to gain cooperation, particularly corporate parties. And I know that in the defense bar at the time there was a prevailing concern that that was invading the importance of the attorney-client privilege.

I would note that during the 3 years I served as a defense attorney, I did learn the perspectives from that side, but having also served for 6 years as a prosecutor, I have always seen both sides of cases and issues, and I would venture to say that when I was a prosecutor, I probably advocated from a different perspective on that very same issue.

In general, I think the fact that I have served both as a prosecutor and a defense attorney has given me a very broad perspective on major issues of criminal law and would help me to be fair and objective and balanced in making decisions, if confirmed to be a judge.

Senator GRASSLEY. Judge Levy, you are probably going to hate me if I bring up something you write in 1983, but you wrote an article about Judge Bork, and I have got a lot of questions on that, but I am only going to ask a couple.

You said, "Judge Bork's philosophy of original intent"—you referred to it as a "fallacy." You have been a judge for a number of years. How does your judicial philosophy differ from Judge Bork's, assuming you stand by your article about Judge Bork at that particular time?

Justice LEVY. Thank you, Senator.

Senator, the U.S. Supreme Court has in recent years been very clear that it is a proper and, in fact, very important tool of constitutional construction to consider the original public meaning of the text of the Constitution when interpreting and applying the Constitution. And I want to assure you and the Committee that I will honor that precedent, as I have honored precedent throughout the 18 years that I have been a judge, and will apply that precedent as indicated by the court.

With respect to the article that you refer to and Judge Bork, Judge Bork at the time was really one of the first and leading proponents of originalism but focused on original intent, and that led him to take issue with a number of established Supreme Court precedent that was really the subject of my letter, which was the reason for me writing that letter.

And certainly with the many, many years now that have passed and having been a judge now for 18 years, the world perhaps is not quite as black and white to me as it was in younger days, and it seems to me that a judge should consider all useful tools of constitutional construction as authorized by the Supreme Court, including the intent of the Framers, in construing the Constitution.

Senator GRASSLEY. Another question that might be more appropriate to what you are doing now as an Associate Justice: You advocated for Government-provided counsel for low-income litigants in civil matters, saying, "Where basic human needs are at stake, regardless of forum, it is, therefore, essential that all individuals be afforded access to publicly financed counsel to represent them."

I think this is a simple question. Was this opinion based upon the Maine Constitution, the U.S. Constitution, or were you just making a policy pronouncement?

Justice LEVY. Thank you, Senator. Senator, I am not sure what speech or article you might be referring to, so I am not certain of the context. But I will say that, yes, for a number of years now I have chaired the commission in Maine which is concerned with access to justice in the civil courts of Maine. And so I have been very involved in promoting pro bono representation by the private bar and in assisting and supporting the legal aid programs in Maine that do provide assistance.

And our experience, of course, is that justice is served when people have representation, they make better decisions, and justice is more likely to be achieved.

Senator, I have not advocated for a constitutionally supported basis for providing representation in civil matters. We have been advocating for it as a matter of both legislative policy and as a matter of the private bar's commitment to providing pro bono work. And so I have not articulated or expressed a position with respect to a constitutional right to civil counsel, nor would I because as a judge that issue could be presented to me. It has not. But I have not publicly supported a constitutional right, a general constitutional right to counsel.

Senator GRASSLEY. Judge Bashant, you have been active in abortion issues and things of that nature. I have got some quotes here I will not go into, but could you please explain to me what the con-

stitutionally excepted restrictions on the right of abortion are from your point of view?

Judge BASHANT. I believe that the Supreme Court has ruled that in certain limited circumstances a woman does have a right to choose abortion. If I were confirmed as a district court judge, I would follow that Supreme Court precedent.

Senator GRASSLEY. I think I am done. Thank you all very much.

Senator WHITEHOUSE. I thank all the witnesses for being here. The record will remain open for an additional week, and the hearing is adjourned.

[Whereupon, at 11:34 a.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"

Thursday, December 19, 2013
Dirksen Senate Office Building, Room 226
10:25 a.m.

Daniel D. Crabtree, to be United States District Judge for the District of Kansas

Cynthia Ann Bashant, to be United States District Judge for the Southern District of California

Jon David Levy, to be United States District Judge for the District of Maine

Theodore David Chuang, to be United States District Judge for the District of Maryland

George Jarrod Hazel, to be United States District Judge for the District of Maryland

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Daniel Dale Crabtree

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

   United States District Judge, District of Kansas

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: Stinson Morrison Hecker LLP
   1201 Walnut, Suite 2900
   Kansas City, Missouri 64106

   Residence: Kansas City, Kansas

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

   1956; Kansas City, 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.

   1978 – 1981, University of Kansas School of Law; J.D., 1981

   1974 – 1978, Ottawa University; B.A., 1978

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

Employment

2002 – present
Stinson Morrison Hecker LLP
1201 Walnut, Suite 2900
Kansas City, Missouri 64106
Partner

1981 – 2002
Stinson Mag & Fizzell
Country Club Bank Building
112th Street and State Line Road
Leawood, Kansas 66211
Partner, 1988 – 2002
Associate, 1981 – 1988

Summer 1980
Boddington & Brown, Chtd.
Security Bank Building
700 North Minnesota Avenue
Kansas City, Kansas 66102
Law Clerk

Summer 1979
Lugar & Whitaker
The Alpine Building
1289 North 78th Street
Kansas City, Kansas 66112
Law Clerk

Summer 1978
Kansas City Power & Light Co.
1200 Main Street
Kansas City, Missouri 66105
Meter Reader and Power Plant Laborer

Other Affiliations (uncompensated)

2000 – present
University of Kansas School of Law Board of Governors
Member, 2000 – 2003
Senior Governor, 2003 – present
Board Chair, 2001 – 2002

2010 – present
Kansas City Sports Commission

114 West 11th Street, #300
Kansas City, Missouri 64105
Member, Board of Directors

2013 – present
Greater Kansas City Community Foundation
1055 Broadway, Suite 130
Kansas City, Missouri 64105
Member, Board of Directors
Member, Audit Committee

2009 – 2013
Providence Medical Center/St. John Hospital
8929 Parallel Parkway
Kansas City, Kansas 66112
-and-
3500 South Fourth Street
Leavenworth, Kansas 66048
Member, Board of Directors, 2009 –2013
Member, Executive Committee of the Board of Directors, 2011 – 2013

2004 – 2009
Community Foundation of Wyandotte County (Kansas)
P.O. Box 171272
Kansas City, Kansas 66117
Member, Board of Directors
Board Chair, 2008 – 2009

1992 – 2004
Associated Youth Services, Inc. ("AYS")
803 Armstrong Avenue
Kansas City, Kansas 66101
Member, Board of Directors
Board Chair, 2000 – 2002 (dates are approximate)

2000 – 2006
Ottawa University
1001 South Cedar Street
Ottawa, Kansas 66067
Member, Board of Trustees

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

I have not served in the military. I registered with the Selective Service when I turned 18.

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

   Fellow, American Bar Foundation (2007 – 2013)

   Fellow, Kansas Bar Foundation (2012 – 2013)

   Selected by *Best Lawyers* as 2014 Kansas City Banking and Finance Litigation "Lawyer of the Year" (2013)

   Selected by *Best Lawyers* as 2013 Kansas City Antitrust "Lawyer of the Year" (2013)

   Named in *Chambers USA: America's Leading Lawyers for Business* (for Litigation and Commercial Litigation) (2012 – 2013)

   Selected for inclusion in *The Best Lawyers in America*, Commercial Litigation, Antitrust Litigation, and Banking & Finance Litigation for 2009 – 2014 (2009 – 2013)

   Named as a "Local Litigation Star" (Kansas) by *Benchmark Litigation* (2009 – 2013)

   Named to *Missouri & Kansas Super Lawyers* (2008 – 2013)

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.

   Bench/Bar Committee for the United States District Court for the District of Kansas

   United States Magistrate Judge Appointment Panel (reviewing the reappointment of United States Magistrate Judge David Waxse, District of Kansas)

   Kansas Bar Association

   Missouri 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.

       Missouri, 1981
       Kansas, 1982

There has been no lapse in my admission to these bars.

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

United States Court of Appeals for the Fourth Circuit, 1991
United States Court of Appeals for the Tenth Circuit, 1987
United States District Court for the District of Kansas, 1984
United States District Court for the Western District of Missouri, 1982
Kansas state courts, 1982
Missouri state courts, 1981

There has been no lapse in my admission to 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 Bar Association (1981 – 2009)

American Bar Foundation (2007 – present)
Fellow

Associated Youth Services, Inc. (1992 – 2004)
Member, Board of Directors (1992 – 2004)
Chair of the Board (2000 – 2002) (dates are approximate)

Community Foundation of Greater Kansas City (2013 – present)
Member, Board of Directors (2013 – present)
Member, Audit Committee (2013 – present)

Kansas Bar Association (1982 – present)

Kansas City County Club, Mission Hills, Kansas (2013 – present)

Kansas Bar Foundation (2012 – present)
Fellow

Kansas City Sports Commission (2008 – present)
Member, Board of Directors

Missouri Bar Association (1981 – present)

Ottawa University Board of Trustees (2000 – 2006)

Prairie Dunes Country Club, Hutchinson, Kansas (2001 – 2012)

Providence Medical Center/St. John Hospital (2009 – 2013)
Member, Board of Directors (2009 – 2013)
Member, Executive Committee of Board of Directors (2010 – 2013)

Sunflower Hills Golf Course (1991 – present)

United States Golf Association (1996 – present)

University of Kansas School of Law Board of Governors (2000 – present)
Member (2000 – 2003)
Board Chair (2001 – 2002)
Senior Governor (2003 – 2013)

Wyandotte County (Kansas) Community Foundation
Member, Board of Directors (2004 – 2009)
Board Chair (2008 – 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.

It is rumored that the Kansas City Country Club previously discriminated on the basis of race and national origin. I have not been able to confirm this rumor, but before I joined, I determined that the Club's by-laws explicitly prohibit discrimination against members and candidates for membership and that, in fact, this club has admitted persons of diverse backgrounds as members. To the best of my knowledge, none of the other organizations listed in 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

"As a Matter of FACTA, Watch Out for a Class ACTA" (addressing The Fair and Accurate Credit Transactions Act); *Clarks' Bank Deposits and Payments Monthly*, published February 2008. Copy supplied.

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

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.

Over the years, I have written letters to judicial selection commissions supporting the applications of various candidates for appointment to state court judgeships. The only ones I remember are: (a) sometime in the 1990's in support of Thomas L. Boeding for selection to the District Court of Wyandotte County, Kansas; and (b) in the last three years in support of John Jackson Miller's applications for a position on the Western Division of the Missouri Court of Appeals. I cannot locate the letter I submitted on Mr. Boeding's behalf. I have located two of the letters I submitted on Mr. Miller's behalf and I am supplying them with this Questionnaire.

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 calendar, files, and memory and the following paragraphs identify the speeches, remarks, lectures, panel discussions, conferences, political speeches and question-and-answer sessions I gave or in which I participated as a presenter. It is possible that I may have omitted an event but if I have done so, it is inadvertent.

April 10, 2013: Presenter, "My Experiences as General Counsel for a Major League Baseball Franchise," Sports Law course, University of Missouri School of Law, Columbia, Missouri. I have no notes, transcript or recording of this presentation. The address for the sponsorship organization is: University of Missouri School of Law, 203 Hulston Hall, Columbia, Missouri 65211.

2005 – 2013: Participant, "Law Day," Leadership 20/20, Kansas City, Missouri. This program provided high school students with an overview of our court system and then permitted them to prepare and make arguments for the two parties in a hypothetical lawsuit. I spoke about how a courtroom functions and also made brief comments about the students' arguments. I have no notes, transcript or recording of my comments during these programs. To my knowledge, the sponsorship organization does not maintain a mailing address.

September 19, 2012: Remarks about James P. Sheeley, a longtime member of the Wyandotte County (Kansas) Bar, Kansas City, Kansas. I have no notes, transcript or recording of these remarks. The address for the sponsorship organization is: Wyandotte County Bar Association, Wyandotte County Courthouse, Fifth Floor, 710 North Seventh Street, Kansas City, Kansas 66101.

June 3, 2010: Speaker, "My Experiences as General Counsel for a Major League Baseball Franchise," Law Clerk's Society of the United States District Court for the Western District of Missouri, Kansas City, Missouri. I have no notes, transcript or recording of this presentation. To my knowledge, the sponsorship organization does not maintain a mailing address but its website identifies the following email address as its official point of contact: Elizabeth_Healey@ca8.uscourts.gov.

August 10, 2009: Panel Participant, "Turning Inside Out," Mid-America Chapter of Association of Corporate Counsel, Olathe, Kansas. I have no notes, transcript or recording of this presentation. To my knowledge, the sponsorship organization does not maintain a mailing address but its website identifies the following email address as its official point of contact: Joyce.Mayo@midlands.com.

Approximately 2005: Presenter, "State of the Job Market for Law Students," University of Kansas School of Law, Lawrence, Kansas. I have no notes, transcript or recording of this presentation. The address for the sponsorship organization is: University of Kansas School of Law, Green Hall, 1535 West 15th Street, Lawrence, Kansas 66045.

1998 – 2004 (dates are approximate): Presenter about job interviewing skills to students enrolled at University of Iowa College of Law, Iowa City, Iowa. I have no notes, transcript, or recording of these presentations. The address for the sponsorship organization is: University of Iowa College of Law, The University of Iowa, 290 Boyd Law Building, Iowa City, Iowa 52242.

Approximately 2003: Speech, "Scholarship and the Broadly Educated Person," Ottawa, Kansas. I have no notes, transcript or recording of this presentation. The address for the sponsorship organization is: Ottawa University, 1001 South Cedar Street, Ottawa, Kansas 66067.

June 9, 2000: Presenter of the University of Kansas Law School's Distinguished Alumna Award to Tenth Circuit Court of Appeals Judge Mary Beck Briscoe, Topeka, Kansas. I have no notes, transcript or recording of the proclamation I read when I presented the award to Judge Briscoe. The address for the sponsorship organization is: University of Kansas School of Law, Green Hall, 1535 West 15th Street, Lawrence, Kansas 66045.

December 2, 1999: Untitled remarks to religious identity task force of the Board of Trustees for Ottawa University, Overland Park, Kansas. I have no notes, transcript or recording of this presentation. The address for the sponsorship organization is: Ottawa University, 1001 South Cedar Street, Ottawa, Kansas 66067.

Summer 1997: Presenter, "Basic Principles of Federal Law Governing States' Liability for School Desegregation," National Association of Attorneys General, Washington, D.C. Handout supplied.

Late 1990's: Presenter about arbitration proceedings to first-year law students enrolled in "Lawyering" class, University of Kansas School of Law, Lawrence, Kansas. My comments discussed the differences between court proceedings and the arbitration process. I have no notes, transcript, or recording of this presentation. The address for the sponsorship organization is: University of Kansas School of Law, Green Hall, 1535 West 15th Street, Lawrence, Kansas 66045.

1986 – 1996 (end date is approximate): Instructor in approximately six programs sponsored by the National Institute of Trial Advocacy (NITA), Lawrence, Kansas, Dallas, Texas, and Boulder, Colorado. Each program provided a comprehensive overview of the trial process, from voir dire to closing argument. My comments consisted of evaluations of the participants' performances and, in some cases, demonstrations of a particular aspect of a trial. I have no notes, transcript or recording of my comments during these programs. The address for the sponsorship organization is: 1685 38th Street, Suite 200, Boulder, Colorado 80301.

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.

Michael Doyle, *Basketball Court to Appeal Court*, The Washington Post, May 27, 2013. Copy supplied. (This article was reproduced in other McClatchey publications, including The Kansas City Star.)

Paul Koepp, *Royals, Sporting KC In-House Counsel Must Be All-Purpose Players*, Kansas City Business Journal, June 8, 2012. Copy supplied.

Q & A with Stinson Morrison's Dan Crabtree, Law360, December 1, 2010. Copy supplied.

During 2010 (approximately): My wife (Maureen Mahoney) and I were interviewed for a corporate-sponsored publication about our connections to the hospitals operated by the Sisters of Charity of Leavenworth. I do not have a copy of this article.

David Twiddy, *KC Schools Ruling Ends Years of Work, Fees by Area Lawyers*, Kansas City Business Journal, August 24, 2003. Copy supplied.

School District to Take Minorities, Lawrence Journal World, January 15, 1991. Copy available at: http://tinyurl.com/ka3erdy.

Early 1990's: I was interviewed by a Kansas City, Missouri, radio station (KMBZ) about a recent ruling in the Kansas City School desegregation litigation. I am not certain which ruling prompted the interview, but it may have been the court's ruling addressing our clients' proposals to participate in a voluntary interdistrict student transfer program as part of a school desegregation remedy. I have no transcript or recording.

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. 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 not held office or rendered service to a political party or election committee. In the early 1980's, I erected yard signs in support of the Mayoral campaign (Kansas City, Missouri) of a former law firm colleague, James Heeter. When my brother-in-law, William P. Mahoney, campaigned for election to a judicial office (District Court of Wyandotte County, Kansas), my family provided space in our garage for his campaign's yard signs. I believe this occurred in the 2010 primary election.

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

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

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

I did not serve as a judicial law clerk.

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

I have never practiced law alone.

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

1981 – 2002
Stinson Mag & Fizzell
Country Club Bank Building
112th Street and State Line Road
Leawood, Kansas 66211
Partner, 1988 – 2002
Associate, 1981 – 2002

2002 – present
Stinson Morrison Hecker LLP
1201 Walnut, Suite 2900
Kansas City, Missouri 64106
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 recall serving in a mediator's role once in the late 1980s or early 1990s. I served as a member of a panel formed under the alternative dispute resolution procedures of the United States District Court for the Western District of Missouri. Three practicing trial lawyers from the district comprised the panel and we returned a purely advisory verdict predicting the result that a jury would return. Although I cannot recall the details, I believe it was a personal injury case.

b. Describe:

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

For most of my 32 years in private practice, I have represented business organizations, business leaders and governmental entities in litigation. The cases were divided almost evenly between federal and state court cases, but I also have tried proceedings to administrative law judges.

During the first 13 years of practice, I devoted the largest portion of my time to representing state and local governmental entities in federal court school desegregation cases. As those cases wound down, I began spending more time representing private employers in employment discrimination and other civil rights litigation. Beginning in 1994, when I relocated to our firm's Kansas office, my practice gravitated to cases involving commercial disputes. Over the last seven years or so, I have devoted a significant portion of my practice to antitrust cases and, in particular, cases involving agricultural commodities.

Beginning in 2008, I began to function in the role of General Counsel for two clients of our firm who do not employ inside counsel: the Kansas City Royals Baseball Club and Walsworth Publishing Company, Inc. Each Major League Club designates one attorney to communicate with other clubs and the Office of the Commissioner (and related baseball entities) about legal affairs. I have served as the designated club counsel for the Royals since 2008. Although I hold no official designation for the Walsworth companies, I serve them and the Walsworth family in a General Counsel-like role. In this aspect of my practice, I perform the functions that a typical General Counsel discharges: I regularly interact with the organization's owners and its Board of Directors, provide triage-like assessments of disputes and legal problems, and recommend lawyers (both within and outside my firm) to represent the organizations in matters.

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

In the first one-third or so of my practice, I spent the majority of my time representing governmental entities. The clients I worked with most often were local school districts and the State of Indiana who were defendants in school desegregation litigation or considering voluntary participation in a school desegregation remedy. Since that time, I have represented business leaders and business organizations, ranging from individual proprietorships to family-owned companies and Fortune 500 corporations. I also have represented individuals suing as plaintiffs in class action litigation. In recent years – the last ten years or so – I have spent a fair portion of my time representing banks, companies engaged in agriculture, and energy companies. During this same period, I have devoted a significant part of my work to representing individuals and companies in antitrust 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.

From 1982 to the 2008, I devoted 100% of my practice to litigation. Since 2008, as my practice has also included work in a General Counsel role, about 95% of my practice has been devoted to litigation. As an associate in my law firm from 1982 to 1988, I appeared in court occasionally. As a partner in my law firm from 1989 to the present, I have appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 47%
   2. state courts of record: 48%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

Since 1996, I have tried 13 cases to verdict or final decision. I was lead trial counsel for our firm's client in all but two of those trials; in those two trials, I split the trial witnesses with my co-counsel, though both times my co-counsel gave the opening statement and closing argument.

Prior to 1996, I can remember participating in five other trials that reached a verdict or final decision. In three of those five trials, I functioned as a second-chair trial lawyer.

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

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

I remember helping prepare one Opposition to a Petition for Certiorari in the Kansas City school desegregation litigation, and the Supreme Court did not grant certiorari. *Jenkins v. Missouri*, 490 U.S. 1034 (1989). I also recall helping prepare a Petition for Certiorari in a subsequent case that raised related issues. I cannot locate the style of that case, and I cannot locate a copy of either filing.

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. *PQEI, Inc. v. Indiana*, Civil No. 86cv0325AS, United States District Court, Northern District of Indiana, Judge Allen Sharp; 1993-1994.

    An organization formed by local parents alleged that the state of Indiana, the Indiana Department of Education, and other state government entities caused the segregation of the schools within the Fort Wayne School District. I was the lead attorney representing the state defendants. After much work and several mediation sessions conducted by United States Magistrate Judge Roger Cosbey, the case was resolved shortly before trial.

    Co-Counsel: (Selected)
    Matthew Verschelden
    Allison Murdock
    Stinson Morrison Hecker LLP
    1201 Walnut Street, Suite 2900
    Kansas City, Missouri 64106
    816-842-8600

    Lawrence Reuben (former Deputy Attorney General)
    136 East Market Street
    Suite 200
    Indianapolis, Indiana 46204
    317-634-2200

    Counsel for Plaintiffs:
    William L. Taylor (deceased)

    Dianne Piche
    The Leadership Conference on Civil and Human Rights
    1629 K Street, NW, Tenth Floor
    Washington, D.C. 20006
    202-466-3311

2. *Jenkins v. Missouri*, 639 F. Supp. 19 (W.D. Mo. 1985), Judge Russell G. Clark; 807 F.2d 657 (8th Cir. 1986) (en banc), *cert. denied*, 490 U.S. 1034 (1989); 1982-1992.

Plaintiffs alleged that the State of Missouri and our clients, five of the 11 suburban Kansas City public school districts, had committed inter-district constitutional violations meeting the standards of *Milliken v. Bradley*, 418 U.S. 717 (1974). The district court conducted a bench trial that spanned five months. Our clients prevailed and the decision in their favor was affirmed narrowly by the Eighth Circuit, sitting en banc. After the favorable liability decision, we began working with the State of Missouri and plaintiffs to develop a voluntary inter-district transfer program that would have permitted African-American students living in the center city school district to attend predominantly white schools in the suburbs. The district court did not approve the proposed plan, however, and consequently it was never implemented.

Co-Counsel:	Charles German Kirk May Rouse, Hendricks, German & May 1201 Walnut Street, 20th Floor Kansas City, Missouri 816-471-7700
Counsel for Co-Defendants: (Selected)	Michael Fields (Former State of Missouri, trial attorney) Cotton Walker & Associates 1739 East Elm Street, Suite 101 Jefferson City, Missouri 65101 573-635-9200
	Richard Taranto (Former State of Missouri, appellate attorney) United States Court of Appeals, Federal Circuit 717 Madison Place, NW Washington, D.C. 20439 202-275-8000
	H. Bartow Farr III (Former State of Missouri, appellate attorney) 1615 M Street, NW, Suite 400 Washington, D.C. 20036 202-775-0184
Counsel for Plaintiffs:	Arthur Benson II Benson & Associates 4006 Central Street Kansas City, Missouri 64111 816-531-656

James Liebmann
Theodore M. Shaw
Columbia University Law School
Jerome Green Hall
New York, New York 10027
212-854-2640

3. *Wolters v. Conner*, No. 5:03-cv-03251-KHV, United States District Court, District of Kansas, Chief Judge Kathryn Vratil; 2005-2006.

Wolters, an inmate at the United States Penitentiary in Leavenworth, Kansas, brought suit against a former warden of that penitentiary. Wolters alleged that the warden denied him adequate food in retaliation for his complaints and grievances against prison officials in violation of the First Amendment and that this denial of food constituted cruel and unusual punishment in violation of the Eighth Amendment. Wolters sought damages under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). After it was determined that Wolters' claims warranted a trial, the district court appointed me to represent him. After a four-day jury trial, the defendant warden prevailed.

Co-Counsel: Sara Meinhard
Cerner Corporation
2800 Rockcreek Parkway
Kansas City, Missouri 64117
816-221-1024

Counsel for Defendant: Kathleen Kahrs (former AUSA)
Kahrs Law Offices P.A.
P.O. Box 780487
Wichita, Kansas 67278
316-218-2625

David Zimmerman (former AUSA)
Clerk, Bankruptcy Court for the District of Kansas
161 U.S. Courthouse
500 State Avenue
Kansas City, Kansas 66101
917-735-2110

4. *Kelly v. Bank Midwest*, 177 F. Supp. 2d 1190 (D. Kan. 2001), Judge John Lungstrum; 2000-2001.

We represented a Kansas City-based bank, which was accused of unlawful racial discrimination because it mistakenly thought that plaintiff, a bank customer, was trying to perpetuate a fraud on the bank and called the police to the bank's lobby.

Plaintiff claimed the bank thus had interfered with his right to make and enforce a contract in violation of 42 U.S.C. § 1981. After a bench trial, the district court concluded that subtle but actionable discrimination was at work and entered judgment in favor of plaintiff.

Co-Counsel: Brian Markley
Stinson Morrison Hecker LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106
816-842-8600

Plaintiff's Counsel: John W. Kurtz
Hubbard & Kurtz LLP
1718 Walnut Street
Kansas City, Missouri 64108
816-467-1776

5. *Smith v. Kansas Gas Serv. Co. & Gilley v. Kansas Gas Serv. Co.*, District Court, Reno County, Kansas, Judge Richard Rome; 169 P.3d 1052 (Kan. 2007) and related appeal, 169 P.3d 1064 (Kan. 2007), Kansas Supreme Court; 2005-2007.

Two certified classes of plaintiffs sought to recover economic damages allegedly caused by the escape of 142 million cubic feet of natural gas from a gas storage area located northwest of Hutchinson, Kansas. I represented Westar Energy, the Topeka, Kansas-based energy company that had developed and operated the storage area before the incidents. There was a 24-day jury trial. The court submitted the case to the jury on damage theories seeking class damages of more than $92 million. The jury returned a defense verdict for our client, and awarded $5 million against our co-defendant, Kansas Gas Service. Plaintiffs appealed and our client cross-appealed, challenging the propriety of class certifications. After we submitted our opening brief, plaintiffs agreed to dismiss our client from the appeal. The Supreme Court of Kansas later reversed the jury verdict against our co-defendant.

Counsel for
Co-Defendant: Lynn Hursh
2345 Grand Boulevard, Suite 1500
Kansas City, Missouri 64108
816-472-3106

Counsel for Plaintiffs: John Edgar
Edgar Law Firm LLC
1032 Pennsylvania Avenue
Kansas City, Missouri 64105
816-531-0033

Jim Frickleton
Bartimus, Frickleton, Robertson & Gorny
11150 Overbrook Road, Suite 200
Leawood, Kansas 66211
913-266-2300.

6. *Burdette v. Vigindustries, Inc.*, No. 10-1083-JAR, United States District Court, District of Kansas, Judge Julie Robinson; 2010-present.

We represent the current owner of land that once was mined for salt using the solution method of mining. The plaintiffs, who own homes in an adjacent neighborhood, claim that the mining on defendant's land has caused subsidence on their residential properties and thereby permanently reduced the value of their homes by 50% or more. They sought to certify a class consisting of all 330 owners of the residential properties in the adjacent neighborhood. After approximately one year of discovery on class certification issues, the district court conducted an evidentiary hearing on the certification motion and heard oral argument. The district court denied the certification motion. The case continues toward a 2014 trial on the merits of the claims asserted by the named plaintiffs.

Co-Counsel: Heather Woodson
Anne Emert
Misty Watt
Angela Nichols
Stinson Morrison Hecker LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106
816-842-8600

Plaintiffs' Counsel: Matthew Bretz
Melinda Young
Bretz & Young
1227 North Main Street
Hutchinson, Kansas 67501
620-662-3435

7. *Associated Wholesale Grocers, Inc. v. United Egg Producers, Inc.*, No. 10-CV-2171, District Court, Wyandotte County, Kansas, Judge Daniel Duncan; 2011-present.

Plaintiffs brought this claim under the Kansas statutory scheme that makes anticompetitive restraints of trade illegal. This Kansas act predates the Sherman Act. Plaintiffs claim that defendants, egg producers and their trade associations, engaged in a conspiracy among horizontal competitors to adopt animal welfare standards as a means to reduce output and raise the price of eggs. While this case was pending, the Kansas Supreme Court held that the relevant Kansas law (the Kansas Restraint of

Trade Act) prohibits all restraints of trade, even those that are permissible under the rule of reason analysis used by the federal antitrust laws. *See O'Brien v. Leegin Creative Prods, Inc.*, 277 P.3d 1062 (Kan. 2012). As a consequence, our clients have counterclaimed, arguing that plaintiffs formed their own illegal conspiracy when they organized a buying cooperative. This matter is currently in discovery and set for a June 2014 trial.

Co-Counsel:

Nathan Eimer
Vanessa Jacobsen
Eimer Stahl LLP
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
312- 660-7601

Counsel for Co-Defendants: (Selected)

Thomas A. Rottinghaus
Wagstaff & Cartmell LLP
4740 Grand Avenue, Suite 300
Kansas City, Missouri 64112
816-701-1100

Christopher E. Ondeck
Elisa Kantor
Crowell & Morning LLP
1001 Pennsylvania Avenue, NW
Washington, D.C. 20004
202-624-2500

Brian E. Robison
Gibson Dunn
2100 McKinney Avenue, Suite 1100
Dallas, Texas 75201-6912
214-698-3100

Laurie A. Novion
Joseph Rebein
Shook, Hardy & Bacon LLP
2555 Grand Boulevard
Kansas City, Missouri 64108
816-474-6550

John Monica
Porter Wright Morris & Arthur LLP
1919 Pennsylvania Avenue, NW, Suite 500
Washington, D.C. 20006-3434
202-778-3059

Daniel F. Church
Morrow Willnaeur Klosterman Church LLC
Executive Hills East, Building A
10401 Holmes Road, Suite 300
Kansas City, Missouri 64131
816-382-1382

Troy Hutchinson
Briggs and Morgan, PA
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
612-977-8415

John L. Peterson
Williamson & Cubbison
748 Ann Avenue
Kansas City, Kansas 66101
913-371-1930

Plaintiffs' Counsel: Patrick Stueve
Rachel Schwartz
Stueve, Siegel and Hanson LLP
460 Nichols Road, #200
Kansas City, Missouri 64112
816-714-7100

8. *In re Southeastern Milk Antitrust Litig.*, 2011 U.S. Dist. LEXIS 76552 (E.D. Tenn. July 14, 2011), Judge Ronnie Greer; 2008-2013.

This case was one of the largest antitrust cases in the country. The plaintiffs were dairy farmers in the southeastern quadrant of the United States (except Florida), who claimed that the largest dairy cooperative in the world had entered a conspiracy with one of the country's leading milk bottlers, other bottlers, and a large dairy marketing agency to monopolize the acquisition of raw milk in the Southeast and suppress the price paid for it at the farm. We represented the former CEO of the large dairy cooperative who, according to plaintiffs' theory, was one of the purported masterminds of the alleged conspiracy. The plaintiffs' damage expert calculated the damage imposed by the alleged conspiracy at more than $600 million. The district court certified, then decertified, and finally recertified a class consisting of all cooperative members and independent farmers (those who belonged to no buying cooperative) in Federal Milk Marketing Orders Five and Seven. The case was set for trial five different times in 2011 and 2012 and twice reached the week before trial before the Court continued the case. It has now settled for payments totaling about $290 million.

Co-Counsel:	David Everson Brian Markley Vicki Smith Misty Watt Stinson Morrison Hecker LLP 1201 Walnut Street, Suite 2900 Kansas City, Missouri 64106 816-842-8600
Counsel for Co-Defendants: (Selected)	John Schmidtlein Kevin Hardy Steve Kuney Carl Metz Shelley Freeman Williams & Connolly LLP 725 Twelfth Street, NW Washington, D.C. 20005 202-434-5900 Kelly Tidwell Patton, Tidwell & Schroeder LLP 4605 Texas Boulevard Texarkana, Texas 75503 903-792-7080
Plaintiffs' Counsel: Selected	Robert Abrams Baker Hostetler Washington Square, Suite 1100 1050 Connecticut Avenue, NW Washington, D.C. 20036 202-861-1699

9. *Crosby v. Kansas City Royals Baseball Corp.*, Arbitration conducted pursuant to the Rules of Major League Baseball, Sandy Alderson (current General Manager of the New York Mets) acted as arbitrator; 2004-2005.

The Royals selected Crosby in the second round of the 2002 amateur draft. After drafting him, the Royals signed Crosby to a contract which paid him more than $2 million in signing bonus. Given the uncertainty about Cosby's future in baseball, the parties agreed to spread this bonus money over five years and all Cosby had to do to receive this bonus was appear at spring training and play baseball during the summer portion of the year that Major League Baseball calls "the championship season." Crosby began missing important parts of the period when he was obligated by contract to report for baseball duties. Nonetheless, he claimed he was entitled to the

remainder of the signing bonus, about $2 million. We tried this case before an arbitrator appointed by the Commissioner of Major League Baseball. The arbitrator found that Crosby had not fulfilled the contract's requirements and thus released the Royals of any obligation to pay the remainder of the signing bonus.

Counsel for Claimant: W. David Cornwell Sr.
Gordon & Rees
3455 Peachtree Road, Suite 1500
Atlanta, Georgia 30326
404-869-9054

10. *In re Grand Jury*, 260 P.3d 1249 (Kan. Ct. App. 2011); 2011-2012.

The petitioner, a longtime political activist and unsuccessful candidate for public office, sought to empanel a grand jury under Kansas' citizens' grand jury statute. He sought a grand jury investigation into broad scale allegations about the corruption he alleged to exist among the local government, its elected leaders, and a municipally-owned public utility. If empanelled, the grand jury proceeding would have imposed hundreds of thousands of dollars of cost on the local governmental unit and its taxpayers. The only means to avoid petitioner's request to empanel a grand jury was to show that he had not submitted a valid petition. We identified and retained a forensic document specialist who inspected hundreds of signatures. He later testified that when hundreds of contrived signatures were ignored, the petition did not contain the number of signatures required by the governing Kansas statute. The trial court agreed with our expert witness and adopted our legal analysis. The Kansas Court of Appeals affirmed its holding.

Co-Counsel: John Aisenbrey
Stinson Morrison Hecker LLP
1201 Walnut Street, Suite 2900
Kansas City, Missouri 64106
816-842-8600

Counsel for Co-Defendants: Carl A. Gallagher
McAnany Van Cleave & Phillips, P.A.
10 East Cambridge Circle Drive, Suite 300
Kansas City, Kansas 66103
913- 371-3838

District Attorney Jerome A. Gorman
Criminal Justice Complex
710 North Seventh Street, Suite Ten
Kansas City, Kansas 66101
913-573-2851

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.)

    For the most part, my professional career has involved litigating disputes in court, but I would identify two principal non-traditional activities.

    First, from 2005 to 2007, I represented the Kansas City Royals in former Senator George Mitchell's investigation into the use of performance enhancing drugs in Major League Baseball. The witness interrogations involved a number of former and current Major League players, managers, coaches, and baseball executives. This investigation was unique procedurally. There were no rules of procedure or evidence, and there was no judge to make decisions about procedural disputes. The lawyers had to resolve everything among themselves.

    Second, in the 1990s, following the liability decision in the Kansas City school desegregation case, I spent about 18 months working with three school districts. The project was designed to help our school district clients identify the components of a purely voluntary inter-district transfer program that would permit students from the predominantly minority Kansas City school district to attend the predominantly white school in the surrounding suburbs. Our clients were not willing to participate in a program that merely moved students around the map. Instead, they wanted any transfer program to meet the needs of students attending school farther from home. We spent about 12 months working with educational leaders who had administered similar transfer plans in other cities and then about six months crafting a detailed plan and related implementing legislation. Though the plans were never implemented in the school districts we represented, a smaller nearby school district did manage to launch a smaller version of the transfer plan we had helped our clients develop. I represented that smaller district in its negotiations with the State of Missouri over details of the plan, including funding.

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 2009, I taught in the trial training program that the Louisiana State University Law School requires all of its students to complete at the beginning of their third year. I do not have a syllabus for the course.

    In the 1990s, I taught the introductory trial advocacy course at the University of Kansas School of Law. It is a semester-long program offered to second and third-year students.

I believe I taught this course during two semesters. 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.

    If appointed, I would have the right under my firm's partnership agreement to the return of contributions I have made to our firm's capital account. Based on my general understanding of the terms of the partnership agreement's provisions, my understanding is that I would receive the payout over a three-year period. In addition, my firm reserves 15% of its net annual profits for distribution from a bonus pool payable at the end of the partnership's fiscal year. Subject to the discretion of the firm's Policy Committee and depending on my contributions to the firm during my last year there, I might be eligible for a bonus distribution.

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

    None.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

        My wife currently serves as Chief of Staff for Mayor Mark Holland, the Mayor

of the Unified Government of Kansas City/Wyandotte County, Kansas. This entity is frequently a party in litigation pending before the District of Kansas. I would recuse myself from matters in which this entity is involved while she holds that position and for some period of time after she has left this position. Also, depending on the duration of time that has passed, cases involving my former clients may present a potential conflict of interest, and I would recuse myself whenever necessary to avoid the appearance of a conflict of interest. Finally, for at least several years, I would recuse myself from any case in which my current law firm (Stinson Morrison Hecker LLP) is representing a party.

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

I do not anticipate having any other potential conflicts of interest. 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 was appointed to represent the indigent plaintiff Wolters in a jury trial in the United States District Court of Kansas. Over the course of my career, I also have volunteered to handle matters through the Volunteer Attorney Project of the Legal Aid Office of the Western District of Missouri. Most recently, in 2012, I filed suit in Missouri on behalf of a homeless man who, because he was not born in a hospital, had never had a birth certificate issued to him. Because he had no birth certificate, he could not procure a Missouri driver's license (or other official state identification card), which in turn made it difficult for him to secure employment. We sued, and the Circuit Court of Jackson County, Missouri, ordered the Missouri Bureau of Vital Statistics to issue a birth certificate to our client.

In addition to these activities as a lawyer, I have devoted 12 years as board member to Associated Youth Services in Kansas City, Kansas. It serves foster children and students who have been permanently expelled from the public schools. I also devoted four years to Providence Medical Center in Kansas City, Kansas. During my board service, it was one of the area's largest providers of uncompensated health care to the uninsured and underinsured.

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 2012, Senator Jerry Moran contacted me by telephone and asked whether I would be willing to be considered for U.S. District Court for the District of Kansas. Since then, I have spoken to him several times about the status of the process. Since May 2013, I have been in communication with officials from the Justice Department's Office of Legal Policy regarding the nominating process. On July 12, 2013, I met with attorneys from the Office of White House Counsel and the Justice Department's Office of Legal Policy 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
Crabtree, Daniel D.	United States District Court, District of Kansas	08/05/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Judge, nominee	**5a. Report Type (check appropriate type)** ☑ Nomination Date 08/01/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2012 to 07/27/2013
7. Chambers or Office Address Daniel D. Crabtree Stinson Morrison Hecker LLP 1201 Walnut, Suite 2900 Kansas City, Missouri 64106		

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	Stinson Morrison Hecker LLP (law firm)
2.	Director (uncompensated)	Greater Kansas City Community Foundation (non-profit charitable foundation)
3.	Director (uncompensated)	Kansas City Sports Commission (non-profit)
4.	Director (uncompensated)	Providence Medical Center/St. John Hospital (non-profit hospitals)
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2002	Party to Partnership Agreement of Stinson Morrison Hecker LLP law firm (governs right to compensation for fees paid and capital contributed)
2.	2002	401(k) Plan of Stinson Morrison Hecker LLP law firm (governs right to contributions made to law firm's 401(k) plan)
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Crabtree, Daniel D.	Date of Report 08/05/2013

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	Stinson Morrison Hecker LLP (partnership income from law firm)	$676,990.00
2.	2012	Stinson Morrison Hecker LLP (partnership income from law firm)	$717,824.00
3.	2013	Stinson Morrison Hecker LLP (partnership income from law firm)	$134,406.00
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	Self-employed, attorney
2.	2013	Self-employed, attorney
3.	2013	Salary, employment by Unified Government of Wyandotte County/Kansas City, Kansas
4.	2012	Indpendent contractor, public television station KTWU (Topeka, Kansas)

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 Crabtree, Daniel D.	Date of Report 08/05/2013

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
Crabtree, Daniel D.	08/05/2013

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-66 of filing instructions.)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Access Midstream Partners LP	A	Distribution	K	U					
2. AG Mortgage Investment Trust (Reit)	A	Distribution	J	U					
3. Breitburn Energy Partners LP	C	Distribution	K	U					
4. Calamos Growth Fund	B	Distribution	K	U					
5. Citigroup Inc. Com New	A	Dividend	J	U					
6. Columbia Acorn Fund	A	Dividend	J	U					
7. Eaton Vance Large-Cap Value Fund	A	Dividend	K	U					
8. Eaton Vance Tax-Managed Growth Fund	A	Dividend	J	U					
9. Energy Transfer Partners LP	A	Distribution	J	U					
10. Fidelity Advisor New Insights Fund	A	Dividend	J	U					
11. General Electric Co.	A	Dividend	J	U					
12. Great Plains Energy Inc.	A	Dividend	J	U					
13. Growth Fund of America	A	Dividend	K	U					
14. Inergy LP Unit Limited Partnership Interests	A	Distribution	K	U					
15. Inergy Midstream LP Unit Limited Partnership Interests	B	Distribution	K	U					
16. Intel Corp	A	Dividend	J	U					
17. Invesco American Franchise Fund	A	Dividend	K	U					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Crabtree, Daniel D.	08/05/2013

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. Invesco Charter Fund	A	Dividend	L	U					
19. Invesco Global Small & Mid Cap Growth Fund	A	Dividend	K	U					
20. Ivy Asset Strategy Fund	A	Dividend	K	U					
21. Learning Quest Aggressive Track: Moderate Portfolio (529)	E	Dividend	M	U					
22. Linn Energy LLC Unit Reptsty Ltd. Interests	B	Distribution	K	U					
23. Penn West Petroleum Ltd	A	Dividend	J	U					
24. Suburban Propane Partners LP Units	A	Distribution	J	U					
25. Targa Resources Partners LP Units	B	Distribution	K	U					
26. Vanguard Emerging Markets Stock Index Fund	A	Dividend	J	U					
27. Vanguard Extended Market Index Fund	A	Dividend	J	U					
28. Vanguard Global Equity Fund	B	Dividend	K	U					
29. Vanguard Inflation-Protected Securities Fund	B	Dividend	K	U					
30. Vanguard Institutional Index Fund	D	Dividend	O	U					
31. Vanguard Life Strategy Growth Fund	D	Dividend	N	U					
32. Vanguard Mid-Cap Fund Index	A	Dividend	K	U					
33. Vanugard Natural Resources LLC	C	Distribution	K	U					
34. Vanguard Pacific Stock Index Fund	A	Dividend	J	U					

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 8	Name of Person Reporting Crabtree, Daniel D.	Date of Report 08/05/2013

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. Vanguard PRIMECAP Core Fund	B	Dividend	L	U					
36. Vanguard Short-Term Investment-Grade Fund	A	Dividend	J	U					
37. Vanguard Small-Cap Index Fund	A	Dividend	K	U					
38. Vanguard Value Index Fund	A	Dividend	K	U					
39. Chesapeke Midstream Partners LP Unit	A	Distribution							
40. Country Club Bank (cash accounts)	A	Interest	N	T					
41. United Missouri Bank, n.a. (Health Savings Account)	A	Interest	J	T					
42. US Bank (cash account)		None	J	T					
43. Stinson Morrison Hecker LLP (capital account)	D	Interest	M	U					

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 Crabtree, Daniel D.	Date of Report 08/05/2013

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

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Crabtree, Daniel D.	Date of Report 08/05/2013

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/ **Daniel D. Crabtree**

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		422	532	Notes payable to banks-secured (auto)		26	513
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	835	605	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		215	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		56	700				
Cash value-life insurance							
Other assets itemize:							
Stinson Morrison Hecker LLP Capital Acct.		117	072				
Health Savings Account		9	074				
				Total liabilities		26	513
				Net Worth	2	629	470
Total Assets	2	655	983	Total liabilities and net worth	2	655	983
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	
Access Midstream Partners LP	$ 23,850
AG Mortgage Investment Trust (REIT)	7,524
Breitburn Energy Partners LP	18,250
Calamos Growth Fund	28,685
Citigroup Inc. Com New	4,797
Columbia Acorn Fund	7,670
Eaton Vance Large-Cap Value Fund	29,954
Eaton Vance Tax-Managed Growth Fund	4,510
Energy Transfer Partners LP	10,613
Fidelity Advisor New Insights Fund	36,219
General Electric Co.	9,855
Great Plains Energy Inc.	869
Growth Fund of America	24,290
Inergy LP Unit Limited Partnership Interests	4,005
Inergy Midstream LP Unit Limited Partnership Interests	24,641
Intel Corp.	11,509
Invesco American Franchise Fund	29,209
Invesco Charter Fund	88,190
Invesco Global Small & Mid Cap Growth Fund	35,954
Ivy Asset Strategy Fund	42,239
Learning Quest Aggressive Track: Moderate Portfolio	134,920
Linn Energy LLC Unit Repsty Ltd. Interests	16,590
Penn West Petroleum Ltd	4,655
Suburban Propane Partners LP Units	1,254
Targa Resources Partners LP Units	17,651
Vanguard Emerging Markets Stock Index Fund	8,673
Vanguard Extended Market Index Fund	10,488
Vanguard Global Equity Fund	16,515
Vanguard Inflation-Protected Securities Fund	43,796
Vanguard Institutional Index Fund	658,003
Vanguard Life Strategy Growth Fund	290,191
Vanguard Mid-Cap Fund Index	36,614
Vanguard Natural Resources LLC	20,925
Vanguard Pacific Stock Index Fund	12,044
Vanguard PRIMECAP Core Fund	52,690
Vanguard Short-Term Investment-Grade Fund	13,471
Vanguard Small-Cap Index Fund	24,253
Vanguard Value Index Fund	30,039
Total Listed Securities	$ 1,835,605

AFFIDAVIT

I, Daniel D. Crabtree, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5 August 2013 (DATE)

Daniel D. Crabtree (NAME)

State of Missouri
County of Jackson

Subscribed and sworn to before me this 5th day of August, 2013

Lisa Parks (NOTARY)

LISA PARKS
Notary Public - Notary Seal
STATE OF MISSOURI
Clay County
My Commission Expires: 11-2-2013
Commission # 09400525

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Cynthia Ann Bashant

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

   United States District Judge for the Southern District of California

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

   Superior Court of San Diego
   220 West Broadway
   San Diego, California 92101

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

   1960; 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.

   1983 – 1986, Hastings College of the Law; J.D., 1986

   Spring 1986, University of San Diego Law School; no degree

   1978 – 1982, Smith College; A.B., 1982

   1980 – 1981, Universite de Geneve; 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
Superior Court of San Diego
220 West Broadway
San Diego, California 92101
Superior Court Judge
Presiding Judge, Juvenile Court (2010 – 2013)

1989 – 2000
United States Attorney's Office for the Southern District of California
940 Front Street
San Diego, California 92101
Assistant United States Attorney (1989 – 2000)
Chief of Border Crimes (1997 – 1998)
Deputy Chief of Narcotics (1995 – 1997)

1988 – 1989
Baker and McKenzie
101 West Broadway
San Diego, California 92101
Associate

1988 – 1991
Western State University (now Thomas Jefferson School of Law)
1155 Island Avenue
San Diego, California 92101
Adjunct Professor

1986 – 1988, Summer 1985
Macdonald Halsted and Laybourne
101 West Broadway
San Diego, California 92101
Associate (1986 – 1988)
Summer Associate (Summer 1985)

Fall 1985
California Courts of Appeal
750 B Street, Suite 300
San Diego, California 92101
Extern for Justice Robert Staniforth

1984 – 1985
Law Offices of Jon Sigerman
550 California Street
San Francisco, California 92104
Law Clerk

Summer 1984
Lane Powell Moss and Miller
1420 Fifth Avenue
Seattle, Washington 98111
Summer Associate

1982 – 1983
Copper Mountain Ski Resort
Copper Mountain, Colorado
Various positions (ski school desk, waitress, marketing department)

Summer 1982
Glacier National Park
Glacier Park, Montana
Information desk

Other Affiliations (uncompensated):

1992 – present
Lawyers Club of San Diego
701 B Street, Suite 224
San Diego, California 92101
Advisory Board (2010 – present, 1995 – 2008)
President (1994 – 1995)
Treasurer (1992 – 1993)
Board of Directors (1992 – 1995)

2011 – 2013
United Way Child Abuse Network Vision Council
4699 Murphy Canyon Road
San Diego, California 92123
Advisory Member

2010 – 2013
Children's Initiative of San Diego
4438 Ingraham Street
San Diego, California 92109
Board of Directors

2010 – 2013
San Pasqual Academy
17701 San Pasqual Valley Road
San Diego, California 92025
Advisory Board

2010 – 2012
San Diego County Commission on Children, Youth and Families
(now the County of San Diego Child Abuse Prevention Coordinating Council)
No physical address
San Diego, California
Chair

2002 – 2007
San Diego County Judges' Association
No physical address
San Diego, California
Board of Directors (2002 – 2007)
Secretary (2003 – 2004, 2005 – 2006)

2003 – 2005
June Burnett Institute
6505 Alvarado Road, #206
San Diego, California 92120
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 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.

   San Diego Juvenile Justice Commission, Judge of the Year for service to juvenile justice (2012)

   Special Commendations for Outstanding Performance as an Assistant United States Attorney (1999, 1998, 1997, 1996, 1995, 1994)

   Director's Award for Superior Performance as an Assistant United States Attorney (1997)

   Young Women's Christian Association of San Diego TWIN (Tribute to Women and Industry) Award (1997)

   California Women in Government, Law and Justice Award (1996)

   Office of the United States Attorney Victim-Witness Award (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.

   California Women Lawyers (1989 – 2002)

   Lawyers Club of San Diego (1987 – present)
   Advisory Board (1995 – 2008, 2010 – present)
   President (1994 – 1995)
   Treasurer (1992 – 1993)
   Newsletter Editor (1989 –1991)

   San Diego County Bar Association (1986 – present)

   San Diego County Judges Association (2000 – present)
   Board of Directors (2002 – 2007)
   Secretary (2003 – 2004, 2005 – 2006)

   San Diego Superior Court Executive Committee (2008 – 2013)

10. **Bar and Court Admission**:

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

       California, 1986 (inactive)

       There have been no lapses in membership. However, since becoming a judge, I have been on inactive judicial status.

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

       United States Court of Appeals for the Ninth Circuit, 1990
       United States District Court for the Southern District of California, 1986
       California State Court, 1986

       I have not had any lapses in membership other than my inactive status while serving as a judge.

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.

Children's Initiative of San Diego (2010 – 2013)
Board of Directors

June Burnett Institute (2003 – 2005)
Advisory Board

San Diego County Child Abuse Prevention Coordinating Council (2012 – 2013)
Member

San Diego County Commission on Children Youth and Families (2010 – 2012)
Chair

San Pasqual Academy (2010 – 2013)
Advisory Board

United Way Child Abuse Network Vision Council (2011 – 2013)
Advisory Member

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

To the best of my knowledge, none of the organizations listed in 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, 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 Igelman, R., Ryan, B., Gilbert, A., and North, K., *Best Practices for Serving*

Traumatized Children, Juvenile and Family Court Journal, Fall 2008, Vol. 59, No. 4, pgs. 35-47. Copy supplied.

With Ryan, B. and Brooks, D., *Protecting and Supporting Children in the Child Welfare System and the Juvenile Court*, Juvenile and Family Court Journal, Winter 2006, Vol. 57, No.1, pgs. 61-68. Copy supplied.

As the president of the Lawyers Club of San Diego, I wrote eleven columns from 1994 to 1995. Copies supplied.

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

None.

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 the Presiding Judge of the Juvenile Division, I was statutorily assigned as the Chair of the San Diego County Commission on Children, Youth and Families, which was subsequently renamed the San Diego County Child Abuse and Prevention Coordinating Council. We had regular meetings with all interested stakeholders to discuss how to better coordinate activities on behalf of abused children, foster, homeless and delinquent youth in San Diego. Meeting minutes supplied.

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

2010 – 2013: I gave quarterly addresses to the Juvenile Justice Commission about the state of the Juvenile Court. I have no notes, transcripts or recording. The address of the Juvenile Justice Commission is 2901 Meadowlark, San Diego, CA 92123.

May 2013: I was the keynote speaker at the Annual Retreat of the County Counsel's Association of California, San Diego, California. I spoke about the necessity of coordinating between dependency (social worker) and delinquency (probation officer), child sex trafficking and concern about the disproportionality of African Americans and Native Americans in the child welfare system. I have no notes, transcripts or recording. The County Counsel's Association of California has no physical address.

March 2013: I led a dialogue for Aaron Price Fellows on what considerations judges should consider when deciding bail and/or sanctions for committing a crime. This took place at the San Diego Juvenile Court, San Diego, California. Notes supplied.

June 2012: I spoke to a group of foster youth graduating from high school as part of a Voices for Children event in San Diego, California. Outline supplied.

May 2012: I participated in a community forum for Project Save Our Children, discussing why so many African American children are active to the court system and what we are trying to do about it. This took place at the New Creation Church in Southeast San Diego, California. I have no notes, transcripts or recording. Project Save Our Children has no physical address.

January 2012: I delivered a State of the Juvenile Court address to Voices for Children at the University Club in San Diego, California. Notes supplied.

October 29, 2011 and June 26, 2010: I spoke at the "I Can Go To College" event for foster youth, which was sponsored by Superior Court of San Diego. In 2011, this was held at San Diego State University. In 2010, this was held at the University of San Diego. In the addresses, I encouraged foster youth to consider applying to college. I have no notes, transcripts or recording. The address of the Superior Court of San Diego is 220 West Broadway, San Diego, CA 92101.

January 2011: I delivered a State of the Juvenile Court address to Voices for Children at the University Club in San Diego, California. I have no notes, transcripts or recording, but the content of the speech was similar to the speech delivered in January 2012, for which notes have been supplied. The address of Voices for Children is 2851 Meadowlark, San Diego, CA 92123.

2006: I spoke at the Voices for Children Starry Starry Night event about how Court Appointed Special Advocates help children in the dependency system in San Diego, California. I have no notes, transcripts or recording. The address of Voices for Children is 2851 Meadowlark, San Diego, California 92123.

2005: I was a panelist discussing *Ethical Considerations in the Administration of Psychotropic Medication* at a program entitled "Advocating for Change!

Improving Health Care for Children In Foster Care" sponsored by the San Diego Volunteer Lawyer Program in San Diego, California. I discussed the court process for obtaining a court order to administer psychotropic medications to any youth in the foster care system. I have no notes, transcripts or recording. The address for the San Diego Volunteer Lawyer Program is 707 Broadway, Suite 1400, San Diego, California 92101.

2005: I spoke to the Welcome Club of Scripps Ranch in Scripps Ranch, California, to give an overview of the foster care/dependency system. Notes supplied.

2002: I was a panelist with several other judges at a Lawyers Club lunch in San Diego, California, discussing "Effective Advocacy" in court. I have no notes, transcripts or recording. The address for the Lawyers Club is 701 B Street, San Diego, California 92101.

2002: I engaged high school students at several schools throughout San Diego in a discussion entitled "Dialogue On Freedom," which was sponsored by the San Diego County Bar Association. I was one of hundreds of lawyers who went into the classroom with the intent of helping students to understand constitutional rights and the reasons for them. I have no notes, transcripts or recording. The address of the San Diego County Bar Association is 401 West A Street, Suite 1100, San Diego, California 92101.

1999: I spent a week in Latvia helping to train Latvian prosecutors in the area of corruption prosecution and money laundering. This was sponsored by the United States Department of Justice, OPDAT. I have no notes, transcripts, or recording. The address of the United States Department of Justice, OPDAT is 950 Pennsylvania Avenue, NW, Washington, DC 20530.

1995: I was a panelist at the California Bar Association Women In Law Conference in Monterrey, California, discussing "Women In Litigation: Do They Do It Differently?" I discussed being a woman in court and how women are perceived by juries. I have no notes, transcripts or recording. The address for the California Bar Association is 180 Howard Street, San Francisco, CA 94105.

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.

Kelly Rand, *Lawyers Club Presidents of the 1990's,* Lawyers Club Newsletter, April 2012. Copy supplied.

Jeff McDonald, *Youth Funds Go To Board Member Agencies,* San Diego Union-Tribune, November 4, 2011. Copy supplied.

Press Release, *Community Groups Unite To Encourage Foster Youth To Attend College,* San Diego Superior Court, October 28, 2011. Copy supplied.

"Smith Alumnae Quarterly," Winter 2010-2011. Copy supplied.

Press Release, *Superior Court Leads Effort To Encourage Foster Youth To Attend College,* San Diego Superior Court, June 24, 2010. Copy supplied.

Governor and First Lady Schwarzenegger Name Foster Youth Advocate Kathryn Vaughn California's Volunteer of the Year, Just In Time for Foster Youth Newsletter, May 6, 2010. Copy supplied.

"Smith Alumnae Quarterly," Spring 2008. Copy supplied.

James W. Talley, *Meet the Bar's New President: Jill Burkhardt*, San Diego Lawyer, November/December 2006. Copy supplied.

Tan Vinh, *Miss Muzzy Celebrates 100th Birthday With Former Students,* "The Seattle Times," May 23, 2004. Copy supplied.

Judicial Profile: Kids in Dependency Court Exhaust But Touch Judge, "Los Angeles Daily Journal," March 19, 2004. Copy supplied.

Accountant Pleads Guilty to Tax Evasion, "Sinocast," May 22, 1999. Copy supplied.

CPA Admits Tax Evasion On Stolen Money, "Accounting Today," April 26, 1999. Copy supplied.

Anne-Marie O'Connor, *U.S. Galled by Alleged Drug Lord's Home,* "Los Angeles Times," May 13, 1997. Copy supplied.

Arrest & Trial: The Tunnel Case, television show that aired in January 1997. Video supplied.

Tendria Narco Cadena Perpetua, "El Norte," October 12, 1996. Copy supplied.

U.S. Convicts Man In Mexican Drug Smuggling Operation, "Daily News of Los Angeles," October 11, 1996. Copy supplied.

San Diego, Channel 51 News story about the conviction of Enrique Avalos-Barriga, October 10, 1996. Video supplied.

Anne-Marie O'Connor, *Businessman Pleads Guilty In Drug Plot,* "Los Angeles Times," September 25, 1996. Copy supplied.

Eric Shine, *Under the Border, Down Mexico Way,* "Business Week," October 15, 1995. Copy supplied.

Sebastian Rotella, *Food Company Owners Charged in Drug Tunnel Case,* "Los Angeles Times," September 29, 1995. Copy supplied.

2 Facing State Charges Arrested, "Associated Press," July 9, 1989. Copy supplied.

Jane Fritscht, *Rancho Santa Fe Pair Arrested Accused Of Massive Bankruptcy Fraud,* "Los Angeles Times," July 7, 1989. Copy supplied.

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

From 2000 to the present, I have held the office of San Diego Superior Court Judge. I was appointed to this position by the Governor. I was reelected to this position in both 2008 and 2002. This is the trial court for San Diego County with jurisdiction over state criminal, civil, family, probate and juvenile matters.

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

Including juvenile dependency trials, I have presided over more than one thousand trials that have gone to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	10%
bench trials:	90%
civil proceedings (juvenile)	90%
criminal proceedings:	10%

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

As a state court judge, I have not issued many written opinions. My trials have either involved juries or juvenile court trials without a jury, where written opinions are uncommon and decisions are generally made from the bench. None of these opinions has been published.

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).

Since my cases in juvenile court have all been confidential, I have listed the ten most significant criminal cases over which I have presided.

(1) *People v. Harper,* D052997 (Sup. Ct. of San Diego Co. 2009), *aff'd,* 2009 WL 4856788 (Cal. App. 4 Dist., 2009).

I presided over the jury trial of Mr. Harper, who was found guilty of multiple counts of bank robbery. Mr. Harper chose to represent himself, which posed unique challenges. Mr. Harper argued that he was not the individual in the surveillance photos and that someone else had made themselves up to look like him. He presented expert testimony on the unreliability of eyewitness testimony. After the jury convicted Mr. Harper of eight counts of bank robbery and found true the allegations of a prior strike conviction, I sentenced Mr. Harper to an aggregate term of twenty-two years in prison. The Court of Appeal affirmed the conviction and sentence.

Counsel for the People: George Bennett (now deceased)

Counsel for Defendant: *pro per*

(2) *In re: St. Martin,* D055287 (Sup. Ct. of San Diego Co., 2009), *rev'd and suspended,* 2011 WL 49695 (Cal. App. 4 Dist., 2011).

I presided over the trial involving a civil-commitment of a sexually-violent predator, in which the jury found that Mr. St. Martin was a sexually violent predator and should remain in a locked facility. Between the time of conviction and the time of appeal, the California Supreme Court issued an opinion placing the sexually violent predator statute in doubt on federal equal protection grounds. (*People v. McKee*, 47 Cal.4th 1172 (2010)). In light of the California Supreme Court case, the appellate court reversed Mr. St. Martin's true finding solely on the issue of federal equal protection and suspended further proceedings pending remand of the *McKee* case. On remand, the trial court in *McKee* found that the sexually violent predator statute did not violate equal protection and this was affirmed on appeal. The California Supreme Court refused to review the appellate court decision. Thus, Mr. St. Martin's true finding as a sexually violent predator was allowed to stand.

Counsel for the People: Deputy District Attorney Wendy Patrick
330 West Broadway, P.O. Box 121011
San Diego, California 92102
(619) 531-4040

Counsel for the Defendant: Deputy Public Defender Marion Gaston
450 B Street, #900
San Diego, California 92101
(619) 338-4699

(3) *People v. Ivy,* D055865 (Sup. Ct. of San Diego Co. 2011), *aff'd with directions,* 2011 WL 300339 (Cal. App. 4 Dist., 2011).

I presided over the jury trial in which Mr. Ivy was found guilty of second degree murder after he beat a man in a wheelchair to death with a cane. The jury also found that Mr. Ivy personally used a deadly or dangerous weapon in committing the murder. The trial included much expert testimony on the cause of death. After trial, I sentenced Mr. Ivy to an aggregate term of sixteen years to life in prison. The Court of Appeal affirmed the conviction and sentence, remanding the case for correction of the clerk's abstract of judgment.

Counsel for the People: Deputy District Attorney David Williams
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for the Defendant: Charles Guthrie
121 Broadway, #531
San Diego, California 92102
(619) 230-8598

(4) *People v. Jackson,* SCD 215451 (Sup. Ct. of San Diego Co., 2009) not appealed, no written judgment.

I presided over the trial in which the jury acquitted Mr. Jackson of selling marijuana. Mr. Jackson was a medical marijuana card holder who sold marijuana out of a cooperative to individuals who had medical marijuana cards. This was one of the first jury trials using the defense of medical marijuana. The case involved the interpretation of the new medical marijuana law and whether it applied to individuals who sold medical marijuana as part of a cooperative.

Counsel for the People: Deputy District Attorney Chris Lindberg
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for the Defendant: Kenneth Lance Rogers
110 West C Street, #1414
San Diego, California 92101
(619) 795-6460

(5) *People v. Monti*, M014004 (S.D.Sup.Ct. 2007) not appealed, no written judgment.

I presided over the trial in which the jury acquitted Mr. Monti of battery and hate crimes against local migrant workers. Mr. Monti had approached an area where local migrant workers gathered hoping to pick up employment. He began photographing the workers, which agitated them. A fracas ensued resulting in injury to several of the workers. Mr. Monti claimed self-defense, and the jury agreed.

Counsel for the People:	Deputy District Attorney Scott Pirrello 330 West Broadway, P.O. Box 121011 San Diego, California 92101 (619) 531-4040
Counsel for the Defendant:	Allison Aranda 932 D Street Ramona, California 92065 (951) 541-9327

(6) *People v. Nunez,* SCD 217464 (S.D.Sup.Ct., April 8, 2009), no written judgment.

I presided over the preliminary hearing of this politically charged case that generated extensive press coverage. Several of the defendants were the sons of prominent political figures. The charges involved a brawl on the San Diego State University campus, which left one student dead of stab wounds. After several days of testimony, I bound all four defendants over for trial on charges of murder, assault with a deadly weapon and vandalism. Two of the defendants pled guilty after the preliminary hearing, and two proceeded to trial in front of a different judge.

Counsel for the People:	Deputy District Attorney Jill DiCarlo 330 West Broadway, P.O. Box 121011 San Diego, California 92101 (619) 531-4040
Counsel for Defendant Mr. Nunez:	Brad Patton 1808 Aston Avenue, #240 Carlsbad, California 92008 (760) 438-3636
Counsel for Defendant Mr. Garcia:	Paul Pfingst 401 West A Street, #2600 San Diego, California 92102 (619) 236-1551

Counsel for Defendant Mr. Jett:	Deputy Public Defender Terry Zimmerman 233 A Street, #800 San Diego, California 92101 (619) 338-4699
Counsel for Defendant Mr. Thomas:	Leisbeth VandenBosch Alternate Public Defenders 110 West C Street, #1100 San Diego, California 92101 (619) 446-2900

(7) *People v. Rouse,* D055804 (Sup. Ct. of San Diego Co., 2010), *aff'd,* 2012 WL 20532 (Cal. App. 4 Dist., 2012); *People v. Henderson,* D054494 (Sup. Ct. of San Diego Co., 2010), *rev'd in part* 2010 WL 3872022 (Cal. App. 4 Dist. 2010).

I presided over this month-long jury trial involving wire taps and charges of multiple gang-related robberies. Several cases were consolidated and all three defendants were tried together in one jury trial. The jury convicted all three defendants of multiple offenses and of gang and firearm enhancements. I denied Mr. Montgomery's motion to dismiss his prior strike conviction. I sentenced Mr. Rouse to thirty-five years, Mr. Henderson to fifteen years, and Mr. Montgomery to fifty years to life plus eleven years in prison. The Court of Appeal affirmed conviction on all counts and sentences for the lead defendant Mr. Rouse and co-defendant Mr. Henderson. The Court of Appeal affirmed one count of conspiracy to commit robbery, but found insufficient evidence for the jury conviction on the second count of conspiracy to commit robbery, for co-defendant Mr. Montgomery.

Counsel for the People:	Deputy District Attorney Anthony Campagna 330 West Broadway, P.O. Box 121011 San Diego, California 92101 (619) 531-4040
Counsel for Defendant Rouse:	Charles Adair 1140 Union Street, #201 San Diego, California 92101 (619) 344-3161
Counsel for Defendant Montgomery:	Manuel Ramirez 550 West C Street, #2000 San Diego, California 92101 (619) 814-3521

Counsel for Defendant Henderson: Keith Rutman
402 West Broadway, #2010
San Diego, California 92101
(619) 573-4988

(8) *People v. Santillon,* D054494 (Sup. Ct. of San Diego Co. 2009) *aff'd,* 2010 WL 302232 (Cal. App. 4 Dist., 2010).

I presided over pretrial motions and jury trial of Mr. Santillon. Mr. Santillon was a soccer coach who was accused of child molestation and oral copulation of one of the young boys he coached. The jury found Mr. Santillon guilty of two counts of lewd act on a child under the age of 14 years old and found true the allegations of substantial sexual contact. After trial, I sentenced Mr. Santillon to an aggregate term of eight years in prison. The Court of Appeal affirmed my refusal to suppress Mr. Santillon's un-Mirandized statement, finding that Mr. Santillon was not in custody at the time of the statement.

Counsel for the People: Deputy District Attorney Enrique Camarena
330 West Broadway, P.O. Box 121011
San Diego, California 92101
(619) 531-4040

Counsel for the Defendant: Timothy Brackney
Alternate Public Defenders
110 West C Street, #1100
San Diego, California 92101
(619) 446-2900

(9) *People v. Westerfield,* D040021, (S.D.Sup.Ct. 2002), *aff'd in part,* 98 Cal.App.4th 145, 119 Cal.Rptr.2d 588 (2002).

I signed and sealed the various search warrants executed at the home and computers of Mr. Westerfield. After Mr. Westerfield was charged but before trial, the San Diego Union-Tribune petitioned to unseal the search warrant affidavits. Counsel for Mr. Westerfield opposed the request, and I presided over the motions in this highly publicized case. The case involved the kidnapping and murder of a nine-year-old girl. The Court of Appeal affirmed my decision to unseal the search warrant affidavits and release some of the documents, but it found that a few of the documents ordered released should not be released to the press. The case proceeded to trial in front of a different judge, and Mr. Westerfield was found guilty of all counts.

Counsel for the People: Deputy District Attorney Jeff Dusek
(now retired)

Counsel for the Defendant: Steven Feldman
Law Offices of Steven Feldman
934 23rd Street
San Diego, California 92102
(619) 232-8649

Counsel for the SD Union-Tribune: Guylyn Cummins
Sheppard Mullin Richter and Hampton
501 West Broadway, 19th Floor
San Diego, California 92101
(619) 338-6645

10) *People v. Wilson*, D052986 (Sup. Ct. of San Diego Co. 2009), *aff'd*, 2009 WL 932625 (Cal. App. 4 Dist., 2009).

I presided over the jury trial charging Mr. Wilson with rape, sodomy and kidnapping. The charges stemmed from events occurring in 1999. Mr. Wilson was identified after a DNA hit identified him as the perpetrator. The case involved interesting expert testimony regarding DNA and cold case identification. The jury convicted Mr. Wilson on all counts. I sentenced Mr. Wilson to fifty-eight years to life in prison. The Court of Appeal affirmed both the conviction and the sentence.

Counsel for the People: (now Judge) Dwayne Moring
220 West Broadway
San Diego, California 92101
(619) 450-5030

Counsel for the Defendant: Timothy Richardson
401 B Street, #2215
San Diego, California 92101
(619) 231-6577

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 a Superior Court judge, I have not written any significant opinions. My trials have either involved juries or juvenile court trials without a jury, where written opinions are uncommon and decisions are generally made from the bench. Moreover, the few opinions that I have written in juvenile cases are subject to non-disclosure rules.

e. Provide a list of all cases in which certiorari was requested or granted. My trials have either involved juries or juvenile court trials without a jury, where written

opinions are uncommon. When required, my decisions were made orally from the bench.

I am not aware of any 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.

Because of the nature of juvenile dependency, a large percentage of cases get appealed. A quick Westlaw search shows that 320 of my cases have resulted in opinions. The vast majority of these are affirmances. I would estimate 90% were affirmed. I have listed the reversals below:

In re Eric B., No. D040087, *rev'd* (unpublished) 2002 WL 31517672 (S.D.Sup.Ct. Nov. 13, 2002). The appellate court upheld my decision as to the establishment of the guardianship, but concluded that I also should have determined the parents' visitation rights, rather than leaving it to the discretion of the guardians.

In re Eric B, No. D041082, D041411, *rev'd* (unpublished) 2003 WL 21300106 (S.D.Sup.Ct. June 6, 2003). The appellate court concluded that a hearing was necessary before denial of a mother's third motion to modify and return children to her.

In re KB, No. D042134, *rev'd* (unpublished) 2003 WL 22245941 (S.D.Sup.Ct. Oct. 1, 2003). The appellate court reversed the decision denying reunification services to a mother who had failed to reunify with other dependent children and had a 14-year history of cocaine and methamphetamine usage. Since the mother had been clean her last few months of pregnancy and was doing well with her drug treatment, the appellate court found reunification services should have been given to her.

In re Nicholas M., No.D043714, *rev'd in part* (unpublished) 2004 WL 1588335 (S.D.Sup.Ct. July 17, 2004). The appellate court affirmed an order denying contact between Nicholas M. and his father, but reversed as to the decision to give discretion to the social worker to allow visitation to begin if recommended by Nicolas M.'s therapist.

In re Brittani O., No. D044578, *rev'd in part* (unpublished) 2004 WL 2809312 (S.D.Sup.Ct. Dec. 8, 2004). The appellate court affirmed the termination of parental rights but reversed the restraining order to clarify the boundaries of the order.

In re Jasmin B., No. D04457, *rev'd* (unpublished) 2004 WL 2569426 (S.D.Sup.Ct. Nov. 10, 2004). The appellate court reversed the finding of adoptability when the children had not yet met prospective adoptive parents.

In re Darin J., No. D045041, *rev'd* (unpublished) 2005 WL 555409 (S.D.Sup.Ct. Mar. 9, 2005). The appellate court reversed the decision denying reunification services to a father.

In re AG, No. D045978, *rev'd* (unpublished) 2005 WL 1926323 (S.D.Sup.Ct. Aug. 12, 2005). The appellate court concluded that I should have held a hearing on the relative's 388 motion to modify for placement before terminating parental rights.

In re Maya K, No. D046553, *rev'd in part* (unpublished) 2005 WL 3250003 (S.D.Sup.Ct. Dec. 1, 2005). The appellate court affirmed jurisdiction but reversed the order removing the child from her mother.

In re KD, No. D044381, *rev'd in part* 124 Cal.App.4th 1013 (2004). The appellate court affirmed the decision to grant guardianship, but reversed the decision to terminate jurisdiction, rather than to continue to monitor the mother's visitation.

Cheryl P. v. Superior Court, No. D047891, *rev'd* (unpublished) 139 Cal.App.4th 87 (2006). The appellate court concluded that reunification services should have been granted to developmentally disabled parents.

In re Jamie P., No. D047789, *rev'd* (unpublished) 2006 WL 2147607 (S.D.Sup.Ct. Aug. 2, 2006). The appellate court reversed, concluding that the mother's visitation should not have been changed from unsupervised to supervised when it was unclear who had caused the subdural hematoma on infant.

In re Courtney P., No. D048764, *rev'd* (unpublished) 2007 WL 521286 (S.D.Sup.Ct. Feb. 21, 2007). I had ruled against placing the three youngest children with an aunt because of a family multi-generational history of sexual assault and molestation. The appellate court reversed, finding I should have granted the sibling's 388 motion to place the children with an aunt.

In re Antonio G., No. D051079, *rev'd* 159 Cal.App.4th 369 (2007). The appellate court reversed, concluding that I should have held a hearing on a relative's motion to modify requesting placement of the children with her.

In re: Adoption of Joshua S., No. S138169, *rev'd* 42 Cal. 4th 945 (2008). The appellate court reversed solely as to attorney's fees under a private attorney general theory in a case involving adoption.

In re Cristian O., No. D053154, *rev'd* (unpublished) 2009 WL 151317 (S.D.Sup.Ct. Jan. 22, 2009). The appellate court reversed, concluding that a finding of adoptability was premature when children had lived with prospective adoptive relative for only one week and no home study had yet been completed.

People v. Hayes, No. D053795, *rev'd in part* (unpublished) 2010 WL 46875 (S.D.Sup.Ct. Jan. 7, 2010). The appellate court affirmed the conviction for grand theft. The appellate court reversed the conviction for willful failure to appear because there was a conflict in the evidence as to when defendant was ordered to appear. Therefore, the appellate court found that a jury could not have found beyond a reasonable doubt that defendant failed to appear as ordered.

People v. JB Heard, No. D054669, *rev'd in part* (unpublished) 2010 WL 2473261 (S.D.Sup.Ct. June 18, 2010). The appellate court struck the imposition of a $200 probation revocation restitution fine and a $40 state surcharge but affirmed in all other respects.

People v. Carradine, No. D053945, *rev'd in part* (unpublished) 2010 WL 819066 (S.D.Sup.Ct. March 10, 2010). The appellate court struck the blind victim enhancement finding but affirmed in all other respects.

People v. Henderson, No. D054494, *rev'd in part* (unpublished) 2010 WL 3872022 (S.D.Sup.Ct. Oct. 5, 2010). The appellate court affirmed the conviction for one count of conspiracy to commit robbery but found insufficient evidence for the jury conviction as to the second count of conspiracy to commit robbery.

In re Kaylee H., No. D060499, *rev'd* 205 Cal.App.4th 92 (2012). This case involved the interplay between the Probate guardianship system and the Juvenile dependency system. The appellate court ruled the case should have been allowed to go through Probate guardianship as opposed to Juvenile dependency if all the parties agreed.

Some reversals are stipulated reversals because of a change in circumstances between the time a decision was rendered and the time of appeal. These include the following cases:

In re Sarah N., No. D040839, D041221, *rev'd* (unpublished) 2003 WL 2002478 (S.D.Sup. Ct. May 1, 2003). The father filed a motion to remove children from the mother and place them with him. This motion was denied. However, while the case was on appeal, the mother's problems increased so everyone agreed a stipulated reversal was appropriate so the children could be placed with the father.

In re Brittany W., No. D042733, *rev'd* (unpublished) 2004 WL 100344 (S.D.Sup.Ct. Jan. 22, 2004). The parties stipulated to reversal of termination of parental rights because Brittany was no longer deemed adoptable.

In re Brooke N., No. D046335, *rev'd* (unpublished) 2006 WL 1174278 (S.D.Sup.Ct. May 4, 2006). Post-judgment developments resulted in stipulation of reversal since the recommendation was now guardianship instead of adoption.

Some cases involved evolving areas of the law creating block reversals. For example, numerous decisions from the California Supreme and Appellate courts regarding the Indian Child Welfare Act led to a large number of reversals in the trial court statewide. Many of these were stipulated reversals because of the new interpretation of the law. I have listed below the cases where all findings were affirmed except for a finding regarding the Indian Child Welfare Act notices:

In re Michael L., No. D041193, *rev'd* (unpublished) 2003 WL 1930340 (S.D.Sup.Ct. Apr. 24, 2003).
In re Christopher B., No. D043368), *rev'd* (unpublished) 2004 WL 811678 (S.D.Sup.Ct. Apr. 15, 2004).
Rosa v. Superior Court, No. D043068, *rev'd* (unpublished) 2004 WL 119838 (S.D.Sup. Ct. Jan. 27, 2004).
In re Angela J., No. D043200, *rev'd* (unpublished) 2004 WL 1260024 (S.D.Sup.Ct. June 9, 2004).
In re Louis S., No. D043166, *rev'd* 117 Cal.App.4th 622 (2004).
In re Mikal H., No. D046303, *rev'd* (unpublished) 2005 WL 2234075 (S.D.Sup.Ct. Sept. 14, 2005).
In re XJ, No. D045837, *rev'd* (unpublished) 2005 WL 1545778 (S.D.Sup.Ct. July 1, 2005).
In re Jessica G., No. D045158, *rev'd* (unpublished) 2005 WL 387902 (S.D.Sup.Ct. May 17, 2006).
In re Francisco W., No. D047094, *rev'd* 139 Cal.App.4th 695 (2006).
In re S.C., No. D047452, *rev'd* (unpublished) 2006 WL 2045780 (S.D.Sup.Ct. July 24, 2006).
In re N.G., No. D049963, *rev'd* (unpublished) 2007 WL 1559231 (S.D.Sup.Ct. May 31, 2007).
In re Makayla P., No. D059889, *rev'd* (unpublished) 2011 WL 4382162 (S.D.Sup.Ct. Sept. 21, 2011).

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

I have issued very few written opinions, none of which were published. I would approximate ten cases – all juvenile dependency or adoption – resulted in some sort of written decision, and many of these were very cursory opinions consisting of no more than a short paragraph. When these opinions were issued, they were filed directly in the confidential Juvenile court file. I have not kept copies of these opinions.

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

I have not issued any written opinions on federal or state constitutional issues.

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

California Code of Civil Procedure section 170.6 allows each party to exercise one peremptory challenge to any sitting judge without the need for showing cause. These motions are fairly routine in the Superior Court. In San Diego County these requests are processed as a matter of course. The Court does not maintain any data for such requests or file them in any particular way. During my thirteen years on the bench, I recall two or three such peremptory challenges that were timely and, therefore, automatically granted.

I did deny one of these peremptory challenges as untimely. The attorney then filed a challenge for cause alleging that I could not hear a case because I had been the judge who had heard an earlier matter in the case. After consultation with colleagues and a review of the codes of conduct, I denied the challenge. I denied the challenge first because I found that hearing the earlier case as a judge was not grounds for recusal and second because the case was assigned to me for settlement conference. There is case law confirming that a challenge did not

apply to a settlement conference. The attorney took the case up on a writ alleging that I should have granted the motion for a challenge, but the Court of Appeal dismissed the case as moot. I cannot recall the name of this case.

I was prepared to recuse myself sua sponte in any case in which there was a conflict of interest or the appearance of any such conflict. When I was first appointed to the bench, I did recuse myself on cases involving an attorney whom I had been investigating as an Assistant United States Attorney before being appointed to the bench. I was also prepared to recuse on any case in which a family member or close friend appeared. However, that has not proved necessary during my time on the Superior Court.

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

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

I have not held any public offices other than judicial office.

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

I have not held any office in a political party or election committee. I have endorsed the following judges for judicial office in non-partisan campaigns: Terrie Eileen Roberts in 2012; Steven Clark, Robert C. Longstreth, and Joel R. Wohlfeil in 2010; Garry Haehnle in 2008; Joseph P. Brannigan in 2006; Daniel Zeke Zeidler in 2004; and Jeff Bostwick in 2002.

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

1986 – 1988
Macdonald Halsted and Laybourne
101 West Broadway
San Diego, California 92101
Associate

1988 – 1989
Baker and McKenzie
101 West Broadway
San Diego, California 92101
Associate

1989 – 2000
United State Attorney's Office for the Southern District of California
940 Front Street
San Diego, California 92101
Assistant United States Attorney (1989 – 2000)
Chief of Border Crimes (1997 – 1998)
Deputy Chief of Narcotics (1995 – 1997)

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 graduation from law school, I practiced law with Macdonald Halsted and Laybourne in San Diego. My practice consisted of general civil litigation. Many of these cases consisted of insurance defense or employment litigation cases. In 1988, Macdonald Halsted and Laybourne merged with Baker and McKenzie, where I continued to practice civil

litigation in San Diego. I spent three months working in the New York City office of Baker and McKenzie.

In 1989, I became an Assistant United States Attorney for the Southern District of California. My practice was solely criminal, focusing on narcotics cases, general crimes (i.e. bank robbery and fraud) and border crimes. I served as the Chief of the Border Crimes section and the Assistant Chief of the Narcotics section. As the Chief of Border Crimes, I supervised approximately thirty new lawyers who were trying primarily cases involving smuggling of drugs or people across the border. I met with each of these lawyers pre-trial to discuss trial tactics and assist them in preparing their cases for trial. As the Assistant Chief of Narcotics, I supervised approximately twelve lawyers who were investigating larger narcotics organizations. Many of the narcotics cases involved wire taps, so I reviewed numerous wire taps and assisted lawyers who were attempting to obtain information about high-level drug traffickers operating in the Southern California area. I then assisted with indictment and trial preparation.

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

When I was at Macdonald, Halsted and Laybourne and Baker and McKenzie, most of my clients were corporate. For example, I represented several insurance agencies and local businesses, such as La Mesa RV and Bradco Inc. I did also represent several individual plaintiffs in their employment litigation. As discussed above, my practice consisted of general civil litigation.

At the United States Attorney's Office for the Southern District of California, I represented the government and people of the United States. As discussed above, my practice was solely criminal, consisting of narcotics, general crimes and border crimes.

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

100% of my practice has been litigation, either civil or criminal. I appeared in court much more frequently as a criminal attorney than I did as a civil attorney, although I did appear in court on civil motions regularly and had two civil trials while I was in private practice.

i. Indicate the percentage of your practice in:

1. state courts of record: 20%
2. federal courts: 79%
3. other courts: 0%
4. administrative agencies: 1%

ii. Indicate the percentage of your practice in:

1. civil proceedings 20%
2. criminal proceedings 80%

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

As a lawyer I tried at least sixteen cases to verdict. I served as chief counsel on two of these cases, associate counsel on two of these cases, and sole counsel on all remaining cases.

i. What percentage of these trials were:
1. jury: 94%
2. non-jury: 6%

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

I have never practiced before the Supreme Court of the United States.

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

a. the date of representation;

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

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

(1) *United States v. Delgado,* 98-2507-JM (S.D. Cal. 1995), before the Honorable Jeffrey Miller, United States District Court for the Southern District of California.

This was the first federal domestic violence case in the Southern District of California and one of the first in the country. Defendant was accused of luring his wife, who had just filed for a divorce, into his car, after which he took her involuntarily to Mexico where he committed acts of domestic violence against her. He believed that by taking her to Mexico, he would be immune from prosecution in the United States, which was exactly what the federal domestic violence statute was designed to address. I presented the case to the grand jury for indictment, which included presenting the wife-victim as a witness even though she was reticent to testify against her husband. Post-indictment, I negotiated a plea agreement with Defendant. Defendant pled guilty to interstate domestic violence and Judge Miller sentenced him to twenty-one months in custody.

Defense counsel: Ricardo Gonzalez
LKA 105 West F Street, Suite 203
San Diego, California 92101
(619) 238-9910

(2) *United States v. Fasola* , 91-0353-GT (S.D. Cal. 1991), *aff'd* 67 F.3d 309 (9th Cir. 1995), before the Honorable Gordon Thompson, United States District Court for the Southern District of California.

Defendant came to the U.S.-Mexico border with a large amount of China White heroin hidden in secret compartments of a suitcase. On his person, the agents also found swallowing instructions. Defendant had just completed a trip from Nigeria to Amsterdam and from Amsterdam to Tijuana, after which he attempted to cross into the United States. I was sole counsel at the jury trial in late 1991. During the trial, the defendant took the stand in his own defense and claimed that the suitcase had been given to him by a friend and that the swallowing instructions were a religious ritual. The jury convicted Defendant.

Defense counsel: Howard Frank
136 Redwood Street
San Diego, California 92103
(619) 574-1888

(3) *United States v. Guzman-Loera et al.,* 95-973-N, 97-50016-N, 97-050043-N, 97-50142-N (S.D.Cal. 1998), *aff'd* (unpublished) 1998 WL 23248 (9th Cir. 1998), before the Honorable Leland C. Nielsen, United States District Court for the Southern District of California.

This was a multi-jurisdictional drug and money laundering investigation involving multiple wire taps in Chicago, San Antonio, Los Angeles and San Diego. Among other acts, the defendants were accused of constructing a 1,600 foot tunnel under the U.S. –

Mexico border to import cocaine. I successfully presented 23 defendants for indictment. After indictment, I presided as chief counsel over the more than 30,000 pages of discovery, defended numerous suppression motions and negotiated plea agreements with all defendants found in the United States except one. I was then lead trial attorney at the trial of the remaining defendant, Avalos. The jury convicted Defendant Avalos, and Judge Nielsen sentenced him to life in prison. The Ninth Circuit upheld his conviction for running a continuing criminal enterprise as well as the life sentence.

Co-counsel:	Assistant U.S. Attorney Todd Robinson 880 Front Street San Diego, California 92101 (619) 557-2034
Trial Counsel for Lead Defendant:	Jan Ronis 105 West F Street, Third Floor San Diego, California 92101 (619) 239-1199
Appellate Counsel for Lead Defendant:	Bernard Scomal (now Magistrate Judge) 940 Front Street San Diego, California 92101 (619) 557-7104
Other Defense Attorneys:	Gerard Wasson 406 Ninth Avenue, #311 San Diego, California 92101 (619) 232-0181
	Ezekiel Cortez 1010 Second Avenue, Suite 1850 San Diego, California 92101 (619) 816-2614
	James Blancarte 633 West Fifth Street, #1100 Los Angeles, California 90717 (213) 955-1200
	Antonio Yoon 501 West Broadway, #A-387 San Diego, California 92101 (619) 544-0021
	Barbara Davis Legal Aid Society of San Diego 110 Euclid Avenue

San Diego, California 92114
(877) 534-2524

Knut Johnson
1010 Second Avenue, Suite 1850
San Diego, California 92101
(619) 232-7080

Frank Ragen
105 West F Street, #209
San Diego, California 92101
(619) 231-4330

Michael Pancer
105 West F Street, Fourth Floor
San Diego, California 92101
(619) 236-1826

(4) *United States v. Ho,* 98-2886-T (S.D. Cal. 1999), *rev'd* 232 F.3d 897 (9th Cir. 2000), before the Honorable Mitchell Fitzgerald, United States District Court for the Southern District of California.

Ms. Ho was a law enforcement officer, working as an investigator for the Department of Health and Human Services. As such, she was responsible for investigating and assisting in the prosecution of Medi-Cal fraud cases. In March 1997, several members of the Vietnamese community were arrested and prosecuted federally for Medi-Cal and bank fraud. In June 1997, two of these individuals (eventually cooperating defendants) were introduced to Ms. Ho. Ms. Ho then promised she could get their case dismissed or their sentences reduced, claiming she was good friends with the lead investigator and prosecutor, AUSA Carol Lam. She also gave the cooperating defendants "hot tips" about the progress of their case. In exchange, she demanded various gifts, including a two-carat diamond ring, a designer purse, sunglasses and money for a face lift. With the help of the cooperating defendants, FBI agents caught Ms. Ho on tape warning the cooperating defendants about an up-coming search warrant. I participated in both the investigation and the jury trial. The jury convicted Ms. Ho of two counts of extortion and one count of revealing a search warrant to prevent seizure. The jury acquitted Ms. Ho of one additional count of extortion.

I was appointed to the bench before the case was heard on appeal. Ms. Ho appealed the conviction based on the trial court's admission of her post-arrest confession, which she gave after she asked the FBI officer if he thought she needed a lawyer. On appeal, the Ninth Circuit reversed, finding that Ms. Ho's inquiry to the FBI officer amounted to a request for an attorney, and thus her post-arrest statement was improperly admitted. I understand that the case resulted in a guilty plea on remand.

Defense Counsel: Everett Bobbitt (now deceased)

(5) *United States v. Kelley*, 89-0647-JLI, (S.D. Cal. 1992), *aff'd* 953 F.2d 59 (9th Cir. 1991), before the Honorable Lawrence Irving, United States District Court for the Southern District of California.

Mr. Kelley was responsible for robbing 21 banks in the Southern California area. In 1990, I tried six counts of bank robbery against Mr. Kelley before a jury. The jury convicted on three counts and hung on three counts, after which Mr. Kelly entered into a plea agreement on the remaining three counts. I also argued the case on appeal. The case was affirmed and resulted in a published appellate opinion.

Defense Counsel: Debra DiIorio
964 Fifth Avenue, #214
San Diego, California 92101
(619) 544-1451

(6) *Longley v. La Mesa RV,* 567190 (Sup. Ct. of San Diego Co., June 24, 1986)

I was associate counsel with Charles Dick, representing La Mesa RV in an employment case filed by local attorney Mr. Longley. Mr. Longley was the CFO at La Mesa RV and alleged he had been fired after he complained about some questionable accounting practices at La Mesa RV. I interviewed numerous witnesses, conducted many depositions, wrote and argued motions, supervised discovery and coordinated the accountant expert witnesses who were reviewing the books at La Mesa RV. The case was settled shortly after I left Baker and McKenzie to work at the U.S. Attorney's office.

Co-Counsel: Charles Dick
12544 High Bluff Drive, Third Floor
San Diego, California 92130
(619) 744-7085

Plaintiff's Counsel: Jeffrey Lewin
550 West C Street, #1500
San Diego, California 92101
(619) 595-3222

(7) *United States v. Marin-Colon* , 90-0841-R (S.D. Cal. 1990), *rev'd and remanded* (unpublished) 1992 WL 208002 (9th Cir 1992) before the Honorable John Rhoads, United States District Court for the Southern District of California.

Defendant led a group of undocumented immigrants, including a mother and her six children ranging in age from six to fifteen years north from Mexico. Just south of the San Clemente checkpoint, Defendant led the group across the I-5 freeway in an attempt to circumvent the checkpoint. The six-year-old boy was killed by oncoming traffic in front of his mother. After the accident, Defendant left in the waiting pick-up car, leaving the mother and her remaining five children by the side of the road. In preparation for trial, I

met extensively with the mother and her sister. Defendant pled guilty to alien smuggling, leaving the issue of the appropriate sentence open for argument. I then engaged in extensive litigation on the issue of sentencing, resulting in two appeals to the Ninth Circuit. In the first appeal, the Ninth Circuit reversed the trial court's 48-month sentence solely on the issue of whether Defendant's two prior DUI convictions should be treated as related. On all other issues, the Ninth Circuit affirmed. Finding the two prior convictions should have been related, the Ninth Circuit remanded to the trial court to determine whether the extent of departure would have been the same had the prior offenses been related. On remand, the trial court reinstated its 48-month sentence, finding it was appropriate even if the two prior DUI convictions were related, and this sentence was affirmed in the second appeal.

Defense Counsel: John Lanahan
550 West C Street, #1670
San Diego, California 92101
(619) 237-5498

(8) *United States v. Preciado-Robles*, 91-50332-L (S.D. Cal. 1992), before the Honorable Leland Nielsen, United States District Court for the Southern District of California.

Defendant was arrested at an immigration checkpoint in Northern San Diego County in possession of one kilogram of cocaine. I tried the case in front of a jury that found the defendant guilty. I then defended the case on appeal. The defendant argued that using the immigration checkpoint to find drugs was an illegal search and seizure. The Ninth Circuit affirmed the conviction, finding that the initial detention for immigration purposes was legal and that the defendant had later consented to the search of his car.

Defense Counsel: James Mangione, Mitchell and Mangione
600 West Broadway
San Diego, California 92101
(619) 232-8151

(9) *United States v. Ta, al.* , 94-170 and 171-R (S.D. Cal. 1994), before The Honorable John Rhoads, United States District Court for the Southern District of California.

During an undercover operation, I supervised the wire taps that were obtained. These wire tapes revealed that Mr. Ta was acting as a "godfather" in the Vietnamese community, responsible for a multitude of crimes, including drug trafficking and trafficking in stolen property. On the wiretaps, Mr. Ta unwittingly introduced an undercover officer, posing as a Hawaiian marijuana grower, to Mr. Schuman, a practicing defense attorney at the time. Mr. Schuman proceeded to launder the undercover officer's "drug money" using several different methods, including setting up trust accounts off the coast of Great Britain and opening a corporation in the Philippines with offices in the United States so the drug money could be run through this corporation overseas. All defendants pled guilty after motions.

Defense Counsel for Lead Defendant: Eugene Iredale
105 West F Street, Fourth Floor
San Diego, California 92101
(619) 233-1525

Other Defense Attorneys: Thomas Warwick
2664 Fourth Avenue
San Diego, California 92103
(619) 232-0600

Steven Hubachek
Federal Defenders Inc.
225 Broadway, #900
San Diego, California 92101
(619) 234-8467

Gretchen Von Helms
105 West F Street, Suite 306
San Diego, California 92101
(610) 239-1199

Peter Vance (no current listing)

Martha Hall
964 Fifth Avenue, #214
San Diego, California 92101
(619) 544-1451

(10) *Taylor v. Thistle,* 586345 (Sup. Ct. of San Diego Co., June 9, 1987)

I was associate counsel with Abby Silverman representing the plaintiff, Ms. Taylor, in her lawsuit for legal malpractice and intentional infliction of emotional distress against her attorney, Mr. Thistle. Ms. Taylor was a police officer and had retained Mr. Thistle to assist her in a disability claim against the City of San Diego. After her disability claim was settled, Mr. Thistle turned over confidential information, including Ms. Taylor's diary, to the press in an effort to discredit then-Police Chief Kolender. Although there was no claim of actual monetary damages, the jury awarded a six figure judgment to Ms. Taylor for her emotional distress.

Co-Counsel: Abby Silverman Weiss
600 B Street, #220
San Diego, California 92101
(619) 906-2400

Counsel for Mr. Thistle: Doug Hendriks (no current listing)

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

    Throughout my legal career I have been involved with the Lawyers Club of San Diego, which was formed in the 1970s to advance the status of women in law and in society. The organization is comprised of approximately 1,000 members and has over twenty subcommittees responsible for various activities, including monthly luncheons and an annual dinner, all with prominent speakers. I began as the newsletter editor, responsible for formatting and distributing a monthly newsletter, and served in this capacity for two years. I was then elected to the Board of Directors, and I served as both the Treasurer and the President of the association. I now serve on the Advisory Board, which meets monthly as an ad hoc advisory counsel for the President.

    I have not performed any lobbying activities for a client or organization.

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

    From 1988 to 1991 I was an adjunct professor for Western State University (now Thomas Jefferson School of Law). I taught Professional Responsibility and Legal Writing. I no longer have syllabi for these courses.

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

    None.

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

    I have no plans, commitments or agreements to pursue outside employment during 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).

    Please see the 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 the attached Statement of Net Worth.

24. **Potential Conflicts of Interest**:

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

    I do not anticipate any major conflicts of interest during my time on the bench. If any family members or close friends were involved in federal litigation, I would recuse myself. Although it has been thirteen years since I was at the United States Attorney's Office and is unlikely to involve many cases, I would be cognizant of any cases that might have originated while I was an Assistant United States Attorney. I would handle all matters involving actual or potential conflicts of interest through thoughtful application of the code of conduct for district judges as well as any pertinent advisory opinions.

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

    In resolving any conflicts of interest, I would consult the Code of Conduct for United States Judges, as well as other relevant canons, statutory provisions and the published Advisory Opinions issued by the Committee on Codes of 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.

    When I was at Baker and McKenzie, I was on the list of appointed attorneys for the San Diego Volunteer Lawyers Program (SDVLP) and for the American Civil Liberties Union. I took cases for both organizations. For example, I took one consumer fraud case (a referral from the SDVLP) to bench trial and received a favorable verdict for the client.

Once I moved to the U.S. Attorney's Office, I volunteered on a monthly basis for several years at the Domestic Violence Prevention Project (DVPP) run by the SDVLP. At the DVPP, I assisted individuals in obtaining restraining orders against their batterers. As a lawyer I was also active in fund-raisers for the SDVLP.

As a judge I volunteer regularly for the Kids In Court program, working with children who are required to testify in court to acclimatize them to the court process.

As the Presiding Judge of Juvenile Court, I had responsibility for coordinating and developing services to juveniles in the dependency and delinquency systems. Pursuant to the California Judicial Council's Standards of Judicial Administration, as the Presiding Judge, I took an active leadership within the community determining the needs of and obtaining the resources and services for at-risk children and their families. I had the opportunity to interact with many of our collaborative partners, including Child Welfare Services, Probation, public schools, mental health providers, attorneys representing all parties, as well as various other community groups to try to ensure the delivery of adequate services to at-risk youth.

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 early 2013, I submitted my application to Senator Feinstein's local advisory committee. On April 16, 2013, I interviewed with this committee in San Diego, California. On May 2, 2013, I interviewed with the statewide chair of Senator Feinstein's judicial advisory process in San Diego, California. On May 12, 2013, I spoke to this chair by telephone to discuss some follow-up questions. Since late June 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 18, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 19, 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
Bashant, Cynthia A.	U.S. District Court, Southern District of California	09/19/2013
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	☑ Nomination Date 09/19/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 08/31/2013
7. Chambers or Office Address		
101 W. Broadway San Diego, CA 92101		

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.	Superior Court Judge	State of California, San Diego County
2.	Member of Board of Directors	Children's Initiative
3.	Member of Board of Directors	San Pasqual Academy
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2000	California Judges' Retirement System, no control
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Bashant, Cynthia A.	Date of Report 09/19/2013

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	Judicial Salary and other income, State of California	$148,600.00
2.	2012	Judicial Salary and other income, State of California	$183,908.00
3.	2011	Judicial Salary and other income, State of California	$194,981.00
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	Trader Joe's (wages)
2.	2013	Trader Joe's (wages)
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Bashant, Cynthia A.	Date of Report 09/19/2013

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	Date of Report
Bashant, Cynthia A.	09/19/2013

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. Capitol One Account (cash account)	A	Interest	K	T					
2. Cabrillo Federal Credit Union (cash accounts)	A	Interest	K	T					
3. Scholarshare College Savings Plan Age-Based Portfolio (18+)	A	Interest	K	T					
4. CalHR Savings Plus Asset Allocation Index Fund-Moderat (IRA)	B	Interest	K	T					
5. Vanguard Growth Index Fund (IRA)	C	Interest	L	T					
6. iShares Russell 2000 Index Fund (IRA)	C	Interest	L	T					
7. Allianz NFJ Small Cap Value Fund (IRA)	A	Interest	J	T					
8. American Funds American Balanced Fund (IRA)	A	Interest	J	T					
9. SSgA Daily Bond Market Fund (IRA)	A	Interest	J	T					
10. SSgA S&P 500 Index Fund (IRA)	A	Interest	J	T					
11. SSgA U.S. Large Cap Growth Opportunities Fund (IRA)	A	Interest	J	T					
12. Invesco Real Estate Fund (IRA)	A	Interest	J	T					
13.									
14.									
15.									
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Bashant, Cynthia A.	Date of Report 09/19/2013

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Bashant, Cynthia A.	Date of Report 09/19/2013

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/ Cynthia A. Bashant

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		63	961	Notes payable to banks-secured (auto)		24	593
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		220	421	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		214	322
Real estate owned – personal residence		668	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:							
California Judges' Retirement System		621	049				
Thrift Savings Plan		268	299				
				Total liabilities		238	915
				Net Worth	1	652	825
Total Assets	1	891	730	Total liabilities and net worth	1	891	730
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	
Allianz NFJ Small-Cap Value Fund	$ 4,973
American Funds American Balanced Fund	5,852
CalHR Savings Plus Asset Allocation Index Fund – Moderate	36,451
Invesco Real Estate Fund	4,352
iShares Russell 2000 Index Fund	66,693
ScholarShare College Savings Plan Age-Based Portfolio	18,002
SSgA Daily Bond Market Fund	519
SSgA S&P 500 Index Fund	6,475
SSgA U.S. Large Cap Growth Opportunities Fund	3,126
Vanguard Growth Index Fund	73,978
Total Listed Securities	$ 220,421

AFFIDAVIT

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

9/20/13
(DATE)

Cynthia Bashart
(NAME)

(NOTARY)

State of California
County of San Diego
Subscribed and sworn to (or affirmed) before me on this 20 day of Sept, 2013 by Cynthia Bashart proved to me on the basis of satisfactory evidence to be the person (s) who appeared before me

Signature of Notary Public

OFFICIAL SEAL
A. ENCINAS
NOTARY PUBLIC-CALIFORNIA
COMM. NO. 1920249
SAN DIEGO COUNTY
MY COMM. EXP. JAN. 30, 2015

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jon David Levy

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

   United States District Judge for the District of Maine

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.

   Maine Supreme Judicial Court
   205 Newbury Street, Room 139
   Portland, Maine 04101

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

   1954; New York, New York

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

   1976 –1979, West Virginia University College of Law; J.D., 1979

   1972 –1976, Syracuse University; B.S., 1976

   1975, George Washington University; no degree

   Summer 1971, Rochester Institute of Technology; 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.

2002 – present
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04101
Associate Justice

1995 – 2002
Maine Judicial Branch, State of Maine
11 Chases Pond Road
York, Maine 03909
Chief Judge (2001 – 2002)
Deputy Chief Judge (2000 – 2001)
District Court Judge, Tenth District (York County) (1995 – 2000)

1994 –1995
Levy & Bartlett (dissolved)
276 York Street
York, Maine 03909
Attorney

1992 – 1995
Landmark Publishing Company (dissolved)
231 Cider Hill Road
York, Maine 03909
President

1983 – 1995
I was the named corporate clerk or secretary of approximately twenty Maine for-profit and not-for-profit corporations that I organized for clients and/or for which I served as corporate counsel. I resigned from those positions when I became a judge in 1995.
Corporate Clerk or Secretary

1986 – 1994
Law Offices of Jon D. Levy (dissolved)
Meadowbrook Plaza
647 U.S. Route One
York, Maine 03909
Attorney

1986
American Institute for Paralegal Studies (formerly of Portland, Maine)
560 Lans Way
Ann Arbor, Michigan 48103
Lecturer

1983 – 1986
Lowther & Levy, P.A. (dissolved)
Meadowbrook Plaza
647 U.S. Route One
York, Maine 03909
Attorney

1981 – 1982
United States District Court, Southern District of Texas
United States Courthouse
515 Rusk Street
Houston, Texas 77002
Special Monitor

1979 – 1981
United States District Court, Southern District of West Virginia
Robert C. Byrd United States Courthouse
300 Virginia Street East, Suite 2400
Charleston, West Virginia 25301
Law Clerk for U.S. District Judge John T. Copenhaver, Jr.

Summer 1978
West Virginia Office of the Attorney General
State Capitol Complex, Building One, Room E-26
Charleston, West Virginia 25305
Law Intern

Summer 1977
Legal Aid of West Virginia (formerly West Virginia Legal Services Plan, Inc.)
110 South Third Street
Clarksburg, West Virginia 26301
Law Intern

January – April 1977
Legal Aid of West Virginia (formerly North Central West Virginia Legal Aid Society)
165 Scott Avenue, Suite 209
Morgantown, West Virginia 26508
Law Intern

Other affiliations (uncompensated)

2007 – present
Maine Justice Action Group
107 Congress Street
Portland, Maine 04101

Chairman of the Board (2008 – present)
Vice-Chairman of the Board (2007 – 2008)

2005 – present
William Vaughan House Condominium Association
389 Danforth Street
Portland, Maine 04102
Director
Treasurer

1996 – 2000 (approximate)
Maine Trial Judges Association
c/o Hon. Nancy Mills
Cumberland County Courthouse
205 Newbury Street
Portland, Maine 04101
Secretary

1990 – 1995
York Hospital
15 Hospital Drive
York, Maine 03909
Trustee (1990 – 1995)
Chair of the Finance Committee (1993 – 1994)
Vice-Chair of the Board (1994 – 1995)

1989 – 1992
York County Bar Association
c/o Susan E. Driscoll, Esq.
Bergen & Parkinson, LLC
62 Portland Road, Suite 25
Kennebunk, Maine 04043
President (1991 – 1992)
Vice President (1990 – 1991)
Treasurer (1989 – 1990)

1988 – 1990
Pine Tree Legal Assistance
88 Federal Street
P.O. Box 547
Portland, Maine 04112
Director

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social

security number) and type of discharge received, and whether you have registered for selective service.

I registered for the selective service when I turned 18, but I 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.

Outstanding Member Award, York County Bar Association, 2006

Family Law Achievement Award, Maine State Bar Association, 2001

Order of the Coif, West Virginia University College of Law, 1979

West Virginia Law School Association Award, 1979

James F. Brown Constitutional Law Award, West Virginia University College of Law, 1979

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

American Bar Association (various periods, 1979 – 1995)
American Bar Association Standing Committee on Legal Aid and Indigent Defendants, Judicial Member (2013 – present)

Cumberland County Bar Association (2002 – present)

Dwight D. Opperman Institute of Judicial Administration, New York University School of Law (approximately 2002 – present)

Juvenile Drug Treatment Court, Biddeford, Maine
Presiding Judge (2000 – 2002)

Maine Bar Foundation (2011 – present)
Fellow (2011 – present)

Maine Family Law Advisory Commission (1996 – 2000, 2002 – present)
Chair (1996 – 2000)
Liaison (2002 – present)

Maine Judicial Branch
- Judicial Education Committee (2012 – present)
  - Chair
- Committee on Judicial Responsibility and Disability (2005 – present)
  - Liaison
- Advisory Committee on Judicial Ethics (2005 – present)
  - Liaison
- Bi-annual Maine Judicial College (2012)
  - Chair
- Maine Supreme Judicial Court, Sentence Review Panel (2009 – present)
  - Chair
- Advisory Committee on Probate Rules (2009 – 2012)
  - Liaison
- Maine Supreme Judicial Court Triage Team (2007 – present)
- Maine Civil Legal Services Fund Commission (2007 – present)
  - Liaison
- Court Appointed Special Advocate Association Advisory Committee (2002 – 2007)
  - Liaison
- New Model Implementation Group (2005)
  - Chair
- Advisory Committee on Professional Responsibility (2002 – 2005)
  - Liaison
- Macro Subcommittee of the Caseload Management and Case Information Committee (2004)
  - Chair
- Judicial Resource Team (2002 – 2004)
  - Chair
- New Judge Training Program (2002 – present)
  - Instructor
- Guardian ad Litem Committee of the Maine District Court, (2000 – 2002)
  - Chair

Maine Justice Action Group (2007 – present)
- Chairman of the Board (2008 – present)
- Vice-Chairman of the Board (2007 – 2008)

Maine State Bar Association (1983 – present)
- Family Law Section Subcommittee, Chair (approximately 1992)
- Maine Bar Journal, Editorial Board (1985 – 1990)

Maine State-Federal Judicial Council (2007 – 2012)
- Vice-Chair

Maine Trial Judges Association (1995 – 2002)
- Secretary (approximately 1996 – 2000)

New England Appellate Judges Conference Coordinating Committee (2004 – 2009)

York County Bar Association (1983 – present)
President (1991 – 1992)
Vice President (1990 – 1991)
Treasurer (1989 – 1990)

10. **Bar and Court Admission**:

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

West Virginia, 1979 (inactive)

Maine, 1983 (inactive)

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.

U.S. District Court for the Southern District of West Virginia, 1979
U.S. District Court for the Southern District of Texas, 1981
U.S. District Court for the District of Maine, 1983

There have been no lapses in membership.

11. **Memberships**:

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

Gignoux Inn of Court (approximately 2002 – 2005)

Maine Businesses for Social Responsibility (approximately 1990 – 1994)

Natural Resources Council of Maine (exact dates of membership unknown, but ended no later than 1995)

Pine Tree Legal Assistance Board of Directors (1988 – 1990)

William Vaughan House Condominium Association (2005 – present)
Director
Treasurer

York Hospital Board of Trustees (1990 – 1995)
Chair of the Finance Committee (1993 – 1994)
Vice-Chair of the Board (1994 – 1995)

YORKWISE (approximately 1988 – 1994)

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

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

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

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

Supreme Court Justice Biographies, MAINE SUPREME JUDICIAL COURT, http://www.courts.state.me.us/maine_courts/supreme/justices_bios.html.

The Supreme Judicial Court of the State of Maine, 1820 to 2009, CLEAVES LAW LIBRARY, http://www.cleaves.org/sjcbios1.htm#JDL.

Maine Voices: Lawyers in Libraries—In Case You Get the Book Thrown at You, PORTLAND PRESS HERALD, April 30, 2013. Copy provided.

MAINE FAMILY LAW (8th ed. 2013). A copy of most recent edition provided.

White House Forum on the State of Civil Legal Assistance, ACCESS TO JUSTICE UPDATE, July 2012. Copy provided.

Introduction, *Symposium: Balancing Fairness with Finality: An Examination of Post-Conviction Review*, 64 MAINE LAW REVIEW 377 (2012). Copy provided.

The Katahdin Counsel Recognition Program, 26 MAINE BAR JOURNAL 123 (2011). Copy provided.

Change is the Law of Life, 26 MAINE BAR JOURNAL 186 (Fall 2011). Copy provided.

About, DICK SIMON PHOTOGRAPHY (December 15, 2010), http://blog.dicksimonphotography.com/about/.

Pro Bono Maine: What a Wonderful World, 25 MAINE BAR JOURNAL 120 (2010). Copy provided.

The World is Round: Why We Must Assure Equal Access to Civil Justice, 62 MAINE LAW REVIEW 561 (2010). Copy provided.

Maine Lawyers Getting Creative About Ways to Help the Poor and Needy, PORTLAND PRESS HERALD, May 1, 2010. Copy provided.

Lessons from Nature: Law Day 2008, PORTLAND PRESS HERALD, May 1, 2008. Copy provided.

Remarks to the Maine State Bar Association Annual Meeting, 23 MAINE BAR JOURNAL 76 (Spring 2008). Copy provided.

Maine Voices: Law Day 2007: Looking Back 50 Years, PORTLAND PRESS HERALD, May 1, 2007. Copy provided.

Letter-to-the-Editor, *Truth Be Told*, NORTHEASTERN LAW MAGAZINE, Summer 2006, at 2. Copy provided.

Comments on the Retirement of Judge Michael N. Westcott, MAINE LAWYERS REVIEW, July 21, 2005, at 21. Copy provided.

Commentary on "Witness for the Client: A Judge's Role in Increasing Awareness in the Defendant" by Joyce Wheeler, 9 GESTALT REVIEW, no. 2, 2005. I have been unable to obtain a copy.

Letter-to-the-Editor, 89 ABA JOURNAL 14, November 2003. Copy provided.

The Changing Face of Justice in Maine: Maine's Drug Courts, 11 MAINE POLICY REVIEW no. 31, Spring 2002. Copy provided.

Learning to Judge: The Evolution of Family Law in Maine, 16 MAINE BAR JOURNAL 83 (2001). Copy provided.

Transcending Borders of Child Custody Litigation: An Introduction to the Uniform Child Custody Jurisdiction and Enforcement Act in Maine, 15 MAINE BAR JOURNAL 78 (2000). Copy provided.

Changes in Maine Matrimonial Law, FAIRSHARE, Jan. 1998. I have been unable to obtain a copy.

Jon D. Levy & Everett Moitoza, *Measuring Satisfaction: The Lawyer Life Inventory*, TRIAL MAGAZINE, July 1994. Copy provided.

Lawyers Can Lead a Balanced Life Outside of Law Practice, LAW PRACTICE MANAGEMENT MAGAZINE, May/June 1994. Copy provided.

From 1992 to 1994, I was an editor and publisher of the MAINE LAWYER'S DIGEST. I have been unable to obtain copies of these issues.

Book Review, *The Professional License and Divorce: A Review of "Valuing Professional Practices and Licenses: A Guide for the Matrimonial Practitioner,"* 3 MAINE BAR JOURNAL 92 (March 1988). Copy provided.

Letter-to-the-Editor, *What Would James Madison Be Doing this Week?*, YORK WEEKLY, September 23, 1987. Copy provided.

Attorney Advertising in West Virginia, YLS NEWSLETTER, Feb. 1980, at 5. Copy provided.

The Holder in Due Course—Paying More Dues, WEST VIRGINIA PUBLIC INTEREST LAW REPORT, February 1978, at 1. Copy provided.

Introduction, *West Virginia Public Interest Law Report*, WEST VIRGINIA PUBLIC INTEREST LAW REPORT (January – February 1978). Copy provided.

Attorney Advertising in WV, WEST VIRGINIA PUBLIC INTEREST LAW REPORT, May 1978, at 6. Copy provided.

The HDC and Consumer Credit, WEST VIRGINIA PUBLIC INTEREST LAW REPORT, May 1978, at 4. Copy provided.

Local Citizens Oppose Dam Project, WEST VIRGINIA PUBLIC INTEREST LAW REPORT, December 1978, at 13. Copy provided.

Confessions of a Consumer: A Guide to Consumer Action, WEST VIRGINIA PUBLIC INTEREST LAW REPORT, Winter 1978, at 13. Copy provided.

Consumer Law—The Supervised Loan in West Virginia, 80 WEST VIRGINIA LAW REVIEW 256 (1977 – 1978). Copy provided.

Editorial, THE FLAME, March 1972, at 2. Copy provided.

Editorial, THE FLAME, May 1971, at 3. Copy provided.

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

Report on the Criminal Justice Process in Region I (York County) of the Maine Judicial Branch (January 28, 2011). Copy provided.

Justice for All: A Report of the Justice Action Group (October 10, 2007). Copy provided.

JAG Statewide Planning Initiative – Work Group Final Reports (May 5, 2007). Copy provided.

A New Model for Scheduling Courts and Allocating Judicial Resources (September 19, 2003). Copy provided.

Maine Family Law Advisory Commission (MFLAC) Report to the Maine Legislature, Joint Standing Committee on the Judiciary (JSCJ) (on L.D. 2564) (March 2000). Copy provided.

MFLAC Second Report to the Maine Legislature, JSCJ (on L.D. 2267) (February 23, 2000). Copy provided.

MFLAC Recommendation to the Maine Legislature, JSCJ (on Revision of Title 19-A, Section 953(2)(E)) (February 23, 2000). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 2511) (February 8, 2000). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 2307) (January 18, 2000). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 2286) (January 18, 2000). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 2267) (January 18, 2000). Copy provided.

MFLAC Comments on "An Act to Revise the Spousal Support Statute" (December 6, 1999). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 1860) (March 26, 1999). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 1592) (March 23, 1999). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 1753) (March 23, 1999). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (March 10, 1999). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (February 22, 1999). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (February 17, 1999). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (February 9, 1999). Copy provided.

MFLAC Report to Chief Justice Daniel E. Wathen (January 1999). Copy provided.

MFLAC Report to Chief Justice Daniel E. Wathen (December 21, 1998). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 1930 (February 9, 1998). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (February 2, 1998). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 1786) (January 16, 1998). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.R. 2706) (December 28, 1997). Copy provided.

MFLAC Recommendation to Add Actions for Judicial Separation to M.R. Civ. P. 80 (November 21, 1997). Copy provided.

MFLAC Comments on the Draft Rules for the Family Division of the District Court, JSCJ (October 14, 1997). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (April 8, 1997). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (March 20, 1997). Copy provided.

MFLAC Report to the Maine Legislature, JSCJ (on L.D. 1213) (March 13, 1997). Copy provided.

MFLAC Report to the Maine Legislature, Joint Standing Committee on the Judiciary (January 27, 1997). Copy provided.

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

Letter on behalf of the Justice Action Group to Legal Services Corporation (June 4, 2013). Copy provided.

Letter on behalf of the Maine Supreme Judicial Court to State of Maine Office of Aging and Disability Services (May 20, 2013). Copy provided.

Statement Before the Joint Standing Committee on the Judiciary (March 7, 2013). Copy provided.

Remarks Before the Joint Standing Committee on the Judiciary (March 13, 2012). Copy provided.

Statement Before the Joint Standing Committee on the Judiciary (February 15, 2011). Copy provided.

Letter on behalf of the Justice Action Group to FDIC (October 13, 2010). Copy provided.

Letter on behalf of the Justice Action Group in support of the Penobscot County Bar Association for the Harrison Tweed Award (March 26, 2010). Copy provided.

Remarks Before the Joint Standing Committee on the Judiciary (February 23, 2010). Copy provided.

Confirmation Remarks on Reappointment to Maine Supreme Judicial Court (February 24, 2009). Copy provided.

The Genesis of the New Model - Presentation to the Maine Judiciary (November 1, 2005). Copy provided.

Confirmation Remarks on Nomination to Maine Supreme Judicial Court (March 6, 2002). Copy provided.

Testimony before the Maine Legislature, Joint Standing Committee on the Judiciary regarding L.D. 2276 "An Act to Revise the Spousal Support Statute" (January 19, 2000). I have no notes, transcript, or recording.

Confirmation Remarks on Nomination to the Maine District Court (1995). Copy provided.

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

October 28, 2013: Presiding Judge, Admission of New Attorneys Ceremony, Alfred and Portland, Maine. I have presided over this ceremony throughout my time as a justice. Representative outline provided.

October 28, 2013: Speaker, remarks made at Katahdin Counsel Recognition Program, Maine Supreme Judicial Court, Alfred, Maine. Remarks provided.

October 24, 2013: Speaker, remarks honoring Ronald D. Bourque, Esq., upon his receipt of the Charles W. Smith, Jr., Award, York County Bar Association, Sanford, Maine. Notes provided.

October 23, 2013: Speaker, introduction of the Hon. Albie Sachs, the 2013 Stanley W. Wernick Lecture, Maine Judicial Branch, Bangor, Maine. Notes provided.

October 7, 2013: Speaker, "Why Should Every Mainer From Kittery to Fort Kent Care Deeply About the Pro Bono Work Performed by Maine Lawyers?," Katahdin Counsel Recognition Presentation sponsored by the Maine Supreme Judicial Court, Bangor, Maine. Notes provided.

June 5, 2013: Speaker, "Equal Access to Civil Justice," York County Bar Association, Saco, Maine. I used the same PowerPoint as the May 10, 2013, presentation.

May 10, 2013: Speaker, "Equal Access to Civil Justice," Knox, Waldo, and Sagadahoc County Bar Associations, Wiscasset, Maine. PowerPoint provided.

May 9, 2013: Speaker, Court Appointed Special Advocate training, Preti Flaherty law firm, Portland, Maine. PowerPoint provided.

May 2, 2013: Speaker, remarks on my work, Supreme Court Justice and Law Day, Augusta Area Kiwanis, Augusta, Maine. Remarks provided.

April 12, 2013: Speaker, presentation on Louis Brandeis, Maine Jewish Museum, Portland, Maine. I provided an overview of the life and achievements of Justice Louis Brandeis. I have no notes, transcript or recording. The address for the Maine Jewish Museum is 267 Congress Street, Portland, Maine 04101.

March 21, 2013: Speaker, remarks on the activities of the Justice Action Group, Cumberland County Bar Association, Portland, Maine. Notes provided.

March 14, 2013: Speaker, remarks on the presentation of the Advocate for Justice Award to Charles Walter Smith Jr., York County Bar Association, Ogunquit, Maine. Remarks provided.

March 13, 2013: Speaker, "The Secret to Happiness as a Family Law Attorney," University of Maine School of Law, Portland, Maine. PowerPoint provided.

December 12, 2012: Speaker, "Equal Access to Civil Justice," Cumberland County Bar Association, Portland, Maine. PowerPoint provided.

November 19, 2012: Speaker, Verrill Dana law firm presentation on the Maine Justice Action Group and the Katahdin Counsel Recognition Program, Portland, Maine. PowerPoint provided.

November 15, 2012: Speaker, presentation on the Maine Justice Action Group, Maine Trial Lawyers Association, Augusta, Maine. PowerPoint provided.

November 14, 2012: Speaker, Court Appointed Special Advocate training, Pierce Atwood law firm, Portland, Maine. PowerPoint provided.

November 7, 2012: Speaker, remarks made at Katahdin Counsel Recognition Program, Maine Supreme Judicial Court, Bangor, Maine. I used the same notes supplied in response to the October 23, 2012, event and press coverage is provided.

October 26, 2012: Speaker, remarks on the Katahdin Counsel Recognition Program at the Cumberland County Courthouse, Portland, Maine. I used the same notes as supplied in response to the October 23, 2012, event.

October 23, 2012: Speaker, remarks on the Katahdin Counsel Recognition Program at the Biddeford District Court, Biddeford, Maine. Notes provided.

October 16, 2012: Speaker, Maine Judicial College welcome and introduction, Maine Judicial Branch, Sugarloaf, Maine. Notes provided.

October 16, 2012: Speaker, presentation on Justice Louis Brandeis, Maine Judicial College, Maine Judicial Branch, Sugarloaf, Maine. PowerPoint provided.

October 16, 2012: Speaker, introduction of Peter L. Murray at the Maine Judicial College, Maine Judicial Branch, Sugarloaf, Maine. Notes provided.

September 18, 2012: Speaker, training for new law clerks on family law, Maine Supreme Judicial Court, Portland, Maine. I have conducted this training for new law clerks each year since 2003. Power point provided.

June 7, 2012: Speaker, presentation on Justice Louis Brandeis, York County Bar Association, Saco, Maine. I used the same PowerPoint supplied in response to the October 16, 2012 event.

April 26, 2012: Speaker, remarks honoring Hon. Peter Goranites on his receipt of the Maine State Bar Association's Family Law Section Achievement Award, Freeport, Maine State Bar Association, Freeport, Maine. Remarks provided.

February 16, 2012: Speaker, remarks regarding the Justice Action Group, Cumberland County Bar Association, Portland, Maine. Remarks provided.

January 26, 2012: Speaker, remarks on Katahdin Counsel Recognition Program at Access to Justice Symposium sponsored by the Maine State Bar Association, University of Maine School of Law, and Maine Justice Action Group, Portland, Maine. Notes provided.

January 26, 2012: Speaker, introduction of keynote address at Access to Justice Symposium sponsored by the Maine State Bar Association, University of Maine School of Law, and Maine Justice Action Group, Portland, Maine. Remarks provided.

January 5, 2012: Speaker, "Remarks of Jon D. Levy on the Retirement of Wendy Rau," Maine Judicial Center, Augusta, Maine. Remarks provided.

2012: Introduction, 2012 American Bar Association Battle of the Bands, Falmouth, Maine. Available at http://www.youtube.com/watch?v=ep5w1q1Ioz8.

December 8, 2011: Speaker, introduction of Mock Trial Competition, Maine State Bar Association, Portland, Maine. Notes provided.

November 15, 2011: Speaker, presentation to Katahdin Counsel Commission, Augusta, Maine. Notes provided.

October 26, 2011: Speaker, "Statement of Justice Jon D. Levy Regarding the Katahdin Counsel Recognition Program," Supreme Judicial Court, Augusta, Maine. Remarks provided.

October 19, 2011: Speaker, Guardian *ad Litem* training, Maine Judicial Branch, Augusta, Maine. I gave this presentation every year beginning in approximately 1999. PowerPoint provided.

June 14, 2011: Speaker, presentation on Justice Louis Brandeis, John W. Ballou Inn of Court, Bangor, Maine. I used the same PowerPoint supplied in response to the October 16, 2012, event.

May 18, 2011: Speaker, "Succeeding Between a Rock and a Hard Place – Best Practices for the Family Law Attorney from Judgment to Appeal," York County Bar Association, Saco, Maine. PowerPoint provided.

January 18, 2011: Speaker, presentation on Justice Louis Brandeis, Shaarey Tphiloh Synagogue, Portland, Maine. I provided an overview of the life and achievements of Justice Louis Brandeis. I have no notes, transcript, or recording. The address for Shaarey Tphiloh Synagogue is 76 Noyes Street, Portland, Maine 04103.

October 29, 2010: Speaker, update on the Maine Justice Action Group, Maine State-Federal Judicial Council, Augusta, Maine. Notes provided.

October 20, 2010: Speaker, presentation on decision writing and appellate review, to new law clerks, Maine Judicial Branch, Portland, Maine. PowerPoint provided.

September 29, 2010: Speaker, presentation on drafting appellate briefs, Maine State Bar Association, Freeport, Maine. PowerPoint provided.

June 17, 2010: Speaker, presentation on status of access to justice efforts in Maine, Maine State Bar Association, Augusta, Maine. I believe this speech was an update on the efforts of the Maine Justice Action Group. I have no notes, transcript, or recording. The address for the sponsoring organization is Maine State Bar Association, 124 State Street, Augusta, Maine 04330.

May 1, 2010: Panelist, family law continuing legal education program, York County Bar Association, Saco, Maine. The panel was on family law related topics. I have no notes, transcript or recording. The address for the York County Bar Association is York County Bar Association, Susan Driscoll, Esq., Bergen & Parkinson, LLC, 62 Portland Road, Suite 25, Kennebunk, Maine 04043.

February 26, 2010: Speaker, introductory remarks at the Access to Justice Symposium, cosponsored by the Maine State Bar Association, University of Maine School of Law, and Maine Justice Action Group, Portland, Maine. I have no notes, transcript, or recording, but press coverage is provided. The address for the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

January 21, 2010: Panelist, presentation on brief writing and appellate standards of review, Maine State Bar Association, Portland, Maine. I believe I used the same PowerPoint supplied in response to the September 29, 2010, event.

November 9, 2009: Speaker, presentation to high school students on freedom of the press, Waynflete School, Portland, Maine. Notes provided.

November 6, 2009: Speaker, presentation of the Harrison L. Richardson Award to the Hon. Robert W. Clifford, Maine Chapter of the American Board of Trial Advocates, Lewiston, Maine. Remarks provided.

October 2, 2009: Remarks at the Maine Access to Justice Symposium, Portland, Maine. Remarks and press coverage is provided.

October 1, 2009: Speaker, remarks on the public display of the portraits of Hon. Howard H. Dana and Hon. Susan Calkins, Maine Supreme Judicial Court, Portland, Maine. Remarks provided.

August 2009: Speaker, presentation on professionalism, University of Maine School of Law, Portland, Maine. Notes provided.

June 18, 2009: Speaker, presentation on status of access to justice efforts in Maine, Pine Tree Legal Assistance, Waterville, Maine. Notes provided.

May 6, 2009: Panelist, "The New Rules for Family Cases," York County Bar Association, Saco, Maine. The panel addressed the latest amendments to rules governing family law practice in Maine. I have no notes, transcript, or recording. The address for the York County Bar Association is York County Bar Association, c/o Susan Driscoll, Esq., Bergen & Parkinson, LLC, 62 Portland Road, Suite 25, Kennebunk, Maine 04043.

April 2, 2009: Speaker, "Trial and Tribulations: Litigation and Advocacy Skills for the Child Protective Attorneys," Maine Judicial Branch, Portland, Maine. Remarks provided.

March 5, 2009: Speaker, presentation on judicial precedent, Bates College, Lewiston, Maine. Notes provided.

March 3, 2009: Speaker, presentation on custody decisions, University of Maine School of Law, Portland, Maine. Power point provided.

January 21, 2009: Speaker, presentation on the Maine Judiciary, Maine State-Federal Judicial Council, Augusta, Maine. Power point provided.

September 27, 2008: Speaker, "Appellate Review and Probate Court Decisions," Presentation to Assembly of Maine Probate Judges, Belfast, Maine. PowerPoint provided.

June 19, 2008: Speaker, presentation on decision-writing for Maine trial judges, Maine Judicial Branch, Newry, Maine. PowerPoint provided.

April 24, 2008: Panelist, "Oral Advocacy Before the Law Court," Maine State Bar Association, Augusta, Maine. PowerPoint provided.

April 16, 2008: Speaker, "Celebrating the Twenty-Fifth Anniversary of Maine Volunteer Lawyers Project," Maine Volunteer Lawyers Project, Portland, Maine. Remarks provided.

April 11, 2008: Speaker, remarks to the Maine State Bar Association Board of Governors, Augusta, Maine. Notes provided.

March 20, 2008: Speaker, "The Spousal Support Conundrum," John W. Ballou Inn of Court, Bangor, Maine. PowerPoint provided.

January 31, 2008: Speaker, presentation on the Maine Justice Action Group to the Maine State Bar Association Winter Meeting, Maine State Bar Association, Rockland, Maine. Remarks provided.

January 23. 2008: Comments on Judge Kermit Lipez's Leadership, Remarks to the Maine Justice Action Group, Portland, Maine. Notes provided.

December 6, 2007: Speaker, presentation of the Advocate for Justice Award to Paul Chaiken, Maine Judicial Branch, Augusta, Maine. Notes and press coverage provided.

October 2007: Speaker, opening remarks, New England Appellate Conference, Ogunquit, Maine. Notes provided.

October 2007: Speaker, introduction of James Friedman, New England Appellate Conference, Ogunquit, Maine. Notes provided.

September 27, 2007: Speaker, presentation on family law, Maine State Bar Association. This presentation was on a family law topic and was part of a continuing legal education program. I have no notes, transcript or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

July 7, 2007: Speaker, opening remarks, American Academy of Matrimonial Attorneys, Freeport, Maine. Remarks provided.

May 17, 2007: Speaker, "IDEA and the American Terroir," Kids Legal, Pine Tree Legal Assistance, Portland, Maine. PowerPoint provided.

March 16, 2007: Panelist, "New Directions in Family Law," York County Bar Association, Saco, Maine. A summary of this program is provided.

March 12, 2007: Speaker, Court Appointed Special Advocate training, Pierce Atwood law firm, Portland, Maine. PowerPoint provided.

November 16, 2006: Speaker, presentation on the Maine Judicial Branch's new model for scheduling, Maine State Bar Association, Augusta, Maine. Remarks provided.

October 2006: Speaker, dinner remarks to the Maine Supreme Judicial Court and Faculty of the University of Maine School of Law, Portland, Maine. Notes provided.

September 12, 2006: Speaker, presentation on the Judicial Branch's new model for scheduling, Advisory Committee on the Maine Civil Rules, Augusta, Maine. PowerPoint provided.

August 31, 2006: Speaker, remarks on professionalism to the first year law school class, University of Maine School of Law, Portland, Maine. Remarks provided.

May 25, 2006: Speaker, "The Spousal Support Conundrum," York County Bar Association, Saco, Maine. PowerPoint and Handout provided.

April 29, 2006: Speaker, introduction of keynote speaker, Juvenile Justice Advisory Group and Maine State Bar Association, Portland, Maine. Notes provided.

February 7, 2006: Speaker, Court Appointed Special Advocate training, Pierce Atwood law firm, Portland, Maine. Notes provided.

January 27, 2006: Speaker, presentation of the Caroline Duby Glassman Award to Faye Luppi, Maine State Bar Association, Portland, Maine. Notes provided.

January 2006: Panelist, "The Art of Written Advocacy: Drafting Persuasive, Concise and Creative Legal Briefs and Memoranda," Maine State Bar Association Annual Meeting. Handout with notes provided.

September 21, 2005: Panelist, presentation on appellate practice, Maine State Bar Association, Augusta, Maine. Slides provided.

June 3, 2005: Speaker, keynote address, Kids Legal, Pine Tree Legal Assistance, Augusta, Maine. Remarks and press coverage is provided.

May 20, 2005: Speaker, comments on the retirement of Judge Michael N. Westcott, Maine Judicial Branch, Augusta, Maine. Remarks provided.

May 18, 2005: Speaker, presentation on appellate family law, Maine State Bar Association, Freeport, Maine. PowerPoint provided.

April 28, 2005: Speaker, "The Case for Caseflow Management," Maine Judicial Branch, Lewiston, Maine. PowerPoint provided.

April 5, 2005: Speaker, "Domestic Violence Training for Lawyers," Cumberland County Violence Intervention Partnership and Maine Volunteers Lawyers Project, Portland, Maine. Notes provided.

February 3, 2005: Speaker, remarks honoring Judge Andre Janelle, York County Bar Association, Saco, Maine. Remarks provided.

January 21, 2005: Speaker, "Are Sanity and Trial Practice Mutually Exclusive?," Maine State Bar Association Augusta, Maine. PowerPoint provided.

September 2004: Panelist, presentation on bench memo preparation, Supreme Judicial Court, Portland, Maine. PowerPoint provided.

June 2004: Speaker, "Humility, Bagels, and Collaborative Change," Kids Legal, Pine Tree Legal Assistance, Augusta, Maine. Remarks provided.

January 29, 2004: Speaker, opening remarks for a seminar entitled "The Developing Brain: A Vital Connection Between a Child's Mind and Behaviors," Maine State Bar Association, Rockland, Maine. Notes provided.

November 20, 2003: Speaker, remarks on the Judicial Resource Team, Maine Trial Lawyers Association, Augusta, Maine. Remarks provided.

November 8, 2003: Speaker, "Seven Habits of Effective District Court Trial Advocates," Maine State Bar Association, Portland, Maine. Notes provided.

October 2, 2003: Speaker, remarks made at Kids' Legal Aid of Maine Conference, Kids Legal, Pine Tree Legal Assistance, Portland Maine. Remarks provided.

May 20, 2003: Panelist, presentation on proof of income in family law cases, York County Bar Association, Saco, Maine. Notes provided.

January 22, 2003: Speaker, remarks to attorneys participating in the Pierce Atwood Law Firm Volunteer Court Appointed Special Advocate Program, Portland, Maine. Remarks provided.

May 1, 2002: Speaker, remarks for Law Day celebration, Kennebec County Superior Court, Augusta, Maine. Remarks provided.

March 6, 2002: Speaker, meeting on domestic violence, Maine Coalition to End Domestic Violence, Augusta, Maine. My talk was on the District Court's response to domestic violence cases. I have no notes, transcript, or recording, but press coverage is provided.

February 4, 2002: Speaker, remarks made on the retirement of Judge John Sheldon, Maine Judicial Branch, Portland, Maine. Notes provided.

October 15, 2001: Speaker, speech to the Maine Prosecutors Association, Bar Harbor, Maine. The speech was on the processing of criminal cases in the Maine District Court. Notes provided.

February 9, 2001: Speaker, "The Judge's View of a Contested Case," Maine Bar Association, Augusta, Maine. The speech was on best practices on presenting a contested family law case in court. I have no notes, transcript or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

October 27, 2000: Speaker, "Planning Evaluation in Juvenile Justice Programs," The Muskie Institute, Brunswick, Maine. The speech was on the juvenile court process in Maine. I have no notes, transcript, or recording. The address of the Muskie School of Public Service is P.O. Box 9300, Portland, Maine 04104.

June or July 2000: Speaker, "Juvenile Justice in Maine," JUMPSTART, Kennebunk, Maine. The speech was on the juvenile court process in Maine. I have no notes, transcript or recording. The address for JUMPSTART is c/o Biddeford Police Department, 39 Alfred Street, Biddeford, Maine 04005.

May 10, 2000: Speaker, "Maine's Juvenile Drug Courts," York County Public Safety/Social Services Collaborative, Biddeford, Maine. The speech was on the development of Maine's juvenile drug treatment courts. I have no notes,

transcript or recording. The address of the Biddeford Police Department is 39 Alfred Street, Biddeford, Maine 04005.

April 2000: Speaker, Juvenile Justice in Maine, Portland Area League of Women Voters, Portland, Maine. This speech was on the development of Maine's Juvenile Drug Treatment Courts. I have no notes, transcript or recording. The address of the Portland Area League of Women Voters is P.O. Box 7904, Portland, Maine 04112.

March 24, 2000: Speaker, "Judge's Perspective," Maine State Bar Association, Augusta, Maine. This speech addressed families in crisis. I have no notes, transcript or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

January 21, 2000: Speaker, "Appreciation of Nonmarital Property," Maine State Bar Association, Portland, Maine. This speech was a presentation at the Annual Meeting of the Maine State Bar Association. I have no notes, transcript or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

December 17, 1999: Speaker, "Procedures for the New Juvenile Drug Treatment Court," Maine District Court, Augusta, Maine. This speech was on the newly developed process for Maine's juvenile drug treatment courts. I have no notes, transcript, or recording. The address of the Maine District Court is 65 Stone Street, Augusta, Maine 04330.

October 22, 1999: Speaker, "Statutory Proposals of the Maine Family Law Advisory Commission," Maine Supreme Judicial Court, Waterville, Maine. This speech reviewed the work of the Maine Family Law Advisory Commission, All Courts Conference. I have no notes, transcript, or recording. The address of the Maine Supreme Judicial Court is 205 Newbury Street, Portland, Maine 04101

October 1, 1999: Speaker, "The Ten Habits of Highly Effective Domestic Relations Attorneys," Maine State Bar Association, Augusta, Maine. This speech was part of a continuing legal education program, entitled "Navigating the System: Nuts and Bolts of the Family Law Case." I have no notes, transcript or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

September 23, 1999: Speaker, "Developments in Maine Juvenile Law," Saco Bay Rotary Club, Saco, Maine. I have no notes, transcript or recording. The address of the Saco Bay Rotary Club is 168 Saco Avenue, Old Orchard Beach, Maine 04060.

June 25, 1999: Speaker, "A Judge's Perspective on Domestic Violence." University of New England College of Osteopathic Medicine, Biddeford, Maine.

The speech was given as part of a multi-disciplinary conference on domestic violence. I have no notes, transcript or recording. The address of the University of New England is 11 Hills Beach Road, Biddeford, Maine 04005.

May 20, 1999: Speaker, "The Family Court System and Testimony," Early Intervention Providers, Portland, Maine. I have not been able to locate any notes, transcript, or recording, nor can I locate an address for the Early Intervention Providers.

March 18, 1999: Speaker, "Juvenile Justice: Keeping Up with the Changes," Maine State Bar Association, South Portland, Maine. This speech concerned juvenile law and was given at a meeting sponsored by the Maine State Bar Association. I have no notes, transcript or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

January 28, 1999: Speaker, "View from the Bench," Maine State Bar Association, Augusta, Maine. This speech regarding domestic violence as given as part of a domestic violence training program for lawyers. I have no notes, transcript or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

December 15, 1998: Speaker, presentation regarding the York County Juvenile Court Pilot Project, Maine District Court, Augusta, Maine. This speech was presented to the Study Group to Review and Consider Improvements in Juvenile and Adult Probation Services. I have no notes, transcript or recording. The address for the Maine District Court is Chief Judge, Maine District Court, 65 Stone Street, Augusta, Maine 04330.

October 30, 1998: Speaker, presentation on child custody decisions, Kids First Center, Portland, Maine. This speech was part of a program entitled "The Effects of Gender on Decision-Makers, Mars and Venus Break Apart: Gender Issues in Divorce." I have no notes, transcript, or recording. The Kids First Center address is 222 St. John's Street, #101, Portland, Maine 04102.

October 25, 1998. Panelist, presentation on juvenile law, Juvenile Justice Center, American Bar Association, Chicago, Illinois. This presentation was part of a program entitled "Programs, Politics and Procedures: A Dialogue Between the Bench and Bar," Juvenile Defender Leadership Summit, Chicago, Illinois. Sponsor: I have no notes, transcript, or recording. The address of the Juvenile Justice Center is ABA Criminal Justice Section, 1050 Connecticut Avenue, N.W., Suite 400, Washington D.C. 20036.

April 1998: Speaker, "Juvenile Justice in York County," JUMPSTART, Kennebunk, Maine. I have no notes, transcript, or recording. The address for JUMPSTART program is the Biddeford Police Department, 39 Alfred Street, Biddeford, Maine 04005.

April 1998: Speaker, "Maine Family Law Principles," Maine District Court, Portland, Maine. This speech was given as part of a training for Case Management Officers. I have no notes, transcript or recording. The address for the Maine District Court is Chief Judge, Maine District Court, 65 Stone Street, Augusta, Maine 04330.

October 24, 1997: Speaker, "A Judge's Perspective on Parent-Child Issues," Court Alternative Dispute Resolution Service, Augusta, Maine. This speech was given as part of training program for family law mediators. I have no notes, transcript, or recording. The address of the Court Alternative Dispute Resolution Service is Administrative Office of the Courts-ADR, P.O. Box 4820, Portland, Maine 04112.

July 24, 1997: Panelist, "The Revised Title 19-A: Pitfalls and Pleasures, New Developments in Family Law," Maine State Bar Association, Augusta, Maine. This panel addressed Maine's newly codified family law statutes. I have no notes, transcript or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

May 7, 1997: Panelist, Judicial Symposium on "Decision-Making in Permanency Planning," Maine District Court, Bethel, Maine. This presentation concerned child protection law best practices. I have no notes, transcript, or recording. The address of the Maine District Court is Chief Judge, Maine District Court, 65 Stone Street, Augusta, Maine 04330.

May 1995: Panelist, "Effective Family Law Practice," National Business Institute, Portland, Maine. This panel addressed family law best practices. I have no notes, transcript, or recording. The address of the National Business Institute is 1218 McAnn Drive, Atlanta, Wisconsin 52720.

January 1994: Panelist, "Tax Aspects of Divorce," National Business Institute, Portland, Maine. This panel addressed the federal income tax consequences of divorce judgments. I have no notes, transcript, or recording. The address of the National Business Institute is 1218 McAnn Drive, Atlanta, Wisconsin 52720.

November 1993: Speaker, "On Lawyer Satisfaction," unknown sponsor, Bangor, Maine. This presentation was made at a law firm's retreat on best practices for deriving satisfaction in the legal profession. I have no notes, transcript, or recording. I have no record regarding the identity or address of the law firm that sponsored the retreat.

July 1993: Speaker, "Achieving Balance: Strategies for Lawyer Satisfaction," Maine State Bar Association, New Brunswick, Canada. This presentation concerned best practices for deriving satisfaction in the legal profession. I have

no notes, transcript, or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

November 1992: Speaker, "Achieving Lawyer Satisfaction," Nashville Bar Association, Nashville, Tennessee. This presentation concerned best practices for deriving satisfaction in the legal profession. I have no notes, transcript, or recording. The address of the Nashville Bar Association is 221 4th Avenue North, Nashville, Tennessee 37219.

November 1992: Speaker, presentation on family law topic, Maine State Bar Association, Augusta, Maine. This speech was given at a program entitled, "Practical Skills for the Family Law Lawyer." I have no notes, transcript, or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

October 1992: Speaker, "Getting Your Life Into Balance," Middlesex Family Lawyers Association, London, Ontario, Canada. This presentation concerned best practices for deriving satisfaction in the legal profession. I have no notes, transcript, or recording. The address of the Middlesex Family Lawyers Association is 80 Dundes Street, London, Ontario, Canada N6A 6A1.

May 1992: Speaker, presentation on family law practice, Maine State Bar Association, Augusta, Maine. This speech was given as part of a program entitled "Managing a Family Law Practice." I have no notes, transcript, or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

February 1992: Speaker, presentation on family law practice, National Education Network, Portland, Maine. This speech was given as part of a program entitled "Breaking Up is Hard to Do – Children & Families in Divorce." I have no notes, transcript, or recording. I am not able to determine the address for the sponsor, the National Education Network.

January 1992: Speaker, "Personal and Professional Satisfaction – A Workshop for Lawyers," Landmark Group, Portsmouth, New Hampshire. This half-day workshop was presented to a group of approximately 20 lawyers. I have no notes, transcript, or recording. There is no physical address for the Landmark Group.

December 1991: Panelist, "Emerging Issues in Domestic Relations Practice," Maine State Bar Association, Portland, Maine. I do not know the specific topics addressed by this panel. I have no notes, transcript, or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

November 1990: Speaker, "1990 Legal Year in Review – Family Law," Maine State Bar Association, Augusta, Maine. I presented a summary of the most important family law related legal developments during the previous year. I have

no notes, transcript, or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

October 1990: Panelist, "Domestic Relations – The Client Interview," Maine State Bar Association, Portland, Maine. This panel concerned best practices for client interviewing. I have no notes, transcript, or recording. The address of the Maine State Bar Association is 124 State Street, Augusta, Maine 04330.

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

Interview for *Maine Watch With Jennifer Rooks*, Maine Public Broadcasting Network, December 14, 2012. Available at http://www.mpbn.net/Television/LocalTelevisionPrograms/MaineWatch/tabid/477/ctl/ViewItem/mid/3470/ItemId/25128/Default.aspx.

Access to Justice and the Business Community, Targeted News Service, March 13, 2012. Copy provided.

Interview for *207: Access to Justice*, WCSH Channel 6, January 26, 2012. Available at http://south.wcsh6.com/news/news/103437-access-justice.

Ryan McLaughlin, *Cape Elizabeth Wins Mock Trial Competition*, Bangor Daily News, December 15, 2011. Copy provided.

Press conference, Maine Supreme Judicial Court, October 26, 2011. Announcement regarding the Katahdin Counsel Recognition Program. Press coverage provided.

Judy Harrison, *Chief Justice Calls Court System "Precarious,"* Bangor Daily News, March 18, 2009. Copy provided.

Trevor Maxwell, *Low Score on Overseeing Judges Rankles State Officials: An Advocacy Group Assumed a Level of Secrecy that Doesn't Exist, Court Experts Say*, Portland Press Herald, May 25, 2008, at B1. Copy provided.

Judy Harrison, *Maine Bar Seeks More Help for Poor*, Bangor Daily News, February 1, 2008, at B1. Copy provided.

Judy Harrison, *Bangor Lawyer Named Advocate for Justice*, Bangor Daily News, December 15, 2007, at B2. Copy provided.

Judy Harrison, *Conference Examines Youth Law*, Bangor Daily News, June 4, 2005. Copy of provided.

Jennifer L. Saunders, *Here Comes the Judge*, York Times, November 4, 2003, at 6A. Copy provided.

Judy Harrison, *Cuts Hurt Legal Aid for Abused*, Bangor Daily News, September 30, 2003, at 1. Copy provided.

Peter Paul Jesep, *Small Can Be Better*, 18 Maine Bar Journal 190, Fall 2003. Copy provided.

Karen Dandurant, *A Grade-A Understanding of Government*, Portsmouth Herald, 2003. Copy provided.

Jennifer Saunders, *Supreme Court Justice Visits York School*, 2003. Copy provided.

Michael P. Keating, *Jon Levy Sworn in as Supreme Court Justice*, York Weekly, March 13, 2002. Copy provided.

Gregory Kesich, *Prosecutor Seeks Help with Juvenile Cases*, Portland Press Herald, February 3, 2000, at 1A. Copy provided.

Meredith Goad, *Kittery Leads Way in Prevention by Giving Youths a Place to Go*, Portland Press Herald, October 26, 1997. Copy provided.

Gordon Bonin, *Maine Will Consider Trying More Youths as Adults*, Foster's Daily Democrat, August 9, 1997. Copy provided.

Gordon Bonin, *Too Few Officials, Too Little Money to Deal with Teen Crime*, Foster's Daily Democrat, July 30, 1997. Copy provided.

Gordon Bonin, *Juvenile Crime in Maine Shoots Up Despite Fewer Kids*, Foster's Daily Democrat, July 26, 1997. Copy provided.

Gordon Bonin, *Maine's Chief Justice Proposes Creating Family Court*, Foster's Daily Democrat, December 27, 1996. Copy provided.

Gordon Bonin, *York Man Heads Panel Studying Equality of Parental Rights Issues*, Foster's Daily Democrat, December 16, 1996. Copy provided.

Bill Nemitz, *Family Law Nothing to Laugh About*, Portland Press Herald, December 13, 1996. Copy provided.

Larry Favinger, *Levy Reminisces on 1st Year as Judge*, York Herald Sunday, September 8, 1996. Copy provided.

Jon Newberry, *Nobody's Perfeck: For Lawyers Who Think They Must Always Be Invincible, Acknowledging an Error and Taking Corrective Action go Hand in Hand*, ABA Journal, March 1996, at 70. Copy provided.

Steven Keeva, *Good Act to Follow*, 81 ABA Journal 74, March 1995, at 74, 76. Copy provided.

Steven Keeva, *Defeating Dissatisfaction*, 78 ABA Journal 9, September 1992, at 38. Copy provided.

Steven Keeva, *Lawman Plays the Blues: From Clubs to Courtrooms, in Music and in Words*, 78 ABA Journal 92, February 1992. Copy provided.

WVU Law Student Publishing Newsletter, Charleston Sunday Gazette-Mail, October 16, 1977, at 18. Copy supplied.

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

From July 1995 to March 2000, I served as a Judge of the Maine District Court. I was appointed to the position by former Governor Angus S. King, Jr., and confirmed by the Maine Senate to a seven-year term. The District Court's jurisdiction extends to most civil and criminal matters but does not include jury trials. The court has exclusive jurisdiction over juvenile, family, zoning enforcement, and traffic cases. As a District Court judge, I was authorized by statute to be assigned to the Superior Court and preside over jury trials. In March 2000, I was appointed to serve as the Deputy Chief Judge of the District Court by then-Chief Justice Daniel Wathen. In January 2001, I was appointed to serve as Chief Judge of the District Court by then-Chief Justice Daniel Wathen. I served as the Chief Judge until March 2002 when I was appointed to the Supreme Judicial Court.

From March 2002 to the present, I have served as an Associate Justice of the Maine Supreme Judicial Court. I was appointed to the position by former Governor Angus S. King, Jr., and was reappointed in July 2009 by former Governor John E. Baldacci. Both my appointment and reappointment were confirmed by the Maine Senate. The Maine Supreme Judicial Court is the sole appellate court in the state, and also has administrative responsibility for the operations of the Maine Judicial Branch.

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

Approximately 500 of the cases over which I have presided have gone to verdict or judgment.

i. Of these, approximately what percent were:

jury trials:	1%
bench trials:	99%
civil proceedings:	65%
criminal proceedings:	35%

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

Please see attached list.

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

1. *Bunnell et al. v. Raeside et al.*, No. 94-CV-82 (Me. Dist. Ct. 1996) (copy supplied).

A married couple brought an action for negligence, negligent infliction of emotional distress, trespass, strict liability, and nuisance against the builder of their home and abutting landowners, based on their contention that effluent leaching from the neighboring septic system contaminated their well and caused the wife to develop giardia lamblia cysts. Following a bench trial, I found the abutting landowners liable for nuisance, and I entered a judgment awarding money damages to the plaintiffs to compensate them for the contamination of their well.

The plaintiffs were represented by Peter Clifford, Esq., Hodsdon and Clifford, LLC, 56 Portland Road, Kennebunk, ME 04043, (207) 985-6184.

The defendants were represented by Robert V. Hoy, Esq., Hoy & Main, PA, P.O. Box 1569, Gray, ME 04039, (207) 657-3511.

2. *State of Maine v. Chapman*, Unknown Docket No. (Me. Dist. Ct. Unknown Date), *aff'd, State v. Chapman*, 685 A.2d 423 (Me. 1996).

The defendant was charged with operating a motor vehicle while under the influence of intoxicants. She sought dismissal of the complaint on the ground that the complaint violated the ex post facto and due process constitutional protections because it alleged that she had previously been convicted of the same offense, thus subjecting her to the minimum mandatory sentencing guidelines, which were enacted after her first conviction. I determined that there was no constitutional violation and denied the motion to dismiss. Following the denial of the motion to

dismiss, the defendant entered a conditional guilty plea. The appellate court affirmed my denial of the motion to dismiss, and affirmed the conviction. My best recollection is that the defendant pled guilty subsequent to my denial of the motion to dismiss. Because the court computer records do not extend to 1996, I have been unable to confirm the ultimate disposition of the case.

The State was represented by then-District Attorney for York County, Maine, Michael P. Cantara, who is now a judge. The Honorable Michael P. Cantara may be contacted at Maine District Court, 447 Main Street, Springvale, ME 04083, (207) 459-1400.

The defendant was represented by James S. Hewes, Esq., 269 Ocean Street, South Portland, ME 04106, (207) 773-4000.

3. *In re Jhanya B. et al.*, No. 96-PC-9 (Me. Dist. Ct. June 17, 1996) (copy supplied).

The State of Maine initiated a child protection proceeding against the parents of four children. Although this was an intact family and there were no allegations that the parents had abused the children, the children's home-life was marked by disorder and chaos, and the parents were unable to maintain control over the children, provide for their safety, or follow through with the psychological and medical treatment the children needed. Following a bench trial, I found that the children were in circumstances of jeopardy and awarded custody to the Department of Human Services.

The State of Maine was represented by then-Assistant Attorney General Marilyn E. Stavros. The Honorable Marilyn E. Stavros is now an active retired judge, and may be contacted at Maine District Court, 11 Chases Pond Road, York, ME 03909, (207) 363-1230.

The father was represented by Joseph Wrobleski, Jr., Esq., 112 Ledgewood Drive, Falmouth, ME 04105, (207) 284-1976.

The mother was represented by Glenda Lovell, Esq., who is deceased.

The guardians *ad litem* for the children were Christopher W. Dilworth, Esq., 120 Court Street, Farmington, ME 04938, (207) 779-7273; and Sandra Brunk, Esq., 6 Washington Street, Sanford, ME 04073, (207) 490-0837.

4. *State of Maine v. Mercier et al.*, Nos. 97-746, 97-460, 97-809, 97-462, 97-161, 97-1886, 97-2550, 97-1749. (Me. Dist. Ct. Nov. 19, 1997), *aff'd sub nom., State v. Anderson*, 724 A.2d 1231 (Me. 1999) (copy supplied).

Nine criminal defendants were charged with operating under the influence of intoxicants or with an excessive blood-alcohol level, after being subjected to

blood-alcohol testing with the Intoxilyzer, a machine that measures the concentration of alcohol in a subject's blood, but is not equipped to capture and preserve a breath sample for independent analysis. The defendants filed motions to suppress evidence on the ground that the State's failure to preserve a breath sample in connection with the use of the Intoxilyzer machine denied the defendants due process and their right of confrontation. Based on the evidence and expert testimony, and applying the Supreme Court's decision in *California v. Trombetta*, 467 U.S. 479 (1984), I denied the motion to dismiss, concluding that there was no constitutional violation arising from the State's failure to preserve a breath sample for independent testing, and that the results of the Intoxilyzer were admissible evidence. Following my denial of the defendants' motion to dismiss, the defendants entered conditional guilty pleas. The appellate court affirmed my denial of the defendants' motion to dismiss and their convictions.

The State of Maine was represented by then-Assistant Attorney General Joseph Wannemacher, Esq. Attorney Wannemacher is retired.

The defendants were represented by James P. Loring, Esq., 55 Congress Street, Suite B, Portsmouth, NH 03801, (603) 430-9322; and Thomas G. Van Houten, 469 Main Street, Suite 101, Springvale, ME 04083, (207) 324-4057.

5. *Emery v. AMP Transport, Inc. et al.* No. 95-CV-107 (Me. Dist. Ct. Sept. 4, 1997) (copy supplied).

The plaintiff was a truck driver who had entered into a lease-purchase agreement for a truck belonging to the defendants, the company that employed him and its president. The truck driver fell behind on his payments because he was responsible for the truck's repairs, which far exceeded those anticipated by the parties, and because the law prohibited him from driving a truck the number of hours that would have been required to remain current with the aggressive payment schedule for the truck. Following a bench trial, I determined that the plaintiff was entitled to restitution based on the Restatement (Second) of Contracts § 377 (1981) because the contract had become impossible to perform.

The plaintiff was represented by Robert M. Raftice, Jr., Esq., Ainsworth, Thelin & Raftice, P.A, P.O. Box 2410, South Portland, ME 04106, (207) 767-4824.

The defendants were represented by David L. Brandt, Esq., P.O. Box 837, Windham, ME 04062, (207) 892-3236.

6. *State of Maine v. Sacuzzo*, Nos. 96-JV-007, 96-JV703 (Me. Dist. Ct. June 25, 1997) (copy supplied).

The State initiated this high-profile probation revocation proceeding against a juvenile offender based on new allegations of criminal conduct, including a high-speed motor vehicle chase on Christmas Day that ended with the juvenile's car

colliding head-on with a police cruiser. The case turned largely on expert accident reconstruction testimony. After a hearing, I determined that the juvenile had violated his probation by committing four new criminal acts and ordered his commitment.

The State was represented by then-District Attorney for York County, Maine, Michael P. Cantara, who is now a judge. The Honorable Michael P. Cantara may be contacted at Maine District Court, 447 Main Street, Springvale, ME 04083, (207) 459-1400.

The defendant was represented by Brian Winchester, Esq., 116 State Street, Augusta, ME 04330, (207) 623-1915; and James Boulos, Esq., 75 North Street, P.O. Box 856, Saco, ME 04072, (207) 282-1564.

7. *Bouchard v. Marcotte*, Nos. 94-FM-41, 95-CV-249, 96-FM-048 (Me. Dist. Ct. Apr. 17, 1997) (copy supplied).

The parties were before the court because of a high-conflict child custody dispute in which the mother was accused of sexually abusing her eight-year-old daughter after inappropriate contact while bathing the daughter. After a lengthy bench trial, I entered a judgment that determined that the manner in which the mother had bathed her daughter demonstrated little insight for the child's physical and emotional development and the need for appropriate boundaries. However, I also concluded that the mother's digital penetration of the daughter while she was washing her was not for purposes of sexual gratification. I structured a plan for continuing supervision and oversight of the mother as she was reunified with the daughter.

The plaintiff was represented by Jens-Peter W. Bergen, Esq., 79 Portland Road, Kennebunk, ME 04043, (207) 985-6789.

The defendant was represented by Ronald G. Caron, Esq., who is deceased. The guardian *ad litem* for the child was Anne C. Pomroy, Esq., Park One Eleven, 407 Alfred Street, Unit 104, Biddeford, ME 04005, (207) 284-8499.

8. *State of Maine v. Alexandre*, No. CR-96-4435 (Me. Dist. Ct. Apr. 25, 1997) (copy supplied).

A criminal defendant sought the dismissal of a complaint charging him with disorderly conduct. The complaint asserted that the defendant had derided and taunted the victims because they were gay. The defendant challenged the constitutionality of the statute, asserting that because it was overbroad and vague, it violated his rights to due process and free speech. Applying precedent related to the "fighting words" doctrine, I determined that the statute was facially constitutional and denied the motion to dismiss. To the best of my recollection,

the defendant subsequently pled guilty. Unfortunately, the court did not maintain the file for this case, so I cannot confirm the outcome of the case.

The State of Maine was represented by Assistant District Attorney Tanya L. Pierson, Esq., York County District Attorney's Office, 45 Kennebunk Road, Alfred, ME 04002, (207) 324-8001.

The defendant was represented by Gary H. Reiner, who is no longer a member of the Maine bar. His last known contact information was P.O. Box 159, Kittery, ME 03904, (207) 439-6377, but his whereabouts are unknown.

9. *Altimari v. Smith*, No. 96-FM-74 (Me. Dist. Ct. Nov./Dec. 1997) (copy supplied).

This case was a child custody proceeding regarding a 13-year-old daughter who suffered from polyarticular juvenile rheumatoid arthritis, a rare autoimmune disorder. The mother, who was the primary custodial parent, had refused to have the daughter treated with commonly accepted medicines, treating her instead with diet, acupuncture, physical therapy, and aspirin. The father had had no significant involvement or relationship with the daughter. After a trial, I determined that the mother had subjected the child to jeopardy, and set a process in place that would eventually result in the Maine Department of Human Services receiving the authority to make medical decisions for the child.

The plaintiff was represented by Jeffrey S. Zdunczyk, Esq., P.O. Box 771, Kennebunk, ME 04043, (207) 967-5636.

The defendant was represented by Jens-Peter W. Bergen, Esq., 79 Portland Road, Kennebunk, ME 04043, (207) 985-6789.

10. *Nicholson v. Board of Bar Examiners*, No. BAR-07-01 (Me. Dec. 6, 2007) (copy supplied).

The Board of Bar Examiners denied the plaintiff admission to the Maine bar based on its finding that he lacked sufficient moral character because he was convicted of possession of sexually explicit material (child pornography) in 2003 while he was a licensed medical doctor. The plaintiff appealed, seeking a de novo hearing before a single justice of the Supreme Judicial Court. After a bench trial, I entered a written decision and order that denied the applicant admission to the bar.

The plaintiff was represented by Bruce Merrill, Esq., 225 Commercial Street, Suite 501, Portland, ME 04101, (207) 775-3333.

The Board of Bar Overseers was represented by Assistant Bar Counsel Aria, Eee, Esq., 97 Winthrop Street, P. O. Box 527, Augusta, ME 04332, (207) 623-1121.

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. *Forest Ecology Network v. Land Use Regulation Comm'n*, 2012 ME 36, 39 A.3d 74 (Mar. 15, 2012)

Appellant Land Use Regulation Commission was represented by Gerald D. Reid, Office of Attorney General, Six State House Station, Augusta, ME 04333, (207) 626-8545.

Appellants Plum Creek Maine Timberlands, LLC, and Plum Creek Land Company were represented by Scott D. Anderson, Esq., Verrill Dana, LLP, One Portland Square, Portland, ME 04112, (207) 774-4000.

Cross-appellants Forest Ecology Network and RESTORE: The North Woods were represented by Philip Worden, Esq., Worden Law Office, P.O. Box 1009, Northeast Harbor, ME 04662, 207-276-3328.

Cross-appellant Natural Resources Council of Maine was represented by Russell B. Pierce, Jr., Esq., Norman Hanson & DeTroy, LLC, 415 Congress Street, P.O. Box 4600, Portland, ME 04112, (207) 774-7000.

2. *HSBC Mortg. Servs., Inc. v. Murphy*, 2011 ME 59, 19 A.3d 815 (May 19, 2011)

Appellants were represented by John D. Clifford IV, Esq., Clifford & Golden, PA, Five Maple Street, P.O. Box 368, Lisbon Falls, ME 04252, (207) 353-9366.

Appellee HSBC Mortgage Services, Inc. was represented by John A. Doonan, Esq., Doonan, Graves & Longoria, LLC, 100 Cummings Center Suite 225D, Beverly, MA 01915, (978) 921-2670.

3. *State v. Nadeau*, 2010 ME 71, 1 A.3d 445 (July 29, 2010)

Appellant Nadeau was represented by Michael A. Cunniff, Esq., McCloskey, Mina & Cunniff, LLC, 12 City Center, Portland, ME 04101, (207) 772-6805.

Appellee State of Maine was represented by Andrew S. Robinson, Assistant District Attorney, District Attorney's Office, 124 Main Street, Suite 105, Farmington, ME 04938, (207) 778-5890.

4. *Lloyd v. Estate of Robbins*, 2010 ME 59, 997 A.2d 733 (July 8, 2010)

Appellant Estate of Robbins was represented by Barry K. Mills, Esq., Hale & Hamlin, LLC, Four State Street, P.O. Box 729, Ellsworth, ME 04938, (207) 667-2561.

Appellees D. and V. Lloyd were represented by William B. Devoe, Esq., Eaton Peabody, Bank of America Building, 80 Exchange Street, P.O. Box 1210, Bangor, ME 04402, (207) 947-0111.

5. *State v. Murphy*, 2010 ME 28, 991 A.2d 35 (Mar. 25, 2010)

Appellant Murphy was represented by David A. Weyrens, Esq., The Hallett Law Firm, 75 Market Street, Suite 502, P.O. Box 7508, Portland, ME 04112, (207) 775-4255.

Appellee State of Maine was represented by Stephanie Anderson, District Attorney, Cumberland County District Attorney's Office, 142 Federal Street, Portland, ME 04101, (207) 871-8384.

6. *State v. Hutchinson*, 2009 ME 44, 969 A.2d 923 (Apr. 30, 2009)

Appellant Hutchinson was represented by Robert C. Andrews, Esq., P.O. Box 17621, Portland, ME 04112, (207) 879-9850.

Appellee State of Maine was represented by Donald W. Macomber, Assistant Attorney General, Office of the Attorney General, Six State House Station, Augusta, ME 04333, (207) 626-8800.

7. *Watt v. UniFirst Corp.*, 2009 ME 47, 969 A.2d 897 (May 5, 2009)

Appellant Watt was represented by Guy D. Loranger, Nichols & Webb, PA, 110 Main Street, Suite 1520, Saco, ME 04072, (207) 283-6400.

Appellee UniFirst Corporation was represented by Adam S. Taylor, Esq., Taylor, McCormack & Frame, LLC, 30 Milk Street, Fifth Floor, Portland, ME 04101, (207) 828-2005.

8. *In re Adoption of M.A.*, 2007 ME 123, 930 A.2d 1088 (Aug. 30, 2007)

Appellants, A.C. and M.K., were represented by:

Mary L. Bonauto, Esq., Park Square Advocates, Inc., 30 Winter Street, Suite 800, Boston, MA 02108, (617) 426-1350.

Judith M. Berry, Esq., 28 State Street, Gorham, ME 04038, 207-839-7004.

Patricia A. Peard, Esq., Bernstein, Shur, Sawyer & Nelson, P.A., P.O. Box 9729, Portland, ME 04104, (207) 774-1200.

The guardian *ad litem* in the case was:

Donna A. Bailey, Esq., Donna A. Bailey, PA, Seven Scrimshaw Lane, Saco, ME 04072, (207) 284-9962.

9. *Alexandre v. State*, 2007 ME 106, 927 A.2d 1155 (Aug. 9, 2007)

Appellant State of Maine was represented by William R. Stokes, Deputy Attorney General, Office of the Attorney General, Six State House Station, Augusta, ME 04333, (207) 626-8571.

Cross-appellant Alexandre was represented by David J. Van Dyke, Esq., Hornblower, Lynch, Rabasco & Van Dyke, P.A., 261 Ash Street, P.O. Box 116, Lewiston, ME 04243, (207) 786-6641.

10. *Blethen Me. Newspapers, Inc. v. State*, 2005 ME 56, 871 A.2d 523 (Apr. 22, 2005)

Appellant Blethen Maine Newspapers was represented by Sigmund D. Schutz, Esq., Preti Flaherty Beliveau & Pachios, LLP, P.O. Box 9546, Portland, ME 04112-9546, (207) 791-3000.

Appellee State of Maine was represented by Leanne Robbin, Assistant Attorney General, Office of the Attorney General, Six State House Station, Augusta, ME 04333-0006, (207) 626-8581.

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

State v. Patton, 2012 ME 101, 50 A.3d 544, *cert. denied*, 133 S. Ct. 667 (U.S. Nov. 26, 2012)

State v. Mitchell, 2010 ME 73, 4 A.3d 478, *cert. denied*, 133 S. Ct. 55 (U.S. June 29, 2012)

State v. Murphy, 2010 ME 28, 991 A.2d 35, *cert. denied*, 131 S. Ct. 515 (U.S. Nov. 1, 2010)

State v. Hutchinson, 2009 ME 44, 969 A.2d 923, *cert. denied*, 130 S. Ct. 510 (U.S. Nov. 2, 2009)

Alexandre v. State, 2007 ME 106, 927 A.2d 1155, *cert. denied*, 128 S. Ct. 1676 (U.S. Mar. 17, 2008)

Anderson v. Town of Durham, 2006 ME 39, 895 A.2d 944 (concurring), *cert. denied*, 127 S. Ct. 661 (U.S. Nov. 27, 2006)

State v. Trusiani, 2004 ME 107, 854 A.2d 860 (dissenting), *cert. denied*, 125 S. Ct. 914 (U.S. Jan. 10, 2005)

State v. Alley, 2004 ME 10, 841 A.2d 803, *cert. denied*, 124 S. Ct. 2425 (U.S. June 1, 2004)

In re Dunleavy, 2003 ME 124; 838 A.2d 338 (concurring), *cert. denied*, 124 S.Ct. 1722 (U.S. Mar. 29, 2004)

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

State v. Gray, 2000 ME 145, 755 A.2d 540. The defendant was indicted on counts of robbery, burglary, burglary of a motor vehicle, eluding a police officer, and four counts of theft. He was found guilty following a jury trial over which I presided. Gray appealed, challenging my denial of his motion for a judgment of acquittal. The Maine Supreme Judicial Court affirmed in part and vacated in part, concluding that the motion was properly denied as to the robbery, burglary, eluding a police officer, and two of the four theft counts, but should have been granted as to the count for burglary of a motor vehicle and two of the four counts of theft.

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

All of my decisions as a trial judge were unpublished. Each decision would have been filed in the case file maintained by the Clerk of Court.

As a justice of the Supreme Judicial Court, I author two types of decisions. First, my signed decisions are published in the Atlantic (second) and Atlantic (third) of West's national case reports. They are also posted on the website of the Maine Judicial Branch. Second, my unsigned opinions are issued by the Court as memoranda of decision. Memoranda of decision are posted on the website of the Maine Judicial Branch, but they are not otherwise subject to publication, nor do they bear my name as the authoring justice. They are treated as a decision of the Court and have no precedential weight. In 2012, the Maine Supreme Judicial Court issued 143 signed opinions and 167 memoranda of decisions. Based on this

sample from a single year, I estimate that approximately 46% of my opinions are published and 54% of my opinions are unpublished.

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

Fortin v. Roman Catholic Bishop of Portland, 2005 ME 57, 871 A.2d 1208 (2005)

State v. LaPlante, 2011 ME 85, 26 A.3d 337 (2011)

State v. Mitchell, 2010 ME 73, 4 A.3d 478 (2010), *cert. denied*, 133 S. Ct. 55 (2012)

State v. Murphy, 2010 ME 28, 991 A.2d 35 (2010), *cert. denied*, 131 S. Ct. 515 (2010)

State v. Letalien, 2009 ME 130, 985 A.2d 4 (2009)

In re Dunleavy, 2003 ME 124, 838 A.2d 338 (2003), *cert. denied*, 541 U.S. 960 (2004)

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.

My court employs an automatic recusal system whereby new case filings are screened, and I am automatically recused from cases involving parties or attorneys whom I have previously designated as requiring my recusal. Although I have modified my list of designated recusals from time to time as circumstances require, I have consistently recused myself from cases involving the hospital for which I previously served as a member of its Board of Trustees, and my former law partner. I base all of my recusal decisions on the applicable provisions of the Maine Code of Judicial Conduct. I have no recollection of having ever recused myself in a case based on the motion or request of a party. I have not maintained a list of cases in which a party has requested my recusal or in which I have recused myself sua sponte. It is not uncommon in prison-related appeals for the appellant to request that all or some of the members of the Court recuse themselves.

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 offices.

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

I was the chair of the York, Maine, Town Democratic Committee from approximately 1985 to 1990. In that role, I worked primarily on voter enrollment and get-out-the-vote efforts. I did not hold a title in any individual political campaign. As the chair of the Town Democratic Committee, I occasionally attended meetings of the York County Democratic Committee, and I attended the state Democratic convention.

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

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

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

From 1979 to 1981, I served as a law clerk to the Honorable John T. Copenhaver, Jr., District Judge of the Southern District of West Virginia.

From 1981 to 1982, I served as a court monitor working under a special master in a statewide prison conditions class action. *See Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980). I was appointed to the position by the Hon. William W. Justice, U.S. District Judge.

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

1986 – 1994
Law Offices of Jon D. Levy
Meadowbrook Office Building
Route One
York, Maine 03909

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 – 1986
Lowther & Levy, P.A.,
Meadowbrook Plaza
647 U.S. Route One
York, Maine 03909
Partner

1986 – 1994
Law Offices of Jon D. Levy
Meadowbrook Plaza
647 U.S. Route One
York, Maine 03909

1994 –1995
Levy & Bartlett
276 York Street
York, Maine 03909
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.

In the final years of my law practice, I served as a mediator in several family law and commercial disputes. I do not have records that enable me to identify or describe the cases. I also conducted mediation sessions as part of my work as a court monitor in the Texas prison conditions class action. *See Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980). Finally, I conducted judicial settlement conferences as a trial judge.

b. Describe:

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

From 1983 to 1995, I engaged in a general law practice, with emphasis in the areas of family law, contracts and small business law, civil litigation, real estate, and zoning. From 1983 to 1990 I also had an active criminal defense practice. Beginning in approximately 1988, family law became my dominant, but not exclusive, area of practice. Beginning in approximately 1990, estate planning and probate also became an area of emphasis.

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

I represented a broad range of clients, including individuals, indigent defendants, and a wide variety of businesses ranging from real estate development companies to a manufacturer of trolley-type buses. I never limited myself to a single specialty during my law practice.

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 40% of my practice was in litigation, and I appeared in court frequently.

i. Indicate the percentage of your practice in:
   1. federal courts: 1%
   2. state courts of record: 89%
   3. other courts: 0%
   4. administrative agencies: 10%

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 tried approximately 40 to 50 cases to verdict, judgment or final decision.

i. What percentage of these trials were:
   1. jury: 15%
   2. non-jury: 85%

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

I did not practice before the Supreme Court of the United States.

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

a. the date of representation;

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

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

I have not litigated since becoming a judge in July 1995. I have relied on my memory to identify cases that I tried because my law practice files have been destroyed. I was able to obtain docket sheets for six of the eight cases that are summarized below, but the court records for those cases have been archived and were not available to me as I prepared my answers.

1. *Rocheleau et al. v. Gerrity, II et al.*, No. CV-91-222 (York Cnty. Super. Court), Justice Roland A. Cole.

This was an action for breach of contract arising out of the sale of a permitted and planned golf course and residential development in York, Maine. From 1991 to 1994, I was the sole attorney of record for the plaintiffs—two builders, Rocheleau and Jacobsen. I eventually withdrew from representation when it became apparent that I would be

required to testify regarding the closing that had occurred as part of the transaction. The representation was then taken over by attorneys Jeffrey Rosenblatt, Esq., and Jack Simmons, Esq. The case was fully tried and taken under advisement by the presiding justice. The case was settled by agreement more than a year after the court took the case under advisement. The financial settlement largely achieved what my clients had sought in bringing the case.

The plaintiff was represented by Jeffrey Rosenblatt, Esq., 112 Wardwell Road, Albany Township, ME 04217, (207) 824-2566; and Jack Simmons, Esq., Berman & Simmons, P.O. Box 961, Lewiston, ME 04240, (207) 784-3576.

The defendants were represented by Jeffrey Bennett, Esq., 12 Mitchellwood Drive, Falmouth, ME 04105, (207) 781-2424; and Thomas F. Monaghan and John J. Wall, III, Esq., Monaghan Leahy, LLP, 95 Exchange Street, Portland, ME 04112, (207) 774-3906. Defendants Frederick H. Baldwin, Jr., and The Harbor Corporation were also represented by Jeffrey J. Clark, Esq., Clark & Howell, P.O. Box 545, York, ME 03909, (207) 363-5208.

2. *State of Maine v. Hamm*, No. CR-84-578 (York Cnty. Super. Ct.), Justice William S. Brodrick.

The defendant was charged with the felony offense of Unlawful Sexual Contact. The alleged victim was the defendant's grandson, who was three-and-a-half at the time of the alleged crime. I was sole trial counsel for the defendant, and the dates of representation were approximately March 1985 to January 1986. The first jury trial ended in a mistrial. The second jury trial ended with a jury verdict of not guilty.

The State of Maine was represented at trial by then-Assistant District Attorney Janmarie Toker, Esq. Attorney Toker may now be contacted at McTeague, Higbee, Case, Cohen, Whitney & Toker, P.A., Four Union Park, Topsham, ME 04086, (207) 725-5581.

3. *State of Maine v. Billadeau*, No. CR-89-1138 (York Cnty. Super. Ct.), Justice Thomas E. Delahanty, II, who is currently the United States Attorney for the District of Maine.

I was sole trial counsel for the defendant, and the dates of the representation were approximately September 1989 to October 1990. The defendant was a real estate broker charged with felony offenses of forgery and theft associated with his treatment of deposits made in connection with three purchase and sale agreements. The State dismissed the forgery count prior to verdict. The jury found the defendant guilty as to the three theft counts. The convictions were affirmed after an appeal in which I was not involved.

The State of Maine was represented at trial by then-Deputy District Attorney Anne Jordan. Attorney Jordan may now be contacted at Administrative Office of the Courts, 171 Statehouse Station, Augusta, ME 04333, (207) 287-5543.

4. *Golden v. Molly Corporation*, No. CV-87-334 (York Cnty. Super. Ct.), Justice Paul A. Fritzsche.

I was the sole trial counsel for the defendant, a national manufacturer of on-the-road trolley/buses. The dates of the representation were approximately June 1987 to May 1990. The plaintiff was a former salesman of the company, alleging breach of contract. The case was tried before a jury, which returned a verdict for the defendant.

The plaintiff was represented by Terrence D. Garmey, Esq., Terry Garmey & Associates, 482 Congress Street, Suite 402, Portland, ME 04101, (207) 899-4644.

5. *Bower et al. v. Bernstein et al.*, No. CV-91-817 (York Cnty. Super. Ct.), Justice Roland A. Cole.

The dates of the representation were approximately November 1991 to February 1994. The plaintiffs and defendants owned abutting residential parcels. The plaintiffs brought a trespass action against the defendants, and the defendants counterclaimed for trespass. I do not have a copy of the complaint available to me, but I believe the defendants may have also counterclaimed for intentional infliction of emotional distress based on harassing actions the plaintiffs had taken against the defendants based on the defendants' sexual orientation. The case was tried before a judge and, after extensive judicial settlement efforts, was ultimately resolved by entry of a stipulated judgment. I was sole trial counsel for the defendants.

Plaintiff's trial counsel was Christopher A. Johnson, Esq., who has retired.

6. *Donn-Griffin v. Donn*, No. 90-DV-83 (Me. Dist. Ct., York Cnty. Super. Ct.), Judge Robert E. Crowley (Dist. Ct.), Justice G. Arthur Brennan (Super. Ct.).

I represented the plaintiff in her effort to obtain an increase in child support, from approximately January 1990 to October 1992. The parties had divorced in Vermont, the plaintiff and children were residing in Maine, and the father was residing in Massachusetts. The trial court denied the defendant's motions seeking the dismissal for lack of jurisdiction, and it awarded the increase in child support sought by my client. I represented the defendant in her appeal to the Maine Superior Court, which affirmed the judgment, and then to the Maine Supreme Judicial Court, which also affirmed the judgment, concluding that the Maine trial court had the authority pursuant to the Uniform Reciprocal Enforcement of Support Act to adopt and then modify the Vermont judgment. The decision is reported at *Donn-Griffin v. Donn*, 615 A.2d 253 (Me. 1992).

The defendant was represented by attorney Dana E. Prescott, Esq., Prescott, Jamieson, Nelson & Murphy, P.O. Box 1190, Saco, ME 04072, (207) 282-5966.

7. *Cardinali v. Cardinali*, No. 93-DV-18 (Me. Dist. Ct.), Judge Edward F. Gaulin.

I represented the plaintiff in this highly contested divorce action. The dates of the representation were approximately January 1993 to August 1994. The case was tried, and the judge awarded the parents shared parental rights and responsibilities, as my client sought.

Plaintiff's trial counsel was Christopher A. Johnson, Esq., who has retired.

8. *Caramihalis v. Caramihalis*, No. 93-DV-84 (Me. Dist. Ct.), Judge Thomas E. Humphrey, currently the Chief Justice of the Maine Superior Court.

I represented the defendant in this highly contested divorce action. The dates of the representation were approximately May 1994 to June 1995. The case was tried, and the court awarded shared parental rights and responsibilities, as my client sought.

Principal counsel for the plaintiff were Ronald D. Bourque, Esq., and Jean L. Walsh, Esq., Bourque & Clegg LLC, 949 Main Street, Sanford, ME 04073, (207) 324-4422.

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 recent years, my most significant legal activities not involving litigation have centered on advancing access to civil justice ("ATJ") in Maine. I became the Chair of the Maine Justice Action Group, Maine's Access to Justice Commission, in January 2008. In that role, I have led a variety of initiatives to promote the availability of legal aid and pro bono representation for Maine's elderly and low-income people, and low cost representation for those who do not qualify for free or pro bono services and would otherwise not have access to traditional legal assistance. I also participate in ATJ efforts on a national level and, in August 2013, I was formally appointed to serve as a judicial member of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

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 1986 I taught a course on civil procedure for the American Institute for Paralegal Studies at Westbrook College in Portland, Maine. I do not have a copy of the 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.

    I have a vested deferred compensation savings account with Mass Mutual that is sponsored by the State of Maine for Judicial Branch employees. I also have a vested pension as a result of my employment as a judge that will become available to me, at the earliest, when I turn sixty-two.

    I receive royalty payments from Lexis Law Publishing for sales of my book Maine Family Law. I expect to receive a payment in 2014 for sales of the 8th edition of the book issued in 2013.

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 to serve on the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. I also hope to complete my chairmanship of the Maine Justice Action Group to the extent consistent with my judicial duties.

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 plan to recuse myself from any cases involving my former law partner James B. Bartlett, Esq., and from any cases involving York Hospital.

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

I will diligently adhere to the requirements of 28 U.S.C. §§ 144 and 455 (2006), Canon 3 of the Code of Conduct for United State 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.

As an attorney, I regularly represented persons without charge or at reduced fees, and, for two years, served on the Board of Directors of Pine Tree Legal Assistance, Maine's primary legal aid organization. As a judge, I have not been permitted to engage in pro bono representation. I have, however, made promoting pro bono involvement a major focus of my judgeship through my leadership of the Maine Justice Action Group. Recently, and at my initiative, the Maine Supreme Judicial Court launched the "Katahdin Counsel Recognition Program" to recognize lawyers who perform 50 or more hours of qualifying pro bono service each year. I also engage in access to justice improvements on a national level through my participation as a member of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

26. **Selection Process**:

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

I learned that Senator Angus King, Congressman Mike Michaud, and Congresswoman Chellie Pingree had formed a judicial screening panel through an email I received from Congressman Michaud's office. I submitted a letter dated February 19, 2013, expressing my interest in being considered for the position and enclosing my resume. On March 15, 2013, I met with the screening panel, consisting of ten or eleven attorneys, in Portland, Maine. Soon thereafter, I received a phone call from Senator King's office informing me that I was one of

three persons recommended by Senator King, Congressman Michaud, and Congresswoman Pingree to the White House for consideration. Since May 2013, I have been in contact with officials from the White House Counsel's Office and officials from the Office of Legal Policy in the Department of Justice. On July 15, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 19, 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.

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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, Jon D.	U.S. District Court, Maine	09/22/2013
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 active	☑ Nomination Date 09/19/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 08/31/2013
7. Chambers or Office Address		
Maine Supreme Judiical Court 205 Newbury St. Portland, Maine 04101-4125		

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.	Associate Justice	Maine Supreme Judicial Court
2.	Treasurer	William Vaughan House Condominium Association
3.	Co-trustee	Trust #1
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.		

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2011	Maine Supreme Judicial Court	$119,476.00
2.	2011	Matthew Bender & Co., book royaltiest	$613.46
3.	2012	Maine Supreme Judicial Court	$119,476.00
4.	2012	Matthew Bender & Co., book royalties	$6,011.69
5.	2013	Maine Supreme Judicial Court	$83,538.79
6.	2013	Matthew Bender & Co., book royalties	$641.66
7.			

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

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

	DATE	SOURCE AND TYPE
1.	2012	self-employed psychologist, self-employment income
2.	2013	self-employed psychologist, self-employment income
3.		
4.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

5.

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

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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. American Funds Capital Income Builder Fund	D	Dividend	N	T					
2. American Funds Capital World Bond Fund	A	Dividend	L	T					
3. American Funds Capital World Growth & Income Fund	A	Dividend	K	T					
4. American Funds EuroPacific Growth Fund	B	Dividend	L	T					
5. American Funds Global Balanced Fund		None	J	T					
6. American Funds Growth Fund of America		None	L	T					
7. American Funds International Growth & Income Fund	B	Dividend	L	T					
8. American Funds New World Fund	B	Dividend	L	T					
9. American Funds Short Term Bond Fund	A	Interest	L	T					
10. United States Treasuryr Inflation Index Notes	A	Interest							
11. Bed Bath & Beyond Stock		None	M	T					
12. Norway Savings Bank Checking Account		None	J	T					
13. Fidelity Equity Income Fund	A	Dividend	J	T					
14. Franklin Small-Mid Cap Growth Fund	A	Dividend	J	T					
15. Hartford Capital Appreciation Fund	A	Dividend	K	T					
16. Hartford Total Return Bond HLS Fund	A	Dividend	J	T					
17. Managers AMG Skyline Special Equities Portfolio	A	Dividend	K	T					

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

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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)
18. Mutual Global Discovery Fund	A	Dividend	K	T					
19. Oppenheimer International Bond Fund		None	J	T					
20. PIMCO All Asset All Authority Fund		None	J	T					
21. PIMCO All Asset Fund	A	Dividend	J	T					
22. PIMCO Low Duration Fund	A	Dividend	K	T					
23. PIMCO Total Return Fund	B	Int./Div.	M	T					
24. PIMCO Global Mult-Asset Fund	B	Dividend							
25. Templeton Global Bond Fund	B	Interest	L	T					
26. Thornberg Investment Trust Limited Term Municipal Fund	B	Dividend	L	T					
27. Wells Fargo Cash Account	A	Interest	N	T					
28. US Government Series E Bonds		None	J	W					
29. US Government Series EE Bonds		None	J	W					
30. Wells Fargo Absolute Return Fund		None	J	T					
31. Pruco Life Insurance Co. of New Jersey Annuity	C	Distribution	K	T					
32. Bank of America Checking Accounts		None	J	T					
33. TD Bank Checking Account		None	J	T					
34. Citibank Cash Account	A	Interest							

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
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

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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)
35. Trust #1 - Wells Fargo Cash Account	A	Interest							
36. American Funds Short Term Tax Exempt Bond Fund	A	Interest	K	T					
37.									
38.									

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

Regarding my answers to Part I, § 2, and Part VII, § 12, I am the treasurer of the Wiliam Vaughan House Condominium Association. The Norway Savings Bank checking account is the condominium's operating account from which I pay the condominium's expenses.

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IX. CERTIFICATION.

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

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

Signature: s/ Jon D. 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		3	497	Notes payable to banks-secured (auto)		25	207
U.S. Government securities – see schedule		1	125	Notes payable to banks-unsecured			
Listed securities – see schedule	1	628	858	Notes payable to relatives			
Unlisted securities – see schedule		31	399	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		450	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:							
				Total liabilities		25	207
				Net Worth	2	164	672
Total Assets	2	189	879	Total liabilities and net worth	2	189	879
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

U.S. Government Securities	
Series E Bonds	$ 475
Series EE Bonds	650
Total U.S. Government Securities	$ 1,125
Listed Securities	
American Funds Capital Income Builder Fund	$ 364,426
American Funds Capital World Bond Fund	52,008
American Funds Capital World Growth & Income Fund	48.090
American Funds EuroPacific Growth Fund	86,838
American Funds Global Balanced Fund	7,947
American Funds Growth Fund of America	55,087
American Funds International Growth & Income Fund	62,441
American Funds New World Fund	76,129
American Funds Short-Term Bond Fund	54,988
American Funds Short-Term Tax Exempt Bond Fund	25,304
Artisan Mid Cap Value Fund	1
Bed Bath & Beyond Inc. stock	117,984
Fidelity Cash Account	122
Fidelity Equity-Income Fund	14,165
Franklin Small-Mid Cap Growth Fund	10,387
Hartford Capital Appreciation HLS Fund	46,630
Hartford Total Return Bond HLS Fund	1,363
Lord Abbott Mid Cap Stock Fund	691
Managers AMG Skyline Special Equities Portfolio	22,471
Mutual Global Discovery Fund	22,189
Oppenheimer International Bond Fund	21,852
PIMCO All Asset All Authority Fund	7,719
PIMCO All Asset Fund	7,734
PIMCO Low Duration Fund	33,296
PIMCO Total Return Fund	118,124
Templeton Global Bond Fund	69,791
Thornburg Investment Trust Limited Term Municipal Fund	50,847
Wells Fargo Absolute Return Fund	14,698
Wells Fargo Cash Account	235,536
Total Listed Securities	$ 1,628,858
Unlisted Securities	
Bank Leumi Bond	$ 200
Pruco Life Insurance Co. of New Jersey Annuity	31,199
Total Unlisted Securities	$ 31,399

AFFIDAVIT

I, Jon D. Levy, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9/20/13
(DATE)

(NAME)

(NOTARY)

Christie-Lynn Clifford
Notary Public of Maine
My Commission Expires
December 14, 2015

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Theodore David Chuang

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

   United States District Judge for the District of Maryland

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

   Office: United States Department of Homeland Security
   Office of the General Counsel
   Washington, D.C. 20528

   Residence: Bethesda, Maryland

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

   1969; Media, 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.

   1991 – 1994, Harvard Law School; J.D. (*magna cum laude*), 1994

   1987 – 1991, Harvard College; B.A. (*summa cum laude*), 1991

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

   2009 – present
   United States Department of Homeland Security
   Office of the General Counsel

Washington, D.C. 20528
Deputy General Counsel (2011 – present)
Counselor on detail to United States Department of State (2013 – present)
Associate General Counsel (2009 – 2011)

2009
House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, D.C. 20515
Chief Investigative Counsel

2007 – 2009
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, D.C. 20515
Deputy Chief Investigative Counsel

2004 – 2007, June – July 1993
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel (2004 – 2007)
Summer Associate (June – July 1993)

1998 – 2004
United States Attorney's Office for the District of Massachusetts
One Courthouse Way, Suite 9200
Boston, MA 02210
Assistant United States Attorney, Criminal Division

1995 – 1998
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Trial Attorney, Housing and Civil Enforcement Section

1994 – 1995
United States Court of Appeals for the Ninth Circuit
Chambers of Judge Dorothy W. Nelson
125 South Grand Avenue, Suite 303
Pasadena, CA 91105
Law Clerk to Judge Dorothy W. Nelson

July – August 1994
United States Department of State

Office of the Legal Adviser
2201 C Street, N.W.
Washington, D.C. 20520
Law Intern

May – July 1994
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Law Intern

Spring 1994
Norfolk County District Attorney's Office
360 Washington Street
Brookline, MA 02445
Student Prosecutor

July – August 1993
Linklaters & Paines (now Linklaters LLP)
One Silk Street
London, United Kingdom EC2Y 8HQ
Summer Law Clerk

Spring 1993
United States Attorney's Office
J.W. McCormack Post Office & Courthouse
Boston, MA 02109
Law Extern

Fall 1992 – Spring 1993
Professor Laurence H. Tribe
Harvard Law School
Cambridge, MA 02138
Research Assistant

Summer 1992
Baker & McKenzie LLP
Two Embarcadero Center, 11th Floor
San Francisco, California 94111
Summer Associate

Other affiliations (uncompensated):

2012 – present
District of Columbia Bar

1101 K Street, N.W., Suite 200
Washington, D.C. 20005
Board of Governors

2005 – present
Asian Pacific American Legal Resource Center
1012 14th Street, N.W., Suite 450
Washington, D.C. 20005
Board of Directors (2005 – present)
Chair of the Board (2007 – 2009)

2009
Montgomery County District 16 Democratic Club
(no physical address)
Executive Board (Vice President)

2009
Coalition of Asian Pacific American Democrats of Maryland
(no physical address)
Board of Directors

2003
Massachusetts Bar Association
20 West Street
Boston, MA 02111
House of Delegates

1999 – 2003
Asian American Lawyers Association of Massachusetts
c/o The Boston Bar Association
16 Beacon Street
Boston, MA 02108
President (2002 – 2003)
Secretary (2000 – 2002)
Board of Directors (1999 – 2000)

2002 – 2003
Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association
294 Washington Street, Suite 443
Boston, MA 02108
Board of Directors

2001 – 2002
Asian Pacific American Agenda Coalition
(no physical address)

Boston, MA
Board of Directors

1999 – 2001
Massachusetts Law Reform Institute
99 Chauncy Street
Boston, MA 02111
Board of Trustees

1996 – 1998
Asian Pacific American Bar Association of the Greater Washington, D.C. Area
P.O. Box 27223
Washington, D.C. 20038
President-Elect (1997 – 1998)
Treasurer (1996 – 1997)

1996 – 1997
Conference on Asian Pacific American Leadership
P.O. Box 65073
Washington, D.C. 20035
Board of Directors

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

   I have not served in the military. I registered for selective service at age 18.

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

   United States Coast Guard Public Service Commendation (2011)

   United States Department of Justice Special Achievement Award (1997)

   Harvard Law Review, Editor (1992 – 1994)

   Harvard Law School Ames Moot Court Competition, Boykin C. Wright Memorial Prize (Best Brief, Final Round) (1993)

   Harvard Law School Ames Moot Court Competition, Finalist (1993)

   Endicott Peabody Saltonstall Prize: Awarded to top Harvard College senior attending Harvard Law School (1991)

Phi Beta Kappa (1991)

John Harvard Scholarship (1989 – 1991)

Time Magazine College Achievement Award: Awarded to 20 college juniors nationwide (1990)

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

American Bar Association

Asian American Lawyers Association of Massachusetts
President (2002 – 2003)
Secretary (2000 – 2002)
Board of Directors (1999 – 2000)
Representative to the 2003 NAPABA Northeast Regional Conference Planning Committee (2003)
Chair, 2000 NAPABA Northeast Regional Conference Planning Committee (2000)

Asian Pacific American Bar Association of Maryland

Asian Pacific American Bar Association of the Greater Washington, D.C. Area
President-Elect (1997 – 1998)
Treasurer (1996 – 1997)
Pro Bono Committee Chair (1996 – 1997)

Boston Bar Association
Criminal Law Section Steering Committee and Publications Co-Chair (1999 – 2003)

District of Columbia Bar
Board of Governors (2012 – present)
Nominations Committee (2005 – 2006)

Maryland State Bar Association

Massachusetts Bar Association
Member, House of Delegates (2003)

National Asian Pacific American Bar Association

Women's Bar Association of the District of Columbia

10. **Bar and Court Admission**:

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

Maryland, January 3, 2012
District of Columbia, April 24, 1997
Massachusetts, March 30, 1995 (inactive)

There have been no lapses of membership, although my District of Columbia bar membership was inactive from approximately 1998 to 2004, and my Massachusetts bar membership is currently 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 Court of Appeals for the First Circuit, 1999
United States Court of Appeals for the Tenth Circuit, 2006
United States District Court for the District of Massachusetts, 2003
District of Columbia Court of Appeals, 1997
Maryland Court of Appeals, 2012
Massachusetts Supreme Judicial Court, 1995

There have been no lapses of membership.

11. **Memberships**:

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

Asian Pacific American Agenda Coalition
Board of Directors (2001 – 2002)
Member (2000 – 2002)

Asian Pacific American Legal Resource Center
Board of Directors (2005 – present)
Chair of the Board (2007 – 2009)

Burning Tree Elementary School Parent Teacher Association (2006 – present)

Conference on Asian Pacific American Leadership
Board of Directors (1996 – 1997)

Department of Homeland Security Asian American Pacific Islander Network
(2011 – present)

Eastern Middle School Parent Teacher Association (2012 – present)

Harvard Club of Washington, D.C. Schools Committee
Interviewer (1996 – 1997, 2005 – 2006, 2012 – present)

Harvard College Class of 1991 Reunion Committee (2000 – 2001)

Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association
Board of Directors (2002 – 2003)

Massachusetts Law Reform Institute
Board of Trustees (1999 – 2001)

National Parks Conservation Association (1997 – present)

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

To the best of my knowledge, none of the organizations listed in 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, 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.

President's Message, *Asian American Lawyers Association of Massachusetts: A Year in Review*, 31 MASS. LAW. WKLY., Dec. 9, 2002. Copy supplied.

President's Message, AALAM NEWS, May 2002. Copy supplied.

Justice Lu Reflects on His First Six Months on the Bench, AALAM NEWS, Nov. 2001. Copy supplied.

Section Hosts Brown Bag Lunch on Sexually Dangerous Person Statute, BOS. BAR ASS'N CRIM. L. SEC. NEWSLETTER, Mar. 2001. Copy supplied.

Judges Take Center Stage, BOS. BAR ASS'N CRIM. L. SEC. NEWSLETTER, Jan. 2000. Copy supplied.

Brown Bag Lunch: Polygraph Evidence, BOS. BAR ASS'N CRIM. L. SEC. NEWSLETTER, Jan. 2000. Copy supplied.

Judges Profile, *Hon. Dorothy W. Nelson*, FED. LAW., Aug. 1999. Copy supplied.

Note, *The Birthright Citizenship Amendment: A Threat to Equality*, 107 HARV. L. REV. 1026 (1994). Copy supplied.

Recent Case, *People v. Bullock*, 485 N.W.2d 866 (1992), 106 HARV. L. REV. 1230 (1993). Copy supplied.

The Hoop God, HARVARD CRIMSON, Feb. 26, 1990.

None Were Guilty of a Rally, HARVARD CRIMSON, Feb. 5, 1990.

Daddy? What Were Sports in The 80s Like?, HARVARD CRIMSON, Dec. 15, 1989.

Cagers Play "Easier" Blue Devils, HARVARD CRIMSON, Dec. 9, 1989.

Cagers Overrule Judges, 52-46, HARVARD CRIMSON, Dec. 5, 1989.

Locating Long-Lost Athletes Like Larry, HARVARD CRIMSON, Nov. 8, 1989.

This Year, Someone's Gotta Win, HARVARD CRIMSON, Oct. 3, 1989.

Still One Goal to Go, HARVARD CRIMSON, June 8, 1989.

Just One Day of Perfection, HARVARD CRIMSON, Apr. 4, 1989.

W. Swimming Wins Fourth Ivy Title, HARVARD CRIMSON, Feb. 21, 1989.

James' 26 Points Leads Cagers Over Yale, HARVARD CRIMSON, Feb. 11, 1989.

Title Hunt: Aquawomen Down Princeton, HARVARD CRIMSON, Feb. 6, 1989.

Ickey Who?, HARVARD CRIMSON, Jan. 23, 1989.

Bird Will Fly Again, HARVARD CRIMSON, Dec. 14, 1988.

Relax Bruce; Boston Says 'Don't Do It,' HARVARD CRIMSON, Dec. 6, 1988.

Aquawomen Edged by Bulldogs, HARVARD CRIMSON, Dec. 5, 1988.

Aquawomen Race to Second, HARVARD CRIMSON, Dec. 3, 1988.

Aquawomen Grab Two Triumphs, Overpower Columbia, Kenyon, HARVARD CRIMSON, Nov. 28, 1988.

Quincy House Serves as Poll, HARVARD CRIMSON, Mar. 9, 1988.

Men Spikers Fall Hard, HARVARD CRIMSON, Feb. 8, 1988.

Harvard Olympic Bobsledder Charges He Was Cut Unfairly, HARVARD CRIMSON, Feb. 8, 1988.

Proctor Light Renews Spirit in Freshman Dorm Sports, HARVARD CRIMSON, Jan. 29, 1988.

Harvard Phi Beta Kappa Inductees Announced, HARVARD CRIMSON, Dec. 7, 1987.

Lashman Brings Political Savvy to Board, HARVARD CRIMSON, Dec. 1, 1987.

M. Fencers Foil Upstart Bruins; Women Win Too, HARVARD CRIMSON, Nov. 25, 1987.

VES Students Slaughter Birds, HARVARD CRIMSON, Nov. 6, 1987.

While serving as Secretary of the Asian American Lawyers Association of Massachusetts from April 2000 to April 2002, my duties included compiling articles and content for the organization's newsletter. Although I did not draft the articles contained in the newsletter (except for those that were attributed to me), I may have edited some of the text. Thus, I am providing copies of the following newsletters which I could locate for which I performed this role:

AALAM News, March 2002
AALAM News, January 2002
AALAM News, November 2001
AALAM News, May/June 2001
AALAM News, March/April 2001
AALAM News, February 2001
AALAM News, January 2001

AALAM News, December 2000
AALAM News, November 2000
AALAM News, October 2000
AALAM News, August/September 2000
AALAM News, July 2000
AALAM News, June 2000

Although it is possible that I wrote other short articles reporting on bar events or activities for bar association newsletters, I do not recall or have copies of any additional 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.

To the best of my recollection, I have not prepared or contributed to the preparation of any such reports, memoranda, or policy statements. As a member of the D.C. Bar Board of Governors, I have voted to approve the issuance of the following reports or policy statements prepared by other individuals or entities within the D.C. Bar:

D.C. Bar Report of the Family Law Task Force (2013). Copy supplied.

D.C. Bar Resolution Authorizing the Board of Governors and Bar Officers To Make Public Statements Concerning Funding of District of Columbia Courts (2012) (voted to renew this resolution in 2013). Copy supplied.

D.C. Bar Resolution Authorizing the Board of Governors and Bar Officers To Make Public Statements Concerning Funding of Civil Legal Services as Proposed by the Access to Justice Commission (2012) (voted to renew this resolution in 2013). Copy supplied.

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

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports

about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have spoken at a number of professional events and law student career events and have listed below all of the events I have identified based on my recollection and my review of available files, but it remains possible that there are other events at which I gave remarks. I am unaware of any transcripts, recordings, or verbatim accounts of my remarks at the listed events. I have searched for and have attached available copies of outlines, draft remarks, talking points, or notes that I used in conjunction with these events, as noted below.

May 23, 2013: Panelist, "Transportation Security Administration Asian American and Pacific Islander Heritage Month Program," Transportation Security Administration, Arlington, Virginia. Notes supplied.

May 21, 2013: Panelist, "AAPI Mentorship Session: Legal Profession and Issues," White House Initiative on Asian Americans and Pacific Islanders, Washington, D.C. Notes supplied.

Feb. 2, 2013: Panelist, "Embracing, Reconciling, and Exploring the Modern Asian Identity," University of Pennsylvania Law School, 12th Annual Asian Pacific American Law Students Association Conference, Philadelphia, Pennsylvania. Outline supplied.

Aug. 20, 2012: Speaker, "White House and DHS Initiatives on Diversity in Federal Employment," National Asian Peace Officers Association and National Asian American Law Enforcement Commanders National Convention, Chicago, Illinois. Draft remarks supplied.

Aug. 8, 2012: Panelist, "A Career Panel on Opportunities in the Federal Workplace," White House Initiative on Asian Americans and Pacific Islanders and the U.S. Department of Housing and Urban Development, Washington, D.C. Talking points supplied.

June 7, 2012: Panelist, "Issues of Importance to Korean Americans," White House Briefing for Korean American Leaders, Washington, D.C. Talking points supplied.

Apr. 11, 2012: Speaker, "For the Public Good: Opportunities in the Federal Government," Cornell Law School, Asian Pacific American Law Students Association and Public Interest Union, Ithaca, New York. Outline supplied.

Nov. 18, 2011: Panelist, "Birthright Citizenship and the 14th Amendment: Facts,

Consequences, and Policy Considerations," National Asian Pacific American Bar Association (NAPABA) National Convention, Atlanta, Georgia. Talking points supplied.

May 16, 2011: Panelist, "Leadership, Diversity, Empowerment, and Beyond," U.S. Citizenship and Immigration Services Asian American and Pacific Islander Heritage Month Celebration, Washington, D.C. Notes supplied.

Oct. 5, 2010: Panelist, "Legal Landscapes: Government Panel," Harvard Law School, Cambridge, Massachusetts. My recollection is that this was a career panel in which I discussed my public sector legal experiences and transitioning between the public and private sectors. I have no notes, transcripts, or recordings. The sponsor of the event was Harvard Law School, Office of Public Interest Advising, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Sept. 2008: Panelist, "Committee Operations Seminar for Members of Parliament," U.S. House of Representatives, Democracy Assistance Commission, Washington, D.C. Notes supplied.

Aug. 13, 2007: Panelist, "Addressing Organizational Conflicts of Interest and the New Wave of Government Oversight," American Bar Association Annual Meeting, Public Contract Law Section, San Francisco, California. Outline submitted for conference materials supplied.

May 1, 2007: Panelist, "Congressional Investigations: The Challenge of Responding Effectively," Fairfax County Chamber of Commerce, Government Contracts Council, McLean, Virginia. Talking points and press coverage supplied.

Feb. 20, 2007: Instructor, "Witness Preparation and Direct Examination," D.C. Bar Continuing Legal Education Program Essential Trial Skills Series, Washington, D.C. This one-evening CLE session consisted of providing instruction and practical advice to attorneys on preparing witnesses for direct examination and conducting direct examination in court. I have no notes, transcripts, or recordings. The event was sponsored by the District of Columbia Bar, 1101 K Street, N.W., Washington, D.C. 20005.

Nov. 11, 2006: Panelist, "White Collar Crime: Corporate Fraud Investigations and Prosecutions," NAPABA National Convention, Philadelphia, Pennsylvania. Outline supplied.

Mar. 18, 2006: Panelist, "Corporate Responsibility after Sarbanes-Oxley," NAPABA Southeast Regional Conference, Washington, D.C. Notes supplied.

Dec. 5, 2003: Presenter, "2003 AALAM Community Service Award to Long Nguyen," Harry H. Dow Memorial Legal Assistance Fund Annual Dinner,

Boston, Massachusetts. My recollection is that this was a brief presentation at which I described the biography and accomplishments of an award recipient. I have no notes, transcripts, or recordings. The event was sponsored by the Harry H. Dow Memorial Legal Assistance Fund, P.O. Box 6204, Boston, Massachusetts 02114.

Sept. 24, 2003: Panelist, "Practicing Law in Massachusetts: Career Paths and Insights," Asian American Lawyers Association of Massachusetts Kickoff Reception, Boston, Massachusetts. My recollection is that this was a career panel for junior attorneys and law students at which I discussed my experiences as an Assistant U.S. Attorney. I have no notes, transcripts, or recordings. The sponsor of the event was the Asian American Lawyers Association of Massachusetts, c/o The Boston Bar Association, 16 Beacon Street, Boston, Massachusetts 02108.

May 3, 2003: Panelist, "New Developments in Anti-Terrorism and the Law," NAPABA Northeast Regional Conference, Hartford, Connecticut. My recollection is that this panel consisted of a discussion of recent legislation and cases relating to anti-terrorism activities. I have no notes, transcripts, or recordings. The sponsor of the event was the National Asian Pacific American Bar Association, 1612 K Street, N.W., Washington, D.C. 20006.

April 30, 2003: President's Remarks at the Asian American Lawyers Association of Massachusetts (AALAM) Anniversary Banquet, Boston, Massachusetts. My recollection is that I provided a summary of AALAM's activities over the past year. I have no notes, transcripts, or recordings. The sponsor of the event was the Asian American Lawyers Association of Massachusetts, c/o The Boston Bar Association, 16 Beacon Street, Boston, Massachusetts 02108.

Dec. 12, 2002: Moderator, "The Federal Bench" (Panel of Federal Judges Advising on Criminal Law Practice), Boston Bar Association, Criminal Law Section, Annual Bench/Bar Conference, Boston, Massachusetts. Notes supplied.

Dec. 6, 2002: Presenter, "2002 AALAM Community Service Award to Paul W. Lee," Harry H. Dow Memorial Legal Assistance Fund Annual Dinner, Boston, Massachusetts. My recollection is that this was a brief presentation at which I described the biography and accomplishments of an award recipient. I have no notes, transcripts, or recordings, but press coverage is supplied. The event was sponsored by the Harry H. Dow Memorial Legal Assistance Fund, P.O. Box 6204, Boston, Massachusetts 02114.

Oct. 2, 2002: Remarks on behalf of the Asian American Lawyers Association of Massachusetts (AALAM), Joint Minority Bar Reception, Boston, Massachusetts. My recollection is that I described AALAM, its upcoming programs and initiatives, and my personal experiences as an attorney and law student. I have no notes, transcripts, or recordings. The event was co-sponsored by the Asian American Lawyers Association of Massachusetts, the Massachusetts Black

Lawyers Association, the Massachusetts Black Women Attorneys, and the Massachusetts Association of Hispanic Attorneys, c/o The Boston Bar Association, 16 Beacon Street, Boston, Massachusetts 02108.

Sept. 19, 2002: Introductory Remarks at Asian American Lawyers Association of Massachusetts (AALAM) General Meeting, Boston, Massachusetts. My recollection is that this was a brief description of AALAM and its recent activities. I have no notes, transcripts, or recordings. The sponsor of the event was the Asian American Lawyers Association of Massachusetts, c/o The Boston Bar Association, 16 Beacon Street, Boston, Massachusetts 02108.

July 24, 2002: Welcoming Remarks at Asian American Lawyers Association of Massachusetts (AALAM) Summer Intern Lunch, Boston, Massachusetts. My recollection is that this was a brief description of AALAM and the benefits of practicing in Boston. I have no notes, transcripts, or recordings. The sponsor of the event was the Asian American Lawyers Association of Massachusetts, c/o The Boston Bar Association, 16 Beacon Street, Boston, Massachusetts 02108.

2002 (approximate date): Panelist, "Office of Public Interest Advising Career Panel," Harvard Law School, Cambridge, Massachusetts. My recollection is that this was a career panel in which I discussed my experiences as an Assistant U.S. Attorney. I have no notes, transcripts, or recordings. The sponsor of the event was Harvard Law School, Office of Public Interest Advising, 1563 Massachusetts Avenue, Cambridge, MA 02138.

Nov. 14, 2001: Moderator, "The Federal Bench" (Panel of Federal Judges Advising on Criminal Law Practice), Boston Bar Association, Criminal Law Section, Annual Bench/Bar Conference, Boston, Massachusetts. 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.

Our Voices, Our Story, Congressional Black Caucus Foundation Annual Report (2009). Copy supplied.

Press Release, Asian Pac. Am. Legal Res. Ctr., Asian Pacific American Legal Resource Center Names Myron Dean Quon Executive Director (Apr. 28, 2008). Copy supplied.

Two Affiliated Bars Gain Seats on House of Delegates, LAW. J., May 2003. Copy supplied.

AALAM Director Named to Mass. Judicial Nominating Commission, AALAM NEWS, Mar. 2003. Copy supplied.

After Controversy, Mass. Bar Opens Itself to Changes, BOSTON BUSINESS JOURNAL, Aug. 12, 2002. Copy supplied.

Lawyer Ditches Hajji Sebaggala, NEW VISION, July 12, 1999. Copy supplied.

Sebaggala to Refund US Bank, NEW VISION, Dec. 8, 1998. Copy supplied.

U.S. Jury Finds Kampala Mayor Guilty of Fraud, REUTERS NEWS, Dec. 4, 1998. Copy supplied.

Fraud Trial of Ugandan Mayor Opens in US, AGENCE FRANCE PRESSE, Nov. 3, 1998. Copy supplied.

Sebaggala's Appeal Stalls, NEW VISION, Aug. 19, 1998. Copy supplied.

Record Numbers Run for Council, HARVARD CRIMSON, Oct. 8, 1987. Copy supplied.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

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

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

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

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that

were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

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

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

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

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

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

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

I have not served as a judge.

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

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

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

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

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

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

Town Meeting Member, Lexington Town Meeting, Lexington, MA: Elected March 1989 and re-elected March 1992 (served 1989 – 1994). I served as one of 189 elected members of the town's non-partisan legislative body charged with appropriating funds for operating and capital budgets, approving general and zoning by-laws, and approving town by-laws and other town government matters.

I have not had 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.

Executive Committee (Vice President), Montgomery County District 16 Democratic Club, Montgomery County, Maryland (2009). I helped plan membership events with elected officials and other speakers.

Board of Directors, Coalition of Asian Pacific American Democrats of Maryland (2009). I helped plan events at which elected officials and Asian American community leaders discussed issues of interest to the Asian American community.

Precinct Chair, Montgomery County Democratic Party, Montgomery County, Maryland (2008). I organized volunteers to staff a polling place information table on Election Day.

Volunteer, Obama for America Presidential Campaign (2008). I served on the Steering Committee of the Maryland Asian Pacific Americans for Obama, helping plan Asian American outreach efforts; on the organizing committee for a National Asian Pacific American Fundraiser, attending planning meetings and inviting personal contacts to attend the event; and as a field volunteer, conducting polling place legal monitoring, canvassing, phonebanking, and voter registration.

Host Committee, Ben Cardin for Senate Fundraiser, Potomac, Maryland (2006). I invited personal contacts to attend a fundraising event.

Delegate, Massachusetts Democratic State Convention (2002). I served as a delegate to the Massachusetts Democratic State Convention.

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 August 1994 to August 1995, I served as a law clerk to Judge Dorothy W. Nelson, Circuit Judge of the United States Court of the Appeals for the Ninth Circuit.

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

I have not practiced alone.

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

May – July 1994
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Law Intern

July – August 1994
United States Department of State
Office of the Legal Adviser
2201 C Street, N.W.
Washington, D.C. 20520
Law Intern

1994 – 1995
United States Court of Appeals for the Ninth Circuit
Chambers of Judge Dorothy W. Nelson
125 South Grand Avenue, Suite 303
Pasadena, CA 91105
Law Clerk to Judge Dorothy W. Nelson

1995 – 1998
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Trial Attorney, Housing and Civil Enforcement Section

1998 – 2004
United States Attorney's Office for the District of Massachusetts
One Courthouse Way, Suite 9200
Boston, MA 02210
Assistant United States Attorney, Criminal Division

2004 – 2007
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel

2007 – 2009
House Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, D.C. 20515
Deputy Chief Investigative Counsel

2009
House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, D.C. 20515
Chief Investigative Counsel

2009 – present
United States Department of Homeland Security
Office of the General Counsel
Washington, D.C. 20528
Associate General Counsel (2009 – 2011)
Deputy General Counsel (2011 – present)
Counselor on detail to United States Department of State (2013 – 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 professional mediator or arbitrator. As a law student, I participated in the Harvard Mediation Program, through which I served as a co-mediator on a few cases arising in Massachusetts state

courts. I do not have records or a recollection of the specific matters mediated.

b. Describe:

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

From 1995 to 1998, when I served as a trial attorney at the United States Department of Justice, Civil Rights Division, I represented the United States as a plaintiff in civil litigation to enforce federal civil rights laws, particularly those relating to fair housing, access to public accommodations, fair lending, and housing rights for persons with disabilities. My activities included conducting investigations, conducting written discovery and depositions, drafting summary judgment motions, and drafting and negotiating consent decrees to settle cases for injunctive relief, damages, and civil penalties.

From 1998 to 2004, when I served as an Assistant United States Attorney at the United States Attorney's Office for the District of Massachusetts, I represented the United States as a federal prosecutor and conducted all phases of criminal prosecution, including grand jury investigations, motion practice, evidentiary hearings, jury trials, plea hearings, sentencing proceedings, and appeals in cases relating to violent crime, financial fraud, immigration crimes, and other federal offenses. My appellate activities included representing the United States in nine appeals (seven as appellee, two as appellant) before the United States Court of Appeals for the First Circuit by drafting the briefs and delivering oral argument in all five of those cases in which the court heard argument.

From 2004 to 2007, when I was a counsel at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, I was engaged in private litigation practice as a defense attorney representing individuals and corporations from the securities, financial, communications, and energy sectors in criminal and civil enforcement investigations and litigation, at both the trial and appellate levels. In criminal cases, I represented companies under grand jury investigation by overseeing teams of attorneys engaged in responding to subpoenas and requests for documents, preparing witnesses, and negotiating resolutions to cases prior to indictment. I also represented defendants in indicted criminal cases, including preparing witnesses, drafting briefs on pre-trial motions, and drafting appellate briefs. In civil cases, I oversaw teams of attorneys engaged in responding to document requests, prepared witnesses for and defended depositions or on-the-record testimony in civil enforcement actions, and negotiated discovery issues and settlement with opposing counsel. In both civil and criminal cases, I

conducted internal investigations to assess potential criminal and civil exposure and to obtain facts to support negotiations to resolve the cases.

From 2007 to 2009, when I served as Deputy Chief Investigative Counsel for the House Committee on Oversight and Government Reform and as Chief Investigative Counsel for the House Committee on Energy and Commerce, I supervised and conducted congressional oversight investigations of federal government agencies and corporations in the national security, financial, and health sectors. Although not formal litigation, the investigations were similar to litigation in that they employed litigation tools, such as document requests, interrogatories, and depositions and often culminated in a formal congressional hearing including witness testimony.

Since I became Associate General Counsel and later Deputy General Counsel at the United States Department of Homeland Security, the majority of my responsibilities have consisted of providing legal advice in a counseling capacity relating to administrative law, labor and employment law, government contracts law, fiscal and appropriations law, intelligence and national security law, and criminal procedure. I have also supervised administrative litigation and overseen federal court litigation conducted by the Department of Justice on behalf of DHS relating to labor and employment law, the Federal Tort Claims Act, government contracts, and certain national security and law enforcement matters. I have also served on a temporary detail to the United States Department of State to provide legal advice and support on congressional investigations and significant litigation.

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

When I served as a trial attorney at the United States Department of Justice, Civil Rights Division, I represented the United States as a plaintiff in civil litigation. My areas of specialization were federal civil litigation and federal civil rights law.

As an Assistant United States Attorney at the United States Attorney's Office for the District of Massachusetts, I represented the United States in criminal prosecutions. My area of specialization was federal criminal law and procedure at the trial and appellate levels.

As a counsel at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, I was engaged in private litigation practice representing individuals and corporations from the securities, financial, communications, and energy sectors in criminal and civil enforcement investigations and litigation. My areas of specialization included criminal defense,

government investigations, and federal civil litigation at the trial and appellate levels.

As the Deputy Chief Investigative Counsel for the House Committee on Oversight and Government Reform and as Chief Investigative Counsel for the House Committee on Energy and Commerce, I represented congressional committees in the conduct of congressional oversight investigations of federal government agencies and corporations in the national security, financial, and health sectors. My area of specialization was congressional investigations practice.

As Deputy General Counsel and Associate General Counsel at the United States Department of Homeland Security, I have represented the United States Department of Homeland Security and the United States Department of State (on detail) as in-house counsel. My areas of specialization have included administrative law, labor and employment law, government contracts law, fiscal and appropriations law, intelligence and national security law, criminal procedure, and federal court and administrative 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.

Throughout most of my career, I have engaged in litigation, either directly or by supervising or overseeing other counsel. When I was a trial attorney at the United States Department of Justice, Civil Rights Division from 1995 to 1998, my practice was 100% litigation, and I appeared in court occasionally. When I was an Assistant United States Attorney from 1998 to 2004, my practice was 100% litigation, and I appeared in court frequently. When I was in private practice from 2004 to 2007, my practice was 100% litigation, and I appeared in court occasionally.

When I was counsel to congressional committees from 2007 to 2009, my practice was not formal litigation, but consisted of the conduct of investigations similar to litigation in that they required the use of litigation tools such as document requests, interrogatories, and depositions and often culminated in a formal congressional hearing including witness testimony.

At the United States Department of Homeland Security since 2009, approximately 20% of my practice has been supervision or oversight of litigation. I have not appeared in court but have supervised and overseen the work of attorneys who did appear in court. I have estimated the percentages of my practice below based on my entire career in litigation.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 1%
   3. other courts: 0%
   4. administrative agencies: 9%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 35%
   2. criminal proceedings: 65%

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

I have tried eight cases to verdict before the United States District Court, which included a total of approximately 95 jury trial days. Of these trials, I was the sole counsel for two trials and chief counsel for two trials. In all of the trials I conducted with other counsel, whether as chief counsel or not, I delivered either the opening statement or closing argument and had responsibility for an approximately equal share of witness examination and other trial activities. I also have tried one case to verdict before a state district court. I was a student prosecutor authorized to represent the state and was the sole counsel, but as required by rule was accompanied by an Assistant District Attorney advisor. All of the eight United States district court trials were criminal jury trials. The one state district court trial was a criminal non-jury trial.

i. What percentage of these trials were:
   1. jury: 89 %
   2. non-jury: 11 %

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

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

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

a. the date of representation;

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

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

1. *United States v. Merlino et al.,* Crim. No. 99-10098-RGS (D. Mass. Mar. 24, 1999); 204 F. Supp. 2d 83 (D. Mass. 2002); 592 F.3d 22 (1st Cir. 2010).

   In this case, four defendants were charged in a six-count indictment with attempted Hobbs Act robbery, conspiracy, use of an explosive and firearms in relation to a crime of violence, and felon-in-possession of an explosive and firearms, arising from a scheme to rob an armored car facility of over $50 million in cash through the use of firearms, an assault rifle, and a hand grenade. I represented the United States and was the lead prosecutor for the trial and shared trial responsibilities with my co-counsel. During a 16-day jury trial, I examined or cross-examined approximately half of the witnesses, including the main cooperating witness whose testimony spanned all or part of seven trial days and included the introduction of substantial evidence from tape recordings. I also delivered the closing argument and shared responsibility for all other aspects of the trial, including jury selection and briefing and argument on motions. After trial, all four defendants were convicted on all counts and received sentences of 51, 47, 38, and 13 years' imprisonment. I did not participate in the appeal cited above, which upheld the original conviction.

Date of Representation:	Trial: September 24, 2001 – October 24, 2001
Court:	U.S. District Court, District of Massachusetts
Judge:	Hon. Richard G. Stearns
Co-Counsel:	Hon. James F. Lang (former Assistant U.S. Attorney) Associate Justice Massachusetts Superior Court Three Pemberton Square, 13th Floor Boston, MA 02108 (617) 788-8130 (978) 242-1931
Opposing Counsel:	Martin D. Boudreau, Esq. (defendant C. Merlino) (deceased)

Robert M. Goldstein, Esq. (defendant Turner)
The Goldstein Law Firm
20 Park Plaza, Suite 1000
Boston, MA 02116
(617) 742-9015

William J. Cintolo, Esq. (defendant Rossetti)
Cosgrove, Eisenberg & Kiley, P.C.
One International Place, Suite 1820
Boston, MA 02110-2600
(617) 439-7775

E. Peter Parker, Esq. (defendant W. Merlino)
151 Merrimac Street
Boston, MA 02114
(617) 742-9099

2. *United States v. Sebaggala*, Crim. No. 98-10186-RCL (D. Mass Sept. 30, 1998); 256 F.3d 59 (1st Cir. 2001).

In this case, the defendant was the mayor of the capital city of Uganda and was charged in a ten-count indictment with bank fraud, transportation of altered securities, and making false statements to the United States government arising out of a scheme to fraudulently alter checks and traveler's checks originating in Africa and present them to a bank in the United States. The evidence at trial revealed that some of the proceeds of the crime were used to fund the defendant's political campaign. I was the sole prosecutor on the case from the original criminal complaint through indictment, trial, and appeal. During a 20-day jury trial, I handled all trial responsibilities on behalf of the United States, including jury selection, opening statement, examination and cross-examination of all witnesses, including two expert witnesses and several foreign witnesses, briefing and arguing all motions, and closing argument. After trial, the defendant was convicted on all counts and sentenced to 15 months' imprisonment. I also briefed and argued the appeal before the United States Court of Appeals for the First Circuit, which affirmed the conviction.

Date of Representation:	Trial: November 2, 1998 – December 4, 1998
Courts:	U.S. District Court, District of Massachusetts U.S. Court of Appeals for the First Circuit
District Judge:	Hon. Reginald C. Lindsay
Opposing Counsel:	Paul V. Kelly, Esq. Jackson Lewis, LLP 75 Park Plaza, Fourth Floor

Boston, MA 02116
(617) 367-0025

3. *United States v. Donnelly, Bailey et al.*, Crim. No. 00-10431-RCL, 405 F.3d 102 (1st Cir. 2005).

In this case, seven Suffolk County jail officers were charged in a 15-count indictment with deprivation of constitutional rights, conspiracy, perjury, and obstruction of justice arising out of a series of beatings of detainees at the Nashua Street Jail in Boston. I served as a member of a three-attorney trial team and prepared for a trial of all seven defendants. Immediately prior to trial, three defendants (Donnelly, Nuzzo, Massucco) pleaded guilty to all charges. At the 18-day trial of three remaining defendants, I delivered the opening statement, examined or cross-examined approximately one-third of the witnesses, including a defendant and one of the main cooperating witnesses, and shared equally in all other aspects of the trial, including jury selection and briefing and arguing of motions. Defendant Bailey was convicted and sentenced to 41 months' imprisonment; the other two defendants (Bethune, Benson) were acquitted.

Dates of Representation:	Trial: March 3 – 31, 2003
Court:	U.S. District Court, District of Massachusetts
Judge:	Hon. Reginald C. Lindsay
Co-Counsel:	Ted Merritt Assistant U.S. Attorney, District of Massachusetts U.S. Attorney's Office One Courthouse Way Boston, MA 02210 (617) 748-3100 Lisa Krigsten, Esq. (former U.S. Department of Justice trial attorney) Dentons US LLP 4520 Main Street, Suite 1100 Kansas City, MO 64111 (816) 460-2554
Opposing Counsel:	Evan Slavitt, Esq. (defendant Bailey) AVX Corporation One Avx Blvd Fountain Inn, SC 29644 (864) 967-2150

Douglas I. Louison, Esq. (defendant Benson)
Louison, Costello, Condon & Pfaff, LLP
101 Summer Street, Fourth Floor
Boston, MA 02110
(617) 439-0305

Stephen C. Pfaff, Esq. (defendant Bethune)
Louison, Costello, Condon & Pfaff, LLP
101 Summer Street, Fourth Floor
Boston, MA 02110
(617) 439-0305

4. *United States v. Sutherland,* Crim. No. 00-10431-GAO (D. Mass. May 15, 2001).

This case consisted of an eight-day jury trial of defendant Sutherland, a Suffolk County jail officer, who was originally charged along with the Donnelly/Bailey defendants with deprivation of constitutional rights, conspiracy, and obstruction of justice, but had his case severed from that of the other defendants. I was one of two prosecutors representing the United States. I examined approximately half of the witnesses, delivered the closing argument, and shared equally in all other aspects of the trial, including jury selection and briefing and arguing of motions. The defendant was convicted of one count of obstruction of justice and was acquitted of the remaining counts. He was sentenced to ten months' imprisonment.

Dates of Representation:	Trial: October 14 – 28, 2003
Court:	U.S. District Court, District of Massachusetts
Judge:	Hon. George A. O'Toole, Jr.
Co-Counsel:	Ted Merritt Assistant U.S. Attorney U.S. Attorney's Office, District of Massachusetts One Courthouse Way Boston, MA 02210 (617) 748-3100
Opposing Counsel:	J.W. Carney, Jr., Esq. Carney & Bassil 20 Park Plaza, Suite 1405 Boston, MA 02116 (617) 963-0534

5. *United States v. Ziskind*, Crim. No. 02-10016-DPW (D. Mass. Jan. 16, 2002), 367 F.Supp.2d 4 (D. Mass. 2005), 491 F.3d 10 (1st Cir. 2007).

   In this case, the defendant was charged in a three-count indictment with theft of interstate shipments and conspiracy arising from a scheme in which an organized crime figure recruited a group of UPS truck drivers to steal packages containing semiconductors, memory chips, and other computer-related products and provide them to the defendant for resale through his electronics business. I joined the case prior to trial and was one of two prosecutors representing the United States. During the nine-day trial, I examined approximately half of the witnesses, including an immunized witness, delivered the closing argument, and shared equally in all other aspects of the trial, including jury selection and briefing and arguing motions. The defendant was convicted on all counts and sentenced to 63 months' imprisonment. I did not participate in the post-trial motion or appeal cited above, the latter of which affirmed the conviction.

Date of Representation:	Trial: January 27 – February 12, 2003
Court:	U.S. District Court, District of Massachusetts
Judge:	Hon. Douglas P. Woodlock
Co-Counsel:	Fred M. Wyshak, Jr. Assistant U.S. Attorney U.S. Attorney's Office, District of Massachusetts One Courthouse Way Boston, MA 02210 (617) 748-3100
Opposing Counsel:	William J. Cintolo, Esq. Cosgrove, Eisenberg & Kiley, P.C. One International Place, Suite 1820 Boston, MA 02110-2600 (617) 439-7775

6. *United States v. Simons et al.*, Crim. No. 97-10334-GAO (D. Mass. 1997); 225 F.3d 54 (1st Cir. 2000).

   In this case, seven defendants were charged in a 33-count indictment with interstate transportation of stolen property, conspiracy, structuring of financial transactions, money laundering, making false statements to the U.S. government, and criminal forfeiture arising out of scheme to steal approximately $17 million worth of Microsoft Office software discs and other computer software and data storage devices from a distributor's warehouse and re-sell them through a separate business. Prior to trial, five of the defendants pleaded guilty. During a two-week jury trial of the two remaining defendants, I was one of two prosecutors

representing the United States. I delivered the opening statement, examined approximately half of the witnesses, and shared equally in all other aspects of the trial, including jury selection and briefing and arguing of motions. Defendant M. Simons was convicted on all seven counts in which she was charged and sentenced to 33 months' imprisonment. Defendant Coviello was convicted on the single count in which he was charged and was sentenced to 30 months' imprisonment. I did not participate in the appeal cited above, which affirmed the conviction.

Dates of Representation:	Trial: March 1 – 19, 1999
Court:	U.S. District Court, District of Massachusetts
Judge:	Hon. George A. O'Toole, Jr.
Co-Counsel:	Ben T. Clements, Esq. (former Assistant U.S. Attorney) Clements & Pineault, LLP 24 Federal Street, Third Floor Boston, MA 02110 (857) 445-0133
Opposing Counsel:	Robert L. Shekatoff, Esq. (defendant M. Simons) One McKinley Square Boston, MA 02109 (617) 367-3449 Robert D. Lewin, Esq. (defendant Coviello) One Salem Street Malden, MA 02148 (781) 322-2228

7. *United States v. Hughes,* Crim. No. 99-10405-REK (D. Mass. Dec. 8, 1999); 95 F. Supp. 2d 49 (D. Mass. 2000); 131 F. Supp. 2d 64 (D. Mass. 2001); 279 F.3d 86 (1st Cir. 2002).

In this case, the defendant was charged in a six-count indictment with making false statements in connection with the purchase of firearms and illegal possession of firearms by a drug user or addict arising from the purchase of a total of 11 firearms over the course of three visits to a gun dealer. I represented the United States in all phases of this prosecution, including a suppression hearing that led to the suppression of evidence and a subsequent interlocutory appeal to the United States Court of Appeals for the First Circuit, which I briefed and argued, that resulted in the reversal of the suppression ruling. During an eight-day jury trial, I was the lead prosecutor and shared trial responsibilities with another Assistant U.S. Attorney. I examined approximately half of the witnesses, including an

expert witness, delivered the closing argument and rebuttal argument, and shared equally in all other aspects of the trial, including jury selection and briefing and arguing of motions. The defendant was convicted on all counts and sentenced to 18 months' imprisonment.

Dates of Representation:	Indictment:	December 8, 1999
	Trial:	June 17 – 26, 2002
Courts:	U.S. District Court, District of Massachusetts U.S. Court of Appeals for the First Circuit	
District Judge:	Hon. Robert E. Keeton	
Co-Counsel:	Hon. Denise Jefferson Casper (former Assistant U.S. Attorney) United States District Judge U.S. District Court Moakley United States Courthouse One Courthouse Way Boston, MA 02210 (617) 748-4829	
Opposing Counsel:	Miriam Conrad, Esq. Federal Public Defender 51 Sleeper Street, Fifth Floor Boston, MA 02210 (617) 223-8061	

8. *United States v. Freeman,* Crim. No. 00-10020-RWZ (D. Mass. Jan. 19, 2000).

In this case, the defendant was charged with illegal possession of a firearm by a convicted felon arising from a police chase of the defendant at an apartment complex. I represented the United States in all phases of this prosecution from indictment to sentencing. During the three-day jury trial, I conducted jury selection, delivered the opening statement and closing argument, and examined all of the witnesses. The defendant was convicted and sentenced to a mandatory minimum of 180 months' imprisonment as an Armed Career Criminal. Subsequently, the defendant arranged for one of his predicate state convictions to be vacated and filed a petition under 28 U.S.C. 2255 to vacate the sentence, resulting in the re-sentencing of the defendant.

Dates of Representation:	Indictment:	January 19, 2000
	Trial:	July 17 – 19, 2000
	2255 Proceeding:	Dec. 2002 – Jan. 2003
Court:	U.S. District Court, District of Massachusetts	

Judge:	Hon. Rya W. Zobel
Opposing Counsel:	James Dilday, Esq. The Law Offices of James S. Dilday, P.C. 27 School Street, Suite 400 Boston, MA 02108 (617) 227-3470

9. *United States v. Bashorun and Junaid,* Crim. No. 97-10318- NG (D. Mass. Dec. 3, 1997); 225 F.3d 9 (1st Cir. 2000).

In this case, two defendants were charged in an 11-count indictment with possession of heroin with intent to distribute, conspiracy, use of a communications facility to facilitate a controlled substance offense, and immigration fraud arising from a scheme to import heroin from Thailand by Express Mail. I joined the case in April 1998 as co-counsel to represent the United States in a six-day evidentiary hearing on a motion to suppress evidence and participated in the drafting of the post-hearing pleadings. After the motion was denied, I prepared the case for trial by preparing to examine approximately half of the witnesses, including an expert witness, and drafting pre-trial motions and submissions. Shortly before trial, the defendants pleaded guilty but reserved their rights to appeal the district court's denial of the motion to suppress. The defendants were sentenced to 63 months' imprisonment (defendant Bashorun) and 12 months' probation (defendant Junaid). On appeal, I served as counsel of record for both appeals (one filed by each defendant), drafted the government's briefs, and delivered oral argument in the one appeal in which the court heard argument. The U.S. Court of Appeals affirmed in both appeals.

Dates of Representation:	March 1998 – September 2000
Courts:	U.S. District Court, District of Massachusetts U.S. Court of Appeals for the First Circuit
District Judge:	Hon. Nancy Gertner
Co-Counsel:	Michael Ricciuti, Esq. K&L Gates State Street Financial Center One Lincoln Street Boston, MA 02111 (617) 951-9094
Opposing Counsel:	Hon. Peter B. Krupp (defendant Bashorun) Associate Justice Massachusetts Superior Court

Three Pemberton Square, 13th Floor
Boston, MA 02108
(617) 788-8130

Karnig Boyajian, Esq. (defendant Junaid)
One Gateway Center, Suite 315
Newton, MA 02458
(617) 332-2222

10. *United States v. Moore*, Crim. No. 98-10140-GAO (D. Mass. Apr. 29, 1998); 235 F.3d 700 (1st Cir. 2000); 286 F.3d 47 (1st Cir. 2002).

In this case, the defendant was charged in a one-count indictment with illegal possession of ammunition by a convicted felon. I represented the United States as sole counsel for all proceedings from indictment through appeal. During an evidentiary hearing on July 20, 1999, I examined all witnesses and presented oral argument. After the district court granted the motion to suppress, the government filed an interlocutory appeal to the United States Court of Appeals for the First Circuit. I briefed and argued the appeal, which resulted in the reversal of the district court's suppression ruling. The defendant then pleaded guilty, and I represented the United States at the plea hearing and sentencing hearing, at which the defendant was sentenced to a mandatory minimum 180 months' imprisonment as an Armed Career Criminal. On a subsequent appeal to the First Circuit related to sentencing, I was counsel of record for the United States and briefed the appeal. The United States Court of Appeals affirmed the sentence.

Dates of Representation:	April 29, 1998 – March 18, 2002
Courts:	U.S. District Court, District of Massachusetts U.S. Court of Appeals for the First Circuit
District Judge:	Hon. George A. O'Toole, Jr.
Opposing Counsel:	E. Peter Parker, Esq. 151 Merrimac Street Boston, MA 02114 (617) 742-9099

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.)

Beyond the trial and litigation activities described above in response to questions 16 and 17, I have engaged in the following significant legal activities that did not consist of direct representation in litigation:

From 2007 to 2009, during my service as Chief Investigative Counsel of the House Committee on Energy and Commerce and Deputy Chief Investigative Counsel of the House Committee on Oversight and Government Reform, I supervised and conducted congressional oversight investigations of federal government agencies and corporations in the national security, financial, and health sectors. Although not formal litigation, the investigations were similar to litigation in that they employed litigation tools such as document requests, interrogatories, and depositions and often culminated in a formal congressional hearing including witness testimony and examination of witnesses by members of Congress. For such hearings, I briefed the Chairman and other members of the Committee on the results of the investigation and prepared proposed questions to be asked of the witnesses. As Chief Investigative Counsel, I had supervisory responsibility over a team of approximately 12 to 15 attorneys and investigators.

Since 2009, as Deputy General Counsel and Associate General Counsel at the United States Department of Homeland Security, I have provided, and supervised the provision of, legal advice in a counseling capacity to senior DHS officials on issues relating to administrative law, labor and employment law, government contracts law, fiscal and appropriations law, intelligence and national security law, and criminal procedure. The counseling related to issues such as counterterrorism, border security, immigration enforcement and administration, cybersecurity, and national disaster responses to events such as the BP/Deepwater Horizon oil spill. In these roles, I also oversaw litigation matters relating to employment law, government contracts, the Federal Tort Claims Act, and certain criminal procedure matters. As part of my litigation responsibilities, I served as the DHS lead on the federal government team supporting the BP/Deepwater Horizon litigation. As Associate General Counsel, I had supervisory responsibility over a team of 30 to 35 attorneys, including five supervisors who reported directly to me. As Deputy General Counsel, I had supervisory responsibility over the chief counsel of four Divisions and Components comprising a combined total of approximately 275 attorneys.

I have not registered as a lobbyist and have not performed lobbying activities during the course of my career.

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.

No.

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

See attached Financial Disclosure Report.

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

See attached Statement of Net Worth.

24. **Potential Conflicts of Interest**:

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

    If confirmed, I would recuse in any litigation in which I had played a role. In particular, a case involving the United States Department of Homeland Security as a party might present a conflict of interest. I would examine whether the case arises from facts with which I had personal or supervisory involvement, or whether participation would violate relevant ethics and professional responsibility rules, and would recuse in such instances. Although I do not foresee any other likely conflicts of interest, I would also examine every case for any conflict or appearance of conflict arising out of any personal relationships.

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

I would follow 28 U.S.C. § 455, the Code of Conduct for United States Judges, and any other applicable ethics, rules, or statutes, to determine whether I should be recused.

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

Since 2005 and continuing to the present, I have served on the Board of Directors of the Asian Pacific American Legal Resource Center (APALRC), a non-profit legal services organization that serves low-income, limited English proficient Asian Americans and immigrants in Maryland, Washington, D.C., and Virginia. The APALRC provides legal representation and referral services in cases involving domestic violence, family law, immigration law, employment law, and a variety of other areas. As a member of the Board of Directors, I help to oversee the management, programs, and finances of the organization. For two years, from 2007 to 2009, I served as Chair of the Board of Directors. In addition to the duties of a Director, I was the principal point of contact for the Executive Director and led a search for a new Executive Director when a vacancy arose, set the agenda for and chaired all Board meetings, set the agenda for and chaired Executive Committee meetings, and represented the organization at various internal and external events and meetings.

From approximately 2002 to 2003, as President of the Asian American Lawyers Association of Massachusetts (AALAM), I oversaw and promoted a project of the organization's Community Service Committee to provide a *pro bono* legal workshop in Boston's Chinatown at which AALAM attorneys provided general information about immigration law, employment law, and other areas of law that may affect the lives of area residents.

From 2002 to 2003, I served on the Board of Directors of Lawyers' Committee for Civil Rights Under Law of the Boston Bar Association (now the Lawyers' Committee for Civil Rights and Economic Justice), a nonprofit, nonpartisan legal organization that provides pro bono legal representation to victims of discrimination based on race or national origin.

From 1999 to 2001, I served on the Board of Trustees of the Massachusetts Law Reform Institute, a non-profit legal services organization whose mission is to advance economic, racial and social justice in Massachusetts through legal action, education and advocacy.

From approximately 1996 to 1997, I served as the Pro Bono Committee Chair of the Asian Pacific American Bar Association of the Greater Washington, D.C. Area (APABA). In that role, I led efforts to study means by which APABA could host a program through which its members could engage in 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.

On or about March 8, 2013, in response to a public notice soliciting applications for the position of United States District Judge for the District of Maryland, I submitted an application to the Office of Senator Barbara A. Mikulski. On March 18, 2013, I was interviewed in Baltimore, Maryland by a Review Committee of Maryland attorneys established by Senator Mikulski and Senator Ben Cardin, which then recommended me to the Senators. On May 6, 2013, I was interviewed in Washington, D.C. by Senator Mikulski and Senator Cardin. On June 10, 2013, Senator Mikulski informed me that she was recommending me to the President for nomination. Since June 11, 2013, I have been in contact with officials from the Office of Legal Policy at the United States Department of Justice. On July 17, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 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
Chuang, Theodore D.	United States District Court, District of Maryland	09/25/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Judge	**5a. Report Type (check appropriate type)** ☑ Nomination Date 09/25/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2012 to 08/31/2013
7. Chambers or Office Address United States District Court, District of Maryland 6500 Cherrywood Lane Greenbelt, MD 20770		

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 of Governors	District of Columbia Bar
2.	Board of Directors	Asian Pacific American Legal Resource Center
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting Chuang, Theodore D.	Date of Report 09/25/2013

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.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2012	Asian American Justice Center - salary
2.	2013	Asian American Justice Center - salary
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting Chuang, Theodore D.	Date of Report 09/25/2013

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.	CitiMortgage	Mortgage on rental property, Brookline, MA	M
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 9

Name of Person Reporting	Date of Report
Chuang, Theodore D.	09/25/2013

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. Rental Property, Brookline, MA	E	Rent	N	W	Exempt				
2. Citibank Cash Accounts	A	Interest	M	T	Exempt				
3. Emigrant Direct Cash Account	A	Interest	K	T	Exempt				
4. Fidelity Dividend Growth Fund	A	Dividend	K	T	Exempt				
5. Lord Abbett Affiliated A Fund	C	Dividend	M	T	Exempt				
6. Brokerage Account #1 (H)									
7. - Dreyfus International Stock Index Fund	A	Dividend	K	T	Exempt				
8. - Dreyfus Mid Cap Index Fund	B	Dividend	K	T	Exempt				
9. - Janus Global Research Fund	A	Dividend	K	T	Exempt				
10. - Janus Growth & Income Fund	A	Dividend	K	T	Exempt				
11. - Loomis Sayles Bond Fund	B	Dividend	K	T	Exempt				
12. - Oakmark Fund	B	Dividend	L	T	Exempt				
13. - Schwab S&P 500 Fund	A	Dividend	K	T	Exempt				
14. - Schwab Small Cap Index Fund	B	Dividend	K	T	Exempt				
15. Brokerage Account #2 (H)									
16. - Schwab 1000 Fund	A	Dividend	L	T	Exempt				
17. - Schwab Core Equity Fund	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
I =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
Page 5 of 9

Name of Person Reporting	Date of Report
Chuang, Theodore D.	09/25/2013

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. Brokerage Account #3 (H)									
19. - Cisco Systems stock	A	Dividend	J	T	Exempt				
20. - Invesco Diversified Dividend A	A	Dividend	K	T	Exempt				
21. - Microsoft Corporation stock	A	Dividend	J	T	Exempt				
22. - Power Shares QQQ TR	A	Dividend	J	T	Exempt				
23. 401(k) #1	D	Dividend	N	T	Exempt				
24. - Allianz GI International Small Cap Fund (Y)									
25. - Eaton Vance Large Cap Value Fund (Y)									
26. - Neuberger Berman Large Cap Fund (Y)									
27. - Artisan Mid Cap Fund									
28. - GRT Value Fund									
29. - Hancock Horizon Dividend International Fund									
30. - Ivy Small Cap Fund									
31. - MFS International New Discovery Fund									
32. - MFS Value Fund									
33. - Touchstone Sands Capital Select Growth Fund									
34. IRA #1	A	Dividend	K	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
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

3. Value Method Codes (See Column C2)

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting Chuang, Theodore D.	Date of Report 09/25/2013

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. - Janus Growth & Income Fund									
36. - Oakmark Fund									
37. - Schwab 1000 Fund									
38. IRA #2	A	Int./Div.	K	T	Exempt				
39. - Charles Schwab Bank Cash Account									
40. - Columbia Energy & Natural Resources Fund									
41. - Oakmark Fund									
42. - Oakmark Global Select Fund									
43. - Schwab 1000 Fund									
44. - Schwab Small Cap Index Fund									
45. State Retirement Plan #1		None	J	T	Exempt				
46. - Mass. Deferred Comp. SMART Plan Large Co. Blend Stock Fund									
47. - Mass. Deferred Comp. SMART Plan Large Co. Stock Index Fund									
48. Fidelity Freedom 2030	B	Dividend	L	T	Exempt				
49. Fidelity Freedom 2035	A	Dividend	K	T	Exempt				
50. Vanguard Life Strategy Growth Fund	A	Dividend	K	T	Exempt				
51. Utah Educational Savings Plan Age Based Aggressive Global	C	Dividend	M	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 7 of 9	Name of Person Reporting Chuang, Theodore D.	Date of Report 09/25/2013

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. Maryland College Investment Plan Portfolio 2024		None	M	T	Exempt				
53. Northwestern Mutual Whole Life Insurance Policy	B	Dividend	K	T	Exempt				
54. U.S. Govt. Securities Series EE Bonds		None	L	T	Exempt				
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
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Chuang, Theodore D.	Date of Report 09/25/2013

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

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Chuang, Theodore D.	Date of Report 09/25/2013

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/ **Theodore D. Chuang**

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		226	633	Notes payable to banks-secured			
U.S. Government securities – see schedule		95	700	Notes payable to banks-unsecured			
Listed securities – see schedule	1	318	303	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		789	633
Real estate owned – see schedule	1	222	900	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000				
Cash value-life insurance		26	624				
Other assets itemize:							
Thrift Savings Plan		428	095				
				Total liabilities		789	633
				Net Worth	2	553	622
Total Assets	3	343	255	Total liabilities and net worth	3	343	255
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

U.S. Government Securities	
Series EE Bonds	$ 95,100
Series E Bond	600
Total U.S. Government Securities	$ 95,700
Listed Securities	
Artisan Mid Cap Fund	44,153
Cisco Systems stock	2,345
Columbia Energy & Natural Resources Fund	1,982
Dreyfus International Stock Fund	23,921
Dreyfus Mid Cap Index Fund	28,547
Fidelity Dividend Growth Fund	37,168
Fidelity Freedom 2030 Fund	70,398
Fidelity Freedom 2035 Fund	21,738
GRT Value Fund	39,187
Hancock Horizon Dividend International Fund	32,339
Invesco Diversified Dividend A	24,084
Ivy Small Cap Growth Fund	28,731
Janus Global Research Fund	25,658
Janus Growth & Income	22,416
Loomis Sayles Bond Fund	25,964
Lord Abbett Affiliated A Fund	181,300
Maryland College Investment Plan Portfolio 2024 (529)	115,529
Mass. Deferred Comp. Smart Plan Large Co. Blend Stock Fund	4,764
Mass. Deferred Comp. Smart Plan Large Co. Stock Index Fund	4,772
MFS International New Discovery Fund	35,271
MFS Value Fund	40,660
Microsoft Corporation stock	6,710
Oakmark Fund	69,492
Oakmark Global Select Fund	1,485
Power Shares QQQ Trust	7,596
Schwab 1000 Index Fund	77,147
Schwab Core Equity Fund	12,758
Schwab S&P 500 Fund	34,123
Schwab Small Cap Index Fund	36,965
Touchstone Sands Capital Select Growth Fund	38,004
Utah Educ. Savings Plan Age Based Aggressive Global (529)	173,670
Vanguard Life Strategy Growth Fund	50,112
Total Listed Securities	$1,318,303

Real Estate Owned	
Personal residence	$ 735,500
Rental property	487,400
Total Real Estate Owned	$ 1,222,900

Real Estate Mortgages Payable	
Personal residence	$ 563,466
Rental property	226,168
Total Real Estate Mortgages Payable	$ 789,633

AFFIDAVIT

I, Theodore David Chuang, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

September 26, 2013
(DATE)

Theodore David Chuang

(NOTARY)
DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES ON:
SEPT. 30, 2016.

CAROLYN V. SHEPARD
NOTARY PUBLIC
DISTRICT OF COLUMBIA
EXP. 9-30-2015

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   George Jarrod Hazel

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

   United States District Judge for the District of Maryland

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

   Office: Office of the State's Attorney for Baltimore City
   120 East Baltimore Street, Ninth Floor
   Baltimore, Maryland 21202

   Residence: North Potomac, Maryland

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

   1975; New York, New York

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

   1996 – 1999, Georgetown University Law Center; J.D., 1999

   1992 – 1996, Morehouse College; B.A. (*cum laude*), May 1996

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.

   2010 – present
   Office of the State's Attorney for Baltimore City
   120 East Baltimore Street, Ninth Floor

Baltimore, Maryland 21202
Chief Deputy State's Attorney (2011 – present)
Member of Transition Team for State's Attorney Elect (December 2010)

2008 – 2010
United States Attorney's Office for the District of Maryland
6406 Ivy Lane, Suite 800
Greenbelt, Maryland 20770
Assistant United States Attorney
Project EXILE Coordinator – Southern Division

2005 – 2008
United States Attorney's Office for the District of Columbia
555 Fourth Street, NW
Washington, DC 20530
Assistant United States Attorney

1999 – 2004, Summer 1998
Weil, Gotshal and Manges, LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
Associate (1999 – 2004)
Summer Associate (Summer 1998)

January – May 1998
American Civil Liberties Union
4301 Connecticut Avenue, NW, Suite 434
Washington, DC 20008
Law Clerk

1997
The Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, DC 20004
Investigator and Law Clerk, Criminal Division (September 1997 – December 1997)
Investigator, Mental Health Division (January – August 1997)

Summer 1996
The Office of Congressman Floyd H. Flake (Retired)
Washington, DC
Intern

Other Affiliations (uncompensated):

September 2011 – present
Federal Bar Association, Maryland Chapter

1220 North Fillmore Street, Suite 444
Arlington, Virginia 22201
Member, Board of Governors

1997 – present
Metropolitan Baptist Church
96 Harry S. Truman Drive
Largo, Maryland 20774
Board of Deacons (2005 – present)
Member of Council of Twelve Advisory Group (2007 – present)
Trustee (2007 – 2010)

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.

   Drug Enforcement Agency, Certificate of Appreciation for prosecution of *United States v. Butler* (2010)

   United States Attorney's Office for the District of Columbia, Special Achievement Award for consistently excellent performance in the Sex Offense / Domestic Violence section (2006)

   Weil, Gotshal & Manges Pro Bono Award given for devoting fifty or more billable hours to pro-bono activities (2002)

   Georgetown University Law Center, Equal Justice Foundation Fellowship for serving public interest through internship with Mental Health Division of the Public Defender Service for the District of Columbia (1997)

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

   Federal Bar Association, Maryland Chapter (2011 – present)
   Board of Governors (2011 – present)
   Membership Committee (2013 – present)

   J. Franklyn Bourne Bar Association (2012 – present)

Montgomery County Bar Association (2013 – present)

Maryland State Bar Association (2012 – present)

Virginia State Bar Association (1999 – present)

10. **Bar and Court Admission**:

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

Maryland State Bar, 2011

District of Columbia Bar, 2000

Virginia State Bar, 1999 (inactive)

There have been no lapses in membership although my membership in the Virginia State Bar 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.

Court of Appeals of Maryland, 2011
Court of Appeals for the District of Columbia, 2000
Supreme Court of Virginia, 1999
United States District Court for the District of Maryland, 2008
United States District Court for the Eastern District of Virginia, 2000
United States Bankruptcy Court for the Eastern District of Virginia, 2000
United States District Court for the Western District of Virginia, 2001
United States Court of Appeals for the Third Circuit, 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.

Metropolitan Baptist Church (1997 – present)
Board of Deacons (2005 – present)
Christian Discipleship Council (2004 – 2006)
President, MBC Toastmasters Ministry (2005 – 2007)
Chair of Legal Ministry (2006 – 2008)
Member of Council of Twelve Advisory Group (2007 – present)
Trustee (2007 – 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 in 11a currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

George J. Hazel, *A Light for Dark Times*, Forty Days of Power: Meditations and Reflections, March 1 – April 16, 2006. Copy Supplied

George J. Hazel, Letter to the Editor, *Diversity Includes Acceptance*, GEORGETOWN LAW WEEKLY, October 6 to October 10, 1997.
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 been a member of the Board of Deacons for the Metropolitan Baptist Church since 2005. Although I have not personally drafted or edited the annual reports during this time, I did review them in my capacity as a Deacon. I have

listed the annual reports of the Metropolitan Baptist Church that I could locate:

Annual Report, Metropolitan Baptist Church, 2010. Copy Supplied.

Annual Report, Metropolitan Baptist Church, 2009. Copy Supplied.

Annual Report, Metropolitan Baptist Church, 2008. Copy Supplied.

Annual Report, Metropolitan Baptist Church, 2007. Copy Supplied.

Annual Report, Metropolitan Baptist Church, 2005 – 2006. Copy Supplied.

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

Letter from Gerard J. Gaeng, President, Maryland Chapter of the Federal Bar Association, to Senator Ben Cardin (May 21, 2013). 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.

February 3, 2013: Speaker, "What to Do When It Doesn't Work," Latter Rain Christian Fellowship, Queens, New York. Recording supplied.

May 11, 2012: Moderator, Gang Symposium, Office of the Attorney General, Baltimore, Maryland. The symposium was on current issues in the area of gang prosecutions. I have no notes, transcript or recording. The address for the Office of the Attorney General is 200 St. Paul Place, Baltimore, Maryland 21202.

November 16, 2011: Panelist, "Careers in the Law," Alliance of Black Women Attorneys, Baltimore, Maryland. The panel was on career paths in the field of law enforcement. I have no notes, transcript or recording. The address for the Alliance of Black Women Attorneys is P.O. Box 23674, Baltimore, Maryland 21203.

October 19, 2011: Panelist, "When Prosecutions Go Wrong," American Constitution Society, Baltimore, Maryland. The panel was on wrongly convicted defendants. I have no notes, transcript or recording. The address for the American Constitution Society is 1333 H Street, NW, 11th Floor, Washington, DC 20005.

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.

Ian Duncan, *Baltimore Crime-Fighter Resigns Over Fast and Furious Case*, BALTIMORE SUN, September 23, 2012. Copy supplied.

Scott Calvert, *Bernstein Names Two Attorneys to Leadership Team*, BALTIMORE SUN, December 6, 2010. Copy supplied.

Liz Skalski, *Metropolitan Baptist Parishioners Await Opening of New Site*, GAZETTE.NET, May 21, 2009. 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 been 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 never been a judge.

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

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

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

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

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

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

I have not held public office. I have had no unsuccessful candidacies for 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, George Seymore campaign for Maryland State Senate (2006). I attended one or two campaign meetings and distributed flyers for his campaign.

Volunteer, Daniel Farrington campaign for Maryland State Delegate (2006). I distributed flyers for the campaign.

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

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

1999 – 2004
Weil, Gotshal and Manges, LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
Litigation Associate

2005 – 2008
United States Attorney's Office for the District of Columbia
555 Fourth Street, NW
Washington, DC 20530
Assistant United States Attorney

2008 – 2010
United States Attorney's Office for the District of Maryland
6406 Ivy Lane, Suite 800
Greenbelt, Maryland 20770
Assistant United States Attorney; Project EXILE Coordinator – Southern Division

2010 – present
Office of the State's Attorney for Baltimore City
120 East Baltimore Street
Baltimore, Maryland 21202
Chief Deputy State's Attorney (2011 – present)
Member of Transition Team for State's Attorney Elect (December 2010)

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

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

b. Describe:

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

During my time at Weil, Gotshal and Manges, LLC ("Weil"), my practice focused almost exclusively on general commercial litigation. The type of cases handled included, but were not limited to, class action antitrust claims, mass tort product liability claims, contract disputes and bankruptcy litigation. Since 2004, I have been a criminal prosecutor handling a variety of criminal cases. From 2005 until 2008, I was an Assistant United States Attorney for the District of Columbia and prosecuted criminal violations in the General Felony Section, Sex Offense / Domestic Violence Section, and the Appellate Section in the Superior Court for the District of Columbia and the District of Columbia Court of Appeals. From 2008 until 2010, I was an Assistant United States Attorney for the District of Maryland and prosecuted violations of federal criminal law in the Violent Crime Unit of the United States District Court for the District

of Maryland. From 2011 through the present, I have been the Chief Deputy State's Attorney for Baltimore City, where I manage an office of approximately two hundred prosecutors responsible for prosecuting violations of Maryland law in Baltimore City, as well as continuing to maintain my own caseload.

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

During my time at Weil, my typical clients were large corporations and my practice was general commercial litigation. Clients represented during my career at Weil included Cooper Tires, Daimler Chrysler Corporation, and Armstrong World Industries. From 2005 to 2008, I was a prosecutor on behalf of the United States of America in the District of Columbia. During this time, I served in the General Felony section, where I handled felony gun and narcotics cases; the Sex Offense / Domestic Violence Section, where I handled cases involving domestic violence and child abuse; and the Appellate Section. From 2008 to 2010, I was a prosecutor on behalf of the United States of America in the District of Maryland. During this time, I served in the Violent Crime Unit in the Northern Division of the Office and became coordinator of Project EXILE in the Southern Division of the Office where I continued to focus on violent crime. Since 2011, I have been a prosecutor for the State of Maryland.

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. From 1999 to 2004, while working at Weil, I practiced primarily civil litigation in federal court, and my appearances were occasional. From 2005 to 2008, while working at the U.S. Attorney's Office for the District of Columbia, I appeared in criminal matters in the Superior Court for the District of Columbia or the District of Columbia Court of Appeals, approximately four out of five days of the week. From 2008 to 2010, while working at the U.S. Attorney's Office for the District of Maryland, I continued to appear in criminal matters in federal court frequently. From 2011 to the present, while working at the Office of the State's Attorney for Baltimore City, I have appeared occasionally in state court in criminal matters.

i. Indicate the percentage of your practice in:

1. federal courts: 50%
2. state courts of record: 50%
3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 25%
2. criminal proceedings: 75%

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

In my career, I have tried approximately fifty cases to verdict. In four of those cases I was associate counsel. In the remainder, I was sole or chief counsel.

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

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

I have never practiced before the Supreme Court.

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

a. the date of representation;

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

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

(1) *In re Armstrong World Industries (Armstrong World Industries v. Center for Claims Resolution)*, 00-4471 (D. N.J.), Judge Alfred Wolin

Armstrong World Industries ("AWI"), along with a number of similarly situated companies, formed the Center for Claims Resolutions ("CCR") to serve as a clearinghouse for asbestos related litigation. Pursuant to sections 547 and 550 of the Bankruptcy Code, AWI commenced an adversary proceeding against the CCR seeking to avoid and recover payments made in the 90-day period preceding its Chapter 11 filing

(the "transfer litigation"). AWI additionally sought an injunction to prevent the CCR from drawing on a surety bond (the "bond litigation").

On the transfer litigation, I was primarily responsible for discovery related matters including the taking and defending of most significant depositions. I was also the primary drafter of AWI's pre-trial memorandum and devised much of our trial strategy. The case was settled prior to trial. I also provided assistance on the bond litigation, including, but not limited to, assisting with discovery related matters and drafting portions of the summary judgment brief, which was granted. These cases began in 2000 and were resolved in 2004.

Lead Counsel:
David A. Hickerson
Foley & Lardner
3000 K Street, NW, Suite 600
Washington, DC 20007
(202) 672-5467

Opposing Counsel:
Anthony Diana
Mayer Brown LLP
1675 Broadway
New York, NY 10019
(212) 506-2542

(2) *State of Maryland v. Carrington*, Case No. 811227004 (Cir. Ct. Balt. 2013), Judge Alfred Nance

Vaughn and Pratt were at a stoplight in a white Acura on North Avenue in Baltimore City, when a gray Honda Accord pulled up beside them. A man exited the vehicle and shot and killed Pratt. Initially, Vaughn refused to identify the shooter but at trial he identified Carrington as the shooter. Testimony at trial also established that a firearm found during a routine traffic stop in the glove compartment of a Honda Accord driven by Carrington was the weapon used to kill Pratt. Carrington's girlfriend testified that while the gray Honda Accord was Carrington's car, he frequently lent the car to his friends. The jury acquitted Carrington of the homicide but found him guilty of possessing the firearm on the day of the traffic stop. I was second-chair on this trial. I handled the motion to suppress the firearm, which was denied. At trial, I was responsible for the direct examinations of the officers who recovered the gun and the ballistics expert who identified it as the murder weapon. I also gave the initial closing argument for the State.

Co-counsel:
Amy Donze
Office of the State's Attorney for Baltimore City
120 East Baltimore Street

Baltimore, MD 21201
(443) 984-6025

Opposing Counsel:
Gil Amaral
200 East Lexington Street
Baltimore, MD 21202
(410) 727-9550

(3) *United States of America v. Braxton*, 08-WDQ-cr-444, (D. Md. 2009), *aff'd*, 456 Fed. Appx. 242 (4th Cir. 2011), Judge William D. Quarles

On May 17, 2006, a Baltimore police officer making a routine traffic stop encountered Braxton and, after Braxton attempted to wrestle the officer, subdued him and recovered a loaded firearm. The district court denied Braxton's motion to suppress the gun and he was convicted after a two-day trial during which other passengers in the vehicle testified in his defense. The government established that the defendant was an Armed Career Criminal and he was sentenced to 235 months incarceration. As lead counsel, I handled all but one witness in the government's case, cross-examined a defense witness, presented the government's opening statement and rebuttal closing argument, and drafted the government's brief on appeal. The conviction and sentence were affirmed on appeal.

Co-counsel:
James Wallner
United States Attorney's Office for the District of Maryland
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
(410) 209-4800

Opposing Counsel:
Gary Proctor
Eight East Mulberry Street
Baltimore, MD 21202
(410) 444-1500

(4) *United States v. Butler*, et al., 08-BEL-cr-0381 (D. Md. 2010), *aff'd*, 429 Fed. Appx. 239 (4th Cir. 2011), Judge Benson Legg (retired)

Butler was the leader of a notoriously violent drug organization in Baltimore City. At the conclusion of a wiretap investigation, a federal grand jury indicted Butler along with nine additional members of his organization. The trial court denied multiple pre-trial motions, including motions to suppress the wiretap and physical evidence recovered during the execution of a number of search warrants. Trial in the matter lasted approximately three weeks. Five cooperating witnesses testified for the government. Expert testimony included a DNA expert, a firearms expert, multiple drug experts and a fingerprint expert. Numerous calls intercepted pursuant to the wiretap were played for the jury. In my role

as lead counsel, I was the principal drafter of the opposition brief to the motions to suppress and argued them in court, established the order of proof, conducted the direct examination of the majority of the witnesses and all of the expert witnesses, with the exception of the fingerprint expert, and delivered the opening statement and rebuttal closing argument for the government. The jury found co-defendant Wright guilty of all counts and found Butler guilty of all but one count. The court agreed with the government's sentencing recommendation and sentenced Butler to life in federal prison upon finding that Butler had committed a murder in furtherance of his drug operation. Wright received a 35-year sentence. Most other defendants, including ones who cooperated, received sentences in excess of ten years. The conviction and sentence were affirmed in an appeal handled by another attorney.

Co-Counsel:
Christine Celeste
Office of the State's Attorney for Baltimore City
120 East Baltimore Street
Baltimore, MD 21202
(443) 984-6136

Counsel for Defendant Butler:
Thomas Saunders
3600 Clipper Mill Road, Suite 201
Baltimore, MD 21211
(410) 662-5586

Counsel for Defendant Wright
Joseph Balter
Malik Edwards
Office of the Federal Public Defender
District of Maryland
Northern Division
100 South Charles Street
Tower II, Ninth Floor
Baltimore, MD 21201
(410) 962-3962

(5) *United States v. Cooper*, 08-BEL-cr-00239 (D. Md. 2009), Judge Benson Legg (retired)

On November 13, 2007, members of the Baltimore Police Department were provided with information from a confidential informant that a Red Denali sports utility vehicle would be involved in a narcotics transaction. This tip led to a traffic stop, a subsequent search warrant of defendant's home and a recovery of a firearm, over one hundred grams of crack cocaine and $1,800. The defense filed motions requesting an Order that the government disclose the identity of the confidential informant, moving to suppress the original stop and the fruits thereof and moving to suppress the defendant's statements

regarding the firearm in his house. As sole counsel for the United States, I briefed the response and presented all evidence and argument at the motions hearing. All motions by the defendant were denied. The defendant then pled guilty and pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) both parties agreed to a sentence of 180 months incarceration.

Opposing Counsel:
Alan Bussard
405 Allegheny Avenue
Towson, MD 21204
(410) 821-5589

(6) *United States v. Graham*, 09-WDQ-cr-5067 (D. Md. 2009), *aff'd*, 7 F.3d 445 (4th Cir. 2013), Judge William D. Quarles

From March 2006 through August 2008, Graham and several co-conspirators distributed 150 kilograms of cocaine to customers in the Baltimore area. Testimony at trial established that Graham and his co-defendants arranged multiple kilograms of cocaine to be shipped from Arizona to Baltimore. All defendants who were intercepted on the wiretap entered plea agreements before trial. Evidence at the trial of Graham consisted almost solely of cooperator testimony. As lead counsel, I drafted the opposition to the motion to suppress the wiretap, conducted the direct examinations of roughly half of the witnesses including two cooperating witnesses and gave the opening statement and rebuttal closing argument for the government. Defendant was convicted at trial and, based on his criminal history, sentenced to life in prison. The conviction and sentence were affirmed on an appeal handled by another attorney.

Co-counsel:
Bryan Giblin
1574 Gulf Road #1509
Point Roberts, WA 98281
(410) 215-7037

Opposing Counsel:
Richard Bittner
Seven Central Avenue
Glen Burnie, MD 21061
(410) 590-2552

(7) *United States v. Hart*, 2008 CF3 00716 (D.C. Super. Ct. 2008), Judge Harold Cushenberry

Hart was accused of pointing a loaded firearm at the head of the victim, his girlfriend. The victim, who immediately reconciled with the defendant, consistently denied being assaulted. Despite the lack of cooperation of the victim, through the usage of recorded jail calls between the defendant and the victim and the testimony of the two officers who

observed a portion of the assault, the jury convicted the defendant of Assault with a Dangerous Weapon and related charges. As sole government counsel on this case, I handled all witnesses and argument for the government. The defendant was sentenced to approximately ten years incarceration.

Opposing Counsel:
Vida Johnson
Georgetown University Law Center
Criminal Justice Clinic
600 New Jersey Avenue, NW
Washington, DC 20001
(202) 662-9575

(8) *United States v. Redd,* 07-WDQ-cr-470, (D. Md. 2008), *aff'd*, 372 Fed. Appx. 413 (4th Cir. 2010), Judge William D. Quarles

Officers of the Baltimore Police Department observed Redd toss a gun under a vehicle. He was apprehended by the officer and the gun was recovered. The defendant was convicted after a two-day jury trial. The government argued at sentencing that the defendant was an Armed Career Criminal, and therefore susceptible to the mandatory 15-year sentence, based on prior convictions for possession with intent to distribute cocaine and multiple prior convictions for first-degree assault. The district court agreed and sentenced the defendant to 240 months incarceration. Redd appealed his sentence, arguing that the district court erred when it relied on the pre-sentence report to establish the predicate offenses supporting the finding of Redd's Armed Career Criminal status. The United States Court of Appeals for the Fourth Circuit rejected Redd's argument in an unpublished opinion holding that the pre-sentence report was sufficient to establish the convictions at issue. I handled all evidence and argument at trial. On appeal, I drafted the government brief.

Co-Counsel:
Steven Levin
Levin & Curlett, LLC
250 West Pratt Street, Suite 1300
Baltimore, MD 21201
(410) 545-5871

Opposing Counsel:
Frank Draper
Office of Defender Services - Training Branch
One Columbus Circle, NE, Suite G-430
Washington, DC 20544
(202) 502-3030

(9) *United States v. Rittner*, 2005 DVM 935 (D.C. Super. Ct. 2005), Judge Craig Iscoe

Rittner was accused of multiple misdemeanor counts including destruction of property, stalking and a violation of a stay-away order from his ex-wife. The charges stemmed from a pattern of behavior during which Rittner followed his ex-wife, spread rumors about her behavior in the community, left threatening and harassing voicemail messages on her phone, and damaged her door in an attempt to gain entry into her house. Rittner represented himself during trial but allowed the Georgetown Criminal Justice Clinic to appear as his stand-by counsel. Rittner's defense was necessity. Rittner, who was a German national, claimed that he was the victim of a massive conspiracy by the German intelligence agency and that his ex-wife was a part of the conspiracy. At trial, witnesses for the government included his wife and their daughter. Rittner testified in his defense. The court found him guilty of all counts and he was sentenced to 180 days incarceration on each of four counts.

Opposing Counsel:
John M. Copacino
Criminal Justice Clinic
Georgetown University Law Center
111 F Street, NW
Washington, DC 20001
(202) 662-9577

(10) *United States v. Shanton*, 08-CCB- cr-00142 (D. Md. 2009), *aff'd*, 513 Fed. Appx. 265 (4th Cir. 2013), Judge Catherine Blake

On October 22, 2007, two masked men robbed an M&T Bank in Hagerstown, Maryland and on November 24, 2007 two men attempted a robbery at the Susquehanna Bank in Hagerstown, Maryland. Evidence at trial included cooperator testimony from the individual who robbed the M&T Bank with Shanton and expert testimony regarding DNA and fingerprints. The government called FBI forensics examiner Luttman as its expert in DNA forensic examination. Luttman testified that she tested various pieces of evidence and determined that Shanton's DNA profile matched the DNA profile left on a piece of chewing gum found at the location where the robbers fled after the robbery. The defendant objected to the fact that the government would not be calling the serologist and the technician who worked on the case. The government argued successfully to the district court and the court of appeals that the "bench work" done by technicians prior to Luttman's analysis of the data was not testimonial. As lead counsel in this case, I delivered the opening statement and rebuttal closing argument and performed the direct examination of multiple witnesses including the DNA expert and the cooperating witness. Shanton was convicted at trial and sentenced to 50 years in prison.

Co-counsel:
Cheryl Crumpton
U.S. Securities and Exchange Commission
Division of Enforcement

100 F Street, NE
Washington, DC 20549
(202) 551-4459

Opposing Counsel:
Deborah L. Boardman
Office of the Federal Public Defender
District of Maryland
Northern Division
Tower II, Ninth Floor
100 South Charles Street
Baltimore, MD 21201
(410) 962-3962

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.)

During my time as an Assistant United States Attorney in the District of Maryland, I led numerous investigations that incorporated wiretaps pursuant to the Federal Wiretap Act ("Title III") or its state equivalent. In 2008 and 2009, I worked with another AUSA and two state prosecutors on a wiretap investigation that resulted in an indictment under the federal racketeering statute and a total of 42 indictments against members of the Bloods gang in Baltimore City. Additionally, I was the lead prosecutor on three Title III investigations, not including those discussed above: (1) an investigation that led to the indictment of ten members of a drug organization that was transporting multiple kilograms of cocaine into Maryland from Houston, Texas; (2) an investigation that led to the indictment of a known repeat violent offender in the Prince George's County area, and (3) an investigation that led to the indictment of more than a dozen members of a local gang suspected of a number of homicides in the Prince George's County area. As the lead prosecutor on these Title III investigations, I drafted and reviewed requests for authorization of wire intercepts, drafted and reviewed search warrant affidavits, participated in strategy meetings with federal agents and determined when there was sufficient evidence to indict each defendant. Each investigation ultimately resulted in convictions at trial after my departure from the United States Attorney's Office.

During my time as an Assistant United States Attorney in the District of Maryland, I served as the Southern Division Coordinator of Project EXILE. Project EXILE is a joint federal/state partnership that seeks to focus federal resources on gun-related violent crime in urban communities. In addition to building relationships with law-enforcement partners that led to the investigations discussed in the preceding paragraph, my role included screening local gun-related crimes for federal prosecution. This included

firearm cases, armed carjacking cases, and robberies prosecuted under the federal Hobbs Act statute.

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.

    I have no such anticipated receipts.

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

    None.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

If confirmed, I would recuse myself from any case through which I have gained knowledge as an Assistant United States Attorney or as Chief Deputy State's Attorney for Baltimore City. In these as in all cases, I would handle any matters involving actual or potential conflicts of interest 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 handle any matter involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules. Further, upon learning of any situation that a party or observer might perceive or identify as an actual or potential conflict of interest, I would alert the parties to the situation in question and solicit their views.

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.

For the last 18 years, I have been a member of the Metropolitan Baptist Church of Washington, DC and Largo, Maryland. During that time I have served in a variety of capacities, many of which afforded me the opportunity to impact the disadvantaged. For a number of years, I served as a part of the church's street ministry. While a member of that ministry, I would meet at my church once a week to prepare meals, which we would then deliver to homeless persons in the community. For two years I was also president of the church's Legal Ministry. Through that role, I assisted members of the church, including many who could not afford lawyers, in obtaining legal representation when they were in need. In my current role as a Deacon, among other obligations, I bring communion to members of our church who are not able to attend service because of illness or infirmity. This is done on a monthly basis. Lastly, I taught the teen Sunday School class on a weekly basis for a number of years, and I currently teach the adult Sunday School class on a periodic basis.

During my time at Weil, I was an active participant in our pro-bono program. My activities included, but were not limited to, representing a Cameroon woman seeking asylum in the United States and an individual in a civil rights action against a local police department based on allegations of police brutality.

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 11, 2013, I submitted an application to Senator Barbara Mikulski's office. On March 26, 2013, I was interviewed by a panel of attorneys, convened by Senators Mikulski and Cardin, in Baltimore, Maryland. On May 6, 2013, I was interviewed by Senators Mikulski and Cardin in Washington, D.C. In June 2013, I was informed by Senator Mikulski that my name had been submitted to the White House to be considered for nomination to the United States District Court for the District of Maryland. Since June 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 19, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 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
Hazel, George J.	United States District Court, Maryland	09/25/2013
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**
U.S. District Judge - Active Status	☑ Nomination Date 09/25/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 08/31/2013
7. Chambers or Office Address		
Office of the State's Attorney for Baltimore City 120 East Baltimore Street, 9th Floor Baltimore, Maryland 21202		

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.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Hazel, George J.	Date of Report 09/25/2013

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	Mayor and City Council of Baltimore, salary	$62,952.13
2.	2012	Mayor and City Council of Baltimore, salary	$110,100.00
3.	2011	Mayor and City Council of Baltimore, salary	$110,100.00
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.	2013	Charlotte-Mecklenburg Board of Education, consultant fee
2.	2013	Montgomery County Board of Education, salary
3.	2012	Montgomery County Board of Education, salary
4.	2011	Montgomery County Board of Education,salary

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 Hazel, George J.	Date of Report 09/25/2013

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.	Sallie Mae	Student Loan	K
2.	Key Bank	Student Loan	L
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Hazel, George J.	Date of Report 09/25/2013

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. Invesco Balanced-Risk Commodity Strategies Fund	A	Dividend	J	T	Exempt				
2. Morgan Stanley Focus Growth Fund	A	Dividend	J	T	Exempt				
3. Oppenheimer Capital Appreciation Fund	A	Dividend	J	T	Exempt				
4. Oppenheimer Global Opportunities Fund	A	Dividend	J	T	Exempt				
5. Oppenheimer Strategic Income Fund	A	Dividend	J	T	Exempt				
6. Oppenheimer Main Street Small & Mid-Cap Fund	A	Dividend	J	T	Exempt				
7. Oppenheimer Real Estate Fund	A	Dividend	J	T	Exempt				
8. PepsiCo Stock	A	Dividend	J	T	Exempt				
9. T. Rowe Price Blue Chip Growth Fund	A	Dividend	J	T	Exempt				
10. VALIC Core Bond Fund	A	Dividend	J	T	Exempt				
11. VALIC Emerging Economies Fund	A	Dividend	J	T	Exempt				
12. VALIC Fixed Account Plus	A	Dividend	J	T	Exempt				
13. VALIC Foreign Value Fund	A	Dividend	J	T	Exempt				
14. VALIC Global Real Estate Fund	A	Dividend	J	T	Exempt				
15. VALIC International Equities Fund	A	Dividend	J	T	Exempt				
16. VALIC International Opportunities Fund	A	Dividend	J	T	Exempt				
17. VALIC Mid Cap Index Fund	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 5 of 7	Name of Person Reporting Hazel, George J.	Date of Report 09/25/2013

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. VALIC Mid Cap Value Fund	A	Dividend	J	T	Exempt				
19. VALIC Small Cap Index Fund	A	Dividend	J	T	Exempt				
20. VALIC Small Cap Value Fund	A	Dividend	J	T	Exempt				
21. VALIC Socially Responsible Fund	A	Dividend	J	T	Exempt				
22. VALIC Stock Index Fund	A	Dividend	J	T	Exempt				
23. Vanguard Windsor II Fund	A	Dividend	J	T	Exempt				
24. Citibank cash accounts	A	Interest	K	T	Exempt				
25. Morgan Stanley cash accounts	A	Interest	J	T	Exempt				
26. Montgomery County Teachers Credit Union cash accounts	A	Interest	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
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U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Hazel, George J.	Date of Report 09/25/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting	Date of Report
	Hazel, George J.	09/25/2013

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/ George J. Hazel

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		18	511	Notes payable to banks-secured (auto)		6	941
U.S. Government securities				Notes payable to banks-unsecured		4	367
Listed securities – see schedule		130	318	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	141
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		377	882
Real estate owned – personal residence		450	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000	Education loan		92	521
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		6	103				
				Total liabilities		489	852
				Net Worth		145	080
Total Assets		634	932	Total liabilities and net worth		634	932
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 EuroPacific Growth Fund	$ 771
American Funds American Mutual Fund	223
American Funds Fundamental Investors Fund	111
BP plc (ADR)	710
Fidelity Prime Capital Reserves	678
Invesco Balanced-Risk Commodity Strategy Fund	4,157
Invesco Select Company Fund	71
Janus Perkins Small Cap Value Fund	142
Morgan Stanley Focus Growth Fund	2,304
Neuberger Berman Real Estate Fund	113
Oppenheimer Capital Appreciation Fund	6,080
Oppenheimer Global Opportunities Fund	6,377
Oppenheimer Global Strategic Income Fund	11,443
Oppenheimer Main Street Small- & Mid-Cap Fund	6,307
Oppenheimer Real Estate Fund	4,011
PepsiCo stock	1,718
PIMCO Total Return Fund	293
T. Rowe Price Blue Chip Growth Fund	2,660
VALIC Core Bond Fund	3,486
VALIC Dividend Value Fund	886
VALIC Emerging Economies Fund	6,096
VALIC Fixed Account Plus	6,184
VALIC Foreign Value Fund	4,288
VALIC Global Real Estate Fund	3,584
VALIC Inflation Protected Fund	867
VALIC International Equities Fund	7,788
VALIC International Opportunities Fund	6,921
VALIC Mid Cap Index Fund	9,749
VALIC Mid Cap Value Fund	4,448
VALIC Small Cap Index Fund	1,774
VALIC Small Cap Value Fund	4,424
VALIC Socially Responsible Fund	7,943
VALIC Stock Index Fund	7,913
Vanguard 500 Index Fund	593
Vanguard Mid Cap Index Fund	112
Vanguard Selected Value Fund	637
Vanguard Small Cap Index Fund	71
Vanguard Windsor II Fund	4,385
Total Listed Securities	$ 130,318

AFFIDAVIT

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

9/27/2013
(DATE)

George J. Hazel
(NAME)

Antonia Livia
(NOTARY)

MY COMMISSION EXPIRES: 9/1/2015

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary regarding the Nominations of:

Daniel D. Crabtree, to be United States District Judge for the District of Kansas
Cynthia Ann Bashant, to be United States District Judge for the Southern District of California
Jon David Levy, to be United States District Judge for the District of Maine
Theodore David Chuang, to be United States District Judge for the District of Maryland
George Jarrod Hazel, to be United States District Judge for the District of Maryland

December 19, 2013

Mr. Chairman,

Today is likely the last Nominations hearing of 2013, so I want to review the good work the Committee has done with regard to judicial nominations. Today, we are holding the 18th judicial nominations hearing of the year, during which we will have considered a total of 62 judicial nominees.

Compare the record on hearings for President Obama this year with how President Bush was treated during the fifth year of his Presidency.

In 2005, the final judicial nomination hearing was held on November 15th. The Committee only held six nominations hearings that year and we considered only 15 district and circuit 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 in Committee last year contributed to that accomplishment when we held 11 hearings for 44 judicial nominees.

In addition, let me remind everyone that we have now confirmed 44 lower court Article 3 judicial nominees this year. That is more than three times the number confirmed at a similar stage in President Bush's second term, when only 14 district and circuit nominees had been confirmed.

In total, the Senate has confirmed 215 of this President's lower court Article 3 judges. This includes a significant number of women and minority nominees.

So anyone who says Republicans are engaging in "unprecedented" obstruction with regards to judicial nominations ignores the cooperation and accommodation I have shown as Ranking Member of this Committee.

We have treated President Obama in a fair manner, and he enjoys an outstanding record for his judicial nominees.

One final point on this baseless charge that Republican obstruction has left the federal judiciary with high vacancies. The fact is, President Obama's initial delay in nominations was the primary factor in the lower number of confirmations during his first term, resulting in the high number of vacancies.

Even now, 43 of 89 vacancies have no nominee. That is 48% of vacancies with no pending nomination before the Senate. While this percentage recently has been reduced, it was the case for most of the Obama presidency that the majority of vacancies had no nominee. Of the 37 "Judicial Emergencies", 19 have no nominee. Half of the judicial emergencies have no nominee.

The Senate can't be held responsible for these vacancies, where almost half the seats have no nominee.

Finally, I'd like to congratulate and welcome today's nominees and their families.

Senator Chuck Grassley
Questions for the Record
Cynthia Ann Bashant
Nominee, U.S. District Court for the Southern District of California

1. You have been a strong supporter of a woman's right to choose whether or not to have an abortion. You were President of the Lawyers Club of San Diego which supports reproductive rights. In one President's column you wrote that pro-life supporters were a "small minority" and that "opponents of choice pose a very real threat to the very foundations of democracy." You have also praised Planned Parenthood's work for their "successful suits against those attempting to curtail the constitutional right to choose."

    a. What are the Constitutionally acceptable restrictions on the right to an abortion?

    b. You did not identify the lawsuits for which you were expressing support in your column. What lawsuits were you referencing?

2. Planned Parenthood has criticized state laws that prohibit filing "wrongful birth" lawsuits. These are lawsuits where parents of a congenitally diseased child claim that their doctor failed to properly warn them of the risk to their child and therefore were not able to make an informed decision about whether or not to have the child.

    a. How do you understand the constitutionality of these suits?

    b. Do you have any concerns with the concept of "wrongful birth" lawsuits?

3. Among the cases you listed as your ten most significant was one where the defendant was acquitted of distributing marijuana after he argued that it was being used for medical purposes. You wrote the case involved the interpretation of the new medical marijuana law and whether it applied to individuals who sold medical marijuana as part of a cooperative. Can you please describe how you interpreted the statute and what tools you used to reach the result you did?

4. In March of this year, you gave a talk about factors to consider when deciding what bail should be and what sanctions should be for defendants. You listed many factors to discuss with the group but provided no indication how you consider each factor when making a sentencing or bail decision for defendants. Please elaborate on when each of the factors you listed should be considered in criminal law cases.

5. In this same talk, you wrote "No one wants to talk about race but it is often the big elephant in the room that everyone is ignoring." What did you mean by this statement?

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 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?

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?

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. 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. 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?

14. 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?

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 and manage your caseload?

16. 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.

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
Theodore David Chuang
Nominee, U.S. District Judge for the District of Maryland

1. As a former congressional staffer who has worked in the Executive Branch for some time, and who is now nominated to serve in the Judicial Branch you have a unique perspective. How has your experience shaped your understanding of the balance between Congress's constitutional obligation to conduct oversight and the Executive Branch's interests?

2. I understand that for the last few months, you have been working with the State Department and its response to the ongoing congressional investigation into the attack on the U.S. mission in Benghazi. On August 1, 2013, House Oversight and Government Reform Committee Chairman Darrell Issa issued a subpoena to the State Department that compelled the Secretary of State to produce, among other things, all the notes and summaries of witness interviews conducted by the State Department's Accountability Review Board. I understand that the State Department has refused to comply with that aspect of the subpoena. Please answer each question separately.

    a. On what legal basis is the State Department withholding those documents?

    b. Has the Executive asserted Executive Privilege?

    c. Has the Executive asserted any privilege?

    d. Do you believe there are valid reasons—other than an assertion of executive privilege or another privilege—to withhold documents from Congress that have been subpoenaed?

    e. Did you advise the Secretary to withhold those documents from the House Oversight Committee?

3. In your hearing, I asked you about the statement you wrote of Judge Nelson that said, "some of Judge Nelson's most noteworthy opinions embody the principle that the courts must be vigilant in protecting the rights of weaker minority interests when they have been unjustifiably violated by more powerful majority interests." When I asked you whether you would take this approach to the administration of justice in your courtroom, if confirmed, you said you would approach your cases by looking at the facts and following precedent. While I appreciate that you will follow the law, I would like a more responsive answer.

    a. In what ways will you protect the rights of "weaker minority interests"?

    b. Are there circumstances under which these interests can be justifiably violated?

4. In that same 1999 profile of Judge Nelson you wrote about her dissenting opinion in a Ninth Circuit case upholding the state of Hawaii's designation of Good Friday as a state

holiday. Judge Nelson found this to be a violation of the establishment clause. Do you agree with her dissent in this case? Please explain.

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?

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? In your answer, please address how your work with several different Democratic organizations and campaigns will not influence you as a judge.

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. 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 and manage your caseload?

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
Daniel D. Crabtree
Nominee, U.S. District Court for the District of Kansas

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. 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?

11. 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?

12. 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.

13. Please describe with particularity the process by which these questions were answered.

14. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record
George Jarrod Hazel
Nominee, U.S. District Judge for the District of Maryland

1. Please explain what your understanding is of the rights and restrictions for individual citizens under the Second Amendment.

2. What is the most important attribute of a judge, and do you possess it?

3. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

4. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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?

5. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

6. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

7. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

8. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

9. 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?

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. 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 and manage your caseload?

12. 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?

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?

Senator Chuck Grassley
Questions for the Record
Jon David Levy
Nominee, U.S. District Court for the District of Maine

1. During your hearing, I asked you about your comments regarding Judge Bork from a 1987 newspaper article. I have several follow-up questions on that topic. In that article you called on readers to write Senators to oppose judge Bork's nomination. You wrote:

   "It is ironic that on the 200th anniversary of the adoption of the Constitution, Robert Bork has been nominated to serve on our Supreme Court. Judge Bork embraces a rigid judicial philosophy of 'original intent' which treats the Constitution like a static document. He interprets the Constitution in accordance with legal and social principles as they existed in the late 1700s, and not as those principles have developed over the last two centuries." I recognize that this was a few years ago, but you were not a new lawyer at the time.

   a. Do you stand by your criticism of Judge Bork?

   b. In your view, what role, if any, does the original meaning of the Constitution play in your judicial analysis?

   c. How does your judicial philosophy differ from Judge Bork's?

   d. You concluded your article saying, "If he were alive today, I suspect that James Madison would be leading the fight against Judge Bork." Do you still believe that is a fair criticism?

2. You noted in the article about Judge Bork that, "the pursuit of Justice requires that our Constitution serve as a dynamic instrument—so that when it is applied we are mindful of both contemporary values and the fundamental ideals of our founding fathers." In 2009 during your remarks at a litigation and advocacy seminar you quoted Chief Justice Warren and challenged the audience to be guided by the principle that, in the end, "it is the law's spirit, and not its form, that keeps justice alive." But you also said during your Maine nomination hearing that you would not be, "beholden to any one theory or grand view of the law." These seem like conflicting notions—on one hand, you are committed to not being beholden to one theory, but you have also been clear that the Constitution is a "dynamic instrument," interpreted "in accordance with those principles that have developed over the last two centuries," and, "it is the law's spirit, not its form, that keeps justice alive." Can you explain how these two notions can peaceably coexist within your judicial framework?

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. 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 and manage your caseload?

13. 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.

14. 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.

15. Please describe with particularity the process by which these questions were answered.

16. Do these answers reflect your true and personal views?

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
Daniel D. Crabtree
Nominee, U.S. District Court for the District of Kansas

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: While it is difficult for me to identify just one attribute as the single most important, I believe objectivity, the ability to keep an open mind until the case reaches a procedural stage where decision-making is appropriate, is an essential attribute for a judge. This characteristic enables a judge to apply precedent faithfully in each case. 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 judge should treat all parties and counsel respectfully and with civility. Also, I believe patience is an important component of judicial temperament because it enables a judge to maintain impartiality, listen and understand each party's arguments, and consider them fully before making decisions. I believe my personal temperament would enable me, if confirmed, to honor these standards.

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 this principle fully.

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 confirmed, I would follow the precedent of the Supreme Court and Tenth Circuit to identify the sources I should consult to resolve the novel issue and the order in which I should consult them. As an example, in a case involving statutory interpretation, I believe these authorities would direct me, first, to examine the text of the statute carefully. If the statutory text answers the question, I believe those legal authorities would direct me to apply the text of the statute enacted by the Congress and proceed no further. If the text of the statute does not provide an answer to the question, then I would apply the principles of statutory construction specified by the controlling authorities, whether from the Supreme Court or the Tenth Circuit. I also would consult decisions by other courts that, though not binding, may have discussed the issue.

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: If confirmed, I would apply the precedential rule adopted by the Supreme Court or the Tenth Circuit, as the case may be.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Judging the constitutionality of a statute, as the Supreme Court has said, is the gravest and most delicate duty a court is called to perform. A court may invalidate a statute enacted by Congress only upon a plain showing that Congress has exceeded its constitutional boundaries and even then, a court must first determine if there is a means to decide the dispute without reaching the constitutional issue.

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. The only qualification I am aware of is that the Supreme Court has consulted English common law to discern the meaning of some provisions adopted in our 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: I have a clear understanding that a judge's political or ideological views can play no role in judicial decision-making. Judges must reach decisions impartially by applying the governing legal principles to the material facts via the appropriate procedural mechanism.

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 32 years as a trial lawyer, I have done my very best to treat judges, opposing parties, and counsel respectfully. I think this approach, while important in every case, is especially important in hotly contested cases. I hope this practice will help assure the Committee and future litigants that, if confirmed, I will treat all parties fairly and impartially.

10. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: I do. If confirmed, I would serve in the District of Kansas. This Court has a long tradition of careful and close case management. Historically, it has placed cases on schedules by adopting comprehensive Scheduling Orders at the outset of the case. These

orders schedule each aspect of the action all the way through the start of trial. Also, the District of Kansas has utilized the skill of its Magistrate Judges to keep cases on the pace adopted in Scheduling Orders and minimize the effects of any scheduling amendments warranted by the case's progress. If confirmed, I would continue this tradition but also look for ways to improve case management. For example, my experience has taught me that some cases, because of their complexity or breadth, warrant direct case management by the District Judge who will preside over the substantive disposition of the case. I would, if confirmed, work to identify such cases and play a more active role in them.

11. **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 I am confirmed, I would plan to emulate the most effective trial judges before whom I have practiced. I would plan, if confirmed, to conduct independent legal research to identify the governing legal principles that apply to each case, review the parties' submissions closely to understand their positions and arguments, and apply the governing legal principles to the evidence presented by the parties. As for the transitional challenges I would face, if confirmed, I am mindful that I do not have significant experience in federal criminal law. Thus, I recognize the need, if confirmed, to devote concerted effort to master this aspect of the federal trial court docket. In facing this challenge, I am comforted by the fact that my career has involved me in a broad array of civil cases and consistently required me to learn new areas of the law.

12. **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.

13. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on Friday, December 20. The next morning, I reviewed the questions, conducted appropriate research, and began drafting my answers. I shared my draft responses with the Office of Legal Policy in the Department of Justice, and I spoke with a representative of that office. I then revised my responses and authorized their submission to the Committee.

14. Do these answers reflect your true and personal views?

Response: They do.

Questions for Judicial Nominees
Senator Ted Cruz to Daniel D. Crabtree

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 approach judging by emulating the characteristics of the best trial judges I have appeared before in years of practice as a trial lawyer. Those characteristics include: impartiality; respect for and adherence to the governing legal principles; command of the rules of civil procedure and rules of evidence; respectful and civil treatment of jurors, litigants, and lawyers; coming to court prepared; and having the will to make decisions when, in the context of the rules of procedure, it is time to make them. I do not feel qualified to liken this this approach to that of any particular Chief Justice or 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: If confirmed, I would follow Supreme Court and Tenth Circuit precedent using this method of interpretation. I know, for instance, that in certain lead opinions the Supreme Court has used the original public meaning ascribed to terms and words used in the Constitution and its amendments as a method of interpretation. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court analyzed how certain words used in the Second Amendment had been used originally in a variety of legal sources and by those who participated in drafting the provision.

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 have been nominated to serve as a District Court Judge and consequently, if confirmed, it would not be proper for me to 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: This statement in *Garcia* is part of precedent binding on all lower courts and, if confirmed, I would apply it faithfully (along with other pertinent decisions of the Supreme Court and the Tenth Circuit) in cases involving issues of state sovereign interests.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: To my knowledge, the Supreme Court has not held that non-economic activity necessarily falls outside the scope of the Commerce Clause. But I also understand that the Supreme Court has relied on the non-economic characteristic of the regulated conduct at issue to invalidate two Acts of Congress, concluding that the regulation at issue exceeded the power delegated by the Commerce Clause. *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). I am aware that at least one Justice has expressed the view that Congress may regulate non-economic conduct in certain circumstances. *Gonzales v. Raich*, 545 U.S. 1, 33 (2005) (Scalia, J., concurring). If I were confirmed, I would carefully apply Supreme Court and Tenth Circuit precedent to any issues arising under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In determining whether the President has acted within the scope of constitutional or statutory authority for executive orders or executive actions, the Supreme Court has established and applied an analytical framework. *Medellín v. Texas*, 552 U.S. 491 (2008). This "tripartite scheme" evaluates whether executive action stems from implied or express authority conferred by Congress, from the President's own independent powers, or is instead incompatible with the expressed or implied will of Congress. If I were confirmed and presented with an issue of this kind, I would apply Supreme Court and Tenth Circuit precedent to resolve the question.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that the due process clause protects fundamental rights and liberties which, objectively, are "deeply rooted in [our] Nation's history and tradition" and are "implicit in the concept of ordered liberty" so that liberty and justice would not exist "if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (citations omitted).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Under my understanding of current precedent, a classification warrants heightened scrutiny when it uses suspect classifications or burdens fundamental rights such as the right to vote. The Supreme Court has identified the reasons certain classifications warrant heightened scrutiny, *e.g.*, heightened scrutiny for classifications based on race, alienage, national origin, and sex but not for classifications based on age or intellectual disabilities. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441-47 (1985).

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 feel qualified to predict the governing state of the law on this question 15 years from now. If this statement were germane to a future case, its significance would be a subject for argument and analysis at that time. I would apply, if confirmed, the holding in *Grutter*, *Fisher v. Univ. of Texas*, 133 S. Ct. 2411 (2013), and any other Supreme Court or Tenth Circuit precedent that might bear on any question arising from a public school's decision to consider an applicant's race in the admissions process.

Senator Chuck Grassley
Questions for the Record

Cynthia Ann Bashant
Nominee: U.S. District Court for the Southern District of California

1. **You have been a strong supporter of a woman's right to choose whether or not to have an abortion. You were President of the Lawyers Club of San Diego which supports reproductive rights. In one President's column you wrote that pro-life supporters were a "small minority" and that "opponents of choice pose a very real threat to the very foundations of democracy." You have also praised Planned Parenthood's work for their "successful suits against those attempting to curtail the constitutional right to choose."**

    a. **What are the Constitutionally acceptable restrictions on the right to an abortion?**

    Response: The United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) ruled that "[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* at 878. This standard was reiterated in *Gonzales v. Carhart*, 550 U.S. 124 (2007), in which the Supreme Court distinguished between such an "undue burden" and "regulations which do no more than create a structural mechanism by which the state…may express a profound respect for the life of the unborn." *Id.* at 146 (internal citation omitted).

    b. **You did not identify the lawsuits for which you were expressing support in your column. What lawsuits were you referencing?**

    Response: Respectfully, the article you are referencing was written nineteen years ago when I was a young lawyer. I don't remember specifically what lawsuits I was referencing at that point in time.

2. **Planned Parenthood has criticized state laws that prohibit filing "wrongful birth" lawsuits. These are lawsuits where parents of a congenitally diseased child claim that their doctor failed to properly warn them of the risk to their child and therefore were not able to make an informed decision about whether or not to have the child.**

    a. **How do you understand the constitutionality of these suits?**

    Response: These suits, brought in federal court under diversity jurisdiction or under the Federal Tort Claims Act, require a federal court to interpret the laws of the state in which the injury occurs. *Santana v. Zilog,* 95 F.3d 780, 781 (9th Cir. 1996). The California Supreme Court in *Turpin v. Sortini*, 31 Cal.3d 220 (1982) addressed this issue with respect to California law. The Court found "while a plaintiff-child in a wrongful life action may not recover general damages for being born impaired as opposed to not being born at all, the child--like his or her parents--may recover special damages for the extraordinary expense necessary to treat the hereditary ailment." Laws similar to that of California's have been affirmed by other Circuit Courts. *See Gallagher v. Duke University,* 852 F.2d 773 (4th Cir. 1990) (affirming such a cause of action under North Carolina law); *Robak v. United States*, 658 F.2d

471 (7th Cir. 1981) (Alabama law); *Duplan v. Harper*, 188 F.3d 1195 (10th Cir. 2013) (Oklahoma law). In *Campbell v. United States*, 962 F.2d 1579 (11th Cir. 1993), the Eleventh Circuit found that Georgia's failure to recognize a cause of action for wrongful birth did not implicate the Fourteenth Amendment because the action only involved an action between private parties.

b. Do you have any concerns with the concept of "wrongful birth" lawsuits?

Response: If such a suit came before me as a federal district judge under a diversity jurisdiction theory or under the Federal Tort Claims Act, I would interpret the state law in which the injury was alleged to have occurred and follow the precedent in effect at the time from both the Supreme Court and the Ninth Circuit.

3. **Among the cases you listed as your ten most significant was one where the defendant was acquitted of distributing marijuana after he argued that it was being used for medical purposes. You wrote the case involved the interpretation of the new medical marijuana law and whether it applied to individuals who sold medical marijuana as part of a cooperative. Can you please describe how you interpreted the statute and what tools you used to reach the result you did?**

Response: I looked at the plain language of the statute and drafted a jury instruction that incorporated this language. The jury then reached a verdict based on this jury instruction.

4. **In March of this year, you gave a talk about factors to consider when deciding what bail should be and what sanctions should be for defendants. You listed many factors to discuss with the group but provided no indication how you consider each factor when making a sentencing or bail decision for defendants. Please elaborate on when each of the factors you listed should be considered in criminal law cases.**

Response: Under California law, such factors as the defendant's criminal history as well as the extent of the injuries to a victim may be taken into consideration in making a sentencing or bail decision. The above-referenced talk was simply a Socratic discussion with a group of young people. I did not offer any opinion or answer to what would be appropriate factors to consider.

5. **In this same talk, you wrote "No one wants to talk about race but it is often the big elephant in the room that everyone is ignoring." What did you mean by this statement?**

Response: I was simply noting the fact that, nationwide, African Americans are disproportionately represented in both the criminal justice and the dependency systems.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: It is important for a judge to be fair, intelligent and decisive. I believe I have all of those 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: A judge should be patient and treat everyone in front of him or her with civility and respect. I believe I possess those qualities.

8. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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 Supreme Court and Circuit Court precedent without regard to my personal opinions.

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: I would look to the plain language of the statute, and, if the meaning was clear, my inquiry would be over. If the plain language was not clear, I would use canons of statutory construction, including considering the statute as a whole to attempt to discern its meaning, and would consider relevant legislative history, if necessary. If there was no Supreme Court or Ninth Circuit precedent dispositive on the issue, I would turn to other Circuit Court cases for their analysis of the issue. I would also look to precedent from the Supreme Court and Ninth Circuit on analogous issues.

10. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would follow the Supreme Court or Court of Appeals precedent without regard to my belief.

11. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes passed by Congress are presumed constitutional, so it should be rare that a federal court declares such a statute unconstitutional. Only if the statute exceeded Congressional authority or violated a Constitutional provision should a federal court find it to be unconstitutional.

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, it is never proper for a judge to rely on foreign law or the views of the "world community" in interpreting the Constitution.

13. **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: In my thirteen years as a California Superior Court Judge, I have grounded my decisions in precedent and the law rather than any personal ideology or motivation, and, if confirmed as a district court judge, I would continue to do so.

14. 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 work as a Superior Court Judge in San Diego reflects that I am able to put aside any personal views and be fair to all who appear in front of me. I would continue to do so if confirmed as a district court judge.

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 and manage your caseload?

Response: I do believe that judges have a role in controlling litigation in their courtroom. If confirmed as a district court judge, I would continue to impose firm and fair deadlines on attorneys and litigants appearing before me. I would also enlist the assistance of Magistrate Judges in an attempt to narrow issues.

16. 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: I carefully review the issues presented to ensure that I am limiting my decision to the questions presented. I listen carefully to all evidence presented. I research and review relevant statutory and case law, and then I apply that law to the facts to reach a decision.

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: 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: I am not aware of any such endorsements.

18. Please describe with particularity the process by which these questions were answered.

Response: After receiving the questions, I personally prepared all responses. I discussed the prepared responses with a representative of the Department of Justice and then authorized the Department to submit my responses.

19. Do these answers reflect your true and personal views?

Response: The above answers do reflect my true and personal views.

Senator Ted Cruz
Questions for the Record

Cynthia Ann Bashant
Nominee: U.S. District Court for the Southern District of California

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 approach every case with an open mind, make sure all parties are adequately heard, research the relevant law, limit my ruling to the specific issue at hand, determine the facts based on the evidence presented and then apply the relevant law to the facts. I have not studied any particular Supreme Court Justice well enough to know whether he or she completely embodies my judicial philosophy.

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 employed originalism to interpret the Constitution. *See e.g. District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a district court judge, I would 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: I would not 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 be bound by the Supreme Court's decision in *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), and I would follow this 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 Supreme Court has recognized limits on the power of Congress to regulate non-economic activity pursuant to the Commerce Clause. *See, e.g., United States v. Morrison*, 529 U.S. 598 (2000): *United States v. Lopez*, 514 U.S. 549 (1995). However, in *Gonzales v. Raich*, 545 U.S. 1 (2005), Justice Scalia noted 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). If confirmed as a district judge, I would follow all binding Supreme Court and Ninth Circuit precedent regarding the issue of Congressional regulatory powers.

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: The Supreme Court has held that a right is fundamental for purposes of the substantive due process doctrine only if it is deeply rooted in our nation's history and tradition and "implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (internal citation omitted). If confirmed, I will follow this and all binding precedent from the Supreme Court and the Ninth Circuit concerning the substantive due process doctrine.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has held that heightened scrutiny under the Equal Protection Clause, either strict or intermediate scrutiny, is appropriate when a classification burdens a fundamental right or when it differentiates categories such as race, national origin or gender. *City of Cleburne v. Cleburne Living Center*, Inc., 473 U.S. 432, 440 (1985); *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976). If confirmed, I would follow binding precedent from the Supreme Court and the Ninth Circuit on this issue.

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 as to when the use of racial preferences in public higher education will no longer be necessary. However, if confirmed as a district judge, I would follow binding 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).

Responses of Jon David Levy, Nominee to be United States District Judge for the District of Maine, to the Written Questions of Senator Chuck Grassley

1. **During your hearing, I asked you about your comments regarding Judge Bork from a 1987 newspaper article. I have several follow-up questions on that topic. In that article you called on readers to write Senators to oppose Judge Bork's nomination. You wrote:**

   "It is ironic that on the 200th anniversary of the adoption of the Constitution, Robert Bork has been nominated to serve on our Supreme Court. Judge Bork embraces a rigid judicial philosophy of 'original intent' which treats the Constitution like a static document. He interprets the Constitution in accordance with legal and social principles as they existed in the late 1700s, and not as those principles have developed over the last two centuries." I recognize that this was a few years ago, but you were not a new lawyer at the time.

   a. Do you stand by your criticism of Judge Bork?

   Response: I have not reflected on Judge Bork's theory of constitutional interpretation in the twenty-six years since I wrote this letter. My recollection is that Judge Bork's theory of constitutional interpretation led him to take issue with established Supreme Court precedent such as *Shelley v. Kraemer*, 334 U.S. 1 (1948), which held that state court enforcement of racially restrictive deed covenants violates the constitutional guarantee of equal protection. Many legal commentators criticized Judge Bork's approach at the time he was under consideration for the United States Supreme Court and I believe my comments echoed some of those concerns. I would note that in the twenty-six years since I wrote this letter, the Supreme Court has recognized that the original public understanding of the text of the Constitution is a "critical tool of constitutional interpretation," *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), and I would faithfully follow this and similar Supreme Court and First Circuit precedent if confirmed as a District Court judge.

   b. In your view, what role, if any, does the original meaning of the Constitution play in your judicial analysis?

   Response: As the Supreme Court explained in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the public's understanding of the meaning of the Constitution's text at the time of its enactment plays a significant role in constitutional interpretation. If confirmed, I will follow binding Supreme Court and First Circuit precedent with respect to interpretation of the Constitution.

   c. How does your judicial philosophy differ from Judge Bork's?

Response: My judicial philosophy is that judges should be absolutely faithful to the rule of law by respecting the separation of powers, adhering to precedent, and basing their decisions solely on the applicable law and the factual record. I am not familiar with Judge Bork's judicial philosophy, other than his adherence to original intent for purposes of constitutional interpretation. If confirmed as a District Court judge, I would apply binding precedent from the Supreme Court and First Circuit whether those courts had employed originalism or another theory of constitutional interpretation.

d. You concluded your article saying, "If he were alive today, I suspect that James Madison would be leading the fight against Judge Bork." Do you still believe that is a fair criticism?

Response: I have not given any thought to what James Madison would think of Judge Bork in the twenty-six years since I wrote this letter. I would add that having spent eighteen of the last twenty-six years as a judge, I have focused on being a good and fair judge and have endeavored to avoid criticizing other judges. If confirmed as a District Court judge, I would continue to carefully consider every case that comes before me, basing my decision on the facts of the case and the applicable law, while respecting the limited role of federal judges in our constitutional system.

2. You noted in the article about Judge Bork that, "the pursuit of Justice requires that our Constitution serve as a dynamic instrument—so that when it is applied we are mindful of both contemporary values and the fundamental ideals of our founding fathers." In 2009 during your remarks at a litigation and advocacy seminar you quoted Chief Justice Warren and challenged the audience to be guided by the principle that, in the end, "it is the law's spirit, and not its form, that keeps justice alive." But you also said during your Maine nomination hearing that you would not be, "beholden to any one theory or grand view of the law." These seem like conflicting notions—on one hand, you are committed to not being beholden to one theory, but you have also been clear that the Constitution is a "dynamic instrument," interpreted "in accordance with those principles that have developed over the last two centuries," and, "it is the law's spirit, not its form, that keeps justice alive." Can you explain how these two notions can peaceably coexist within your judicial framework?

Response: My 2009 remarks were made to an audience of judges and lawyers in Maine who are responsible for litigating child protection cases and implementing the Adoption and Safe Families Act of 1997 (ASFA), Pub. L. No. 105-89, 111 Stat. 2115. In my remarks, I made the point that judges and lawyers should not expect to receive additional resources with which to improve the administration of child protection cases, and that it was their responsibility to continually seek ways to improve that process. I quoted Chief Justice Warren to underscore that the statutory requirements of ASFA are not self-effectuating, and that any improvements in the quality of the administration of child protection cases in Maine will come from the spirit in which judges and lawyers approach their responsibilities. I do not believe that this view is at odds with the idea, expressed in

my Maine nomination hearing remarks, that judges should not be beholden to any single grand theory of the law when interpreting the law.

3. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is an absolute commitment to the rule of law, and the discipline to stay true to that commitment in every case. I possess this attribute.

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: Judges should treat everyone, both inside and outside the courtroom, with courtesy and respect. Further, judges must continually evaluate everything they do by the standard of whether it demonstrates respect for the public and generates respect for the law. I hold myself to this standard and would continue to do so 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: As demonstrated during my eighteen-year career as a judge, I am unequivocally committed to being faithful to all binding precedent even if I personally disagree with it.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In a matter of first impression involving the construction of a statute, I would first examine the language of the statute. If the text of the provision were clear, my analysis would be at an end. If the text of the provision were not clear, I would examine the provision in the broader context of the statute in which it appears. I would also look to relevant precedent from the Supreme Court, the First Circuit, and other federal courts that have interpreted similar or analogous provisions. Finally, I would consider any relevant legislative history in accordance with established rules of statutory construction.

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 apply the decision.

8. **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 and should only be declared unconstitutional if they are in clear violation of a provision of the Constitution. In addressing a constitutional challenge to a statute, I would be guided by all applicable precedent of the Supreme Court and the First Circuit. If I were to conclude that a statute might be unconstitutional, I would apply the doctrine of constitutional avoidance and, if appropriate, decide the case on an alternative basis without ruling on the constitutionality of the statute.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No. I am not aware of any precedent that would ever make it proper for me, if confirmed as a District Court judge, to rely on foreign law or the views of the "world community" to determine 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: If confirmed, I will be faithful to my sworn duty to decide cases based solely on the factual record and the applicable law. The best evidence I can give the Committee is the written record of the decisions I have issued during my eighteen years as a state trial and appellate judge.

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: Throughout my eighteen years as a state trial and appellate judge, I have remained faithful to the oath I took which requires that I put aside my personal views and be fair to all who appear before me. I am fully committed to being fair and impartial, and to deciding cases based only upon the applicable law and the evidence in the record.

12. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket and manage your caseload?**

Response: Yes. If confirmed, I would take an active role in the management of the cases assigned to me. I would apply principles of differentiated case management so that the process applicable to each case would be tailored to the requirements of the case. Whenever appropriate, I would hold Rule 16 conferences shortly after the filing of a case, as my experience has taught me that the pretrial process is made more effective and efficient by the early involvement of the assigned judge. I would also continually evaluate

the ways in which I manage cases to ensure that cases are decided in a fair and timely manner.

13. **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: I begin by carefully evaluating the factual record, remaining mindful of my responsibility as a judge to assess evidence in accordance with the rules of evidence and the applicable burdens of proof. My factual determinations are based strictly on the evidentiary record, and I do not consider extraneous resources in making factual findings. I then apply the applicable law to the facts as I find them. To determine the applicable law, I identify and study the relevant provisions of the Constitution, statutes, and rules, as well as binding precedent. I approach decision writing with great care, usually producing multiple drafts of a decision before issuing a final opinion.

14. **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: I have had no such contact.

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.

15. **Please describe with particularity the process by which these questions were answered.**

Response: Following my receipt of the questions from the Department of Justice, I drafted answers to the questions. After speaking to a Justice Department official, I finalized my answers and authorized the Justice Department to submit my answers to the Committee.

16. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Jon David Levy, Nominee to be United States District Judge for the District of Maine, 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: My judicial philosophy is to be faithful to the rule of law, remaining ever mindful of the separation of powers and the role of precedent, and to fairly and impartially decide each case based on the evidentiary record and controlling law. While I frequently apply Supreme Court decisions as binding precedent in my current position as a Justice of the Maine Supreme Judicial Court, I have not studied the body of decisions of any single Justice of the Warren, Burger, or Rehnquist Courts so as to be in a position to identify which individual Justice's 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: Yes. As the Supreme Court explained in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the public understanding of the meaning of the text of the Constitution when it was enacted plays an important role in constitutional interpretation. If confirmed, I will follow all binding Supreme Court and First Circuit precedent with respect to interpretation of the Constitution.

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 I am confirmed as a judge of the District Court, I would not 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's decision in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), is binding precedent. Therefore, if confirmed, I would follow and apply the holding in *Garcia* as I would all other precedent established by the Supreme Court.

Do you believe that Congress's Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has held that Congress's Commerce Clause power extends to regulating: (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. Morrison*, 529 U.S. 598, 608-09 (2000); *United States v. Lopez*, 514 U.S.

549, 558-59 (1995). These cases likewise stand for the proposition that the Commerce Clause does not empower Congress to regulate non-economic activity that has only an attenuated effect on interstate commerce. *See Morrison*, 529 U.S. at 612-13 (citing *Lopez*, 514 U.S. at 563-67). If confirmed, I would follow and apply Supreme Court and First Circuit precedent that limits Congress's power to regulate non-economic activity under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The President's authority to issue executive orders or take executive actions is subject to the limits on the exercise of federal power set forth in the Constitution and specific acts of Congress. Guidance for determining whether the President has exceeded the constitutional limits on his authority is set forth in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring), and in subsequent cases such as *Medellin v. Texas*, 552 U.S. 491 (2008) and *Dames & Moore v. Regan*, 453 U.S. 654 (1981). Furthermore, regulatory actions by the executive branch 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 Defense Council, Inc.*, 467 U.S. 837 (1984). If confirmed, I would faithfully apply these and all other relevant precedent of the Supreme Court and First Circuit.

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 for purposes of substantive due process when 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, 720-21 (1997) (citations omitted). If confirmed, I would follow all applicable Supreme Court and First Circuit precedent in addressing issues involving fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied heightened scrutiny in certain cases involving classifications based on race, religion, national origin, and gender, or when "state laws impinge on personal rights protected by the Constitution." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). 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. University of Texas at Austin*, 133 S. Ct. 2411, 2418 (2013) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989)). The Court has stated that intermediate scrutiny applies to gender-based classifications, *see United States v. Virginia*, 518 U.S. 515, 532-34 (1996), and classifications based on illegitimacy, *see City of Cleburne*, 473 U.S. at 441. If confirmed, I would follow all relevant Supreme Court and First Circuit precedent regarding the level of judicial scrutiny to be given to a classification.

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 an expectation concerning the use of racial preferences fifteen years from now. If confirmed, I would follow Supreme Court precedent concerning the use of racial preferences, including *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

Theodore David Chuang
Nominee, U.S. District Judge for the District of Maryland

1. **As a former congressional staffer who has worked in the Executive Branch for some time, and who is now nominated to serve in the Judicial Branch you have a unique perspective. How has your experience shaped your understanding of the balance between Congress's constitutional obligation to conduct oversight and the Executive Branch's interests?**

   Response: As a former counsel for congressional oversight committees, I firmly believe and appreciate that appropriate congressional oversight of the Executive Branch is a critical part of our constitutional system of checks and balances and can lead to important reforms and improvements in the operations of government. Having also worked on such issues from the Executive Branch, I also recognize that congressional oversight should be sensitive to the Executive Branch's legitimate need to have candid internal deliberations in order to carry out its various missions effectively. Ultimately, I believe that congressional oversight is most effective when both branches approach this important function with a spirit of cooperation and accommodation of each branch's legitimate interests.

2. **I understand that for the last few months, you have been working with the State Department and its response to the ongoing congressional investigation into the attack on the U.S. mission in Benghazi. On August 1, 2013, House Oversight and Government Reform Committee Chairman Darrell Issa issued a subpoena to the State Department that compelled the Secretary of State to produce, among other things, all the notes and summaries of witness interviews conducted by the State Department's Accountability Review Board. I understand that the State Department has refused to comply with that aspect of the subpoena. Please answer each question separately.**

   a. **On what legal basis is the State Department withholding those documents?**

      Response: The State Department articulated the institutional concerns surrounding production of these documents, and its willingness to engage in a process of accommodation, in its letter of September 20, 2013 to the House Committee on Oversight and Government Reform.

   b. **Has the Executive asserted Executive Privilege?**

      Response: At this time, the Executive has not asserted Executive Privilege over these documents.

   c. **Has the Executive asserted any privilege?**

Response: At this time, the Executive has not asserted an applicable privilege. The State Department articulated the institutional concerns surrounding production of these documents, and its willingness to engage in a process of accommodation, in its letter of September 20, 2013 to the House Committee on Oversight and Government Reform.

d. Do you believe there are valid reasons—other than an assertion of executive privilege or another privilege—to withhold documents from Congress that have been subpoenaed?

Response: A valid legal privilege could form an appropriate basis for withholding documents subpoenaed by Congress. In practice, if an Executive Branch agency identifies other reasons that providing certain subpoenaed documents to Congress may have adverse consequences for the government, it may seek, through the traditional process of accommodation, to reach an understanding with the relevant congressional committee that production of such documents need not occur.

e. Did you advise the Secretary to withhold those documents from the House Oversight Committee?

Response: My role during my temporary detail to the State Department, as in all of my professional positions, has been as legal counsel. In that capacity, I have provided legal advice to the Department on the parameters of the law. As an attorney subject to rules of professional responsibility, I do not believe it is appropriate to discuss specific legal advice provided to a client.

3. In your hearing, I asked you about the statement you wrote of Judge Nelson that said, "some of Judge Nelson's most noteworthy opinions embody the principle that the courts must be vigilant in protecting the rights of weaker minority interests when they have been unjustifiably violated by more powerful majority interests." When I asked you whether you would take this approach to the administration of justice in your courtroom, if confirmed, you said you would approach your cases by looking at the facts and following precedent. While I appreciate that you will follow the law, I would like a more responsive answer.

a. In what ways will you protect the rights of "weaker minority interests"?

Response: The role of a judge is to make decisions based on the law and the facts, without regard for outside considerations, such as whether one party has more or fewer resources or is advocating for a more or less popular position. If confirmed to serve as a federal judge, I would rule for whichever party the law and facts dictate should prevail, regardless of the party's level of resources or the popularity of its position.

b. Are there circumstances under which these interests can be justifiably violated?

Response: If the law and facts do not support the position of a party which has fewer resources or has a less popular or minority position, the court should rule against that party.

4. In that same 1999 profile of Judge Nelson you wrote about her dissenting opinion in a Ninth Circuit case upholding the state of Hawaii's designation of Good Friday as a state holiday. Judge Nelson found this to be a violation of the establishment clause. Do you agree with her dissent in this case? Please explain.

Response: If confirmed as a federal judge, any personal views I may have about any issue would not play a role in my evaluation of any case. The Fourth Circuit has addressed the question of whether Good Friday can be designated as a public school holiday under the Establishment Clause and held that such a designation is permissible. *Koenick v. Felton*, 190 F.2d 259, 268-69 (4th Cir. 1999), *cert. denied*, 528 U.S. 1118 (2000). This opinion is consistent with the rulings of the Seventh Circuit in *Bridenbaugh v. O'Bannon*, 185 F.3d 796 (7th Cir. 1999), and the Ninth Circuit in the case in which Judge Nelson dissented, *Cammack v. Waihee*, 932 F.2d 765 (9th Cir. 1991). If confirmed to serve as a United States District Judge for the District of Maryland, I would be bound by and would faithfully apply all Supreme Court and Fourth Circuit precedent relating to the Establishment Clause, including *Koenick*.

5. 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 entirely fair and impartial toward parties and their arguments, such that cases are decided based on the applicable facts and law and not on any outside considerations. I believe that over the course of my legal career, I have demonstrated that I possess this ability.

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: As a guardian of the rule of law and the American system of justice, a judge must be able to consider every case fairly and objectively, based on the applicable law and facts, without consideration of outside factors. A judge must also act in a manner that instills confidence in the parties and the public that the judge's rulings are rendered in this manner. Accordingly, a judge should be fair, open-minded, and evenhanded in all matters. A judge should also be respectful, courteous, and patient with all who appear in the courtroom. I believe that I have demonstrated these qualities over the course of my legal career.

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?

Response: A district judge is bound by precedent of the Supreme Court and the relevant Circuit Court. If confirmed, I would faithfully apply controlling precedents of the Supreme Court and the Fourth Circuit and give them full force and effect, regardless of whether I personally agree or 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?**

Response: In a matter of first impression, I would consider the plain language of an applicable statute and, if necessary, would apply the canons of statutory construction to assist in interpreting the language for purposes of the case. I would also review and consider persuasive case law, including Supreme Court and Fourth Circuit case law addressing analogous issues and case law from other circuits addressing the same issue. I would follow the principle of judicial restraint and would endeavor to decide only those issues that need to be decided to resolve the case.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: As a district court judge, I would apply controlling Supreme Court or Fourth Circuit precedent even if I believed that the higher court's ruling was incorrect.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Having served as legal counsel to congressional committees, I have a strong appreciation for the prerogative of the elected representatives in the Legislative Branch to enact the laws of the United States. Accordingly, and consistent with the doctrine of constitutional avoidance, I believe that a federal court should address the constitutionality of a federal statute only when it is necessary to decide the case at hand and should declare a statute unconstitutional only in rare circumstances, when the Constitution and applicable legal precedent make clear that such a ruling is required.

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. In the absence of Supreme Court or Fourth Circuit precedent requiring me to do so, I would not rely on foreign law or the views of the "world community" in determining the meaning of the Constitution.

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? In your answer, please address how your work with several different Democratic organizations and campaigns will not influence you as a judge.

Response: All of my professional positions have been as legal counsel, and although I have had some limited involvement with political activities on a voluntary basis, I have always understood that politics has no place in legal analysis. Throughout my legal career, I have represented individuals and institutions of diverse political, economic, and social backgrounds, including representing both the Legislative and Executive Branches, serving in a U.S. Attorney's Office under both Democratic and Republican administrations, and representing large corporations in the securities, financial, energy, and telecommunications sectors as well as individuals with diverse viewpoints while in private practice. Throughout these legal representations, I have always advocated for the best interests of my clients regardless of their political or philosophical viewpoints, and I have not allowed any personal views or my limited participation in certain political activities to affect my legal advice and representation. While I recognize that the role of a judge is very different from that of an advocate, if confirmed I would draw on this experience in setting aside any personal views and prior political participation and commit that I would decide cases solely based on the facts and the relevant legal text and precedent.

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?

Response: Throughout my legal career I have represented diverse interests as discussed in my response above to question 12, including as a criminal prosecutor, criminal defense attorney, and as a civil attorney for both plaintiffs and defendants. Throughout these legal representations, I have always advocated for the best interests of my clients regardless of their positions or viewpoints, and I have always set aside any personal views in representing my client as an attorney. While I recognize that the role of a judge is very different from that of an advocate, if confirmed I would draw on this experience and would set aside any personal views, treat all parties fairly regardless of their background or circumstances, and decide cases solely based on the relevant law and facts.

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 and manage your caseload?

Response: In order to advance the administration of justice and the efficiency of the justice system, judges may play a role relating to the pace and conduct of litigation, provided that they act in accordance with existing precedent on the due process rights of litigants. I would expect to employ scheduling and discovery orders, case management and status conferences, pretrial conferences, and other similar tools to advance the efficiency of the litigation process. I would also endeavor to issue timely rulings so as to keep cases proceeding toward resolution.

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: In deciding a case that came before me should I be confirmed, I would seek to learn and understand the facts of the case as presented through witness testimony, exhibits, and submissions by the parties. I would then apply the relevant law to those facts. In determining what law to apply, I would consider the oral and written arguments of the parties but would also conduct independent legal research as necessary. The sources I would rely upon would include the language of any applicable statutes and regulations, controlling Supreme Court or Fourth Circuit precedent, and other relevant case law.

Having served as a judicial law clerk, as well as a government attorney whose role included weighing opposing interests to make an assessment of a fair outcome for both parties, I believe that I am well equipped to make this transition. One difficult but surmountable part of the transition may be the need expeditiously to learn new areas of federal law in order to decide specific cases.

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: I have had no such contact.

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 December 20, 2013. I drafted responses to the questions and provided them to the U.S. Department of Justice. After discussing my responses with a representative of the Department of Justice, I finalized my responses and authorized the Department to transmit them to the Committee.

18. Do these answers reflect your true and personal views?

Response: Yes.

Senator Ted Cruz
Questions for the Record

Theodore David Chuang
Nominee, U.S. District Judge for the District of Maryland

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 to with yours?

Response: I believe that a federal judge is a guardian of the rule of law and the American system of justice. Accordingly, my judicial philosophy is that a judge must always decide cases based on the Constitution, the applicable laws, and the facts of the case, and not on any outside considerations. A judge's role is to learn the facts of a case, study the applicable statutes and precedents, and apply the law to the case in a fair and impartial manner, treating all parties with respect and dignity. I have profound respect for the institution of the Supreme Court and for its justices, past and present, but I do not have a sufficient basis of knowledge to identify a single justice who has expressed a judicial philosophy that I would adopt as my own.

Do you believe that 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 to serve as a United States District Judge, my role in cases involving constitutional interpretation would be to study and apply to the case at hand the applicable precedent of the Supreme Court and the Fourth Circuit, including precedent considering the original intent of the drafters or the original public meaning of the text. *See, e.g., 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 circumstances would you overrule that precedent as a judge?

Response: If confirmed to serve as a United States District Judge, I would be bound by the precedent of the Supreme Court and the Fourth Circuit. I would not overrule that 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 serve as a United States District Judge, I would be bound by Supreme Court and Fourth Circuit precedent addressing limitations on federal action toward state governments, including cases such as *Garcia*, which addressed the specific issue of regulatory immunity for state governments under the Commerce Clause. I would apply such precedent without regard to any personal views.

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 identified three categories of activity that may be regulated under the Commerce Clause: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce and persons or things in interstate commerce; and (3) those activities that substantially affect interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005); *United States v. Morrison*, 529 U.S. 598, 608-09 (2000); *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). In *Morrison*, the Court declined to "adopt a categorical rule against aggregating the effects of any noneconomic activity" in order to uphold congressional action under the Commerce Clause, but noted that the Court historically has "upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature." 529 U.S. at 613. If confirmed to serve as a United States District Judge, I would follow all applicable Supreme Court and Fourth Circuit precedent on the extent of congressional authority under the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: According to the Supreme Court, "[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) (internal citations omitted). In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court invalidated an executive order requiring federal seizure of the nation's steel mills based on the determination that it was not authorized by statute or the Constitution. The prevailing framework for a court to analyze whether executive action exceeds presidential authority is set forth in Justice Jackson's concurrence in *Youngstown*. 343 U.S. at 635-38 (Jackson, J., concurring).

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has stated that fundamental rights include "the specific freedoms protected by the Bill of Rights," and "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition" and which are "implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Gluckberg*, 521 U.S. 702, 720-21 (1997) (internal citations and quotations omitted). If confirmed, I would consider a right to be fundamental under the Due Process Clause if the Supreme Court or the Fourth Circuit has previously held it to be fundamental under this standard.

When should a classification be subject to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has identified the classifications which are subject to heightened scrutiny under the Equal Protection Clause. These classifications include race, alienage, and national origin, which are subject to strict scrutiny; and gender and illegitimacy, which are subject to intermediate scrutiny. *See, e.g., City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). If confirmed, I would follow Supreme Court and Fourth Circuit precedent on what classifications are subject to heightened scrutiny and how to apply such 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: I do not have sufficient background or expertise to have any personal expectations on this matter. If confirmed, I would apply *Grutter* and any other subsequent Supreme Court or Fourth Circuit precedent on the use of race in admissions to public institutions of higher education, such as *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013), in any applicable cases.

Senator Chuck Grassley
Questions for the Record
George Jarrod Hazel
Nominee, U.S. District Judge for the District of Maryland

1. **Please explain what your understanding is of the rights and restrictions for individual citizens under the Second Amendment.**

   Response: The Supreme Court has ruled that the Second Amendment guarantees an individual right to possess and to use firearms for traditional lawful purposes, including self-defense within a home. *See District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). In *McDonald v. Chicago*, 561 U.S. 3025, 3036 (2010), the Supreme Court further ruled that this right was a fundamental one applicable to the states. The Supreme Court has also noted that its holding should not be interpreted as casting doubt on longstanding prohibitions on the possession of firearms by felons or the mentally ill, restrictions on carrying firearms in sensitive places such as schools or government buildings, or laws regulating the commercial sale of firearms. *Heller*, 554 U.S. at 626-627.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is the ability to consistently apply the law to the relevant facts of the case. I believe I possess that ability.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: Judges should treat everyone in their courtroom with respect, courtesy and dignity. Throughout my career, I have made every effort to comply with that standard and would continue to do so if confirmed to the bench.

4. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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 following the precedents of higher courts faithfully and giving them full force and effect, even if I personally disagree with such precedents.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with an issue of first impression, I would begin by examining the text of the statute or regulation at issue. If the plain language of the provision did not adequately address the issue before me, I would look to precedent from the Supreme Court or the Fourth Circuit involving analogous provisions. If there were no such precedent, I would look to relevant cases in other circuits or district courts as persuasive authority.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply binding precedent of the Supreme Court or the Fourth Circuit without regard to whether I believed the court erred in the decision.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed constitutional and federal courts should only find them to be unconstitutional "upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). I would follow precedent of the Supreme Court on this issue.

8. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No.

9. **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: In my years as a civil lawyer, I advocated on behalf of clients who held a range of political views. As a prosecutor, I have served under both Democratic and Republican leadership. At no point have I ever allowed political ideology or motivation to influence my decisions. I can assure the Committee that if confirmed as a judge, I would base my decisions on the law and the relevant facts and not on any 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?**

Response: I am committed to deciding each case impartially after a fair and open hearing, by applying precedent to the facts of the case before me and will do so without regard to any personal views I may have.

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 and manage your caseload?

Response: I believe that judges do have a role in controlling the pace and conduct of litigation. If confirmed, I will schedule case management conferences, set reasonable but firm deadlines for the filing of motions, decide motions in a thoughtful but efficient manner and encourage mediation or settlement conferences where appropriate.

12. 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: In reaching a decision in a case before me, I would carefully review the arguments made by the parties, analyze the text of the appropriate statute or regulation at issue, review controlling precedent from the Supreme Court or the Fourth Circuit and apply the law to the relevant facts. I do not believe that adopting this approach will be a difficult transition for me. As a more general matter, I do believe that working with a small chambers staff will be an adjustment for me after spending most of my career in larger offices.

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.

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.

14. Please describe with particularity the process by which these questions were answered.

Response: I received a copy of the questions from a Justice Department attorney of the Office of Legal Policy. I drafted responses and submitted them to the same attorney, made revisions and then submitted them in final form.

15. Do these answers reflect your true and personal views?

Response: Yes.

Questions for Judicial Nominees
Senator Ted Cruz

George Jarrod Hazel
Nominee, U.S. District Court for the District of Maryland

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 to the bench, I would adhere to judicial precedent, treat all parties with civility and respect and manage my docket in an efficient manner. However, I have not studied the judicial philosophies of specific Supreme Court Justices with sufficient attention to identify one 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: In the case of *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the Supreme Court held that the meaning of the words written as they were commonly understood at the time of their writing should be given great consideration when interpreting provisions of the Constitution. If confirmed, I would faithfully apply this 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: Under no circumstances would I overrule binding 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).

Response: *Garcia v. San Antonio Metro Transit Authority*, 469 U.S. 528, 552 (1985), is binding precedent and I would be obliged to follow that precedent regardless of any personal view I might have.

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 ruled that Congress' power under the Commerce Clause does extend to local, non-economic activity that "exerts a substantial economic effect on interstate commerce." *Wickard v. Filburn*, 317 U.S. 111, 125 (1942); *see also Gonzales v. Raich*, 545 U.S. 1, 18-19 (2005). Congress' power under the Commerce Clause is not unlimited, however, and the Supreme Court has invalidated statutes that it ruled went beyond that power. *See, e.g., United States v. Morrison*, 529 U.S. 598, 610-11 (2000); *United States v. Lopez*, 514 U.S. 549

(1995). If confirmed as a District Judge, I would follow all binding Supreme Court precedent regarding the issue of Congressional powers.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has held that the President's authority to issue executive orders or take executive actions must be derived from either an act of Congress or the Constitution. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). Justice Jackson's concurring opinion in *Youngstown* established a three-part analysis for determining the constitutionality of executive action or executive orders, *see id.* at 635 (Jackson, J., concurring), and that analysis remains the framework by which such cases are decided. *See Medellin v. Texas*, 552 U.S. 491, 523-29 (2008). If confirmed as a District Judge, I would follow all binding Supreme Court precedent on this issue.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has stated that "only fundamental rights and liberties which are 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty' qualify for [substantive due process] protection." *Chavez v. Martinez*, 538 U.S. 760, 775 (2003) (internal citation omitted). If confirmed as a District Judge, I would follow this and all binding precedent regarding the substantive due process doctrine.

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). Classifications based on gender are to be reviewed under an immediate level of scrutiny requiring justification for such classifications to be "exceedingly persuasive." *See United States v. Virginia,* 518 U.S. 515, 531-33 (1995). If confirmed, I would follow this and all binding 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: In *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), the Supreme Court made a prediction that by 2028 it would no longer be necessary to use racial preferences to further the interest of diversity in public institutions of higher education. Without regard to whether I personally agree with that prediction, if confirmed, I would apply all binding Supreme Court precedent in analyzing the constitutionality of considerations of race in university admissions programs including the Supreme Court's decision in *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013).

Defending Liberty
Pursuing Justice

CHAIR
Judy Perry Martinez
New Orleans, LA

Mailing Address:
2980 Fairview Park Drive
Falls Church, VA 22042

FIRST CIRCUIT
Lisa G. Arrowood
Suite 1180 North
10 Post Office Square
Boston, MA 02109

SECOND CIRCUIT
Bettina B. Plevan
31 Times Square
New York, NY 10036-8299

THIRD CIRCUIT
Robert C. Heim
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

FOURTH CIRCUIT
F. Fitzgerald Pannell, III
Suite 2200
301 South College Street
Charlotte, NC 28202-6021

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Costello Slovak
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
David L. Brown
5th Floor
U.S. Bank Building
520 Walnut Street
Des Moines, IA 50309-4119

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl L. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Coh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Ramón A. Abadin
Suite 1208
3155 South Dadeland Boulevard
Miami, FL 33156-2739

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

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
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 Daniel Dale Crabtree to the United States District Court for the District of Kansas

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Daniel Dale Crabtree who has been nominated for a position on the United States District Court for the District of Kansas. As a result of our investigation, the Committee is of the opinion that for this position Mr. Daniel Dale Crabtree is Unanimously Well Qualified.

A copy of this letter has been provided to Mr. Crabtree.

Sincerely,



Judy Perry Martinez
Chair

cc: Mr. Daniel D. Crabtree, 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.

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
Paul E. Summit
Suite 2300
1 Post Office Square
Boston, MA 02109-2129

SECOND CIRCUIT
Jeh C. Johnson
1285 Avenue of the Americas
New York, NY 10019-6064

THIRD CIRCUIT
Karol Corbin Walker
1 Riverfront Plaza
Floor 16
1037 Raymond Boulevard
Newark, NJ 07102-5423

FOURTH CIRCUIT
Willis P. Whichard
501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Costello Slowik
Suite 6600
233 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
Charles A. Weiss
Suite 3600
211 N. Broadway
Saint Louis, MO 63102-2769

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Goh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Frank R. Angones
Courthouse Tower
Floor 8
44 West Flagler Street
Miami, FL 33130-6802

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066-1743

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

AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

Please respond to:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

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VIA EMAIL AND FIRST-CLASS MAIL

September 20, 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 Judge Cynthia Ann Bashant to the United States District Court for the Southern District of California***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Cynthia Ann Bashant who has been nominated for a position on the United States District Court for the Southern District of California. As a result of our investigation, the Committee is of the opinion that Judge Cynthia Ann Bashant is Unanimously Qualified for this position.

A copy of this letter has been provided to Judge Bashant.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Cynthia Ann Bashant (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 Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on September 20, 2013.

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
Paul E. Summit
Suite 2300
1 Post Office Square
Boston, MA 02109-2129

SECOND CIRCUIT
Jeb C. Johnsen
1285 Avenue of the Americas
New York, NY 10019-6064

THIRD CIRCUIT
Karol Corbin Walker
1 Riverfront Plaza
Floor 16
1037 Raymond Boulevard
Newark, NJ 07102-5423

FOURTH CIRCUIT
Willis P. Whichard
501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
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Bowling Green, KY 42102-0770

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Miami, FL 33130-6802

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066-1743

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

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

Defending Liberty
Pursuing Justice

Please respond to:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

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VIA EMAIL AND FIRST-CLASS MAIL

September 20, 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 Justice Jon David Levy for the United States District Court for the District of Maine***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Justice Jon David Levy who has been nominated for a position on the United States District Court for the District of Maine. As a result of our investigation, a substantial majority of the Committee is of the opinion that Justice Levy is Well Qualified and a minority of the Committee is of the opinion that Justice Levy is Qualified for this position.

A copy of this letter has been provided to Justice Levy.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Jon David Levy (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 Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on September 20, 2013.

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
Paul E. Summit
Suite 2300
1 Post Office Square
Boston, MA 02109-2129

SECOND CIRCUIT
Jeh C. Johnson
1285 Avenue of the Americas
New York, NY 10019-6064

THIRD CIRCUIT
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1 Riverfront Plaza
Floor 16
1037 Raymond Boulevard
Newark, NJ 07102-5423

FOURTH CIRCUIT
Willis P. Whichard
501 Eastowne Drive #330
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Costello Slovak
Suite 6600
214 South Wacker Drive
Chicago, IL 60606-6107

EIGHTH CIRCUIT
Charles A. Weiss
Suite 3600
211 N. Broadway
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Suite 4100
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Seattle, WA 98101

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Denver, CO 80203-4556

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44 West Flagler Street
Miami, FL 33130-6802

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10560 Fox Forest Drive
Great Falls, VA 22066-1743

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

AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

Please respond to:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

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VIA EMAIL AND FIRST-CLASS MAIL

September 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 Theodore David Chuang to the United States District Court for the District of Maryland***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Theodore David Chuang who has been nominated for a position on the United States District for the District of Maryland. As a result of our investigation, a substantial majority of the Committee is of the opinion that Mr. Chuang is Well Qualified and minority of the Committee is of the opinion that Mr. Chuang is Qualified.

A copy of this letter has been provided to Mr. Chuang.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Theodore David Chuang, Esq.
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 Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on August 29, 2013.



c/o T. Christine Pham
Rosenberg Martin Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, Maryland 21201
410.547.9142
E-mail: info@APABA-MD.org
Website: www.APABA-MD.org

December 16, 2013

VIA First Class Mail and Electronic Transmission
info@judiciary-dem.senate.gov

Senator Patrick J. Leahy, Chairman
Senator Chuck Grassley, Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Confirmation of Theodore D. Chuang for the
United States District Court for the District of Maryland

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Asian Pacific American Bar Association of Maryland ("APABA-MD"), we submit this letter in support of the confirmation of Theodore D. Chuang's nomination for the judicial vacancy on the United States District Court for the District of Maryland.

As you may be aware, APABA-MD is the Maryland chapter of a national, professional association of attorneys. One of our goals is to promote diversity and address issues affecting the Maryland Asian and Pacific American communities.

APABA-MD commends the Senate Committee on the Judiciary for its efforts to diversify the federal bench over the last fifteen years and three presidencies. While these confirmations have certainly expanded diversity on the federal bench, for which the association is immeasurably grateful, currently less than 3% of the over 800 active federal judges are of East Asian, South Asian or Pacific American descent.

In the State of Maryland, the time is ripe for your Committee to make another mark on history by confirming the first Asian American as a United States District Court Article III Judge

in Maryland, Virginia, or Washington, D.C. The confirmation of Theodore Chuang, a member of the Maryland bar and a longtime Montgomery County resident, to the federal bench, would once again demonstrate the Committee's strong support of diversity among the leadership of our great United States.

Mr. Chuang is expected to serve as a jurist with integrity, intellect, respect, and excellence, as he has done in his years as a lawyer. Mr. Chuang will bring his unique talents, background, and perspectives to the bench. Notably, Mr. Chuang has devoted the vast majority of his professional and personal life to public service.

Following his judicial clerkship with the Honorable Dorothy Nelson, United States Court of Appeals for the Ninth Circuit, Mr. Chuang embarked on his path of public service through his positions with the U.S Department of Justice's Civil Rights Division, United States Attorney's Office, House Committee on Oversight and Government Reform, and House Committee on Energy and Commerce. Mr. Chuang presently serves as Deputy General Counsel for the United States Department of Homeland Security ("DHS") and has served at DHS since 2009.

Throughout his life, Mr. Chuang has developed and embodied an appreciation for the law and the role that it serves in the communities that we live in. Mr. Chuang's community service and his involvement with the Asian Pacific American Legal Resource Center ("APALRC") evidence his commitment to serve the public and to promote diversity. APALRC is a non-profit legal services organization that serves APA immigrants in Maryland, Virginia, and Washington, D.C. who often have nowhere else to turn. One of its goals is to ensure that APAs have access to the legal system to protect and enforce their rights. Mr. Chuang does not merely pay lip service to these efforts, but actively participates to ensure that due process of law and access to justice is available to everyone. Above all, APABA-MD is confident that Mr. Chuang will lead by example inside and outside the courtroom.

Members of APABA-MD have gotten to personally know Mr. Chuang, a member of our organization, and we strongly believe that his even temperament, keen insight and demeanor will ensure that he performs his duties and obligations with fairness and respect for our judicial system and the people that it serves. There is no doubt that Mr. Chuang will both proudly and humbly serve the citizens of Maryland, and all who come before him, with distinction. Accordingly, APABA-MD wholeheartedly supports and enthusiastically endorses the nomination of Theodore Chuang for the United States District Court for the District of Maryland.

The President and Co-Chairs of the Judicial Selections Committee of APABA-MD are available to you should you have any questions or would like to discuss Mr. Chuang's confirmation further.

Ranju R. Shrestha, Esquire, President	877.711.5019, ext. 28933
Ari Ghosal, Esquire, Judicial Selections Co-Chair	301.804.3615
Michael W. Siri, Esquire,. Judicial Selections Co-Chair	410.583.2400
T. Christine Pham, Judicial Selections Co-Chair	410.547.9142

Thank you for your time and consideration.

Respectfully,

T. Christine Pham
Co-Chair, APABA-MD
JUDICIAL SELECTIONS COMMITTEE



APABA DC
Asian Pacific American Bar Association

2013-2014
BOARD OF DIRECTORS

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programs@apaba-dc.org

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Ben Huh
treasurer@apaba-dc.org

December 16, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the Asian Pacific American Bar Association of the Greater Washington, D.C. Area (APABA-DC), I write to respectfully request that you vote in favor of confirming Theodore D. Chuang to become the first Asian Pacific American judge on the United States District Court for the District of Maryland, Greenbelt Division, and indeed, the first Asian Pacific American judge on any federal court within the Fourth Circuit. His confirmation hearing is scheduled on December 18, 2013. With over 600 members, APABA-DC is the oldest and largest association of Asian Pacific American attorneys in the national capital region. We proudly support Mr. Chuang as a long-standing member and former officer of our organization.

Mr. Chuang is very well-qualified to serve as a District Judge. He is a graduate *magna cum laude* of Harvard Law School, where he was an editor of the Harvard Law Review. Following a clerkship for a U.S. Court of Appeals judge, he practiced law as a trial attorney at the Department of Justice, an Assistant U.S. Attorney, and an attorney in private practice with a leading law firm. His nearly 20 years of legal experience has included representing the prosecution and defense in criminal matters, and plaintiffs and defendants in civil matters. Through his recent service in the Obama Administration as the Deputy General Counsel for the U.S. Department of Homeland Security (DHS) and prior experience as counsel to congressional committees, Mr. Chuang has a strong understanding of complex federal laws and regulations and the legislative process.

Besides being an accomplished attorney, Mr. Chuang has served as a leader in multiple bar associations, as well as non-profit legal organizations, and is an active member of the community. Most significantly, Mr. Chuang has worked to ensure that

The Honorable Patrick J. Leahy
The Honorable Chuck Grassley
December 16, 2013

Maryland residents have access to justice. He has served as Chair of the Board of the Asian Pacific American Legal Resource Center (APALRC), which serves low-income, limited-English proficiency Asian Americans in Montgomery County and in Washington, D.C. In this position, he has worked to secure critical funding for legal services from Montgomery County and the Maryland Legal Services Corporation. He also has served as a precinct chair for elections in Montgomery County.

Finally, we believe in the importance of having federal courts that reflect the communities they serve. Asian Americans are the fastest growing population in Montgomery County and make up approximately 14% of the County, which is served by the Greenbelt Division, yet there has never been an Asian American judge on the Maryland federal district court. We urge you to be part of the historic process of appointing an Asian American from Montgomery County to the U.S. District Court in Greenbelt.

Mr. Chuang is the son of immigrants who came to the United States 50 years ago seeking freedom and opportunity. He has devoted the majority of his professional career to public service and has demonstrated his commitment to upholding the United States Constitution and the laws of the United States for the benefit of all parties. He would be an exemplary and inspiring addition to the federal bench in Maryland. For all these reasons, we strongly urge you to support Mr. Chuang's confirmation as a judge of the United States District Court for the District of Maryland, Greenbelt Division.

If you would like to discuss Mr. Chuang's qualifications or any of the information above, please do not hesitate to contact me at nominations@apaba-dc.org.

Sincerely,

Tacie H. Yoon

Tacie H. Yoon
Nominations Committee Co-Chair

APABA-DC, a 501(c)(6) organization, is the oldest and largest association of Asian Pacific American attorneys in the greater Washington, D.C. area. Since its founding in 1981, APABA-DC's membership has grown into a network of over 600 lawyers, law professors, law school students, and other community leaders. APABA-DC encourages and promotes the professional growth and advancement of our members by providing substantive professional development and educational programs, mentoring and networking opportunities, and opportunities to develop leadership and public speaking. To learn more about our organization and its activities, please visit our website at www.apaba-dc.org. Contributions to APABA-DC are not deductible as charitable contributions.

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December 17, 2013

The Honorable Patrick J. Leahy – Chairman
The Honorable Charles E. Grassley – Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Letter of Recommendation for Judicial Nominee, Mr. Theodore Chuang

Dear Chairman Leahy and Ranking Member Grassley:

The work of the Judiciary Committee is vital to ensure that nominees to our Federal Courts have exceptional professional experience as well as superior integrity and judicial temperament. Recognizing that the best of the best should be considered for appointment as Federal Judges, it is with great pleasure and confidence that I offer my recommendation and support for Mr. Theodore Chuang, the President's nominee for the United States District Court for the District of Maryland. Theodore Chuang is an exceptional nominee who has demonstrated throughout his life and career a devotion to fairness and justice, an extraordinary knowledge and respect for the law, an inquisitive mind and a temperament that will serve the people of Maryland and our Nation well.

I have had the distinct privilege of knowing Theo Chuang for over 12 years. I first met Theo when I was appointed United States Attorney for the District of Massachusetts in September, 2001. Theo was an assistant with an already impressive reputation. Theo's experiences at the United States Attorney's Office included all phases of criminal prosecution; grand jury and other investigations, evidentiary hearings, jury trials, plea hearings, sentencing proceeding, and appeals relating to the wide variety of matters that the United States Attorney's office is privileged to handle on behalf of the United States. Theo has all the important technical and legal knowledge and experiences that are the foundation of those judges, that are viewed as most successful and are most respected. Theo's experiences, however, go well beyond his technical skills and knowledge. He is a good and decent person.

Because of what he has done and how he has served, Theo has rightfully earned an exceptional reputation and is known for working well with all within our justice system, including investigators, colleagues, defense attorneys, the Court, victims and witnesses. Theo is always respectful, always conscientious and always open minded in his pursuit of fairness and justice.

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As you know, much responsibility and authority rests in the hands and judgment of those privileged to serve as assistant United States Attorneys. Theo always understood and demonstrated extraordinary judgment as he exercised his responsibility and authority as an assistant United States Attorney. He has a key sense of fairness in the pursuit of justice. Those qualities will serve him well as a District Court Judge.

Your Committee has a very important role to insure that nominees possess experiences, judgment and temperament to effectively carry out the enormous responsibilities of serving as an Article III Judge. Theo is extremely bright. His professional and life experiences will serve him well on the Court. I am confident your Committee will be as impressed with Nominee Chuang as others have, who have had the privilege of knowing and working with Theo throughout his career.

I would be honored to provide any additional information for the Committee as they conduct the important work in considering the nomination of Mr. Theodore Chuang.

Sincerely,



Michael J. Sullivan

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

FIRST CIRCUIT
Paul E. Summit
Suite 2300
1 Post Office Square
Boston, MA 02109-2129

SECOND CIRCUIT
Jeh C. Johnson
1285 Avenue of the Americas
New York, NY 10019-6064

THIRD CIRCUIT
Karol Corbin Walker
1 Riverfront Plaza
Floor 16
1037 Raymond Boulevard
Newark, NJ 07102-5423

FOURTH CIRCUIT
Willis P. Whichard
501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

SIXTH CIRCUIT
Charles E. English, Jr.
P.O. Box 770
1101 College Street
Bowling Green, KY 42102-0770

SEVENTH CIRCUIT
Patricia Costello Slowik
Suite 6600
213 South Wacker Drive
Chicago, IL 60606-6307

EIGHTH CIRCUIT
Charles A. Weiss
Suite 3600
211 N. Broadway
Saint Louis, MO 63102-2769

NINTH CIRCUIT
Edith R. Matthai
Suite 1500
500 South Grand Avenue
Los Angeles, CA 90071

Sheryl J. Willert
Suite 4100
601 Union Street
Seattle, WA 98101

TENTH CIRCUIT
Jim Goh
Suite 4650
1700 Lincoln Street
Denver, CO 80203-4556

ELEVENTH CIRCUIT
Frank R. Angones
Courthouse Tower
Floor 8
44 West Flagler Street
Miami, FL 33130-6802

D.C. CIRCUIT
Ronald A. Cass
10560 Fox Forest Drive
Great Falls, VA 22066-1743

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

AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
Washington, DC 20036

Please respond to:

Bettina B. Plevan, Esq.
Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

RECEIVED OCT 18 2013

VIA EMAIL AND FIRST-CLASS MAIL

September 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 George Jarrod Hazel to the United States District Court for the District of Maryland***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of George Jarrod Hazel who has been nominated for a position on the United States District Court for the District of Maryland. As a result of our investigation, a substantial majority of the Committee is of the opinion that Mr. Hazel is Qualified and a minority of the Committee is of the opinion that Mr. Hazel is Well Qualified for this position.

A copy of this letter has been provided to Mr. Hazel.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: George Jarrod Hazel, Esq.
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 Honorable Charles E. Grassley, Ranking Member of the Minority Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, DC 20510-6275 on September 26, 2013.

STATE OF MAINE
SUPREME JUDICIAL COURT
BANGOR, MAINE 04401

WARREN M. SILVER
ASSOCIATE JUSTICE

PENOBSCOT JUDICIAL CENTER
78 EXCHANGE STREET
SUITE 350
BANGOR, MAINE 04401
(207) 561-2325
Warren.Silver@courts.maine.gov

February 15, 2013

Peter J. DeTroy, III, Esq., Chair
Judicial Screening Panel
Norman Hanson & DeTroy LLC
415 Congress Street
P.O. Box 4600
Portland, ME 04112-4600

RE: JON D. LEVY

Thank you for taking the time out of your busy schedule to chair such an important committee. As you already know, your selection will impact the citizens and lawyers of Maine for many years to come. Like you, I chaired a Selection Committee for both a U.S Court of Appeals position and a U.S. District Court position. In addition, I chaired Governor Baldacci's Judicial Selection and Retention Committee. Now serving in my eighth year as an Associate Justice on the Maine Supreme Court gives me an additional perspective on judging and what is important in selecting a good judge.

The most important quality in a trial judge is temperament. Picking a trial judge who is kind, patient, considerate, and respectful of all litigants is the most important criteria in the selection process. Jon Levy has these qualities and I have seen them exercised again and again during my service with him on the Maine Supreme Court. Jon is kind, patient, considerate, and respectful to all who are in the litigation process. His service as Chair of the Justice Action Group (JAG) and his work with those who have difficulty accessing the court system is one example of who Jon is as a person. Jon is always calm and thoughtful no matter what is occurring in the courtroom. Maine District Court hears hundreds of cases daily and he was an important part of making sure each litigant is heard fairly. His JAG work still connects him to those concerns.

We want the new Article III judge to be in the position for a long time. Jon is of the right age and has the right level of experience to be an Article III trial judge. First, he practiced for many years before he assumed the bench. Second, his experience as a Maine District Court judge and as Chief Judge of that court has given him a wide diversity of trial court experience. Third, his service on the Law Court has added to the range of his background.

Jon is scholarly and always well prepared. He has excellent management skills which will be a help in leading the U.S. District Court into the future. He works extremely well with others and can handle diverse personalities. One of his many roles in the Maine Judicial Branch is Continuing Judicial Education Chair and his skills in that area are extraordinary. He managed a large educational conference which the judiciary is still talking about.

Of course the new judge must have excellent analytical skills and Jon's analytical skills are outstanding. Making difficult decisions comes naturally to him. He is also thoughtful, thorough, and an excellent listener, all skills which would make him a fine U.S. District Court judge. I recommend Jon without qualification as our next U.S. District Court judge and would be happy to speak to you further about Jon's qualifications.

Very truly yours,



WARREN M. SILVER
Associate Justice

WMS:nlg

DrummondWoodsum
ATTORNEYS AT LAW

Melissa A. Hewey
mhewey@dwmlaw.com
84 Marginal Way, Suite 600
Portland, ME 04101-2480

(207) 772-1941
(207) 772-3627 Fax
(800) 727-1941
www.dwmlaw.com

February 15, 2013

Peter J. DeTroy, Esq.
Norman Hanson & DeTroy
415 Congress Street
P.O. Box 4600
Portland, ME 04112

RE: Justice Jon D. Levy

Dear Peter:

I am pleased to write this letter of reference in support of the application of Justice Jon D. Levy for appointment as a District Judge to the United States District Court for the District of Maine. I support his application with my highest recommendation.

Justice Levy's judicial credentials are impeccable. With seven years of experience as Judge, and Chief Judge, on the Maine District Court, Justice Levy has a proven track record as a trial judge. In his ten years of service as an Associate Justice on the Maine Supreme Judicial Court, Justice Levy has precisely the kind of experience as a legal scholar that is such an important part of the work on the federal bench. This combination of judicial experience makes Justice Levy well qualified to serve as a trial judge on the United States District Court.

As I know that you and the other members of the Screening Panel are aware, judicial experience alone is no guarantee that a candidate will live up to the high judicial standards set by those federal judges who have come before him. I write in support of Justice Levy's application because in the many years that I have known him, he has demonstrated that rare combination of deep legal scholarship, clearly and crisply written legal opinions, decisiveness, and exceptional judicial temperament. Justice Levy's legal scholarship is continually of the highest caliber, regardless of the size or nature of the case. His opinions always thoroughly analyze the applicable statutory law and judicial precedent. But his effectiveness as a jurist is driven as much by the well thought out questions he asks from the bench, and his common sense style of writing. Equally as important, in every instance in which I have interacted with him, or observed him interact with other counsel, I have never seen anything other than exactly the type of judicial demeanor that those of us fortunate enough to practice law in Maine have come to expect from the judges before whom we appear.

It is important also to mention Justice Levy's commitment to the administration of justice. I am sure that Justice Levy's application materials detail his substantial experience in this area, but in my view two examples bear particular mention. For the past five years, Justice Levy has chaired the Justice Action Group. Under his leadership, JAG continues to work hard to expand access to justice for those who are brought into court but who do not have the means to hire legal counsel to assist them. In the same vein, Justice Levy organized and launched the Katahdin Counsel Recognition Program, the new annual statewide program to honor Maine attorneys who provide 50 or more hours of pro bono service in a year. These two examples exemplify Justice Levy's abiding commitment to eliminating restrictions on access to justice for those in need.

In sum, I am honored to have the opportunity to recommend Justice Jon Levy for appointment as District Judge to the United States District Court for the District of Maine. As the members of the Screening Panel all know, the judges who have served on that Court during our legal careers have set a very high standard for judicial scholarship, temperament, and the promotion of access to justice. Justice Levy meets that standard in all of these essential categories of achievement.

Sincerely,

Melissa Hewey

Melissa A. Hewey

MAH/ll

STATE OF MAINE
SUPREME JUDICIAL COURT

LEIGH INGALLS SAUFLEY
CHIEF JUSTICE

MAILING ADDRESS:
Cumberland County Courthouse
205 Newbury Street, Room 139
Portland, ME 04101-4125
Tel. (207) 822-4286
Fax (207) 822-4202

Maine Judicial Center
65 Stone Street
Augusta, ME 04330
Tel. (207) 287-6950
Fax (207) 287-4641

E-MAIL:
chiefjustice@courts.maine.gov

December 17, 2013

The Honorable Angus S. King Jr.
United States Senate
359 Dirksen Building
Washington, D.C. 20510

Re: Justice Jon D. Levy

Dear Senator King:

You have asked me to describe the judicial skills of Justice Jon D. Levy, and I am pleased to do. I use the word pleased with some hesitation, given that, in the event that Justice Levy is appointed to a position on the federal court, the Maine Supreme Judicial Court will lose one of the most extraordinary jurists ever to grace its bench.

Justice Levy's judicial abilities spring from two primary sources: his intellect and his humanity. Intellectually, Justice Levy is among the brightest jurists I have had the honor to serve with. But that in itself does not tell the story. Most judges are intellectually capable. The more important question is how that intellect is put to use. Justice Levy has an extraordinary skill for clear and cogent legal analysis. He uses that skill to assure that every single case presented to the Court is reviewed carefully and thoroughly. Of critical importance in the appellate arena, Justice Levy is able to use his powers of analysis to inform and enlighten his colleagues. It is my understanding that in his time on the Maine District Court, as a trial judge, he was very much respected for this ability, which helped guide counsel and the parties to appropriate resolutions. From the simplest through the most complex cases, Justice Levy is able to delineate the path to justice in such a way that the laws and rules that our Legislature and our courts have worked so hard to craft are given real life in the courts.

Justice Levy's intellectual skills have also been put to wonderful use in his non-opinion writing. He is the author of the preeminent Maine treatise on family

law. He regularly writes on issues of justice and jurisprudence. His explanatory memos and writings in court-related matters are highly respected.

Perhaps most important to the parties that appear before the Court, Justice Levy's intellect shines through in person without the ego or other trappings that occasionally accompany such great gifts. He is sought out as a teacher and a trainer, and his annual presentation to one of our bar groups regarding family law is one of the best-attended events of the year. I have taken great advantage of that skill in appointing him to lead the State Court's Judicial Education program, which has blossomed under his leadership. In short, Justice Levy's intellectual skills are demonstrated in analysis, writing, and interpersonal communications without ego or fanfare.

No consideration of judicial skills, however, can be undertaken without an evaluation of the judge's humanity. The ability to connect with people whose lives are affected every day by our system of justice, the ability to empathize with those who do not have resources to obtain access to justice, and the ability to enforce the laws in a fashion that is consistent, reasonable, and focused on legislative goals are key to truly excellent judging.

As you will find in any conversation with Justice Levy, that humanity augments his intellectual capacities in every aspect of his work. Justice Levy was the first Maine jurist ever to be appointed to the Maine Supreme Judicial Court directly from the District Court, without having spent time on our Superior Court. The reason is evident. His passion for assuring justice and bringing logic, consistency, and, perhaps most important, accessibility to Maine citizens who found themselves caught up in legal proceedings made him an excellent candidate for our only appellate court.

In my role as Chief Justice, I must regularly ask my colleagues to volunteer for challenging and often thankless administrative work. When I asked Justice Levy to lead Maine's Justice Action Group, the organization within Maine that strives to provide access to justice to low-income litigants who cannot afford their own attorneys, he stepped up to the plate with an energy and commitment that far exceeded my highest expectations. Benefitting from his leadership, the State of Maine has expanded and strengthened its commitment to providing legal resources

to those too poor to afford them. The effect that Justice Levy's commitment to access to justice has had on individual lives cannot be overstated.

Finally, I must disclose that the justice was not actually born in Maine, and thus will never be a true "Mainer." Nonetheless, the hallmark of his career on the Maine trial bench and appellate bench has been his extraordinary *Maine* work ethic. Justice Levy is constantly going the extra mile to assure that the peoples' needs are responded to thoroughly and quickly.

As Chief Justice on a Court of seven jurists, I will exercise a point of personal privilege to say that it is truly a delight to work with Jon Levy. It has been an honor and a pleasure to collaborate and debate with him for more than a decade on the Maine Supreme Judicial Court. The State of Maine has been exceedingly fortunate to have had the benefit of his skills and humanity.

All the best,

Leigh I. Saufley
Chief Justice

LIS:ajm

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK
LAW SCHOOL

February 21, 2013

Peter DeTroy, Esq.
Chair, U. S. District Court Selection Committee

Re: The Hon. Jon D. Levy

Dear Mr. DeTroy,

I am writing to recommend to you and your Committee the Hon. Jonathan Levy to serve on the U. S. District Court for the State of Maine.

You and your Committee have a difficult task as you weigh the qualifications of the applicants before you. As a member of a similar Committee that made recommendations to the Maine delegation in prior years, I know that there are many Maine lawyers who would make an outstanding District Court Judge. Although I have not been made aware of the names that are under consideration, I know that you have a difficult task.

That being said, my task in recommending Jon Levy is not a difficult one.

I have been a licensed to practice law in Maine since 1975. During that time I have had occasion to work with many lawyers and have been able to determine their intellect, ethics, legal acumen and, and compassion. For ten of those years I served as the Attorney General of Maine during which I dealt with an extraordinary array of legal issues and witnessed the legal writing and trial abilities of other bar members from the unique perspective of Maine's chief law enforcement officer.

With this experience in mind, I believe that Jon Levy has all of the skills necessary to be an outstanding federal judge and recommend him without hesitation. After moving to Maine, Jon hung out his shingle and plunged into the life of his community. He rolled up his sleeves and conducted a classic Maine general law practice, which included criminal and civil litigation, land use disputes, business representation, and family law matters. In other words, he spent years representing real Maine people at some of the most difficult times in their lives.

Jon was soon elevated to the bench where he has repeatedly demonstrated his capacity to make clear and fair decisions by showing his ability to clearly and quickly get to the essence of the matter in litigation. I have read many of Justice Levy's decisions and recommend that you and members of your Committee do so as well. Jon's intellectual capacity and adherence to our laws and constitution are readily apparent.

While Jon's career as a member of our Supreme Judicial Court is well known, I would like to remind you that before his appointment to that Court, he served for seven years as a trial

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judge in Maine's District Court where impoverished litigants often appear in civil matters without counsel. Jon Levy's compassion and wisdom in the Maine District Court - far away from the eyes of outside observers - resulted in such an overall level of respect that he was quickly appointed Chief Judge of the District Court where in addition to his case load he had supervisory responsibility for Maine's thirty one District Courts.

I know from personal and professional conversations with him that Jon takes a balanced view of the law that combines a firm respect for precedent with a deep sense of justice. I also know that he has a great capacity for collaboration and compassion.

In conclusion, I have no doubt that Jon Levy would bring great credit to our state and our country were he selected to sit on the federal court. I hope that my heartfelt thoughts on his application will assist you in your difficult decision.

Sincerely yours,

James E. Tierney
Director, National State Attorney General Program
Columbia Law School (2000- present)
Lecturer in Law, Harvard Law School (2010-present)
Attorney General of Maine (1980-1990)

National State Attorneys General Program
Social Justice Initiatives
605 W. 113th Street #1, New York, NY 10025 - (212) 851-1061 - attorneygeneral@law.columbia.edu