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S. HRG. 113–515, Pt. 7

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JANUARY 8, JANUARY 28, FEBRUARY 11, AND FEBRUARY 25, 2014

Serial No. J–113–1

Part 7

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WEDNESDAY, JANUARY 8, 2014

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

The Committee met, pursuant to notice, at 10:02 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Schumer, Durbin, Whitehouse, Franken, Coons, Blumenthal, Grassley, Sessions, Lee, and Flake.

Chairman LEAHY. It seems that somebody has an important phone call that they may want to—I do not want the hearing to interrupt their phone call, if they would like to step outside to take it. They may or may not be able to get back in. He said subtly.

We have the two Senators from Wisconsin who are here, and I know we have the nominee from Wisconsin, James Peterson. If the Ranking Member has no objection, why don't we let Senator Johnson and Senator Baldwin go first, because I know you have other committees you are supposed to be at, so I appreciate your being here, Senator Johnson. Go ahead.

PRESENTATION OF JAMES D. PETERSON, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN, BY HON. RON JOHNSON, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator JOHNSON. Chairman Leahy, Ranking Member Grassley, Members of the Committee, thank you for the opportunity to come

before the Judiciary Committee to recommend Mr. James D. Peterson to be the United States District Judge for the Western District of Wisconsin.

Before going further, I would like to thank my colleague Senator Baldwin and the individuals that served on our bipartisan commission for all their hard work and cooperation that resulted in the selection of this well-qualified jurist to serve the Nation and the people of Wisconsin's Western District well.

As many of you know, the Western District is currently facing a judicial emergency. United States District Judge Barbara Crabb has continued to serve on the bench despite retiring 4 years ago, and I sincerely appreciate her dedication to the State of Wisconsin during this vacancy. I have full confidence that with Jim's expertise and experience he will now be able to fill that void.

Jim has deep roots in Wisconsin, having earned a bachelor's, master's, and a Ph.D. from the University of Wisconsin-Madison before his first career as an associate professor of film studies at Notre Dame University. After a number of productive and successful years of academic life, his restlessness for intellectual challenge was piqued when his wife, Sue Collins, who is also here with Jim today, interested him in the law as she was teaching legal writing at Valparaiso University Law School. They both returned to the University of Wisconsin where they each obtained their law degrees.

Mr. Peterson is currently the leader of the law firm Godfrey and Kahn's intellectual property litigation working group and has handled a wide variety of commercial and constitutional disputes. He has also served as the local counsel in nearly two dozen patent disputes in the Western District of Wisconsin. In addition, he has appeared before the Wisconsin Supreme Court, the Seventh Circuit Court of Appeals, and the Court of Appeals for the Federal Circuit, which hears appeals of patent cases from district courts across the country. This experience is important in the Western District of Wisconsin which oversees many complex intellectual property cases. Since 2007, the Western District of Wisconsin was ranked among the 25 most popular courts for patent litigation, largely due to the court's speed, commonly referred to as "the rocket docket."

Jim is also the author of numerous academic publications which proved helpful to everyone involved during his application process. Right after law school, he was firsthand the challenges and requirements associated with being a judge when he served as the law clerk to the Honorable David D. Deininger of the Wisconsin Court of Appeals.

Jim has had a challenging and successful career as a legal practitioner. I have no doubt he will as a Federal district court judge excel in yet another career for which he is well suited. Jim has my full support, and I am happy to recommend him to the Senate for swift confirmation.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Johnson. You and I have discussed the nominee before, and I appreciate your being here.

Senator Baldwin, I am so happy to have you here also. Please go ahead.

PRESENTATION OF JAMES D. PETERSON, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN, BY HON. TAMMY BALDWIN, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator BALDWIN. Thank you. Good morning, Mr. Chairman and Ranking Member Grassley. It gives me great pleasure to appear before you this morning to introduce attorney James Peterson, the President's nominee for the United States District Court for the Western District of Wisconsin.

The filling of judicial vacancies has been a top priority for me since even before I was sworn in to the U.S. Senator a year ago. The people of Wisconsin deserve to have these vacancies filled with highly qualified public servants who will work hard for them in our judicial system. Jim Peterson will be such a jurist when he is confirmed by the Senate.

I am proud to have worked together with Senator Johnson to find common ground on this important issue for Wisconsin, and together we have put in place a Federal judicial nominating commission and a process for moving judicial nominations forward. James Peterson was among those recommended by the nonpartisan commission that we established last April.

In August, Senator Johnson and I submitted Jim's name to the White House as a candidate to fill the open U.S. Federal district judgeship for the Western District of Wisconsin. I applaud the President's nomination of James Peterson to serve. Mr. Peterson will make an outstanding Federal judge, and his nomination marks an important step forward in fulfilling a judgeship that has been vacant for nearly 6 years.

Jim's experience and expertise make him an outstanding choice for this position, and I am proud to join Senator Johnson in endorsing his nomination, and I am proud to come before you today to introduce Jim Peterson.

Jim is a member of the intellectual property and litigation practice groups in the Madison office of Godfrey and Kahn, and he is a leader of the firm's intellectual property litigation working group. For the last 14 years, his professional life has been substantially devoted to practice for the firm and its national clients in the United States District Court for the Western District of Wisconsin.

In addition to his work in the Western District of Wisconsin, he has appeared before the Wisconsin Supreme Court, the Seventh Circuit Court of Appeals, and the Court of Appeals for the Federal Circuit, which hears appeals of patent cases from district courts across the country.

Jim is the president of the Western District Bar Association. The mission of the association is to work with attorneys, the court, and the public to facilitate the just, speedy, respectful, and efficient resolution of all matters before the court—qualities that have been the hallmarks of the Western District of Wisconsin.

As you heard, he earned his J.D. from the University of Wisconsin Law School in 1998, where he was an officer of the moot court and a member of the Wisconsin Law Review and the Order of the Coif. From 1998 to 1999, he served as a law clerk to my friend and former colleague, Honorable David Deininger, on the Wisconsin Court of Appeals. He is a member of the adjunct faculty

of the University of Wisconsin Law School, having taught copyright law and public speaking workshops for law students. And as you also heard, he received his Ph.D. in communications from the University of Wisconsin in 1986.

Jim lives in my home town of Madison, Wisconsin, with his wife, Sue Collins, who is also an attorney. I am very pleased that she is here today, along with their two daughters, Lauren Collins Peterson and Anna Collins Peterson; Anna's fiance, Derek Behnke; and Jim's parents, James D. Peterson, Sr., and Patricia Peterson.

Senator Johnson and I agree on James Peterson's nomination to the U.S. District Court for the Western District of Wisconsin, and I hope that our joint support sends a strong message to this Committee and the entire Senate that he is the right choice for this judgeship.

I urge the Committee and the full Senate to consider and confirm his nomination without undue delay.

Thank you, Mr. Chairman.

Chairman LEAHY. Well, thank you, Senator Baldwin, and I also appreciate the time you spent with me, as well as Senator Johnson, on this nominee, and thank you.

Senator Warren, Senator Durbin has suggested you go first. You have Indira Talwani to be U.S. district judge. Please go ahead.

PRESENTATION OF INDIRA TALWANI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS, BY HON. ELIZABETH WARREN, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator WARREN. Thank you very much. Thank you, Senator Durbin, thank you, Mr. Chairman, thank you, Ranking Member Grassley, and Members of the Committee.

Chairman LEAHY. Also, I should mention to Senator Baldwin, you do not have to stay. I am not trying to get rid of you, but——

[Laughter.]

Chairman LEAHY. I know, like all of us, you have got about 12 other things you are supposed to be at. I appreciate your support.

Senator WARREN. So thank you very much, thank you, Mr. Chairman. I am very pleased to be here this morning to introduce Indira Talwani. She has bee nominated to fill a judicial vacancy on the District Court for the District of Massachusetts.

Ms. Talwani's nomination came to me after she was recommended for this position by the Advisory Committee on Massachusetts Judicial Nominations. The advisory committee is comprised of distinguished members of the Massachusetts legal community, including prominent academics and prominent litigators and is chaired by the former Massachusetts District Court Judge Nancy Gertner. The advisory committee's recommendation reflects the strength of Ms. Talwani's resume, the exceptionally warm reviews that she received from those who have worked with her, and the firm conviction of the Massachusetts legal community that she will make an excellent district court judge.

Indira Talwani is the daughter of immigrants from India and Germany. She graduated with honors from Harvard University and was later named Order of the Coif at Boalt Hall School of Law at the University of California-Berkeley. She is here today with her

husband, Tod; her daughter Natasha, and her son, Nico; and her brother, Rajeev. I know they are all immensely proud to be able to attend this hearing and provide their love and support on this extraordinary day, as their son, Shelton, who was unable to be here.

Immediately after graduating, Ms. Talwani spent a year serving as a law clerk to Judge Stanley Weigel of the United States District Court for the Northern District of California, building practical experience that will serve her well as a district court judge. She subsequently worked for several years as an associate and later a partner at the firm of Altshuler, Berzon, Nussbaum and Rubin in San Francisco before moving in 1999 to join Segal Roitman LLP in Boston, where she is currently a partner.

Ms. Talwani has an impressive track record as a litigator, having represented clients in matters before the Massachusetts State trial courts and appeals courts, as well as the district court to which she has been nominated, the Federal courts of appeals, and the U.S. Supreme Court.

In addition to her broad credentials and wide litigation experience, Ms. Talwani has developed particular expertise in legal issues that relate to employment. She is the associate editor of a treatise on the Family and Medical Leave Act, compiled by the American Bar Association. Her work representing an investment advisor whistleblower who was allegedly retaliated against for reporting accounting irregularities to her supervisor earned her the distinction of being named one of Massachusetts Lawyers Weekly's top ten lawyers for 2010, and she is currently assisting in the argument of that case before the U.S. Supreme Court.

Ms. Talwani is also committed to public service, providing pro bono representation to indigent clients. She has worked with the Greater Boston Legal Services to ensure that low-income clients have access to counsel.

Ms. Talwani's nomination is strongly supported by the Asian American Lawyers Association of Massachusetts. Asian Americans are a fast-growing segment of our State's population, and that growth is reflected in our State bench, which currently has ten Asian American judges. Remarkably, if she is confirmed, Ms. Talwani will be the first individual of Asian descent to serve on the Federal bench in Massachusetts.

Indira Talwani is a first-rate litigator with impressive credentials. Her unique professional and personal background will bring important perspective to the Federal bench in Massachusetts. I am proud to have recommended her to President Obama, and I look forward to her approval by this Committee and her swift confirmation by the full Senate. Thank you very much.

Chairman LEAHY. Well, thank you very much. I know that—I say this as President Pro Tem, which means, as the Senator from Massachusetts knows, I sometimes preside for about 1 minute at the opening of the session and then somebody else takes over. Senator Markey is currently presiding over the Senate so that I can be here, and I know he joins with you, too, in the support of this outstanding nominee. So thank you very, very much.

Senator WARREN. Yes, he does, and thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Durbin, you have also an extraordinary nominee for the Southern District of Illinois. Let me yield to you.

PRESENTATION OF NANCY J. ROSENSTENGEL, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS, BY HON. DICK DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you, Mr. Chairman. I am pleased to introduce Nancy Rosenstengel to the Committee. She has been nominated to serve as district court judge in the Southern District of Illinois to fill the judgeship in East St. Louis left vacant by the retirement of Judge Patrick Murphy in December.

Ms. Rosenstengel knows the St. Louis courthouse very well, currently serves as clerk of the court for the Southern District, a position she has held since 2009. She is the chief administrative officer for the court responsible for the day-to-day management functions of the court, and she has received widespread praise for her handling of this responsibility.

Previously she served for 11 years as judicial law clerk to Judge Murphy, the judge she is nominated to replace. As Judge Murphy's career law clerk, she assisted him in hundreds of civil and criminal proceedings during all stages of litigation. It is hard to imagine a better training for judgeship.

Ms. Rosenstengel also worked for 5 years in private practice at the law firm Sandberg, Phoenix and von Gontard in St. Louis, where she handled a broad range of litigation matters.

Born in Alton, Illinois, currently lives in Belleville, Illinois, received her B.A. cum laude from the University of Illinois in Urbana-Champaign, her J.D. cum laude from Southern Illinois University School of Law, Ms. Rosenstengel's nomination is historic. No woman—no woman—has ever served as an Article III Federal judge in the Southern District of Illinois. Upon confirmation, Nancy Rosenstengel will be the first, and I am sure she will do an outstanding job.

I want to thank my colleague Senator Mark Kirk for his support of this nomination as well. In Illinois, we have a bipartisan process for recommending judicial candidates to the White House, and we have had a pretty good record of bringing forward some outstanding nominees for very timely confirmation, and I hope this will be no exception. I am sure it will not be.

Ms. Rosenstengel was recommended to me by a bipartisan screening committee which we established, and they were proud to recommend her name to me, and I was proud to recommend her with Senator Kirk to the President. I look forward to working with my colleagues to see that she moves through the confirmation process swiftly. I know she will have a chance to introduce her family with more specificity, but I want to thank her husband, Jon, and her three children, Katie, Anna, and Jack, for joining us. They are all welcome here today.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, and I appreciate what you and Senator Kirk have done, and I think, Senator Grassley, you have a statement from Senator Kirk.

Senator GRASSLEY. Yes, thank you, Mr. Chairman. This will be in support of the same nominee as Senator Durbin, so we will put that in the record.

Chairman LEAHY. Thank you. And I appreciate the strong support of both Senator Durbin and Senator Kirk on this.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Now we mentioned the three judicial nominees. We are going to have five nominees before us. Let me speak about a couple of them.

Debo Patrick Adegbile—even though he works for me, I always have trouble with that, and I apologize—is nominated to be the Assistant Attorney General for Civil Rights at the Department of Justice. He currently serves as Senior Counsel on the Judiciary Committee, where he has done exceptional work and has provided me with prudent counsel on many, many issues.

Like other Members of the Committee who have had staff members nominated to positions in the administration or to the judiciary, the nominations come with mixed emotions. As I am sure Senators Hatch, Cornyn, Lee, and Schumer can attest, it is no surprise when members of our staffs on either side of the aisle are tapped by the administration for positions.

Anyone who knows this nominee appreciates that he is an excellent choice to lead the Civil Rights Division at the Department of Justice. He brings a wealth of experience. I remember when he testified before the Committee as an expert on voting rights in 2006. He has earned a reputation for his calm demeanor and for working to build consensus. He is a careful lawyer and a good listener. And these skills have made him one of the country's most prominent appellate advocates. Former Solicitor General Paul Clement under President George W. Bush said the following about Debo: "I have litigated both with and against Debo and have heard him argue in the Supreme Court. I have always found him to be a formidable advocate of the highest intellect, skills, and integrity."

Like Justice Thurgood Marshall, he served as Acting President and Director Counsel at the NAACP Legal Defense and Educational Fund and also as Associate Director Counsel and Director of Litigation. He argued two significant cases on voting rights during that time before the U.S. Supreme Court. He also litigated in private practice at the well-known, highly respected law firm of Paul, Weiss for 7 years.

Let me just tell you a little bit about him. He was born in the Bronx to an Irish mother—thus the middle name, I expect—and a father from Nigeria. He grew up in poverty and experienced periods of homelessness. But through hard work and grit, he graduated from Connecticut College and then earned his law degree from the New York University School of Law. And I might say this to his two lovely daughters I had a chance to meet earlier. They may not appreciate it yet, but they will as they get older. But his journey from the Bronx to this nomination is a remarkable example of the American dream, one of the best. I know he has been shaped by these experiences.

Today the Committee also welcomes John Carlin, who has been nominated to serve as the Assistant Attorney General for the National Security Division at the Department of Justice, an increasingly significant position. And, of course, we have heard Senators refer to the three U.S. district judges.

I am going to yield to the Ranking Member for an opening statement, and then we will call the nominees up. And I know Senator Schumer at that point is going to introduce John Carlin.

Senator Grassley.

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

Senator GRASSLEY. First, I, like my colleagues, congratulate the nominees and the families that are proud of their nomination who happen to be here with them today and probably a lot of people that are proud of their nomination who cannot be here today as well. We are considering three district court nominees and two important Department of Justice positions, one of these to the Civil Rights Division. That Division has had its share of controversy lately. I have reminded my colleagues of the predecessor's involvement of this office orchestrating the quid pro quo between the Department of Justice and the city of St. Paul where the Department of Justice went to great lengths to get a case withdrawn from the Supreme Court so that the legal theory known as "disparate impact" would evade a Supreme Court decision. And, of course, there have been very disturbing allegations of politicizing the hiring process at the Civil Rights Division. In fact, March last year, the Inspector General report criticized the Civil Rights Division for using hiring practices, noting that the primary criterion used by the hiring committee resulted in a pool of candidates that was "overwhelmingly Democratic/liberal in affiliation" from the IG report. So I have some concerns with the way that the Civil Rights Division has been run.

Now, that has nothing to do with the nominee, but we do have some concern about the nominee's legal experience, and we have this letter from the Fraternal Order of Police, an organization that is very well respected by both sides of the aisle, submitting a letter strongly opposing the nominee for the Civil Rights Division. The Fraternal Order of Police represents 330,000 men and women who are on the front lines of law enforcement, putting their lives on the lines to protect us every day. So when they write to inform us of their "extreme disappointment, displeasure, and vehement opposition" to the nominee for the Civil Rights Division, I think that we should give their concerns thoughtful consideration, and I am sure that the nominee will be willing to address some of those concerns and give his point of view on them.

I look forward then to hearing from the nominee on these and other issues, and I would ask consent that that letter be placed in the record.

Chairman LEAHY. Without objection, so ordered.

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

Senator GRASSLEY. And then the rest of my statement is in regard to the work of the Committee. My colleagues have heard that, so I will summarize that by simply saying that over the course of

the last 5 years we have been able to approve 217 of the President's lower court judges and at this point disapproved on the floor of only two, a 99-percent record.

The rest of my statement is in the record with more detail on that point.

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

Chairman LEAHY. And we will look forward to approving on the floor the whole bunch of them that are still sitting there.

Senator GRASSLEY. Yes, and you will have to work that out with Reid and McConnell. That is a fact.

Chairman LEAHY. I am going to—my religion believes in miracles, but only to an extent. But, anyway, why don't I call Mr. Carlin, Mr. Adegbile, Mr. Peterson, Ms. Rosenstengel, and Ms. Talwani up here.

What I am going to do, before I yield to Senator Schumer, if I just might ask all the nominees—I should have done this before you sat down. Please stand and raise your right hand. Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CARLIN. I do.

Mr. ADEGBILE. I do.

Mr. PETERSON. I do.

Ms. ROSENSTENGEL. I do.

Ms. TALWANI. I do.

Chairman LEAHY. Let the record note that they all agreed to that.

Senator Schumer, you wished to introduce Mr. Carlin.

PRESENTATION OF JOHN P. CARLIN, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, AND DEBO P. ADEGBILE, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, BY HON. CHUCK SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman, and I thank you, Senator Grassley, and other Members of the Committee. You know, it is not uncommon for me to go from Committee to Committee in the Senate introducing talented and public service-oriented New Yorkers to my colleagues. As I am sure some of my colleagues know, four of the five boroughs are represented—of New York City, of course, are represented on——

Chairman LEAHY. We do not have many boroughs in Vermont.

[Laughter.]

Senator SCHUMER. Are represented on the Supreme Court: Justice Ginsburg from my home borough of Brooklyn; she went to P.S. 238 where my wife went; Justice Scalia from Queens; Justice Sotomayor from the Bronx; and Justice Kagan from Manhattan. So it is not surprising today that we have two New Yorkers poised to take important leadership positions at the Department of Justice.

I first want to introduce John Carlin. Mr. Carlin is a native of New York and nominated to be the Assistant Attorney General for the National Security Division of DOJ. Mr. Carlin graduated high school from Dalton in Manhattan, where I am going this Friday to

watch my niece in the eighth grade—she is on the varsity basketball team, I have been told only the second time that has been done. Who knows? The Dalton Tigers—and earned his undergraduate degree from Williams College, his law degree from Harvard Law School, and he was articles editor of the Harvard Journal on Legislation.

After graduating from law school, Mr. Carlin dedicated his entire career to the Department of Justice. He has served as trial attorney for the Tax Division, an Assistant U.S. Attorney for the District of Columbia, a senior adviser and chief of staff to Robert Mueller, then Director of the FBI, and as the Acting head of the National Security Division.

In the course of his career, he has prosecuted everything from homicides to public corruption cases, and he has developed a special expertise in something we dearly need, and that is in cyber crime. It is probably the next redoubt for organized criminals—the cyber world is the next redoubt for organized criminals and terrorists. Mr. Carlin is recipient of the DOJ Award for Special Achievement and has also been awarded the prestigious Samuel J. Heyman fellowship for Federal Government service, so over the course of 14 years in his legal career, Carlin has quietly and capably served at the nexus of law enforcement and intelligence.

I have more to say about Mr. Carlin, but I will conclude by saying the most important thing. His wife, Sarah, and his cute little daughter who I saw, Sylvie, is here; and his parents, Patricia and Roy, who I hope, Mr. Carlin, are still residents of New York. Good, good.

I would like to say a word, with the Chairman's indulgence, on another New Yorker who he had the honor to introduce because he served well on this Committee and we recognize Debo Adegbile for the great work he did there. I just want to add my thoughts to what Senator Leahy said.

The Civil Rights Division is the crowning jewel of civil rights enforcement in this country. Under the capable leadership of now Secretary Tom Perez, it recovered from some of the dark days during the previous administration, and I know that Mr. Adegbile has committed his entire career not just to politics but to the enforcement of the very laws that his Division protects as its core function, and his primary goal as a lawyer has been to interpret and apply our country's long-held anti-discrimination principles. He did a great job under your leadership, Mr. Chairman. I am confident he will do a great job in the Civil Rights Division. And he came up the hard way. He even spent time in one of New York's most notorious residences for the underprivileged, the infamous Martinique Hotel. And he has come all the way from there to here, which is a testament to his hard work and a beacon for the precepts of equal opportunity that he will now enforce.

So I thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

I will put in the record from Senator Gillibrand the introductions for Mr. Carlin and Mr. Adegbile, and those will be placed in the record.

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

Chairman LEAHY. Let me start first with each one of you, and I will call on you if you have any comments, Mr. Carlin, but I would also like you to introduce—I know that Senator Schumer has, but introduce again whatever family members or anybody else here. It will someday be in the Carlin archives, and you will want to be able to refer to it.

STATEMENT OF JOHN P. CARLIN, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. CARLIN. Well, thank you, Chairman Leahy and Ranking Member Grassley and distinguished Members of this Committee. It is an honor to appear before you today, and I thank you for considering my nomination. And thank you, Senator Schumer, for your very kind introduction. Go, Tigers.

I would also like to thank the President for his confidence in nominating me and the Attorney General for his support.

And, Mr. Chairman, I would like to introduce the members of my family who are here today and thank them for their love and support over the years: my wife, Sarah, and our daughter, Sylvie; my parents, Roy and Patricia, who traveled here from New York City yesterday in the 8 degree weather; my sister, Jennifer, and my brother-in-law, Don; and my nephew, Daniel, and niece, Katie, who came in from northern New Jersey.

I also want to thank my wife for her countless sacrifices to allow me to pursue a career in public service, and thank my parents who have taught my sister and me the important lesson, both by example and by word, of dedication, discipline, and always trying to do what is right.

With the support of all of my family and their selflessness, I have been able to choose the path that has led me here today.

And I would like to thank the people from the National Security Division and the friends who have come here today to show their support.

It has really been a privilege to spend my entire legal career with the Department of Justice and to witness a time of enormous transformation after the terrible events of September 11th. As with so many Americans, I and my family recall vividly the events of that day, the horror of senseless murder and the dark cloud of ashes that hung over New York City for all too long. My brother-in-law was across the street, working at the time, from the Twin Towers, and my father was in the subway underneath. And I remember as our family called each other to determine that each one of us was safe. We were lucky.

Our mission at the National Security Division is clear: Prevent future terrorist attacks while preserving our civil liberties. It is a special honor and privilege to be considered for a position charged with leading the Division that this body, Congress, created to unite all the Department of Justice's national security elements, to bring to bear all tools in the fight against terrorism and other threats against national security.

Serving as the Acting Assistant Attorney General for National Security for approximately the last 10 months, I have been both humbled and driven by the responsibilities and mission that you have entrusted to the position. This mission builds upon the les-

sons we have learned through our evolving approach to national security over the past years, and my experience has taught me about the transformative power of lawyers in a government based on the rule of law and the sense of duty and mission that comes with it.

For more than a decade, I have learned from and worked alongside some legendary public servants as the United States undertook fundamental changes in our approach to combating the threat of terrorism and other emerging national security challenges and, in particular, working with FBI Director Bob Mueller as his counsel and later as his chief of staff to help the Bureau evolve from a law enforcement agency into a threat-based, intelligence-driven national security organization.

Here at the National Security Division, we must apply and are applying those lessons both to meet the growing national security cyber threat and to continue to evolve to meet other national security threats. And if I am fortunate enough to be confirmed, I look forward to continuing this important evolution.

Thank you again for the opportunity to appear before you today and for your consideration, and I look forward to answering your questions.

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

Chairman LEAHY. Thank you very much.

Mr. Adegbile, would you please—I have already met your family, but there are other members of your family, too. Would you introduce everybody here from your family? And then I will yield to you for any statement you may wish to make. Press the button.

Mr. ADEGBILE. Excuse me.

Chairman LEAHY. There you go.

STATEMENT OF DEBO P. ADEGBILE, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. ADEGBILE. Thank you, Senator. I am joined today by my wife, Susan Haskell, whose love, kindness, and strength sustains me and helps make me a better person. We are joined also by our two lovely daughters, Sela and Devan. Sela and Devan are the joy of our lives, and Susan and I could not be more proud of them.

We are also joined by my mother-in-law, Carol Haskell, a person of tremendous grace and love for her family.

Chairman LEAHY. And I would note for the record that your wife is a graduate of the University of Vermont. I just thought I would throw that out.

[Laughter.]

Senator SCHUMER. Where was she raised?

Chairman LEAHY. Never mind.

[Laughter.]

Mr. ADEGBILE. Connecticut, for the record.

Chairman LEAHY. Senator Blumenthal sat up on that one.

Senator BLUMENTHAL. I will await my turn, Mr. Chairman.

Mr. ADEGBILE. In addition, Senator, there are many friends here spanning from my years in grade school through law school. I am joined by former and present colleagues, and I thank them all for their attendance, whether or not that attendance was compelled.

Thank you, Chairman——

Chairman LEAHY. We will submit all their names for the record later on.

Mr. ADEGBILE. Thank you, Chairman Leahy, for your leadership of this Committee. Thank you, Ranking Member Grassley, for your long service to this Nation. And thank you to all the Members of the Committee.

I also would like to thank President Obama for the nomination and the President and Attorney General Holder for the opportunity, if confirmed, to serve our Nation as Assistant Attorney General.

I have a deep appreciation for the opportunities America provides. I know, too, that the road to opportunity can be long and difficult. I have faced the challenges and learned from them. I have learned that that which binds is stronger than that which threatens to divide us.

I have benefited from the transformative power of educational opportunity. I know firsthand that in our country, with the benefit of education, steadfastness, and a bit of good luck, the circumstances of one's birth need not limit one's aspirations or achievements.

I have an unshakable belief in the value that we assign to civil rights. At the very outset, our Constitution sets as its goal as building a "more perfect union," words that are both inspirational and aspirational.

The Civil Rights Division, through the laws it enforces, protects all of us. The commitment and expertise of the public servants in the Division have dramatically and demonstrably improved our country. We are a stronger Nation today for these efforts. And yet our past successes should not limit our future achievements. We can do more to protect civil rights, we must do more to protect civil rights, and the Division stands ready to protect the civil rights of all Americans.

I have seen the impact that enforcing civil rights can have on real people's lives. Improved employment options, greater access to educational opportunity, removal of unnecessary barriers for people with disabilities, and ensuring fuller access to the political process, among other efforts, make lives more fulfilling.

If confirmed, I will commit to lead the Division with fidelity to its mission and with the sensitivity, fairness, and integrity that civil rights work, effective civil rights work, requires.

It is my great privilege to appear before you this morning, and I look forward to your questions.

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

Chairman LEAHY. Well, thank you very much.

Mr. Peterson, please go ahead, and if you have family you would like to introduce, please feel free to.

STATEMENT OF JAMES D. PETERSON, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WISCONSIN

Mr. PETERSON. Thank you, Chairman Leahy and Ranking Member Grassley and all the Members of the Committee, for considering my nomination. I want to thank the President for nominating me, and I want to particularly thank Senators Baldwin and John-

son for their kind remarks and especially for their work with the nominating commission to fill not only this vacancy but some others in Wisconsin and the Seventh Circuit.

I would like to introduce some members of my family. With me today is my closest adviser and outstanding attorney, my wife of 32 years, Susan Collins. I am also pleased that our daughters could be here. Our daughter Lauren traveled from the borough of Manhattan to be here today, Lauren Peterson. Our younger daughter, Anna Peterson, came with us from Madison, and with her also is the newest member of our family, her fiance, Derek Behnke.

I also want to acknowledge my sister, Lisa, and my brother, Wes, who cannot be here with us today, but I am sure they will watch the webcast.

The last important guests that I would like to introduce are my Mom and Dad, James D. Peterson, Sr., and Patricia Peterson. I know they are proud of me, but I wanted to take this opportunity to tell you how proud I am of them. They worked very hard to make sure that my brother and sister and I had the benefit of an education from the University of Wisconsin. They did not have the benefit of that education, but they were smart, they worked hard, and they both went on to outstanding professional careers, and they were able to retire early and are now enjoying a long and well-deserved retirement in the great State of North Carolina. I want to let you know that they have truly lived the American dream, and they have been an inspiration to me my entire life. Thank you, Mom and Dad.

And with that, Senators, I welcome your questions.

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

Chairman LEAHY. Thank you very much.

And, Ms. Rosenstengel.

STATEMENT OF NANCY J. ROSENSTENGEL, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF ILLINOIS

Ms. ROSENSTENGEL. Good morning. I would like to thank Senator Durbin for the introduction and Senator Kirk for his role in this process.

I thank President Obama for the nomination and Chairman Leahy, Senator Grassley, and the entire Committee for giving me the opportunity to appear here today and for considering my nomination.

With me today is my husband, Jon Rosenstengel. We have been married for 17 years, and he has always been very supportive of my career, and for that I am very grateful. Together we are raising three beautiful children while balancing our legal careers, which is some days an easier task than others.

I am blessed to have my children with me here today. My daughter Kate is 15 and a sophomore at Mascoutah High School in Mascoutah, Illinois. We strategically placed her between the other two to referee if necessary. My daughter Anna will turn 14 tomorrow, and I am excited that she will always remember celebrating her 14th birthday in our Nation's capital. And last but not least, my son, Jack, is 11 and he is in fifth grade at Mascoutah Elementary School.

Also, I would like to acknowledge those who could not be with me here today but I am sure are watching on the webcast: my mother, Joyce Neimayer, in Glen Carbon, Illinois; my mother-in-law, Janet Rosenstengel, in Belleville, Illinois; my brothers-in-law and sisters-in-law, Jeff and Lee Bonnefield, Jeremy and Cian Rosenstengel, and our nieces and nephews, Jim, Jerry, Julie, and Rachel; my aunt and uncle, Lolly and Ron Davies, who are watching from Casa Grande, Arizona; and Jon's cousins, who I grew up with, who are all lawyers, watching in Dallas, Denver, and Chicago; as well as Jon's aunt and uncle, Jerry and Kathy Bonnefield; and many other friends of ours in southern Illinois who I will not begin to try to mention; and likely the entire court family in the Southern District.

I thank you again for the opportunity to appear here today, and I look forward to answering your questions.

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

Chairman LEAHY. Well, thank you very much.

And, Ms. Talwani, please, if you have family members you wish to introduce here?

STATEMENT OF INDIRA TALWANI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS

Ms. TALWANI. Yes, thank you, Chairman Leahy, thank you, Ranking Member Grassley, and to this Committee for holding this hearing on such an early date in January. Senator Warren, I appreciate the very, very kind introduction and the recommendation, and to President Obama for this incredible honor.

I have with me a number of my family members: first and foremost, my husband, Tod Cochran. We have been married for almost 27 years. He is the love of my life. Our three children, two of whom are here: Natasha, Shelton, and Nico. Natasha is a master's student at Clark University, and she is student teaching right now—not this moment. She is sitting here behind me, but she is a student teacher at University Park Campus School, and her tenth grade high school class is watching today's hearing. My son Shelton is a biochemistry major at Amherst College and was unable to come, but is watching. And Nico, our 10-year-old, is sitting behind me.

My brother, Rajeev, traveled here from Los Angeles, and I really appreciate that, on incredibly short notice. My other brother, Sunjay, in Helena, Montana, was not able to come but is watching.

My uncle and aunt, Pradeep and Anita Talwani, from South Carolina, traveled up; my cousin, Rohit Talwani, from Maryland; and my niece, Bonnie Doyle, and I should mention was a clerk on the Vermont Supreme Court, so we are making our Vermont connections, but traveled down here——

Chairman LEAHY. It does not hurt.

[Laughter.]

Ms. TALWANI. She traveled down here from New York.

My biggest thanks and appreciation go to my parents. My father and mother taught me so much about hard work, integrity, the value of family. They celebrated their——

Chairman LEAHY. Take your time.

Ms. TALWANI. They celebrated their 55th anniversary last year before my mother passed away. And my father is the one person who is upset at this early hearing because he is attending the Indian Geophysical Union meeting in Hyderabad, India, as we speak, and was unable to make it here on this notice. But there, too, I believe the American delegation is watching us from Hyderabad.

Others who could not come I owe appreciation to: my parents-in-law, sisters-in-law, brothers-in-law, nephews, nieces, cousins around the country; and my friends and law partners and colleagues from Massachusetts for these past 15 years, and California, the 10 years of practice before I returned to Massachusetts.

Thank you very much for this opportunity.

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

Chairman LEAHY. I am glad we are webcasting so your husband can see it—I mean, your father can see it, and I also have to think how proud your mother would be, too.

Let me begin the questions with Mr. Adegbile. You have had this distinguished career at a top law firm, also at the NAACP Legal Defense and Educational Fund. We have heard one—a noted Republican Solicitor General who has praised you. You have testified before this Committee. You have worked for this Committee on these issues. How do your personal and professional experiences prepare you to lead the Civil Rights Division at the Department of Justice?

Mr. ADEGBILE. Thank you, Senator. I think about the extent to which America has provided me with great opportunities, the extent to which people who have come before me removed barriers so that I could thrive and work hard and, given the chance, serve other people. My experiences have called me toward service in different contexts, and the thing that I think is so wonderful about the work of the Civil Rights Division is that in many ways it is about opportunity and fair play.

I would commit myself, if confirmed, to advancing those causes through the laws that the Civil Rights Division advances every single day.

Chairman LEAHY. You know, Senator Grassley has referenced a letter, which is part of the record now, and one I have received, too. I worked a great deal with law enforcement over the years, having served 8 years in law enforcement myself. And they raise the question of the 1981 murder of a Philadelphia police officer. I think we all agree that this was a horrific crime, and the slaying of Officer Daniel Faulkner caused immeasurable loss for Officer Faulkner's family and his fellow officers. Whenever a law enforcement officer is killed, it affects all of us who depend upon the police for protection and leadership in our communities. I find it particularly poignant, having spent 8 years working with police officers.

So I would like you to explain the role that LDF played in the case, and just for background, in 1982 Mumia Abu Jamal was convicted by a jury of murdering Officer Daniel Faulkner, and he was sentenced to death. In 2001, a Federal judge in Philadelphia overturned the death sentence—not the conviction but the death sentence—because the original trial court gave jury instructions on the requirements to issue a death sentence that violated what the Su-

preme Court had laid down in their precedents. And I understand that between 2008 and 2011, your name appeared on three appellate briefs that LDF filed in appeals in this case.

So can you clarify, one, whether the appellate briefs filed by LDF and signed by you in this case disparaged the fallen officer or argued any of the facts surrounding the murder?

Mr. ADEGBILE. Absolutely. Those briefs, Senator, made no negative comment about the tragic loss of Officer Faulkner. It is a tremendous loss to lose a civil servant, a public law enforcement officer serving the people. And I would never personally or professionally say anything negative about that horrific loss. My sympathy goes to his family, to the community in Philadelphia, and it would be completely contrary to my person to make any negative comment about that particular situation.

Our work when I was a lawyer—and this is when I was at LDF—the work involved a legal issue relating to jury issues. It was about the legal process, and it was years after the conviction had been entered by the lower court. It was on an issue of whether or not the jury had properly been instructed, and ultimately several Federal courts found that the jury had not been properly instructed, and there was, in fact, a constitutional violation. It was on that basis that the death sentence was thrown out and Mr. Abu Jamal was resentenced to life without parole.

But it is important, I think, to understand that in no way does that legal representation, zealously as an advocate, cast any aspersion or look past the grievous loss of Sergeant Faulkner.

Chairman LEAHY. Okay. You know, like many others on this panel, as a lawyer, I have defended cases and then subsequently as a prosecutor prosecuted cases. I think we all agree that in any issue you should have advocates on both sides. Is that correct?

Mr. ADEGBILE. Absolutely. That is what our system calls for.

Chairman LEAHY. And when you argued this case before the Supreme Court, you had advocates on the other side arguing the other way. Is that not correct?

Mr. ADEGBILE. That is correct. And in briefs. I did not actually argue the case.

Chairman LEAHY. I mean in the briefs.

Mr. ADEGBILE. That is correct.

Chairman LEAHY. But you had others on the other side. Thank you. So how do you respond to those who criticize your involvement in this case?

Mr. ADEGBILE. Senator, what I understand about these types of cases, death penalty cases, is that they are the most harrowing cases. In every circumstance somebody has been killed, and that sends ripples through families, through communities, and through societies. So these are the hardest cases.

But our commitment in the Constitution is to follow our procedural rules even in those hardest cases, perhaps especially in those hardest cases, so that all of our rights can be vindicated. But I completely understand how difficult these cases are, and I have experienced that difficulty as a lawyer, and I take nothing away from the people who come to these cases and wonder how can somebody stand in the shoes and represent somebody. But that is what we commit ourselves to under our Constitution.

Chairman LEAHY. Thank you. I have exceeded my time, and I will yield to Senator Grassley, and Senator Coons has offered to take over the Chair for me as I have to go to another hearing. But thank you very much, and I can assure you that I support your nomination. I support the nomination of all five of the nominees who are here before us. I think the country is fortunate to have people of the quality of the men and women before us ready to serve.

Senator GRASSLEY. I am going to start with Mr. Carlin and refer to the President's Review Group of Intelligence and Communication Technology and the report that was recently issued. Many of the group's recommendations would affect the way in which national security investigations are conducted. One example, the review group's recommendations would require a judge to approve all national security letters before they are sent. This would obviously be a dramatic change.

Number one question: What would the operational effect of this recommendation be on national security investigations?

Mr. CARLIN. Thank you, Ranking Member, for your question. The President's review group has submitted a series of recommendations. I know the administration is considering and the President is considering those recommendations and also hearing from a variety of others, including meeting with Members of the Senate and hearing from the intelligence community heads and hearing from other groups, such as the Privacy, Civil Liberties, and Oversight Board, as we try to wrestle with, in a time of changing technology, how do we ensure that we accomplish our core mission of keeping the American people safe while at the same time preserving our treasured values of civil rights and civil liberties. They made a whole slew of recommendations. There are a lot of different thoughts in one way or the other.

Senator GRASSLEY. Well, maybe you are telling me you do not know the effect that the recommendations have on the operation of our national security investigations. Is that what you are saying, you do not know what the impact of those recommendations would be?

Mr. CARLIN. I think they are still studying and coming to a conclusion as an administration. When I worked at——

Senator GRASSLEY. Well, you are saying they are coming to a conclusion about what the administration might recommend. My question is, in regard to the group's recommendations, if those were carried out, what would be that impact on the national security investigations?

Mr. CARLIN. Yes, sir. So I think they are still working out all of the ramifications, but I will say this in terms of the recommendation that you raise regarding national security letters, which is that during my time at the FBI and in my experience at the National Security Division, the type of information that you can obtain from those letters is often a critical building block in order to then obtain additional evidence to use more intrusive methods that have a higher standard, such as a probable cause standard. And so whatever changes we do make or contemplate, we should think carefully and make sure that we preserve the nimbleness and agil-

ity that we need to respond quickly to fast-moving national security threats while at the same time trying to preserve civil liberties.

Senator GRASSLEY. I think you can give a more definite response here, and I appreciate the last three or four sentences you gave. That is very important information.

Was the National Security Division given an opportunity to respond to this recommendation before the review group issued its report? And did you or anyone from the National Security Division ever meet with the review group? And if you did, how many times and for how long?

Mr. CARLIN. I would say—thank you for that question because I think it is important before adopting recommendations to ensure that there is a thorough process and we hear from all elements from the intelligence community and law enforcement and national security community as well as others. The——

Senator GRASSLEY. Hence my question. Did they seek your advice before they issued a report?

Mr. CARLIN. I personally did not meet with the review group. There were individuals from the National Security Division who met with the group. I do not have the exact time for you here, sir, in terms of how long they spent with the group. I do not recall a discussion with them about the particular issue that you raised, the national security letter issue.

Senator GRASSLEY. Okay. I am glad that—for you, Mr. Adegbile, I am glad that Senator Leahy asked the question he did; I was going to ask. In regard to lawsuits that are pending from your Division, which you are not head of yet, but in regard to voter ID, if confirmed, do you plan to allow States to require voters to identify themselves to prevent the fraud that we have seen?

Mr. ADEGBILE. Thank you for your question, Ranking Member Grassley. My understanding of the role of the Assistant Attorney General for Civil Rights is that the Assistant Attorney General works to evaluate laws where there are claims of civil rights violations. And so it is not, as I understand it, the role of the Assistant Attorney General to determine in the first instance how States run their voting systems. It is only in the context of a particular law that is passed that then occasionally becomes subject to review either because of the way in which it was passed or because of its impact.

Senator GRASSLEY. Thank you.

Senator COONS [presiding]. Thank you very much, Senator Grassley.

Senator Whitehouse.

Senator WHITEHOUSE. I believe others were here first, but I am happy to proceed if—are we going by seniority? If so, I will proceed. My questions are for Mr. Carlin. But before I ask my question of Mr. Carlin, Ms. Talwani, what time do you think it is in Hyderabad right now?

Ms. TALWANI. It is about 9½ hours, 10½ hours——

Senator WHITEHOUSE. In the evening, so not too bad. It is afternoon. They are not up at 2 in the morning. Well, our best wishes to the Hyderabad watchers.

Mr. Carlin, we have talked about cyber, and I would like to kind of reprise a little bit of that conversation. My first concern is that

we have had a number of members of the Obama administration say that the attacks through our cyber system on private corporations for the purpose of stealing their intellectual property to distribute to competitor corporations in the home country of the attacker is a very, very significant drain on our economy and, indeed, it has been described as the "biggest illicit transfer of wealth in the history of mankind."

Given the scope of that ongoing criminal activity, I am concerned that the Department of Justice has not yet brought a single case arising out of a pure cyber intrusion against an American company for the purpose of stealing the American company's intellectual property. And there are clearly diplomatic concerns involved in taking such an action. There are clearly intelligence concerns that need to be addressed in terms of how the case is brought forward to protect sources and methods that may have supported the development of the case, and I get that. But I would like to hear your assurance that you will be more energetic about pursuing that kind of a case and working through the difficulties rather than allowing the Department to be defeated by those difficulties.

Mr. CARLIN. Thank you, Senator, for your question and for your leadership on issues having to do with the national security cyber threat. You have my absolute assurance and pledge that I will do all I can, if confirmed for this position, to ensure that we do confront that threat by using all tools in the toolbox, and that includes bringing, when we can, Article III criminal prosecutions. And since my time at the Division and building on my time as a prosecutor prosecuting cyber cases and my time at the Bureau working with Director Mueller to transform the Bureau to confront that threat, and subsequently at my time at the Division, my top priority for the Division as Acting Assistant Attorney General has been to transform the Division and to evolve the Division so we can meet the national security cyber threat by having dedicated national security cyber prosecutors working day in and day out to make sure that we can hold nation states or others accountable when they are stealing secrets from our corporations.

Senator WHITEHOUSE. Good. Well, I appreciate that, and it is just one Senator's point of view, but I would rather have the State Department have to have the problem of cleaning up a little bit than to have the Department of Justice have the problem of doing nothing about this massive hemorrhage of American value and this massive criminal attack sponsored by a foreign nation. So thank you for that.

My second question is that I do not yet believe that our institutional structure for addressing this massive new threat is fully mature. I have been tracking this for months now, and there are constantly new initiatives and new programs that are emerging, and I understand that it is a continuing work in progress, and I want to make sure that part of your work is to try to look ahead, not just to the concerns of the moment but to what the cyber threat is going to look like in the years ahead and what sort of a structure in law enforcement is the appropriate structure to meet it. I do not believe we are there yet. I do not think you believe we are there yet. But I do want to hear you discuss what kind of energy you will put into that type of thinking and that topic, because I know it is

going to be very easy to get into the cases and to get into the details and to forget the fact that at some point, as we are morphing our way toward a more robust and stable anti-cyber attack structure, we have got more work to do.

Mr. CARLIN. I do share your concern, Senator. The threat is here, and it is growing, and we can anticipate it will continue to grow over the years to come. I think the Government has taken significant steps to try to transform to meet that threat, but there is much more that we can and should do. And at the National Security Division, we just recently have tried to uncork the ingenuity and thoughts and talents of the U.S. Attorneys across the country, all 94 U.S. Attorney's Offices, by having special training and having people dedicated to handling, on the one hand, sensitive sources and methods that you need to be able to handle in national security threats and, on the other hand, the specific expertise on how to handle cyber intrusions while at the same time working with the FBI to try to ensure that matters that are being viewed as intelligence are shared with prosecutors so that, if there are Article III options, they can be preserved for later down the road—the same type of thinking that we have used in our transformation to face the terrorist threat. And I do believe that, in addition to working case by case, we need to continue to work as a Government and with this body on what the best approach, strategic approach is overall going forward.

Senator WHITEHOUSE. Thank you.

Mr. Chairman, thank you. Let me also just take this opportunity to thank you and Senator Blumenthal for the very strong effort that was put into trying to come up with a cyber bill that would help this work forward. And I know that you and Senator Blumenthal and other Members of this Committee are very, very committed to making sure that our cyber structure is the right structure in the long term to address this threat. And so I think Mr. Carlin can expect continued interest from this Committee in that subject, and I do want to thank Senator Blumenthal and Senator Coons for their leadership.

Senator COONS. Thank you, Senator Whitehouse, and thank you for your tireless work on keeping us safe from the cyber threat.

Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman. And I thank all of you and congratulations on being nominated to august Federal positions. I know your families are proud of you, and we all recognize the challenges you are facing, and I am sure you will be able to meet those, if confirmed.

Let me ask you, Mr. Carlin, just yesterday in The Washington Post, there was an article by Adam Goldman: "U.S. officials suspect that a former Guantanamo Bay detainee played a role in the attack on the American diplomatic compound in Benghazi, Libya, and are planning to designate the group he leads as a foreign terrorist organization, according to officials."

"Militiamen under the command of Abu Sufian bin Qumu, the leader of Ansar al-Sharia in the Libyan city of Darnah, participated in the attack that killed U.S. Ambassador Christopher Stevens and three other Americans, U.S. officials said."

"In 2007, Qumu was released from the U.S. prison at Guantanamo Bay, Cuba, and sent to Libya, where he was detained. The . . . government released him [a year later] in 2008."

Do you recognize there is a need in a time of war to detain hostile combatants until the war is over?

Mr. CARLIN. Yes, sir. We are a Nation that is still at war, and pursuant to this body's Authorized Use of Military Force, a war specifically against al Qaeda, the Taliban, and its associated forces. And at the National Security Division it is a threat and a responsibility we take seriously day in, day out. There is a determined enemy who wants to attack and bring harm to the United States both here and to our citizens abroad, and we need to use all of the tools that you grant us in our toolkit to deter and disrupt those who would try to cause us harm.

Senator SESSIONS. I absolutely agree that you should use, it is your duty to use the lawful tools you have been given to protect the people of the United States and our Ambassadors from attacks. And it is disappointing to see that this releasee was a leader actually in that attack, and we have had others that have been released also returning to the fight.

And so you have that responsibility, and I sense that you understand it. Is that correct? And you will be willing to speak out against those who do not understand those responsibilities and do not understand traditional rules of warfare?

Mr. CARLIN. Yes, sir, we certainly do understand that responsibility, and in my role, and if confirmed, I will provide my honest and frank guidance to any consideration on any national security threat.

Senator SESSIONS. And you will, when necessary, object or make known your objection if someone above you desires to do otherwise?

Mr. CARLIN. Sir, as a lifelong Government servant, I think we have a duty and we arrive at the best decisions when people who are asked for their opinion give a frank and honest opinion for those internal deliberations.

Senator SESSIONS. Thank you. I appreciate that, and I will expect that you will do that, protecting the people of the United States as the law allows you to do.

Mr. Adegbile—is that correct?

Mr. ADEGBILE. That counts, Senator.

Senator SESSIONS. Close enough.

[Laughter.]

Senator SESSIONS. Close enough for Government work. You will answer when called that.

You have been a long-time counsel at the NAACP Legal Defense Fund, which has a historic record of advocacy and defense of civil rights and has achieved much respect in those efforts over the years. But it is a leading advocacy institution also. Civil rights can be stretched, it appears to me, to cover political agendas sometimes and go beyond what true civil rights are and can be used as a mechanism to advance a political agenda. I am sure you would essentially agree with that concern.

Recently Attorney General Holder, before the Mexican American Legal Defense and Educational Fund, said this: "Creating a pathway to earned citizenship for the 11 million unauthorized immi-

grants in this country is essential. The way we treat our friends and neighbors who are undocumented—by creating a mechanism for them to earn citizenship and move out of the shadows—transcends the issue of immigration status. This is a matter of civil and human rights."

Do you believe that an individual who entered the country unlawfully has a civil right to citizenship in America?

Mr. ADEGBILE. Senator, my understanding is that the Congress sets the laws with respect to immigration, and only after those laws are set, if certain of the laws are designated for enforcement responsibility to the Civil Rights Division, would the Civil Rights Division act in that scenario.

Senator SESSIONS. Well, your boss-to-be, Attorney General Holder, has said plainly, it seems to me, that persons who violate the United States immigration laws and who enter the country have a civil right to even citizenship. Do you agree with that or not?

Mr. ADEGBILE. Well, I am just hearing this statement now, and I take it that what may be at the source of the Attorney General's comment is that in certain circumstances people who are vulnerable or not properly documented can be preyed upon because of their status, and there are certain circumstances in which such people would need the protection of law enforcement and others to make sure that their rights are not violated as human beings and as persons under the Constitution.

Senator SESSIONS. Peter Kirsanow, who is a member of the U.S. Commission on Civil Rights, did a blog recently that said, "To equate amnesty for breaking the Nation's immigration laws with civil rights betrays an incoherent and ahistorical understanding of the civil rights movement. Law-abiding black citizens in the United States were not seeking exemption from law. They were seeking the application of such laws in the manner that were applied to whites." Would you agree with that statement?

Mr. ADEGBILE. I can commit to you that my understanding of our long history is that many groups have come to hold up the Constitution and try to narrow the space between the practice on the ground and our high goals that we set for ourselves. And if confirmed as Assistant Attorney General for Civil Rights, I assure you that I will give fidelity to the law and enforce the laws as they are given by this Senate and the House of Representatives and duly signed by the President.

Senator SESSIONS. Well, my time is up. Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Sessions.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman. Mr. Adegbile——

Mr. ADEGBILE. That is full credit, Senator.

[Laughter.]

Senator FRANKEN. As a Nation, we have made great strides on the road toward equality for LGBT citizens, and the Civil Rights Division of the Department of Justice has been instrumental in that progress. But there is still work to be done. Every day, students who are or are perceived to be lesbian, gay, bisexual, or transgender are subjected to bullying and harassment in our schools. In fact, one out of every three LGBT students in our coun-

try reports having missed a day of school recently because he or she felt unsafe in school.

I have introduced legislation in the Senate, the Student Nondiscrimination Act, to ensure that LGBT students have the same rights against discrimination as other students have.

If you are chosen to be head of the Civil Rights Division, how will you work with schools to address the discrimination that LGBT students so often face?

Mr. ADEGBILE. Thank you, Senator. This is a very important issue. I have sitting behind me my two daughters who are school-aged, and it is something that we talk about a fair amount. Bullying can really reduce the opportunity of children to learn and, as you have described, even lead kids not to want to go to school. I commit to you that, if confirmed as Assistant Attorney General, I will focus on the laws and enforce them vigorously in all areas. The educational area is something that is part of the soaring story of American justice and of civil rights, and as we learn it, as new statutes are passed, I think it is important to focus on them and enforce them where applicable on the facts and the law.

Senator FRANKEN. Well, I hope through this measure, which has the support of every Member of the majority of this Committee and on the HELP Committee, I hope we are able to do that, because through the Civil Rights Act in 1964 we protected people by virtue of their race or color, to the Americans With Disabilities Act we have given those kind of rights to people with disabilities. To me the LGBT community now deserves the same kind of rights.

Mr. Carlin, if you are confirmed to this position, you will hold one of the Nation's most important positions on national security. Senator Grassley talked about the President's review group on surveillance, and they made some recommendations. And I did speak to the group. I know that your Department has but you have not. They made some major recommendations about how our Nation's surveillance programs should be reformed, and I know that your answer to Senator Grassley was that you are kind of reviewing this and this is being reviewed in the Department.

But among other things, the group urged the passage of legislation to give the American people more information about the total number of Americans that, this information, are being caught up in these surveillance programs and to give the American people more information about that. I have a bipartisan transparency bill that would do just that.

Do you agree, Mr. Carlin, with the President's review group that the American people need to have more information about our Nation's surveillance programs?

Mr. CARLIN. Thank you for that question, Senator, and for your leadership on the issue of transparency in terms of our use of national security authorities. The law enforcement/national security community and our Government need the support and trust of the American people to do our jobs day in and day out, and so I think it is, as the President said, incumbent upon us to be as transparent as we can while preserving the sensitive sources and methods, to be as transparent as we can with the American people so that they have that trust and confidence.

And so as we discussed when we met, I think we need to work and, if confirmed, we would work within the National Security Division to try to ensure across the board that, when we can, we can share as much information as possible with the American people.

Senator FRANKEN. And do you think that possibly we have been erring on the overly conservative side in terms of transparency and that the recommendations of the President's review group are going in the right direction?

Mr. CARLIN. I will say this: I think there has been an unprecedented effort over the last several months or close to a year to declassify thousands of pages of previously classified documents in order to share information, and that as we look forward and try to hit the right balance between the steps that we need to take to protect us from national security threats, which are real and present, while at the same time both ensuring that we preserve our treasured values in terms of civil liberties and civil rights, and also that we maintain the confidence of the American public. We are at a stage right now where we need to take, it seems, additional steps to assure that the public on the tools that we are using, and I think we are rightly headed in that direction.

Senator FRANKEN. Well, thank you. My time has expired. Thank you for your answers.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Franken.

Senator Blumenthal.

Senator BLUMENTHAL. Thank you. Let me begin by thanking all of the nominees for your public service and your willingness to devote yourselves to continued public service, and my thanks also to your families who have shared and will continue to share that burden of long hours and sometimes little appreciation from the public for the work that you do.

I want to say to the judicial nominees that your work is so critical to the credibility and trust of the public in our justice system. You will be the voice and face of justice to countless individuals who come before your court and who will seek redress and justice from you. And as one who has been in the Federal courts for several decades, I appreciate the very hard work that you will devote to this immensely important task. And I look forward to supporting you and hope that I am not premature in congratulating you but thanking you for the great work that you are going to do.

To Mr. Adegbile, I congratulate you on your Connecticut connection through Connecticut College. I am not going to sing the fight song here, as Senator Schumer no doubt could for Dalton. But I want to first of all ask you about the NAACP Legal Defense Fund and other organizations like it that play such a critical role in our justice system, and most particularly during what Senator Schumer rightly referred to as "a dark period" when the Civil Rights Division was not as active as it has been under President Obama.

Could you tell me about the partnership that you foresee between the Civil Rights Division and those organizations if you are confirmed?

Mr. ADEGBILE. Certainly. Thanks for the question, Senator. So civil rights organizations play a vital function as private attorneys general to enforce many of the statutes in the civil rights pantheon

that allow individuals or groups to bring cases to vindicate the principles of the law. The understanding has been that while the Justice Department is terrific and central to the effort, in certain circumstances more resources are needed, and we cannot have too much equality is part of the concept.

There needs to be a conversation between groups and the Justice Department. However, in my role, if confirmed as Assistant Attorney General, I am crystal clear that I will step over from being an advocate for a particular group and particular clients to enforcing the laws of the United States. And so what I would expect is that there will be open streams of communication within the bounds of ethical rules and considerations, but that the goal is to enforce the laws of the United States within our best judgment and with the advice of the long-serving, able public servants in the United States Department of Justice.

Senator BLUMENTHAL. Thank you.

Mr. Carlin, I know you are familiar with the recommendations made by the President's Panel on Intelligence Reform, and in particular, as you may know, I have proposed that there be a constitutional advocate to protect privacy rights and civil liberties and that there be a more adversarial process before the Foreign Intelligence Surveillance Act Court as well as a different method of appointing that court to make it more transparent and accountable, to make sure that the court really functions as a court, hearing both sides not just one side, not just the Government's side but also an advocate to really represent the contrary side when there are questions, important questions, of law or fact to be decided.

I wonder if you could give me your views on that aspect of the President's panel.

Mr. CARLIN. Well, thank you, Senator. I think that in terms of the Foreign Intelligence Surveillance Court, there are certain cases that involve significant interpretations of the law where the court may decide that it would benefit from the view of another party, and that we have discussed and I think the Deputy Attorney General has testified before that it would be open to proposals along that line to both ensure a full briefing before the court and also to provide that sense of trust and accountability to the American people for the decisions that are ultimately made.

Senator BLUMENTHAL. And would you not agree that the advocate ought to be involved in deciding whether a particular request for a warrant or other surveillance or search raises that kind of significant issue? In other words, it should not be just the court that decides the advocate is involved but the advocate as well?

Mr. CARLIN. So I think that the President and the administration are still studying a variety of ideas and inputs from different groups on that issue, and what they are seeking to do in terms of an ultimate determination is to try to reach the right balance between the really unique and distinctly American system that we have set up that involves all three branches of Government for the conduct of our foreign intelligence activities. It was dating back to 1978 and the original passage of FISA. We have been searching in the current debate to look for other models or systems across the world, and we have not found one that——

Senator BLUMENTHAL. Well, we do have a distinctly American judicial system that involves, in fact, hearing both sides of the argument in open court, especially when there are searches and seizures. One of the reasons why that distinctly American system developed in rebellion against the English was secret courts doing general warrants. And so I would submit respectfully that that distinctly American system involves exactly what the President's panel recommended, namely, an advocate, an open system where possible, more transparency, as Senator Franken has suggested, and hope that you will consider supporting that kind of proposal.

I want to thank both Mr. Carlin and Mr. Adegbile for your service, your extraordinary service over many years already, and the continued service that you will provide for our Nation. Thank you.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Blumenthal.

While I appreciate that we have had a broad and vigorous exchange of views with Mr. Carlin and Mr. Adegbile, I am going to turn to our judicial nominees, if I might, for a few moments. But first I simply wanted to say that I strongly endorse Senator Blumenthal's leadership on suggesting that we would strengthen transparency in the performance of the FISA Courts by having a public advocate. I think that is a strong proposal, and I think both Senator Franken and Senator Whitehouse and Senator Blumenthal raised important points about transparency, accountability, and about the cyber threat and defending American innovations and inventions. And hopefully we will have a few minutes to explore some other areas of great interest to me, and I am grateful to all of you for your public service and to your families for supporting you through this hearing and through what I am sure have already been long and challenging careers in public service that will hopefully continue for quite some time.

So if I might, Ms. Talwani, Ms. Rosenstengel, and Mr. Peterson, if you would just in order describe your judicial philosophy for this Committee, please?

Ms. TALWANI. I am not used to labeling it as a "judicial philosophy," but I feel very strongly about the role of a district judge and a district court, which is to decide that case that is in front of the judge right then based on the applicable law. And that is what I intend to do.

Ms. ROSENSTENGEL. Thank you. I would agree with Ms. Talwani and say that my judicial philosophy would be to follow the rule of law at all times and to decide cases and issues before me promptly without bias, sympathy, or prejudice.

Mr. PETERSON. I also agree that I do not have a judicial philosophy in the sense of the concept that I have some preconceived approach to deciding the results of any particular case. As a district court judge, if I were confirmed, I would do my best to comply with Rule 1 of the Federal Rules of Civil Procedure, which suggests, indeed requires that we do all we can to secure the just, speedy, and in expensive resolution of matters. So I would have a philosophy as a district court judge that people would get early trial dates, the trial dates would be firm, I would work hard to decide motions promptly, and so people would get a decision that is thorough, well reasoned, understandable, and prompt.

Senator COONS. Admirable. It would be great if this institution was also thorough and prompt.

If I might, working backward, Mr. Peterson, Ms. Rosenstengel, and Ms. Talwani, what do you see as your role in ensuring fair and equal access to justice in this country for the litigants who might appear before you in your court?

Mr. PETERSON. I think one of the great virtues of our American justice system is that once you get into a court, particularly a Federal court, it does not matter if you are rich or poor or have resources. You get the same kind of decision regardless of your resources.

I think the district courts have an important role in ensuring that people who might not be able to afford lavish representation or even sometimes basic representation get a fair hearing despite that. So, for example, in the Western District of Wisconsin, we have very able pro se clerks that handle cases that are brought by unrepresented individuals, and those individuals, despite lack of counsel, get a very thorough and fair hearing.

Ms. ROSENSTENGEL. I would like to echo Mr. Peterson's remarks. I would say that it is important as a judge, and I would if confirmed, give every case the same consideration and be available for the parties and the lawyers on the case. And as Mr. Peterson said, it is important to make sure that those who do not have the same resources as others may have access to justice.

One of the things I have done as the clerk of court is to develop a panel of lawyers to represent indigent people before the court so that we have a panel of people we can represent and to assist those so that they have an equal footing as any other litigant would in the court.

Senator COONS. Thank you, Ms. Rosenstengel.

Ms. Talwani.

Ms. TALWANI. I would just add that litigation is incredibly expensive, and I would be very conscious of the time that cases take and how that burdens both parties, and try to move cases expeditiously, have firm case management procedures, and just try to ensure that litigation is not more expensive than it needs to be.

Senator COONS. A last question, if I might, for our judicial nominees, and also for Mr. Adegbile. Our legal system relies fundamentally on active advocacy before the bench on parties who heighten the differences and, thus, zealous advocacy. You bring a variety of strengths and skills and backgrounds to your potential service on the bench. How would you distinguish between a period when you were before the bench as an advocate and the period you might soon enter where you are serving on the bench? Or how would you differentiate your experience and service as an effective advocate for LDF and now as someone charged with enforcing law for all the people of the United States? If we might, Ms. Talwani, and then move to our left.

Ms. TALWANI. Thank you. There is no question that the roles are very, very different. If confirmed, I would strive to ensure an absence of bias in decisionmaking, that decisions are based on the facts and the law best applicable. It differs from the role of an advocate where you can be open to different possible views but you do not have to sit and make the final decision which is necessarily

the one that you would say will be right at the end. And I believe it is a very different role, and I would strive, if confirmed, to ensure the most objective decisionmaking possible.

Senator COONS. Thank you, Ms. Talwani.

Ms. Rosenstengel.

Ms. ROSENSTENGEL. I agree that it is a very different role. As an advocate, you know your client's position and advocate that strongly and maybe anticipate the other side, but do not study it as well.

As a judge, it is the judge's responsibility to understand both sides of the argument, to research everything presented to the judge, and come to a fair resolution of the case. The bulk of my career has been approaching issues from an impartial standpoint and trying to understand both sides, and I think that is important and something that, if confirmed, I would respect and follow.

Mr. PETERSON. I have been an advocate. That has been an important part of my role as a lawyer. But I have also been a counselor, which I think in many cases an even more important role for my clients. And as a counselor, I help them not advance a particular position in a forum, but to help them deliberate about what really is the right thing to do. That I think is excellent preparation of the role of the judge. And so if I am confirmed, I think it is a transition from advocate to a more deliberative decider. I think it is a transition that I would be ready and well prepared to make.

Senator COONS. Thank you.

Mr. Adegbile.

Mr. ADEGBILE. I think it is fair to say that in both contexts, representing your clients zealously and ably is important. That is consistent in both contexts. What is different is that as a law enforcement officer for the United States of America, the portfolio is much broader; the range of statutes that you are called upon to enforce touch a wide array of aspects of life in our great Nation. And it is very important in both contexts, I guess, to make sure that the institutional integrity is there so that you can do your job effectively, and also to have an eye toward the people that you are trying to serve.

If lucky enough to be confirmed as Assistant Attorney General, the people that I will be serving are the people of the United States of America.

Senator COONS. Thank you.

Senator Grassley.

Senator GRASSLEY. I am just going to question the judge nominees at this point, but I do have some followup questions that I am going to submit in writing for the Justice Department nominees.

[The questions of Ranking Member Grassley appear as submissions for the record.]

Senator GRASSLEY. I am going to start with Mr. Peterson. You have done some pro bono work on behalf of the Freedom from Religion Foundation, filing a Supreme Court brief in two Establishment Clause cases, *McCreary* and *Van Orden*. You have argued against Ten Commandments display on Government properties. In one case, you argued that a particular display had the effect of "casting non-believers as outsiders to the political community." I am not here to question your belief in regard to that, but since you

are going to be a judge and be impartial, I have a two-part question:

How does that statement affect your view? And what assurances could you give the Committee that you would be fair to all litigants who come before you and, in particular, those of religious faith who may be concerned about your advocacy on behalf of non-theism?

Mr. PETERSON. The first part of the answer is really very simple. My personal views would play no role whatsoever in my decision-making on constitutional issues involving any aspect of the First Amendment or any other constitutional provision.

My work on behalf of the Freedom from Religion Foundation was on behalf of a former and long-time client of the firm. It was not pro bono work. It was engaged work that we had done. My firm has a long history of advocating on behalf of the First Amendment interests of a wide variety of clients across the political spectrum. I consider it a great honor to have worked on matters that are of great importance on the First Amendment.

As I said, we have represented the whole political spectrum on those issues, and I would take every case as it comes and decide it according to the law. The position that we advocated on behalf of the Freedom from Religion Foundation was vindicated in one of the Supreme Court cases, rejected in another. Those decisions are by definition right. They are from the Supreme Court, and I would follow them to the letter, sir.

Senator GRASSLEY. Thank you.

I will now go to Ms. Rosenstengel. From your resume, there is some—it is quite obvious, and not to discriminate against you on this basis, but somewhat limited experience as a practicing attorney, appear to have no experience with criminal law, so a two-part question:

Describe how you would prepare yourself for the job of district court judge. And then as a law clerk, what qualities did you admire about the judge you worked for, and how would you be different from that person?

Ms. ROSENSTENGEL. Thank you, Senator, for the question.

First, how would I prepare myself? I would study the Federal Rules of Civil Procedure and Criminal Procedure. Again, I was very familiar with them as a law clerk. During you time as clerk of court, I have stayed abreast of Seventh Circuit and Supreme Court jurisprudence, and I would continue to do that.

The quality I admired most about Judge Murphy, the judge for whom I clerked, was he was very decisive. he worked hard. He held hearings on all dispositive motions and had the parties and the lawyers before him, and that is something that I would hope to follow. I think there is a lot of value to having the lawyers in court. He was very firm about setting deadlines and expecting lawyers to meet them, and that is also a trait that I would hope to follow.

Senator GRASSLEY. And for you, Ms. Talwani, you have been an advocate throughout your career, including with some labor organizations. How will you make the transition from being an advocate in the way you were—and I do not disparage that—to being an impartial mediator?

Ms. TALWANI. Thank you for that question. I would start by saying that I very much understand how different the roles are, and

I also realize an importance in the practice, the advocacy that I did, that I was able to represent parties both as plaintiffs and as defendants. In representing unions, there have been cases where, for example, the union would not take an employee's case to a grievance because it was, in the union's view, without merit, and the employee will turn around and sue both the employer and the union. And so I have seen cases from both sides, despite our institutional clients being unions over many of these years.

That said, I am very aware of having represented particular clients, particular types of matters, and realized that I need to ensure that I do not make assumptions, that I am aware of any potential bias, and that I am very, very rigorous in being objective about the cases in front of me.

Senator GRASSLEY. Okay. Are there any characteristics of any Federal judges that you would seek to avoid if you were confirmed?

Ms. TALWANI. Yes.

[Laughter.]

Senator GRASSLEY. Maybe an example or two without naming the judge?

Ms. TALWANI. I think impatience from the bench is counterproductive. I think that a judge needs to enforce order and civility, but I do not think that judges should in any circumstance be overly—or should be disrespectful at all to the people who appear in front of them.

I guess the other thing I will be very careful of is interjecting reasonings and decisions that have not had an opportunity for exploration through the adversarial process, where a judge comes up with their own solution to the problem—which may be appropriate. There may be, for example, a jurisdiction issue that the parties did not consider. I will endeavor, if that comes up, to ensure that the parties have an opportunity through the adversarial process to address those issues.

Senator GRASSLEY. Thank you.

Thank you, Mr. Chairman. Congratulations to all of you.

Senator COONS. Thank you very much, Senator Grassley. And to Mr. Carlin, to Mr. Adegbile, to Mr. Peterson, to Ms. Rosenstengel, to Ms. Talwani, and to your families and supporters, thank you so much for your appearance before this Committee today.

We will keep the record open for a week for those Members of the Committee who have questions they would like to submit in writing but who were not able to join us today.

With that, this hearing is hereby adjourned.

[Whereupon, at 11:47 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

"Nominations"

Wednesday, January 8, 2014
Dirksen Senate Office Building, Room 226
10:00 a.m.

John P. Carlin, to be an Assistant Attorney General

Debo P. Adegbile, to be an Assistant Attorney General

James D. Peterson, to be a United States District Judge for the Western District of Wisconsin

Nancy J. Rosenstengel, to be a United States District Judge for the Southern District of Illinois

Indira Talwani, to be a United States District Judge for the District of Massachusetts

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   John Philip Carlin

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

   Assistant Attorney General for National Security

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

   United States Department of Justice
   950 Pennsylvania Avenue, NW
   Washington DC 20530

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

   1973; 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.

   Harvard Law School
   1996-1999
   J.D., June 1999

   Williams College
   1991-1995
   B.A., June 1995

   Oxford University, Exeter College
   1993-1994
   Junior year abroad

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.

United States Department of Justice
National Security Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
Acting Assistant Attorney General (March 2013-present)
Principal Deputy Assistant Attorney General and Chief of Staff (August 2012-March 2013, and while on detail from the Federal Bureau of Investigation, est. July 2011-July 2012)

Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20530
Chief of Staff and Senior Counsel to the Director (February 2010-est. July 2011)
Acting Chief of Staff and Senior Counsel to the Director (est. August 2009-February 2010)
Deputy Chief of Staff and Counselor to the Director (March 2009-est. August 2009)
Special Counsel to the Director (on detail from the United States Attorney's Office for the District of Columbia) (July 2007-February 2009)

United States Department of Justice
Criminal Division, Computer Crime & Intellectual Property Section
10th & Constitution Ave., NW
John C. Keeney Building, Suite 600
Washington, DC 20530
National Computer Hacking and Intellectual Property Program Coordinator
(on detail from the United States Attorney's Office for the District of Columbia)
(January-June 2007)

United States Attorney's Office for the District of Columbia
555 4th Street, NW
Washington, DC 20001
Assistant United States Attorney (October 2001-February 2009) (on detail to the U.S. Department of Justice Criminal Division from January-June 2007 and to the Federal Bureau of Investigation from July 2007-February 2009 as noted above)
Special Assistant United States Attorney (est. February 2000-June 2000) (on detail from the U.S. Department of Justice Tax Division)

United States Attorney's Office for the District of Arizona
405 W. Congress Street, Suite 4800
Tucson, AZ 85701
Special Assistant U.S. Attorney (on detail from the U.S. Department of Justice Tax Division) (June-December 2000)

United States Department of Justice
Tax Division, Criminal Enforcement
600 E Street, NW
Washington DC 20530
Trial Attorney (October 1999-October 2001) (on detail to the United States Attorney's Office for the District of Columbia from est. February 2000-June 2000 and to the United States Attorney's Office for the District of Arizona from June-December 2000 as noted above)

Debevoise and Plimpton
919 3rd Avenue
New York, NY 10022
Summer Associate (June 1998-August 1998)

Office of the Public Advocate for the City of New York
1 Centre Street
New York, NY 10007
Summer Legal Intern (June 1997-August 1997)

Gifford Miller for New York City Council '96
336 E 73rd Street, Suite C
New York, NY 10021
Campaign Manager (est. June 1996-est. August 1996)

Freedom House Inc.
120 Wall Street
New York, NY 10005
Project Officer (June 1995-June 1996)

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

   I have not served in the U.S. Military. I have registered for selective service.

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

   Samuel J. Heyman Fellowship for Federal Government Service (2000)
   Department of Justice Award for Special Achievement (five-time recipient, various dates)
   Harvard Journal on Legislation, Articles Editor (1998-1999)
   Phi Beta Kappa (1995)

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

Associate-at-Large, Edward Bennett Williams Inn of Court, est. 2003 to present.

10. **Bar and Court Admission**:

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

2000, New York Bar. I have had no lapses in membership.

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

As an Assistant United States Attorney, a Special Assistant United States Attorney and as a Trial Attorney for the Department of Justice, I appeared regularly in the United States District Court for the District of Columbia and I appeared in the United States District Courts for the District of Arizona and Boston. I do not recall being required to acquire separate admission to appear before these courts.

11. **Memberships**:

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

None other than that listed in my response to Question 9.

I have made financial contributions to charitable organizations over the years. I have not included any organizations to which I gave funds and did not otherwise participate in organizational activities, although the organization may label me a member because of my contribution.

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Not to my knowledge.

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

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

I have done my best to identify published materials, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

Book review, *Harvard Journal on Legislation*, Summer 1997 (cite: 34 Harv. J. on Legis. 611) (copy supplied).

Op-ed, *New York Daily News*, July 24, 1995 *Don't Honor Singapore PM* (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.

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 done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Keynote Speaker, ABA Standing Committee on Law and National Security Breakfast Program, "Perspectives from the National Security Division," September 19, 2013 (copy supplied).

Panelist, 2013 Aspen Institute on "Law Enforcement and National Security," July 20, 2013 (no transcript located, but video available at http://www.aspeninstitute.org/video/law-enforcement-national-security).

Keynote Speaker, 2013 ABA Homeland Security Law Institute on "An Overview of the U.S. Department of Justice's National Security Division and What to Expect in 2013" June 20, 2013 (copy supplied).

Panelist, Edward Bennett Williams American Inn of Court, "Economic Espionage: national security issues confronting white collar practitioners, from cyber intrusions to export control and sanctions," October 18, 2012 (no notes or transcript available).

Panelist, 2012 ABA Homeland Security Law Institute on "A Look at Homeland Security Legal and Policy Issues," March 22, 2012 (copy supplied).

Panelist, American University Washington College of Law panel discussion entitled "Ten Years After 9/11: the Changing Terrorist Threat," September 8, 2011 (copy supplied).

Keynote Speaker, "Safety and Social Networks: the Challenge of Community Policing in a Virtual Neighborhood," at Berkeley Law School, October 23, 2009 (no transcript located, but audio available at http://www.law.berkeley.edu/7458.htm).

Panelist, Princeton Forum on Public Service, "Panel: Perspectives from the Next Generation," November 8, 2007. I spoke on the benefits of a public service career (no notes or transcript available).

Panelist, Edward Bennett Williams American Inn of Court, "Recovery and Use of Electronic Data in Internal Inquiries and Criminal Cases," March 15, 2007 (no notes or transcript available).

Opening Remarks, Federal Trade Commission Hearings on Protecting Consumers in the Next Tech-ade, November 9, 2006 (no notes or transcript available).

Speaker, Partnership for Public Service Third Annual Gala honoring Senator John McCain. I spoke on the benefits of a public service career (est. June 2005) (no notes or transcript available).

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

I have done my best to identify all interviews given, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Interview with Garrett Graff, author of *The Threat Matrix*. I am quoted on page 594 of *The Threat Matrix*. Published in March 2011. (copy of chapter in which quote appears supplied).

Interview with Sari Horowitz of *The Washington Post*. "Justice Department trains prosecutors to combat cyber espionage." July 25, 2012. (copy supplied).

Interview with Aram Roston of *C4ISR Journal*. "DOJ Plans to Indict State-Sponsored Cyber Attackers." Article printed December 18, 2012. (copy supplied).

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

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

I have never been a candidate for public office, although as listed in answer to Q6, I have held a number of positions in the federal government.

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.

Campaign Manager for the Gifford Miller for City Council '96 campaign from June of 1996 (est.) to August of 1996 (est.).

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

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

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

I have not served as a clerk.

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.

United States Department of Justice
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Summer Associate (June 1998-August 1998)

Office of the Public Advocate for the City of New York
1 Centre Street
New York, NY 10007
Summer Legal Intern (June 1997-August 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.

b. Describe:

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

From October 1999 to the present, I served primarily as a prosecutor and as an advisor and supervisor of national security, law enforcement and litigation matters at the Department of Justice and the Federal Bureau of Investigation. As a prosecutor, the cases I handled ranged from homicide and sexual offenses to cyber, intellectual property, fraud, and public corruption crimes.

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

I have served one client throughout my career: the United States. The areas in which I have specialized are criminal prosecution, national security, and law enforcement.

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 1999 to the beginning of 2007 nearly 100% of my work was litigation.

i. Indicate the percentage of your practice in:
   1. federal courts 65%;
   2. state courts of record 35%;
   3. other courts 0%;
   4. administrative agencies 0%

ii. Indicate the percentage of your practice in:

For the periods during which I litigated

   1. civil proceedings, 0%;
   2. criminal proceedings, 100%.

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

I tried approximately 40 cases. In roughly 3/4 of the cases I was sole counsel and 1/4 joint counsel. I have not tried a case that went to verdict with more than one co-counsel.

i. What percentage of these trials were:
   1. jury 50%;
   2. non-jury 50%.

The non-jury trials occurred during my detail to the United States Attorney's office for the District of Columbia in the domestic violence section of that office. The majority of the misdemeanor trials were resolved by plea or bench trial. I believe I tried approximately twenty bench trials.

From 1999-2001 while serving as a trial attorney in the Tax Division's criminal section, in addition to my criminal caseload, I served on two details to United States Attorneys Offices – the District of Arizona and the District of Columbia. In each I practiced criminal litigation: in the former, I appeared regularly in federal court and in the latter, in the Superior Court for the District of Columbia. I also worked briefly on detail on one oversight matter. When I permanently joined the United States Attorney's Office for the District of Columbia as an Assistant United States Attorney in 2001, all of my work was in the criminal arena. Until 2007, I appeared in court, often on a daily basis, in the District of Columbia Superior Court and the United States District Court in the District of Columbia. In 2007, I was detailed to the Criminal Division to serve as the National Computer Hacking and Intellectual Property Program Coordinator. The detail involved coordinating complex federal criminal litigation matters. From the latter half of 2007 to 2011, while I was at the FBI, my work did not often involve litigation, and I did not have occasion to appear in court. In 2011, I moved to the National Security Division, first as Principal Deputy Assistant Attorney General and Chief of Staff and now as Acting Assistant Attorney General. I currently oversee the lawyers in the National Security Division, including on litigation matters.

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

I have not argued any cases before the Supreme Court, nor have I served as the primary author on any briefs submitted to the Court. However, in my capacity as Acting Assistant Attorney General of the National Security Division, and in accordance with Department procedure, my name appeared on briefs filed in the U.S. Supreme Court (including briefs filed at the certiorari stage and briefs filed at the merits stage).

I am listed on the following briefs filed in the Supreme Court, according to searches of electronic databases:

Merits Brief

Bond v. United States, No. 12-158

Briefs in Opposition to Certiorari

In re Electronic Privacy Information Center, No. 13-58

Ali v. United States, No. 12-805

Stewart v. United States, No. 12-8891

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

    a. the date of representation;

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

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

(1) *United States v. Modou Camara, et al.*, 02-cr-00157 (Judge Roberts, United States District Court for the District of Columbia). Served as prosecutor in mortgage fraud case with nine counts of fraud against the main defendant. Case against Modou Camara was tried from October 23, 2003 – November 4, 2003. The remaining defendants pleaded guilty. Modou Camara was sentenced to 60 months' incarceration on each count to run concurrently, and ordered to pay $1,116,440.90 in restitution. Co-defendants Audrey Waite and Baboucarr Lowe were sentenced to incarceration, and charges against remaining co-defendants were dismissed.

Co-counsel:

Sarah Chasson (then Assistant U.S. Attorney in the District of Columbia)
The Mintz Group
1150 18th Street NW
Suite 500
Washington, DC 20036
(202) 887-9100

Defense counsel:

Elise Haldane (Modou Camara)
303 E Street, NE
Washington, DC 20002

(202) 659-8700

Bravitt Manley, Jr. (Ajola Faal, Howsoon Cham)
5204 Knoughton Way
Centreville, VA 20120
(202) 262-7505

John Briley (Audrey Waite)
6205 30th Street, NW
Washington, DC 20015
(202) 364-7012

Joanne Hepworth (Samba Camra)
601 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004
(202) 220-3025

William Spencer (Baboucarr Lowe)
Federal Public Defender
625 Indiana Avenue, NW
Suite 550
Washington, DC 20004
(202) 208-7500

(2) *United States v. Caroline Deforest*, F-285-04 (Judge Richter, District of Columbia Superior Court). Served as prosecutor in case involving voluntary manslaughter and child cruelty charges. The defendant tortured and murdered a baby girl. The defendant pleaded guilty in 2004 and was sentenced on August 22, 2005 to 17 years' incarceration.

Co-counsel:

Deborah Connor
United States Attorney's Office
District of Columbia
555 Fourth Street, NW
Washington, DC 20530
(202) 252-7871

Defense counsel:

Santha Sonenberg
Federal Public Defender
633 Indiana Avenue, NW
Washington, DC 20004
(202) 628-1200

(3) *United States v. Mitchell Wade*, 06-cr-00049 (Judge Ricardo Urbina, United States District Court for the District of Columbia). Served as prosecutor in case involving bribery and a scheme to defraud. The defendant pleaded guilty on February 25, 2006, to bribing former Congressman "Duke" Cunningham, corrupting defense officials and election fraud. He cooperated and was sentenced to 30 months' imprisonment and assessed a $250,000 fine.

Co-counsel:

Howard Sklamberg (then Assistant U.S. Attorney in the District of Columbia)
Food and Drug Administration
Office of Compliance, Center for Drug Evaluation and Research
Building WO 51
Silver Spring, MD 20993
(301) 796-8314

Defense counsel:

Howard Shapiro
Wilmer Hale
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6606

The Honorable Ronald C. Machen, Jr. (then an attorney in private practice)
United States Attorney's Office
District of Columbia
555 Fourth Street, NW
Washington, DC 20530
(202) 252-7566

(4) *United States v. Leslie Simms*, 2004 FEL 005747 (Judge Patricia Broderick, District of Columbia Superior Court). Served as lead prosecutor in case involving voluntary manslaughter. The defendant pleaded guilty and was sentenced to 14 years' incarceration.

Defense counsel:

Sean P. Kanuck
725 17th Street, NW
Room 3020
Washington, DC 20503
(917) 833-4282

(5) *United States v. Ajene Kigozi*, formerly known as Walter Johnson, Jr., F-7618-01 (Judge Patricia Broderick, District of Columbia Superior Court). Served as lead prosecutor in first-degree murder case. The defendant was convicted in April 2003 and sentenced to 35 years' incarceration. In 2012, after I was no longer a prosecutor in the U.S. Attorney's Office for the District of Columbia, the defendant's conviction was overturned by the District of Columbia Court of Appeals based on ineffective assistance of counsel (appellate case nos. 03-CF-1181 & 07-CO-684). In July 2013, the defendant pleaded guilty to one count of second degree murder while armed. The defendant is scheduled to be re-sentenced in October 2013.

Defense counsel:

Ken Robinson
717 D Street, NW
Fourth Floor
Washington, DC 20004
(301) 762-2909

(6) *United States v. Monwell T. Onley*, F-5490-02 (Judge Rafael Diaz, District of Columbia Superior Court). Served as prosecutor in aggravated assault case. On August 16, 2002, innocent bystander Jacqueline Clark, a child, was shot in the hip as she tried to escape gunfire. Trial took place from March 3-14, 2003. The defendant was convicted of aggravated assault while armed, possession of a firearm during the commission of a crime of violence, and carrying a pistol without a license. The defendant was sentenced to consecutive terms of imprisonment: twenty years for the aggravated assault while armed, thirteen years for the possession of a firearm during the commission of a crime of violence, and three years for carrying a pistol without a license.

Defense counsel:

Jon Norris
503 D Street, NW
Suite 250
Washington, DC 20001
(202) 559-1167

(7) *United States v. Gwendolyn Tann*, 03-cr-00175, (Judge Colleen Kollar-Kotelly, United States District Court for the District of Columbia). Served as lead prosecutor in bank fraud case. Defendant was charged with 18 counts of federal bank fraud, one count of federal wire fraud, and one count of fraud in the first degree under District of Columbia law. Trial took place from March 29-31, 2006 and the defendant was found guilty on all counts. The defendant was sentenced on September 7, 2006 to 30 months' incarceration on the federal fraud counts, and 10 months on the District of Columbia offense to run consecutive.

Co-counsel:

Timothy Lynch (then Assistant U.S. Attorney in the District of Columbia)
Vice President and General Counsel
University of Michigan
503 Thompson Street
5010 Fleming Building
Ann Arbor, MI 48109
(734) 764-0305

Defense counsel:

Howard Katzoff
717 D Street, NW
Suite 310
Washington, DC 20004
(202) 783-6414

(8) *United States v. Abdul Khanu*, 09-cr-00087, (Judge Colleen Kollar-Kotelly, United States District Court for the District of Columbia). Served as prosecutor in tax evasion case. The defendant ran two cash-intensive nightclubs in the District of Columbia area, VIP and Platinum, and was charged with two counts of tax evasion for the years 2002 and 2003. Law enforcement officers seized 1.9 million dollars from a safe in the defendant's Potomac, MD home. Upon my detail to DOJ's Computer Crime and Intellectual Property Section, the case was transferred and tried by another prosecutor. The defendant was found guilty.

Co-counsel:

John Roth (then Assistant U.S. Attorney in the District of Columbia)
Food and Drug Administration
Office of Criminal Investigations
10903 New Hampshire Avenue
Silver Spring, MD 20993
(240) 276-9461

Defense counsel:

William R. Martin
Martin & Gitner, PLLC
2121 K Street, NW
Suite 850
Washington, DC 20037
(202) 331-2121

Kerry Verdi
Martin & Gitner, PLLC
2121 K Street, NW
Suite 850
Washington, DC 20037
(202) 442-3511

(9) *United States v. Benjamin Stark*, 04-cr-00195, (Judge Rosemary Collyer, United States District Court for the District of Columbia). Served as lead prosecutor in case involving computer hacking of United States Government computer systems. The defendant pleaded guilty in 2004 and was sentenced in 2005.

Co-counsel:

Michelle Merola (then Assistant U.S. Attorney in the District of Columbia)
Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, NY 14202
(716) 848-1686

Defense counsel:

Gregory Lawrence Poe
Poe & Burton PLLC
1030 15th Street NW
Suite 580 West
Washington, DC 20005
(202) 583-2500

(10) *United States v. Bryan Tanner*, 05-cr-00164 (Judge Paul Friedman, United States District Court for the District of Columbia). Served as prosecutor in case involving illegal sharing of copyrighted materials over peer-to-peer networks. The defendant pleaded guilty and was sentenced in 2005.

Co-counsel:

Sherri Schornstein
United States Attorney's Office
District of Columbia
555 Fourth Street, NW
Washington, DC 20530
(202) 252-7883

Defense counsel:

Mark E. Schamel
Womble Carlyle Sandridge & Rice, LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036
(202) 857-4481

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

From 1999-2001 while serving as a trial attorney in the Tax Division's criminal section, in addition to my criminal caseload, I served on two details to United States Attorney's Offices – the District of Arizona and the District of Columbia. In each I practiced criminal litigation as a federal prosecutor; in the former, I appeared regularly in federal court and in the latter, in the Superior Court for the District of Columbia.

In October 2001, I permanently joined the United States Attorney's Office for the District of Columbia as an Assistant United States Attorney (AUSA) and continued my work as a prosecutor. I served in the following sections in Superior Court: Felony Trial; Sex Offense and Domestic Violence; and Homicide/Major Crimes sections. I also served in the Fraud and Public Corruption Section. As an AUSA, I prosecuted cases ranging from homicide and sexual offenses to cyber, intellectual property, fraud, and public corruption cases.

In 2007, I was detailed to the Criminal Division's Computer Crime and Intellectual Property section to serve as the National Coordinator of the Computer Hacking and Intellectual Property (CHIP) Program Coordinator. In that position, I coordinated the federal prosecutors specially trained to prosecute cyber crime and intellectual property cases.

In July 2007, I began another detail as AUSA serving as Special Counsel to the Director of the Federal Bureau of Investigation. As Special Counsel to the Director, I provided advice and guidance on a range of national security and law enforcement matters.

In February 2009, I became Deputy Chief of Staff and Counselor to the Director of the Federal Bureau of Investigation, and then Chief of Staff and Senior Counselor to the Director. During this time I ran the day-to-day operations of the Director's office and provided advice and guidance on national security operations and investigations as well as on criminal and law enforcement matters. I also assisted in the management and

oversight of the National Security Branch of the FBI (which is responsible for counterterrorism and counter intelligence investigations) and in the development of the intelligence capability of the FBI. I assisted the Director of the FBI and other senior executives in advancing the transformation of the FBI into a threat-based, intelligence-driven national security organization, including assessing the FBI's approach to national security cyber threats. In this capacity, I had regular interaction with representatives of the Intelligence Community, National Security Council Staff, and congressional staff.

In 2011, I moved to the National Security Division, first as Principal Deputy Assistant Attorney General and Chief of Staff, and now as Acting Assistant Attorney General. In addition to providing strategic legal advice to senior Department of Justice leaders and coordinating national security initiatives across the government for the Department, I oversee and manage the full spectrum of the National Security Division's work including the investigation and prosecution of terrorism and counterintelligence investigations, NSD's export enforcement initiative, NSD's practice before the Foreign Intelligence Surveillance Court, and the Department's participation in the inter-agency Committee for Foreign Investment in the United States (CFIUS).

I have not been a lobbyist.

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

I have not taught a full course. I have guest lectured at several law school courses, including:

Georgetown University Law Center:

October 18, 2012, guest lecturer, Professor Mary DeRosa's Seminar on Current Issues in Cyber and National Security, Washington, DC (no transcripts or notes available).

Harvard Law School:

Fall 2010, guest lecturer, Professor Philip Heymann's Seminar on Privacy, Technology, and National Security, Cambridge, MA (no transcripts or notes available).

March 26, 2012, guest lecturer, Professor Philip Heymann's Seminar on Decision-making and Leadership in the Public Sector, Cambridge, MA (no transcripts or notes available).

I have also taught a number of non-public training courses for federal prosecutors and others at the National Advocacy Center. A representative sample includes:

March 7-9 2007, faculty, Criminal Chiefs' Conference, Columbia, SC

March 28-30 2007, faculty, Computer Forensics for Prosecutors, Columbia, SC

April 11-13 2007, faculty, Basic Cybercrime and Computer-Based Evidence, Columbia, SC (taught this same course in April 2006)

June 25-29 2007, faculty, Computer Hacking and Intellectual Property Coordinators' Conference, Columbia, SC

February 6-8 2008, faculty, Criminal Chiefs' Conference, Columbia, SC

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

I participate in the Federal Thrift Savings Plan.

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

None.

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

Please see attached SF-278.

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

See attached net worth statement.

22. **Potential Conflicts of Interest**:

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official. I am not aware of any other conflicts.

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

In the event of a potential conflict of interest, I would consult the Department's designated agency ethics official.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Since I joined the Department of Justice, I have not had the opportunity to represent anyone other than the United States. As described above, I have from time to time spoken to students regarding careers in federal government service and in national security. During law school, I served in the Harvard Defenders and in the Criminal Justice Institute representing indigent clients in need of representation.

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	108,172.15			Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	508,683.20		
Real estate owned-add schedule	Est. $775,000			Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan	$294,866.21						
TIAA CREF	7,380.58						
JP Morgan Advisor guided plan, New York Individual 529, Jura S. Newman is the account owner and Sylvie R. Carlin is the beneficiary)	99,060.69			Total liabilities	508,683.20		

				Net Worth	676,735.74		
Total Assets	1,284,479.63			Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	0			Are any assets pledged? (Add schedule)	No		
On leases or contracts	0			Are you defendant in any suits or legal actions?	No		
Legal Claims	0			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	0						
Other special debt	0						

SCHEDULE OF REAL ESTATE OWNED AND MORTGAGES PAYABLE

Personal Residence
Washington, DC
Estimated Value: $775,000
Mortgage with PNC Bank (Amount Owed): $508,683.20

AFFIDAVIT

I, John Philip Carter, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/9/18
(DATE)

(NAME)

SHERYL LAFAYETTE THOMPKINS NOTARY PUBLIC MY COMMISSION EXPIRES 8 14 2018 DISTRICT OF COLUMBIA

(NOTARY)

January 6, 2014

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

Dear Mr. Chairman:

I reviewed the Senate Judiciary Questionnaire filed on November 1, 2013, in connection with my nomination to be Assistant Attorney General for National Security. I certify that, with the incorporation of additional information included below, the information contained in that document is and remains, to the best of my knowledge, true and accurate.

Question 15:

5. *United States v. Ajene Kigozi*

Final disposition:

On October 4, 2013, District of Columbia Superior Court Judge Ronna L. Beck re-sentenced defendant Ajene Kigozi.

I am also submitting an updated Financial Statement (Net Worth), which is enclosed.

Thank you and the Committee for consideration of my nomination.

Sincerely,

John P. Carlin

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Enclosure

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

   Debo Patrick Adegbile

   I also use Debo P. Adegbile or Debo Adegbile. Each is a shortened version of Adebowale Patrick Akande Adegbile, the name appearing on my birth certificate.

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

   Assistant Attorney General for Civil Rights, United States Department of Justice

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

   Office: 224 Dirksen Office Building
   Washington, DC 20510

   Residence: New York, NY

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

   1966, New York, NY

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, New York University School of Law; J.D., 1994
   1987 – 1991, Connecticut College; B.A., 1991
   1986 & 1987, Lehman College; coursework, no degree sought or received.

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

Employment

2013 – Present
United States Senate Committee on the Judiciary
224 Dirksen Office Building
Washington D.C. 20510
Senior Counsel

2001 – 2013
NAACP Legal Defense and Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013
Special Counsel (2013)
Acting President & Director Counsel (2012-2013)
Associate Director-Counsel/Director of Litigation (2010 – present)
Director of Litigation (2007 – 2010)
Associate Director of Litigation (2004 – 2007)
Assistant Counsel (2001 – 2004)

Summer 1993; 1994 – 2001
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
Associate (1994 – 2001)
Summer Associate (1993, 1994)

Summer 1992
Morrison & Foerster, LLP
1290 Avenue of the Americas
New York, NY 10104
Summer Associate

Summer 1991
Solin & Breindel, P.C.
100 East 42nd Street
New York, NY 10017
Legal Assistant

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

I have not served in the U.S. Military. I have registered for selective service.

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

   Freedom Flame Award, Annual Selma Bridge Crossing Committee/National Voting Rights Museum Institute (2013)

   Power 100 List of Nation's Most Influential Black Attorneys (2013)

   Catalyst Law List, Council of Urban Professionals (2012)

   The Root 100 List of Top African American Achievers and Influencers (2012, 2009)

   Black, Latino, Asian American Pacific American Law Alumni Distinguished Alumni Achievement Award, New York University School of Law (2012)

   Agnes Berkeley Leahy Award, Connecticut College (2011)

   Alumnus of the Month, New York University School of Law (July 2010)

   Child of America Award, George Washington Carver Community Center (2010)

   Chauncey Eskridge Award, Southern Christian Leadership Conference (2009)

   National Public Service Award, Stanford Law School (2009)

   Mentor Award, Manhattan Country School (2007)

   Urban Hero Award, The Catalog for Giving (2002)

   Anna Lord Strauss Medal, Connecticut College (1991)

   Selected by Connecticut College to Accept Point of Light Honor presented to Connecticut College's Office of Volunteer Services by President George H.W. Bush at the White House (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.

   Inn of Court

   National Bar Association

   New York City Bar Association

10. **Bar and Court Admission**:

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

New York, 1995. 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.

New York Appellate Division, First Department, 1995
United States District Court for the Southern District of New York, 1997
United States District Court for the Eastern District of New York, 1997
Supreme Court of the United States, 2003
United States Court of Appeals for the First Circuit, 2009
United States Court of Appeals for the Second Circuit, 2009
United States Court of Appeals for the Third Circuit, 1999
United States Court of Appeals for the Fourth Circuit, 2009
United States Court of Appeals for the Fifth Circuit, 2009
United States Court of Appeals for the Sixth Circuit, 2009
United States Court of Appeals for the Seventh Circuit, 2009
United States Court of Appeals for the Eighth Circuit, 2009
United States Court of Appeals for the Ninth Circuit, 2009
United States Court of Appeals for the Tenth Circuit, 2009
United States Court of Appeals for the Eleventh Circuit, 2009
United States Court of Appeals for the District of Columbia Circuit, 2010
United States District Court for the Northern District of New York, 2010
United States District Court for the District of Columbia, 2012

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.

Connecticut College
Trustee (2011)
Executive Committee (2013)
Presidential Search Committee (2013)
Trustee-Faculty Liaison Committee (2011- Present) (Chair 2013)
Student Life Enrollment and Design Committee (2011- Present)

Center for Institutional and Social Change, Columbia Law School
Advisory Board Member (2007-2008) est.

23rd Street Loft Corporation
Member, Board of Directors (2006 – 2012) est.
Shareholder (2003 – Present)

Manhattan Country School
Trustee (1995 est. – present)
Vice-Chair, Board of Trustees (1999 – 2006, 2010 – 2011)
Chair, Board of Trustees (2008 – 2010)
Member, Board of Trustees (1996 – 1998, 2007)
Assistant Treasurer, Board of Trustees (1998)
Committees have included: Executive, Finance, Real Estate, and Strategic Planning

The Catalog for Giving
Board President (1995 – 2001 est.)

I have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds and did not otherwise participate in programmatic activities although the organization may label me a member.

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

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

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

I have done my best to identify books, articles, reports, letters to the editor, editorial pieces, or other published material, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

Looking Backward To and Forward From The 2006 Voting Rights Act Reauthorization in The Most Fundamental Right: Contrasting Perspectives on the Voting Rights Act, Indiana University Press (2012). Copy to be provided.

Why Diversity in Higher Education Isn't Optional, MSNBC (October 10, 2012). http://www.msnbc.com/melissa-harris-perry/why-diversity-higher-education-isnt

Purging Democracy in the Sunshine State, The Root (June 10, 2012). Copy supplied

John Payton Left A Lasting Mark, The Root (March 29, 2012). Copy supplied.

Restoring Access to Justice: The Impact of Iqbal and Twombly on Federal Civil Rights Litigation, American Constitution Society Issue Brief (September 14, 2010) (with Joshua Civin). Copy supplied.

An Eloquent Dissenter, in *Speaking of Stevens: Practitioners, Professors and Former Law Clerks Weigh in on the Justice, His Legacy and the Future of the U.S. Supreme Court*, National Law Journal, April 19, 2010. Copy supplied.

The Vital Constitutional Conversation about Civil Rights, SCOTUSblog, (February 26, 2010, 4:05 PM). Copy supplied.

An Example of Possibility, MCS (Manhattan Country School) Courtyard, Spring 2010 (with Michèle Solá). Copy supplied.

Which Branch Decides How Much Discrimination Is Tolerable? The Voting Rights Act's Preclearance Provision Heads Back to the Supreme Court in

Northwest Austin Municipal Utility District Number One v. Holder, in America Votes!: A Guide To Modern Election Law and Voting Rights (Benjamin E. Griffith ed., Supp. 2009). Copy supplied.

Voting Rights in Louisiana, 1982-2006, 17 S. Cal. Rev. L. & Soc. Just. 413 (Spring 2008). Copy supplied.

Voting Rights Act Hits Hurdle, Albany Times Union (NY), July 6, 2006. Copy supplied.

Why Voting Still Matters, in The Unfinished Agenda of the Selma-Montgomery Voting Rights March (Editors of *Black Issues in Higher Education*, 2005) (with Theodore M. Shaw). Copy supplied.

The Price and Promise of Two Bloody Sundays, NAACP Legal Defense & Educational Fund, Inc., Airlie Website, March 10, 2005. Copy supplied.

Why Are So Many of Us Here? Members of the ECF Community Find Themselves Helping At-Risk Youths Together, ECF Reporter, Spring/Summer 2002. 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 done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Report of the Working Committees to the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts, 1997 Ann. Surv. Am. L. 117 (1997). 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.

Access to Justice Denied: Ashcroft v. Iqbal: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary,

111th Cong. 77-78 (Oct. 27, 2009) (testimony); id. at 79-92 (statement); id. at 93-101 (responses to questions). Copy supplied.

Civil Rights Under Fire: Recent Supreme Court Decisions: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary, 111th Cong. 63-64 (Oct. 8, 2009) (testimony); id. at 65-82 (statement); id. at 92-113 (responses to questions). Copy supplied.

Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views from the Field: Hearing Before the Subcomm. on the Constitution, Civil Rights and Property Rights of the S. Comm. on the Judiciary, 109th Cong. 6-8 (June 21, 2006) (statement); id. at 24-28 (responses to questions); id. at 29-81 (written responses to questions from Senators Kennedy, Leahy, Cornyn, and Coburn); id. at 129-153 (testimony). Copy supplied

Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Acts of 2006: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 38-39 (May 4, 2006) (testimony); id. at 40-55 (statement); id. at 56-72 (responses to questions). Copy supplied.

Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, Vol. 2, 109th Cong. 1592-708 (Mar. 8, 2006). A report that I prepared entitled, *Voting Rights in Louisiana, 1982-2006: A Report of RenewtheVRA.org*, was submitted as part of the appendix to the statement of Wade Henderson, Executive Director of the Leadership Conference on Civil Rights. A second report that I edited and was authored by Juan Cartagena, *Voting Rights in New York, 1982-2006: A Report of RenewtheVRA.org* was also included in this appendix. Id. at 1836-927. Copy supplied.

Testimony at the Florida Hearing of the National Commission on the Voting Rights Act on August 4, 2005, inserted into Congressional record for the Reauthorization of the Voting Rights Act by Hon. Steve Chabot, Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, Vol. 4, 109th Cong. 4526-548 (Mar. 8, 2006), and To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 569-602 (Oct. 18, 2005). Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or

recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

The list below represents all of the speeches and talks in which I participated and that I was able to identify from a search of my records, those of my former employer, the NAACP Legal Defense and Educational Fund, Inc., and from an internet search. I have attempted to identify all responsive items, however, it is possible that I may have given additional remarks that I have been unable to identify or recall. I do not typically prepare written versions of my remarks or retain any notes which may have guided my oral presentations. However, I provide any responsive written or electronic items that I could identify as indicated below.

November 12, 2013: Baruch College Campus High School lecture (New York, NY). Lectured about voting rights and Supreme Court advocacy and answered questions for two AP history classes. The address of Baruch College Campus High School is 55 West 25th Street, New York, NY 10005. No notes or transcript available.

October 23, 2013: University of Maryland Carey School of Law Moot Court Board Keynote (Baltimore, MD). Delivered keynote speech to members of the moot court team about my experiences arguing in the Supreme Court and as a civil rights lawyer. The address of University of Maryland Carey School of Law is: 500 W Baltimore Street, Baltimore Maryland 21201. No notes or transcript available.

September 25, 2013: New York University School of Law Milbank Tweed Forum Supreme Court (P) Review Panel (New York, NY). Participated on a panel addressing cases from the 2012 and 2013 Supreme Court terms. A link from the panel is provided here: http://www.youtube.com/watch?v=RTm2zNUpeVs

September 13, 2013: New York Law School Remembering the Dream Renewing the Dream Conference (New York, NY). Participated in a panel entitled "We Shall Always March Ahead" addressing the continuing efforts to protect civil rights. A link from the panel is provided here: http://www.youtube.com/watch?v=8W7KCi7Pd2c&feature=youtu.be.

September 7, 2013: Egbe Omo Yoruba of Greater Miami Valley Annual Dinner (Dayton, OH). Delivered the keynote address. The address of Egbe Omo Yoruba of Greater Miami Valley is: P.O. Box 148, Wilberforce, OH. 45385. No notes or transcript available.

August 12, 3013: University Settlement Summer Camp High School Student Career Panel (New York, NY). Presentation to high school student campers about

legal career opportunities. The address of University Settlement Houston Street Center is: 273 Bowery Street, New York, New York 10002. No notes or transcript available.

August 10, 2013: ABA Convention On the Docket 2013: The 2012-2013 Supreme Court Term (San Francisco, CA). Participated in a panel regarding the 2012 and 2013 Supreme Court terms. The address of the American Bar Association's Preview publication is: 321 North Clark Street, Chicago, Illinois 60654. No notes or transcript available.

April 23, 2013: NYU School of Law Racial Justice Clinic Guest Lecture (New York, NY). Lectured in this class regarding my experience as a civil rights and Supreme Court litigator. The address of NYU School of Law is: 40 Washington Square South, New York, NY 10012. No notes or transcript available.

April 12, 2013: George Boyer Vashon Lecture, Duane, Morris LLP (Philadelphia, PA). Delivered the Vashon Lecture and participated in the panel that followed. The address of Duane Morris is: 30 South 17th Street, Philadelphia, Pennsylvania 19103. No notes or transcript available.

March 13, 2013: ACS Chapter at Yale Law School: *Shelby County v. Holder Post-Argument Discussion* (New Haven, CT). Interviewed about the oral argument in *Shelby County v. Holder* and the legal issues in the case. The address of Yale Law School is: 127 Wall Street, New Haven, Connecticut 06511. No notes or transcript available.

March 7, 2013: New York Lawyers for the Public Interest Public Interest Transition from Law Firms Panel (New York). Participated on a panel addressing transitions from law firms to various careers in public service. The address of New York Lawyers for the Public Interest is: 151 West 30th Street, New York, NY 10001. No notes or transcript available.

March 3, 2013: Remarks at 48th Annual Edmund Pettus Bridge Crossing Rally and Introduction of Attorney General Holder (Selma, Alabama). Delivered brief remarks regarding Section 5 and introduced the United States Attorney General. No notes or transcript available.

March 2, 2013: Annual Bridge Crossing Banquet: Freedom Flame Award Delivered honoree remarks (Selma, Alabama). The address of the National Voting Rights Museum and Institute is: 6 U.S. Highway 80 East, Selma, Alabama 36701. No notes or transcript available.

March 2, 2013: Participated in an NAACP Legal Defense Fund, Inc. sponsored panel regarding *Shelby County v. Alabama* (Selma, Alabama). The address of the NAACP Legal Defense and Educational Fund, Inc. is 40 Rector Street, New

York, NY 10006. A link from that panel is provided here http://www.youtube.com/watch?v=RA_DrewC3Vs.

February 9, 2013: Stanford Law School the SCOTUS at Mid-Term Conference (Stanford, CA). Participated in a discussion of the civil rights cases before the United States Supreme Court during the 2012 term. The address of Stanford Law School is: Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305-8610. No notes or transcript available.

January 3, 2013: Shelby County Community Meeting (Shelby County, Alabama). Spoke at a church community meeting regarding *Shelby County v. Holder*. A link to the speech is provided here: http://www.youtube.com/watch?v=Y68CuNira9U

November 19, 2012: NYU School of Law Critical Narratives in Civil Rights Guest Lecture (New York, NY). Lectured regarding experiences as a civil rights litigator. The address of NYU School of Law is: 40 Washington Square South, New York, NY 10012. No notes or transcript available.

November 11, 2012: NAACP Legal Defense and Educational Fund, Inc., Princeton Committee Speech and Panel (Princeton, NJ). Delivered remarks and participated in a discussion regarding the NAACP Legal Defense Fund's advocacy. The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

November 1, 2012: NAACP Legal Defense and Educational Fund, Inc. Delivered National Equal Justice Awards Dinner remarks (New York, NY). Remarks supplied.

October 25, 2012: Connecticut College Mellon Sophomore Seminar Lecture (New London, CT). Lectured on voting rights issues. The address of Connecticut College is: 270 Mohegan Avenue, New London, Connecticut 06320. No notes or transcript available.

October 4, 2012: Century Foundation Panel on *Fisher v. University of Texas* (Washington, DC). Participated on a panel regarding the *Fisher v. University of Texas* case which, I understand, was broadcast on CSPAN. http://www.c-spanvideo.org/program/CollegeAd.

September 29, 2012: 25th Annual Supreme Court Preview, Institute of Bill of Rights Law, William & Mary Law School (Williamsburg, VA). Participated in a preview panel on election law and another panel on the Supreme Court. A link from the election law panel is provided here: http://www.youtube.com/watch?v=AHDr9j-H-Xg.

September 27, 2012: A Conversation with Professor Frasure at the Yale Club (New York, NY). Participated in a panel discussion with Connecticut College

Professor, William Frasure on civil rights topics and our experiences as Professor and student at Connecticut College. The address of Connecticut College is: 270 Mohegan Avenue, New London, CT 06320. No notes or transcript available.

September 19, 2012: University of Maryland Carey School of Law Faculty Luncheon Speaker and separate student lecture (Baltimore, MD). Delivered remarks to the faculty regarding civil rights cases in the United States Supreme Court, and separately a group of students regarding voting rights. The address of the University of Maryland, Carey School of Law is: 500 West Baltimore Street, Baltimore, MD 21201. No notes or transcript available.

August 30, 2012: Connecticut College Convocation Speech (New London, CT). Delivered the convocation keynote speech and offered remarks on *Fisher v. University of Texas*. A link to the speech is provided here: http://www.conncoll.edu/news/event-releases/debo-adegbile-91-delivers-keynote-address-during-convocation.htm.

August 18, 2012: LDF Martha's Vineyard Voting Rights Panel (West Tisbury, MA). Participated in a panel discussing voting rights topics. The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

July 26, 2012: National Urban League Convention, Remarks (New Orleans, LA). Addressed a plenary session during the National Urban League's convention regarding significant cases in the United States Supreme Court in the 2012 Term. The address of the National Urban League is: 120 Wall Street, New York, NY 10005. No notes or transcript available.

July 17, 2012: National Bar Association Civil Rights Committee United States Supreme Court Review Panel (Las Vegas, Nevada). Participated on a panel addressing cases from the 2011 Supreme Court Term. The address of the NBA is: 1225 11th Street, NW, Washington, DC 20001. No notes or transcript available.

July 9, 2012: NAACP Convention Greeting (Houston, Texas). Addressed the conferees regarding Supreme Court civil rights cases in the coming term. The address of the NAACP is: 4805 Mt. Hope Drive, Baltimore, MD 21215. No notes or transcript available.

May 15, 2012: The Edward Coke Appellate Inn of Court (Washington, DC). Participated on a panel reflecting on the life and legacy of John Payton, a Master of the Inn. The address of the Edward Coke Inn of Court is: Howard T. Markey National Courts Bldg., 717 Madison Place, N.W., Washington, DC 20439. No notes or transcript available.

April 16, 2012: John Payton Memorial (Washington, DC). Delivered a memorial tribute to my late colleague, mentor and friend. No notes or transcript available.

March 30, 2012: Black Latino Asian and Pacific Islander Law Alumni Association Spring Dinner, Distinguished Alumnus Award Acceptance Address (New York, NY). Delivered honoree remarks regarding the professional contributions of recently deceased and prominent members of the bar. The address of the Black Latino Asian Pacific Islander Alumni Association's address is: 40 Washington Square South, New York, NY 10012. No notes or transcript available.

November 11, 2011: Connecticut College Alumni of Color, Keynote Speech (New London, Connecticut). Delivered remarks regarding my Connecticut College experience. The address of Connecticut College is: 270 Mohegan Avenue, New London, Connecticut 06320. No notes or transcript available.

October 7, 2011: LDF Civil Rights Training Institute (Warrenton, VA). Participated in a panel entitled, "LDF Perspectives on the Current Supreme Court Term." The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

October 5, 2011: Congressional Black Caucus Redistricting Committee Meeting (Washington, DC). Delivered remarks on Voting Rights Act compliance in the redistricting process. The address of the CBC is: 1433 Longworth House Office Building, Washington, DC 20515. No notes or transcript available.

August 16, 2011: A Better Chance Scholars Career Panel (New York, NY). Participated in a career panel for current ABC scholars. The address of A Better Chance is: 253 West 35th Street, New York, NY 10001. No notes or transcript available.

June 11, 2011: NYC Public School 3 (New York, NY). Spoke with a fourth grade class about civil rights. The address of NYC Public School 3 is: 490 Hudson Street, New York, NY 10014. No notes or transcript available.

June 8, 2011: Big Decisions: A Discussion of Recent and Upcoming SCOTUS Cases, Netroots Conference (Providence, Rhode Island). Participated on a panel discussing Supreme Court cases. A link to the panel is provided here: http://www.netrootsnation.org/nn_events/nn-12/scotus-big-decisions/

May 31, 2011: Manhattan Country School Mathematics Fair, Mathematics and Social Justice Lecture (New York, NY). Delivered remarks regarding some of the uses of math and data in civil rights cases. No notes or transcript available.

December 17, 2010: Public Interest Law Institute (now known as PILnet), Fellows' Visit to LDF (New York, NY). Made presentation on civil rights topics. The address of PILnet is: 333 Seventh Avenue, 14th floor, New York, NY 10001. No notes or transcript available.

December 14, 2010: Mexican American Legal Defense and Educational Fund (MALDEF) Redistricting Meeting (San Antonio, TX). Presentation regarding compliance with the Voting Rights Act. The address of MALDEF is: 634 South Spring Street, Los Angeles, CA 90014. No notes or transcript available.

November 1, 2010: "The Unfinished Work": Advancing New Strategies in the Struggle for Civil Rights, University of North Carolina Center for Civil Rights (Chapel Hill, NC). Participated in a panel entitled, "The Challenge." The address of the University of North Carolina Center for Civil Rights is: 101 East Weaver Street, Chapel Hill, NC 27599-3382. No notes or transcript available.

October 28, 2010: NYC Public School 3 (New York, NY). Spoke with a fourth grade class about civil rights, the role of young people in the civil rights movement, and the work of LDF. The address of NYC Public School 3 is: 490 Hudson Street, New York, NY 10014. No notes or transcript available.

October 25, 2010: New York Law School (New York, NY). Guest lecture in a constitutional law class. The address of New York Law School is: 185 West Broadway, New York, NY 10013. No notes or transcript available.

October 14, 2010: Redistricting 2011: Mapping Political Power for the Decade, Open Society Institute (New York, NY). Participated in panel regarding redistricting following the 2010 census. Audio file supplied.

October 8, 2010: LDF Voting Rights and Redistricting Training Institute (Warrenton, VA). Moderated a panel entitled, "Litigation Strategies: Ensuring Protection of Minority Voting Rights." The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

October 8, 2010: LDF Civil Rights Training Institute (Warrenton, VA). Moderated a panel entitled, "The Future of Impact Claims in Civil Rights Cases." The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

September 24-25, 2010: 23rd Annual Supreme Court Preview, Institute of Bill of Rights Law, William & Mary Law School (Williamsburg, VA). Participated in a panel on individual rights and in an election law breakout panel. The address of the Institute of Bill of Rights Law is: P.O. Box 8795, 613 South Henry Street, Williamsburg, VA 23187. No notes or transcript available.

August 11, 2010: National Bar Association 85th Annual Convention (New Orleans, LA). Participated in a CLE panel, co-sponsored by the Judicial Council, entitled, "Recent Civil Rights Decisions by the Reconstituted U.S. Supreme Court." No notes or transcript available.

July 26, 2010: Skadden, Arps Honors Program in Legal Studies, City College of New York Honors Program (New York, NY). Made presentation to college students about civil rights and participated in a question and answer session. The address of the City College of New York Honors Program is: Honors Center, North Academic Building, 160 Convent Avenue, New York, NY 10031. No notes or transcript available.

June 18, 2010: American Constitution Society 2010 National Convention (Washington, DC). Participated in a panel entitled, "Access to Federal Courts after *Iqbal* and *Twombly*." Video file supplied.

May 14, 2010: George Washington Carver Community Center Dinner (Darien, CT). Delivered an honoree acceptance speech upon receiving the George Washington Carver Community Center's Child of America Award. The address of the George Washington Carver Community Center is: 7 Academy Street, Norwalk, CT 06850. No notes or transcript available.

May 13, 2010: LDF Spring Luncheon (Washington, DC). Moderated a discussion with John Payton, LDF's President and Director-Counsel, and Seth Waxman, partner at WilmerHale LLP, on civil rights decisions of the Supreme Court, and LDF's role in them. No notes or transcript available.

April 15, 2010: Post-Racial America?: Reconciling Progress and the Continuing Salience of Race in the Age of President Obama, Yale Law School Chapter of the American Constitution Society (New Haven, CT). Made a presentation about recent developments in voting rights law and about the Voting Rights Act. The address of Yale Law School is: 127 Wall Street, New Haven, CT 06511. No notes or transcript available.

March 4, 2010: Voting Rights Since 2000: Have We Made Progress? Demos (New York, NY). Participated in a panel about voting rights. The address of Demos is: 220 Fifth Avenue, 5th Floor New York, NY 10001. Video file supplied.

February 1, 2010: One Destiny: Reclaiming the Dream, Connecticut College (New London, CT). Speaker in celebration of Black History Month. The address of Connecticut College is: 270 Mohegan Ave., New London, CT 06320. No notes or transcript available.

January 11, 2010: New York University School of Law (New York, NY). Delivered the first Public Leaders' Lecture of 2010. The address of New York University Law School is: 40 Washington Square South, New York, NY 10012. No notes or transcript available.

November 30, 2009: Connecticut College (New London, CT). Lectured in government class regarding my experiences at Connecticut College, in law school, and as a litigator, including my experience arguing before the United States Supreme Court. The address of Connecticut College is: 270 Mohegan Ave., New London, CT, 06320. No notes or transcript available.

November 3, 2009: Stanford Law School (Stanford, CA). I delivered a speech entitled, "Charting a Path as a Modern Civil Rights Lawyer." Transcript supplied.

November 3, 2009: Stanford Law School (Stanford, CA). Lectured in education policy class regarding education litigation and policy. The address of Stanford Law School is: 559 Nathan Abbott Way, Stanford, CA 94305-8610. No notes or transcript available.

November 2, 2009: Stanford Law School (Stanford, CA). Delivered honoree remarks after receiving Stanford Law School's 2009 National Public Service Award. The address of Stanford Law School is: 559 Nathan Abbott Way, Stanford, CA 94305-8610. No notes or transcript available.

November 2, 2009: Stanford Law School (Stanford, CA). Participated in a question and answer session with students in Stanford Law School's Supreme Court Law Clinic regarding Supreme Court advocacy and the work of LDF. The address of Stanford Law School is: 559 Nathan Abbott Way, Stanford, CA 94305-8610. No notes or transcript available.

October 30, 2009: Columbia Law School (New York, NY). Participated in panel during a class at Columbia Law School regarding the future of pro bono representation. The address of Columbia Law School is: 435 West 116th Street, Mail Code 4004, New York, NY 10027-7297. No notes or transcript available.

October 4, 2009: Constitution in 2020, Yale Law School (New Haven, CT). Participated in panel discussion entitled, "The Constitution in 2020: Getting There from Here." The address of Yale Law School is: 127 Wall Street, New Haven, CT 06511. No notes or transcript available.

October 1, 2009: LDF Civil Rights Training Institute (Warrenton, VA). Participated in a panel entitled, "Defending Civil Rights in the Current Supreme Court." The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

September 25, 2009: Congressional Black Caucus Foundation 39th Annual Legislative Conference (Washington, DC). Participated in a panel entitled, "A. Leon Higginbotham Memorial Voting Rights Braintrust." The address of the Congressional Black Caucus Foundation is: 1720 Massachusetts Avenue, NW, Washington, DC 20036. No notes or transcript available.

September 24, 2009: Penn Law Supreme Court Review & Preview, University of Pennsylvania Law School Chapter of the American Constitution Society (Philadelphia, PA). Participated in panel regarding term's Supreme Court cases. The address of the University of Pennsylvania Law School Chapter of the American Constitution Society is: 3400 Chestnut Street, Philadelphia, PA 19104. No notes or transcript available.

September 24, 2009: American Constitution Society 2008-2009 Supreme Court Review & Preview (Washington, DC). Participated in this panel. The address of the American Constitution Society is: 1333 H Street, NW, 11th Floor, Washington, DC 20005. No notes or transcript available.

August 6, 2009: National Bar Association Annual Convention (San Diego, CA). Participated in panel about the recent Supreme Court term. The address of the National Bar Association is: 1225 11th Street, NW, Washington, DC 20001. No notes or transcript available.

August 3, 2009: Southern Christian Leadership Conference Annual Conference (Memphis, TN). Delivered honoree remarks upon receiving the Chauncey Eskridge Award. The address of the Southern Christian Leadership Conference is: P.O. Box 89128, Atlanta, GA 30312. No notes or transcript available.

June 10, 2009: The Salk School of Science (New York, NY). Spoke at this public middle school regarding the Voting Rights Act and the oral argument in *Northwest Austin Municipal Utility District No. 1 v. Holder*. The address of the Salk School is: 320 East 20th Street, New York, NY 10003. No notes or transcript available.

June 6, 2009: Julius Chambers Golf Tournament (Port St. Lucie, FL). Delivered remarks regarding *Northwest Austin Municipal Utility District No. 1 v. Holder* and the Supreme Court oral argument in that case. The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

January 23, 2009: Manhattan County School (New York, NY). Spoke with sixth grade class regarding civil rights and voting rights topics. The address of Manhattan County School is: 7 East 96th Street, New York, NY 10128. No notes or transcript available.

November 14, 2008: National Symposium: The Second Founding and the Reconstruction Amendments, American Constitution Society (Philadelphia, PA). Participated in panel about the enforcement powers of the Reconstruction Amendments. The address of the American Constitution Society is: 1333 H St, NW, 11th Floor, Washington, DC 20005. No notes or transcript available.

October 15, 2008: Public School 3 (New York, NY). Spoke with my daughter's class and discussed voting and civil rights topics. The address of Public School 3 is: 490 Hudson Street New York, NY 10014. No notes or transcript available.

October 2, 2008: LDF Civil Rights Training Institute (Warrenton, VA). Participated in a panel entitled, "Have We Reached a Post-Racial Era?: Progress and Retrenchment in the Struggle for Minority Voting Rights." The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

September 24, 2008: American Constitution Society 2008-2009 Supreme Court Preview (Washington, DC). Participated in a preview panel regarding the Supreme Court term. The address of the American Constitution Society is: 1333 H Street, NW, 11th Floor, Washington, DC 20005. No notes or transcript available.

September 19, 2008: American Bar Association 2008 Fall Council Meeting, Section of State and Local Government Law (Chicago, IL). Participated in a panel entitled, "Election 2008: Complying with Federal Voting Rights Laws." PowerPoint prepared by co-panelist supplied.

September 15, 2008: Census and Redistricting: A Funders' Committee for Civic Participation (FCCP) Funder Convening, (Chicago, IL). Participated in a panel entitled, "Focus on Redistricting." The address of FCCP is: 221 NW Second Avenue, Suite 207, Portland, OR 97209. No notes or transcript available.

January 22, 2008: Fordham Law School (New York, NY). Lectured constitutional law class about the reauthorization of the Voting Rights Act. The address of Fordham Law School is: 140 West 62nd Street, New York, NY 10023. No notes or transcript available.

October 20, 2007: Why We Can't Wait: Reversing the Retreat on Civil Rights (Durham, NC). Participated in a panel entitled, "Where Do We Go From Here: Action-Oriented Next Steps." The names and addresses of the sponsoring organizations are: North Carolina Central University School of Law, 640 Nelson

Street, Durham, NC 27707; University of North Carolina School of Law, 160 Ridge Road, Chapel Hill, NC 27599-3380; Duke University School of Law, 210 Science Drive, Durham, NC 27708; The Leadership Conference Education Fund, 1629 K Street NW, 10th Floor, Washington, DC 20006; and the National Campaign to Restore Civil Rights, 307 Seventh Avenue, Suite 1201, New York, NY 10001. No notes or transcript available.

September 28, 2007: Congressional Black Caucus Foundation 2007 Annual Legislative Conference: Unleashing Our Power (Washington, DC). Participated in a panel about the Voting Rights Act. The address of the Congressional Black Caucus Foundation is: 1720 Massachusetts Avenue, NW, Washington, DC 20036. No notes or transcript available.

August 3, 2007: YearlyKos Convention: Building a Netroots Nation (Chicago, IL). Participated in a panel entitled, "Ensuring Every Vote is Counted." The address of YearlyKos, now called Netroots Nation, is: 60 29th Street #664, San Francisco, CA 94110. No notes or transcript available.

July 31, 2007: Access to Democracy: Removing Barriers to Full and Equal Participation, the Decade Ahead, University of California Washington Center (Washington, DC). Participated in a panel about voting rights. The address of the University of California Washington Center is: 1608 Rhode Island Avenue, NW, Washington, DC 20036. No notes or transcript available.

April 27, 2007: Practicing Democracy: How Political Arrangements Promote Equal Citizenship . . . or Not, Ash Institute for Democratic Governance and Innovation, John F. Kennedy School of Government, Harvard University (Cambridge, MA). Commentator in a session entitled, "Representing Groups." The address of the Ash Institute for Democratic Governance and Innovation is: 79 John F. Kennedy Street Cambridge, MA 02138. No notes or transcript available.

April 7, 2007: A Conference on Elections and Democracy, Stanford Law School Chapter of the American Constitutional Society (Stanford, CA). Participated in a panel entitled, "Voter Representation." No notes or transcript available.

December 15, 2006: Public School 3 (New York, NY). Spoke with my daughter's class and discussed civil rights topics. The address of Public School 3 is: 490 Hudson Street, New York, NY 10014. No notes or transcript available.

November 13, 2006: Williams College (Williamstown, MA). Lectured government class on voting rights topics. The address of Williams College is: 880 Main Street, Williamstown, MA 01267. No notes or transcript available.

October 6, 2006: LDF Civil Rights Training Institute (Warrenton, VA). Participated in a panel entitled, "Current Challenges for Voting Rights Advocates: Mining the Lessons of the VRA Renewal and Looking Beyond." The address of

the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

September 25, 2006: Fordham Law School (New York, NY). Lectured on the Voting Rights Act. The address of Fordham Law School is: 140 West 62nd Street, New York, NY 10023. No notes or transcript available.

September 19, 2006: Columbia Law School (New York, NY). Participated in a panel on the Voting Rights Act. The address of Columbia Law School is: 435 West 116th Street, New York, NY 10027-7297. No notes or transcript available.

July 17, 2006: University of North Carolina School of Law (Chapel Hill, NC). Lectured about the Voting Rights Act reauthorization. The address of the University of North Carolina School of Law is: 160 Ridge Road, Chapel Hill, NC 27599. No notes or transcript available.

June 18, 2006: American Constitution Society 2006 National Convention (Washington, DC). Participated in a panel entitled, "Renewing the Voting Rights Act: What Should it Say?" The address of the American Constitution Society is: 1333 H Street, NW, 11th Floor, Washington, DC 20005. No notes or transcript available.

April 7, 2006: W(h)ither the Voting Rights Act? Agreements and Contestations in the Debate on its Renewal, John Hope Franklin Center, Duke University (Durham, NC). Participated in a panel about the Voting Rights Act. The address of the John Hope Franklin Center is: Box 90402, 2204 Erwin Road, Durham, NC 27708-0402. No notes or transcript available.

March 25, 2006: Southern University Law Center (Baton Rouge, LA). Participated in a panel about the Voting Rights Act. The address of the Southern University Law Center is: 2 Roosevelt Steptoe Drive, Baton Rouge, LA 70813. No notes or transcript available.

March 9, 2006: Conference on the Voting Rights Act: Strengthening Diversity in Democracy, Congressional Black Caucus Foundation (Washington, DC). Participated in a panel entitled, "The Future of the Voting Rights Act: Legislative Challenges and Remedies." The address of the Congressional Black Caucus Foundation is: 1720 Massachusetts Avenue, NW, Washington, DC 20036. No notes or transcript available.

March 1, 2006: The Advocates Speak: Texas Redistricting Cases, American Constitution Society (Washington, DC). Participated in redistricting panel. The address of the American Constitution Society is: 1333 H Street, NW, 11th Floor, Washington, DC 20005. No notes or transcript available.

February 9-11, 2006: Making History Again: HBCU Student Leaders' Training of Trainers on the Reauthorization of the Voting Rights Act, multiple sponsors including LDF, CourtTV, and Clark Atlanta University (Atlanta, GA). Moderated a panel about the Voting Rights Act. The address of Clark Atlanta University is: 223 James P. Brawley Drive, SW, Atlanta, GA 30314. The address of CourtTV, now truTV, is: One Time Warner Center, New York, NY 10019-6038. No notes or transcript available.

February 9, 2006: Protecting Democracy: Using Research to Inform the Voting Rights Reauthorization Debate, University of California, Berkeley, School of Law, Institute for Governmental Studies, and Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity (Washington, DC). Participated in a panel entitled, "If Section 5 Is Reauthorized, Should It Be Modified?" The address of the Institute for Governmental Studies is: 109 Moses Hall, #2370, Berkeley, CA 94720-2370. The address of the Warren Institute is: 2850 Telegraph Avenue, Suite 500, Berkeley, CA 94705-7220. No notes or transcript available.

February 3, 2006: Who Draws the Lines? The Consequences of Redistricting Reform for Minority Voters, University of North Carolina Center for Civil Rights Annual Conference (Chapel Hill, NC). Participated in a panel entitled, "Redistricting in 2010: How Have the Rules Changed and What are the Current Proposals for Reform?" The address of the Center for Civil Rights is: 101 East Weaver Street, Chapel Hill, NC 27599-3382. No notes or transcript available.

January 14, 2006: NAACP (Orlando, FL). Delivered a speech on the Voting Rights Act during a Martin Luther King Day event. The address of the NAACP is: 4805 Mount Hope Drive, Baltimore, MD 21215. No notes or transcript available.

December 5, 2005: CourtTV (New York, NY). Participated in a panel about the Voting Rights Act and civil rights. The address of Court TV, now TruTV, is: One Time Warner Center, New York, NY 10019-6038. No notes or transcript available.

November 19, 2005: William C. Velasquez Institute Conference (San Antonio, TX). Participated in a panel about the Voting Rights Act. The address of WCVI is: Kelly USA, Building 1670, 206 Lombard Street, 1st Floor, San Antonio, TX 78226. No notes or transcript available.

November 18, 2005: Florida Conference on Black State Legislators (Orlando, FL). Delivered remarks regarding independent redistricting commissions and redistricting. The address of the Florida Conference on Black State Legislators is: 400 North Adams Street, Tallahassee, FL 32301-1162. No notes or transcript available.

November 10, 2005: Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act, University of Michigan Law School Voting Rights Initiative (Ann Arbor, MI). Participated in a panel about the Voting Rights Act. The address of the University of Michigan Law School Voting Rights Initiative is: 625 South State Street, Ann Arbor, MI 48109. No notes or transcript available.

November 8, 2005: New York University School of Law (New York, NY). Delivered remarks regarding the Voting Rights Act to the law school's Root Tilden Scholars. The address of New York University Law School is: 40 Washington Square South, New York, NY 10012. No notes or transcript available.

November 4, 2005: Good Day New York, Fox 5 Morning Show (New York, NY). Participated in a panel regarding civil rights. The address of Fox Television Stations is: 205 East 67th Street, New York, NY 10065. No notes or transcript available.

November 2, 2005: Columbia Law School (New York, NY). Participated in a panel regarding the Voting Rights Act. The address of Columbia Law School is: 435 West 116th Street, New York, NY 10027. No notes or transcript available.

November 1, 2005: Voting after Katrina: Ensuring Meaningful Participation, Center for American Progress & American Constitution Society (Washington, DC). Transcript supplied.

October 29, 2005: LDF Civil Rights Training Institute (Warrenton, VA). Moderated a panel entitled, "The Voting Rights Act at 40." The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

October 21, 2005: University of South Carolina Law School Voting Rights Symposium (Columbia, SC). Participated in a panel entitled, "Anticipating the 2007 Preclearance Reauthorization Debate." The address of the University of South Carolina Law School is: 701 Main Street, Columbia, SC 29208. No notes or transcript available.

September 30, 2005: Election Reform: Voting Rights for the New Millennium, University of the District of Columbia Law Review (Washington, DC). Participated in a panel entitled, "Voting Rights Act of 1965." The address of the University of the District of Columbia Law Review is: 4200 Connecticut Avenue NW, Building 38, 2nd Floor, Washington, DC 20008. No notes or transcript available.

September 12, 2005: National Association for Multi-Ethnicity in Communications (NAMIC), 19th Annual Conference (New York, NY). Participated in a panel

regarding the Voting Rights Act. The address of NAMIC is: 320 West 37th Street, 8th Floor, New York, NY 10018. No notes or transcript available.

August 18, 2005: Teamsters National Black Caucus 30th Annual Education Conference (Chicago, IL). Participated in a panel about civil rights. The address of the Teamsters National Black Caucus is: P.O. Box 16707, Memphis, TN 38186-0707. No notes or transcript available.

August 4, 2005: National Bar Association 80th Annual Convention (Orlando, FL). I offered testimony at an event entitled, "Hearing of the National Commission on the Voting Rights Act." Transcript supplied.

June 9, 2005: Extending the Voting Rights Act: Mobilizing New York City, Demos (New York, NY). Participated in a Voting Rights Act panel. The address of Demos is: 220 Fifth Avenue, 5th Floor, New York, NY 10001. No notes or transcript available.

May 26, 2005: Coalition of Black Trade Unionists 34th Annual Convention (Phoenix, AZ). Participated in a panel regarding the Voting Rights Act. A press report is supplied. The address of the Coalition of Black Trade Unionists is: 1150 17th Street, NW, Suite 300, Washington, DC 20036. No notes or transcript available.

May 17, 2005: Why the Voting Rights Act Still Matters: A New York Panel Discussion, Demos, Lawyers' Committee for Civil Rights Under Law, LDF, New York Voting Rights Consortium, and Community Service Society (CSS) (New York, NY). Participated in a Voting Rights Act panel. The address of Demos is: 220 Fifth Avenue, 5th Floor, New York, NY 10001. The address of the Lawyers' Committee for Civil Rights Under Law is: 1401 New York Avenue, NW, Suite 400, Washington, DC 20005. The address of CSS is: 105 East 22nd Street, New York, 10010. No notes or transcript available.

April 22, 2005: Lessons From the Past, Prospects for the Future: Honoring the 40th Anniversary of the Voting Rights Act of 1965, Center for the Study of American Politics, Yale University (New Haven, CT). Participated in panel regarding the Voting Rights Act. The address of the Center for the Study of American Politics is: Yale University, 77 Prospect Street, New Haven, CT 06520-8209. No notes or transcript available.

April 20, 2005: Coalition of Black Trade Unionists Regional Meeting (Miami, FL). Participated on a panel regarding the Voting Rights Act.
The address of the Coalition of Black Trade Unionists is: 1150 17th Street, NW, Suite 300, Washington, DC 20036. No notes or transcript available.

April 19, 2005: The Voting Rights Act at 40: Past, Present, and Future Challenges, School of Public Affairs, Bernard M. Baruch College (New York, NY). Participated in a Voting Rights Act panel. No notes or transcript available.

March 31, 2005: Metropolitan Black Bar Association (affiliate of the National Bar Association) (New York, NY). Participated in a Voting Rights Act panel. The address of the Metropolitan Black Bar Association is: 275 Madison Avenue, 14th Floor, New York, NY 10016. No notes or transcript available.

March 22, 2005: The March 2005 Metro-Atlanta Monthly Mass Meeting, Social Justice Ministry of the First Iconium Baptist Church (Atlanta, GA). Participated in a panel entitled, "The 40th Anniversary of The Voting Rights Act of 1965: The Past, The Present and the Future." The address of the First Iconium Baptist Church is: 542 Moreland Avenue, SE, Atlanta, GA 30316. No notes or transcript available.

February 19, 2005: Looking Back and Moving Forward: Commemorating the Civil Rights Act and Voting Rights Act, Stanford Law School (Stanford, CA). Participated in a panel entitled, "1965 Voting Rights Act." The address of Stanford Law School is: 559 Nathan Abbott Way, Stanford, CA 94305-8610. No notes or transcript available.

February 18, 2005: Voting Rights Act Symposium, Columbia Law School (New York, NY). Participated in panel regarding Voting Rights Act. The address of Columbia Law School is: 435 West 116th Street, New York, NY 10027-7297. No notes or transcript available.

December 17, 2004: Weil, Gotshal & Manges LLP, Voting Rights Litigation Presentation (New York, NY). Delivered remarks regarding voting rights litiagtion. The address of Weil, Gotshal & Manges LLP is: 767 Fifth Avenue, New York, NY 10153. No notes or transcript available.

November 11, 2004: Applied Research Center, Race and Public Policy Conference (Berkeley, CA). Participated in a panel entitled, "The Impact of the 2004 Election on the Voting Rights Act Reauthorization." The address of the Applied Research Center is: 32 Broadway, Suite 1801, New York, NY 10004. No notes or transcript available.

October 25, 2004: Felony Disenfranchisement: A Latino Civil Rights Issue, Mexican American Legal Defense & Educational Fund (MALDEF), and Community Service Society (CSS) (New York, NY). Participated in roundtable discussion. The address of MALDEF is: 634 South Spring Street, Los Angeles, CA 90014. The address of CSS is: 105 East 22nd Street, New York, 10010. No notes or transcript available.

October 9, 2004: LDF Civil Rights Training Institute (Warrenton, VA). Moderated a workshop entitled, "VRA Reauthorization: Revisiting History to Provide for the Future." The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

October 4-27, 2004: Election Protection Program Training Sessions, multiple sponsors including LDF, the Lawyers' Committee for Civil Rights Under Law, NAACP, and People for the American Way (New York, NY). Conducted numerous training sessions for hotline and poll watcher volunteers in locations throughout New York City on behalf of this national, non-partisan voter education and election protection program. The address of the Lawyers' Committee for Civil Rights Under Law is: 1401 New York Avenue, NW, Suite 400, Washington, DC 20005. The address of NAACP is: 4805 Mt. Hope Drive, Baltimore, MD 21215. The address of People for the American Way is: 2000 M Street NW, Suite 400, Washington, DC 20036. No notes or transcript available.

August 13, 2004: CORO Leadership Fellows Program (New York, NY). Made presentation to the CORO Fellows about civil rights advocacy. The address of CORO is: 42 Broadway, Suite 1827-35, New York, NY 10004. No notes or transcript available.

August 10, 2004: National Bar Association 79th Annual Convention (Charlotte, NC). Participated in a panel entitled, "Redistricting: Friend or Foe of a Fair Electoral Process." The address of the National Bar Association is: 1225 11th Street, NW Washington, DC 20001. No notes or transcript available.

October 25, 2003: LDF Civil Rights Training Institute (Warrenton, VA). Participated in a panel entitled, "Developments in Voting Rights and Political Participation." The address of the NAACP Legal Defense and Educational Fund, Inc. is: 40 Rector Street, New York, NY 10006. No notes or transcript available.

June 3, 2002: The Catalog for Giving, Urban Heroes Award Dinner, (New York, NY). Delivered honoree remarks after receiving an Urban Heroes Award. The address of The Catalog for Giving is: 38 West 32nd Street, Suite 1312 New York, NY 10011. No notes or transcript available.

January 28, 1999: Memorial for A. Leon Higginbotham Jr., Paul, Weiss, Rifkind, Wharton, & Garrison (New York, NY). Delivered remarks at Judge Higginbotham's memorial. Remarks supplied.

Spring 1997: Morris High School (Bronx, NY). Guest speaker at this public school in the Bronx on or around May 1, 1997 regarding the practice of law. The address of Morris High School is: 110 Boston Road, Bronx, NY 10456. No notes or transcript available.

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

I have searched my records and electronic databases to refresh my memory and to produce a complete list of interviews, but it is possible there are some clips that I was unable to identify or locate. In connection with my work at the NAACP Legal Defense & Educational Fund, Inc. (LDF), I have done many radio interviews, and several of these radio spots are listed below. These radio interviews are, however, episodic and often conducted without much notice. Accordingly, it is likely that I have been unable to identify some radio clips and, except as indicated below, do not have records of the dates of their recording date or airing. Some of the newspaper articles or other media listed may feature quotations of mine from LDF press releases or public events, rather than from actual interviews.

Joyce Jones, The Jacksonville Free Press, *Affirmative Action Faces a Supreme Test in High Court*, October 11, 2013. Copy supplied.

New York Law School, Student Podcast Interview, September 13, 2013. No transcript available.

Big Captain Defends the Vote, Winnebago Alumni Newsletter, Summer 2013. Copy supplied.

All In with Chris Hayes, MSNBC, June 25, 2013. Transcript supplied.

The Cycle, MSNBC, June 25, 2013. Video file unavailable.

Richard Wolf, USA Today, *Section Affects Which States Subject to Law; Portion Required Them to Get OK on Changes*, June 26, 2013. Copy Supplied.

Bill Mears, CNN Wire, *Justices to Rule Soon on Divisive Voting Rights Case*, June 23, 2013. Copy supplied.

Bill Mears, CNN, *Court Set to Rule on Race in College Admissions*, June 8, 2013. Copy supplied.

Bill Mears, CNN.com, *Court Set to Rule on Race in College Admissions*, June 7, 2013. Copy supplied.

Jake Miller, CBS News, *Scalia: Voting Rights Act a "Racial Preferment,"* April 17, 2013. Copy Supplied.

Virginia Legislators Approve Voter ID Law, May Kill Chances for Federal Bailout, Legal Monitor Worldwide, March 5, 2013. Copy Supplied.

Mary Orndorff Troyan, The Greenville News, *Minority Districts May Be in Danger*, March 5, 2013. Copy supplied.

Phillip Rawls, Associated Press, *Biden Leads Re-enactment Voting Rights March*, March 4, 2013. Copy supplied.

The Cycle, MSNBC, March 8, 2013. Link: http://video.msnbc.msn.com/the-cycle/51105742#51105742

CNN Sunday Morning, CNN, March 3, 2013. Transcript supplied.

Up with Chris Hayes, MSNBC, March 2, 2013. Transcript supplied.

The American Prospect Blog, *Change Is Bad At Least for the VRA*, March 1, 2013. Copy supplied.

Mary Orndorff Troyan, Gannett News Service, *Minority DistrictsAt Issue In Voting Rights Case*, March 1, 2013. Copy supplied.

Jan Crawford, *Supreme Court Divided on Voting Rights Act*, CBS News, February 28, 2013. Copy Supplied.

NBC Nightly News, February 27, 2013. Transcript supplied.

CBS Evening News, February 27, 2013. Transcript supplied.

Hispanically Speaking News, *NAACP [sic] Presents Oral Argument Urging the Supreme Court to Uphold Voting Rights Act*, February 27, 2013. Copy supplied.

International Business Times, *Supreme Court Could Strike Down Key Part of Voting Rights Act, Apparently Racism Isn't A Problem in the South*, February 27, 2013. Copy supplied.

Mary Orndorff Troyan, Gannett News Service, *Supreme Court to Hear Argument in Voting Rights Case*, February 26, 2013. Copy supplied.

Mary Orndorff Troyan, The Montgomery Advertiser, *Record Number of Exemptions Complicates Voting Rights Case*, February 26, 2013. Copy supplied.

Mary Orndorff Troyan, The Montgomery Advertiser, *Shelby County Hearing Wed.*, February 26, 2013. Copy supplied.

Brentin Mock, The Nation's Blogs, *What is Alabama's Problem With the Voting Rights Act?*, February 26, 2013. Copy supplied.

Michael Doyle, The Daily Gazette, *Voting Rights Act Faces Supreme Court Challenge*, February 24, 2013. Copy supplied.

Richard Wolf, USA Today, *Voting Rights Act: A Political Twist for the South*, February 23, 2013. Copy supplied.

Congressional Quarterly News, *Messaging Ramps Up Before Key Voting Rights Act Case*, February 22, 2013. Copy supplied.

Ed Pilkington, The Guardian, *Thwart Assault On Voting Rights, Or Risk 'Old Poison' NAACP [sic] Warns*, February 22, 2013. Copy supplied.

Brentin Mock, The Nation's Blogs, *Virginia Legislators Approve Voter ID Law, May Kill Chance for Federal Bailout*, February 22, 2013. Copy supplied.

Richard Wolf, Gannett News Service, *Voting Rights Act: Do We Still Need It?* February 20, 2013. Copy supplied.

Adam Liptak, New York Times, *Voting Rights Act Is Challenged As A Cure the South Has Outgrown*, February 18, 2013. Copy supplied.

Amanda Becker, CQ Weekly, *Voting Rights Act At Risk?*, February 2, 2013. Copy supplied.

Mark Sherman, Native American Times, *High Court to Take Fresh Look At Voting Rights Law*, November 16, 2012. Copy supplied.

The Nation's Blogs, *Why We Still Need Section 5 of the Voting Rights Act*, November 12, 2012. Copy supplied.

David Muto, The Texas Tribune, *The Big Conversation*, November 12, 2012. Copy Supplied.

Mary Orndorff Troyan, Asbury Park Press, *Supreme Court Accepts Voting Rights Act Challenge*, November 10, 2012. Copy supplied.

Adam Liptak, New York Times, *Justices to Revisit the Voting Rights Act in View of Changing South*, November 10, 2012. Copy supplied.

Robert Barnes, The Washington Post, *Justices to Review Key Section of Elections Law*, November 10, 2012. Copy supplied.

NBC Nightly News, November 9, 2012. Transcript supplied.

The Rachel Maddow Show, November 9, 2012. Transcript supplied.

PBS NewsHour, October 10, 2012. Transcript supplied.

CBS This Morning, October, 10, 2012. Transcript supplied.

Bill Mears, CNN Wire, *Justices to Re-examine Use of Race in College Admissions*, October 8, 2012. Copy supplied.

CNN Newsroom, October 7, 2012. Transcript supplied.

Melissa Harris Perry Show, MSNBC, October 7, 2012. Transcript supplied.

The Jacksonville Free Press, *Supreme Court to Consider Affirmative Action, Voting Rights in New Term*, October 4 – October 10, 2012. Copy supplied.

Chris McGreal, The Guardian, *Civil Rights Under Threat As States Plan Assault On Anti-Discrimination Laws*, September 6, 2012. Copy supplied.

Viewpoint with Eliot Spitzer, August 21, 2012. No transcript available.

Melanie Eversley, USA Today, *Affirmative Action Case at High Court Could Restart Old Debate*, August 13, 2012. Copy Supplied.

MSNBC Live, June 22, 2012. No transcript unavailable.

Pete Yost, Associated Press, *Appeals Court Upholds Key Voting Rights Provision*, May 19, 2012. Copy Supplied.

Dennis Hevesi, Louis H. Pollak, New York Times, *Civil Rights Advocate and Federal Judge, Dies at 89*, May 13, 2012. Copy Supplied.

Joseph Goldstein, New York Times, March 2, 2011. I was interviewed about *Davis v. New York*, No. 10-00699 (S.D.N.Y.), on this date, but I have no transcript or recording of this event.

Robert Barnes, The Washington Post, *Voting Rights Provision in Peril*, February 10, 2012. Copy Supplied.

Cameron Joseph, National Journal Daily, *D.C. Circuit Court to Hear Voting Rights Act Challenge*, Feb. 2, 2011. Copy supplied.

DVD: *Northwest Austin Municipal Utility District No. 1 v. Holder* (LDF 2010). This video was presented at an annual fundraising event on November 4, 2010. Video file supplied.

Public School 3, Sept. 15, 2010 (New York, NY). Interview for a fundraising video for my daughters' school. No video or transcript available.

Alumnus of the Month for July 2010, New York University Law (July 2010). Copy supplied.

Carol King, The Hour, *Bill Murray Helps Make Carver Fundraiser a Success*, May 6, 2010. Copy supplied.

Gerrymandering (Green Film Company 2010). I was interviewed for this documentary film on March 23, 2009. I have no recording of this documentary.

Rachel Harrington, Connecticut College Magazine, *Debo Adegbile '91 Argued Before the Supreme Court to Preserve the Voting Rights Act*, Fall 2009. Article supplied.

The Root, *ROOT 100 Recognizes Emerging and Established African-American Leaders Who Are Making Extraordinary Contributions*, October 16, 2009. Copy supplied.

Tavis Smiley Show, PBS, July 2, 2009. Video file supplied.

John Farmer, The Star-Ledger (Newark, NJ), *A Limited Victory*, June 28, 2009. Copy supplied.

New York University School of Law News *Adegbile '94 Defends Voting Rights Act Before Supreme Court*, June 24, 2009. Copy supplied.

Bill Rankin & Aaron Gould Sheinin, Atlanta Journal-Constitution, *Voting Rights Act Left Largely Intact*, June 23, 2009. Copy supplied.

Ben Conery, Washington Times, *Supreme Court Dodges Ruling on Voting Rights: Holds Off on Deciding Whether Provision is Constitutional*, June 23, 2009. Copy supplied.

Mark Sherman, Associated Press, *High Court Rules Narrowly in Voting Rights Case*, June 22, 2009. Copy supplied.

Adam Liptak, New York Times, *Justices Retain Oversight by U.S. on Voting*, June 22, 2009. Copy supplied.

Robert Barnes, Washington Post. *High Court Compromises on Voting Rights Case*, June 22, 2009. Copy supplied.

San Francisco Bay View, *Supreme Court Upholds Core Provision of the Voting Rights Act*, June 22, 2009. Copy supplied.

Anthony Zurcher, Texas Observer, *Austin MUD v. Voting Rights Act: Will Conservative Activists in a Small Texas Utility District Take Down a Key Piece of American Civil Rights Law?* May 15, 2009. Copy supplied.

Make It Plain with Mark Thompson, Sirius 146, May 11, 2009. Interviewed regarding *Northwest Austin Municipal Utility District No. One v. Holder* on this date. No transcript available.

Nicholas Jahr, The Nation, June 11, 2009. Interview regarding *Northwest Austin Municipal Utility District No. One v. Holder* on this date. No transcript available.

Mississippi Public Radio, May 1, 2009. Audio file supplied.

Leonard Colvin, New Journal and Guide, May 1, 2009. My records reflect an interview regarding *Northwest Austin Municipal Utility District No. One v. Holder* on this date. No transcript available.

NPR, Brian Lehrer Show, *Voting Rights Act Up For Debate,* April 30, 2009. Audio file supplied.

Maria Recio, McClatchy Newspapers, *Justices Question Usefulness of Voting Rights Act,* April 29, 2009. Copy supplied.

NBC Nightly News, *US Supreme Court Looks at Necessity of Voting Rights Act,* April 29, 2009. Copy supplied.

Fox Special Report with Bret Baier, April 29, 2009. Transcript supplied.

The Michael Baisden Show, April 29, 2009 (syndicated radio show). Audio file supplied.

Tony Mauro, Legal Times, *Civil Rights Dominates High Court in April*, March 30, 2009. Copy supplied.

Jess Bravin, Wall Street Journal, March 20, 2009. Interview regarding *Northwest Austin Municipal Utility District No. One v. Holder*. No transcript available.

The Law School: Magazine of the New York University School of Law, *Voting Rights Endure—for Now*, 2009. Copy supplied.

Clarion-Ledger (Jackson, MS), *High Court Could Hear Voting Act Challenge*, June 10, 2008. Versions of this article also appeared in other media outlets. *See, e.g.*, Hattiesburg American (MS), *Texas Case May Affect State*, June 10, 2008; The News-Star (Monroe, LA), *Court to Hear Voting Rights Act Challenge*, June 9, 2008. Copy supplied.

Summary Judgments, Stanford Law School Chapter of the American Constitution Society, April 20, 2007. Audio file supplied.

Ben Evans, Associated Press, September 6, 2006. Interview regarding the Voting Rights Act. No transcript available.

Meg Cox, Sojourners, *Stalling Tactics Fail in Voting Rights Renewal*, July 26, 2006. Copy supplied.

Frank James, Chicago Tribune, *Some Officials, Scholars Say Voting Rights Act Needs Update*, July 13, 2006. Copy supplied.

New York Times, *Chances of Voting Rights Act Renewal Dim*, July 12, 2006. Copy supplied.

Suzanne Gamboa, Associated Press, *Immigration Critics Muddy Voting Rights Act Renewal*, July 12, 2006. Copy supplied.

Tyler Lewis, The Leadership Conference, *Civil Rights Experts Testify: Voting Rights Act Bill Restorative*, May 10, 2006. Copy supplied.

Susan King, K-LOVE Radio, April 20, 2006. My records reflect that I was interview regarding Voting Rights Act. No transcript available.

Voting Rights Alert, KUSP 88.9 FM, Santa Cruz, April 19, 2006. No transcript available.

Tracie Powell, Washington Post, Washington, DC, April 12, 2006. No transcript available.

Leslie Fulbright, San Francisco Chronicle, *Campaigns Begin on Voting Rights Act: Expiring Provisions Called Vital by Some, Outmoded by Others*, April 7, 2006. Copy supplied.

Rebecca Walsh, Salt Lake Tribune, *Lawmakers Avoid Race in Discussions of Redistricting*, April 6, 2006. Copy supplied.

Associated Press, *Report: Voting Rights Act Provisions Vital to NYC Elections*, April 5, 2006. Copy supplied.

Marcus Franklin, Charleston Gazette & Daily Mail (WV), *Voting Act Expiration Stirs Debate, Officials Question Relevance; Rumors Circulate that Blacks Will Lose Voting Rights*, March 31, 2006. Article supplied.

New York Times, Atlanta News Bureau, Atlanta, GA, March 15, 2006. My records reflect that I was interviewed about the reauthorization of the Voting Rights Act on this date. No transcript available.

WBAI 99.5 FM Pacifica Radio, New York, NY, February 28, 2006. Interview regarding *Wallace v. Blanco* litigation. No transcript available.

Radio interview, Gulfport, MS, February 28, 2006. My records reflect that I was interviewed by a Mississippi radio station about the *Wallace v. Blanco* litigation on this date. No transcript available.

American Urban Radio Network, February 28, 2006 (syndicated radio network). My records reflect that I was interviewed about the *Wallace v. Blanco* litigation on this date. No transcript available.

Sam Quinones, Los Angeles Times, *Judge Rejects Suit to Open New Orleans Poll Stations Around U.S.*, February 25, 2006. Copy supplied.

Hon. Cynthia Diane Stephens & Jerome Reide, Human Rights, *Katrina "Survivors" Versus "Internally Displaced Persons": More than Mere Semantics*, Fall 2006. Copy supplied.

Jonathan Tilove, New Orleans Times Picayune, *Displaced Demanding "Right of Return": Locals Seek to Help to Rebuild*, November 13, 2005. Article supplied.

WPFW Pacifica Radio, Washington, DC, August 31, 2005. Interview regarding Voting Rights Act. No transcript available.

KURS 1040AM, San Diego, CA, August 15, 2005. Interview regarding Voting Rights Act. No transcript available.

Democracy Now, *NAACP Legal Defense Fund Responds to Supreme Court Nominee Roberts Push to Limit Voting Rights Act*, August 8, 2005. Video file supplied.

Jonathan Tilove, New Orleans Times Picayune, *Voting Rights Return to Spotlight: Law's Reauthorization May Bring Changes*, August 6, 2005. Copy supplied.

Kelly Brewington, Baltimore Sun, *Voting Rights Issue Mobilizing Activists: Civil Rights Advocates Ask for Extension of 1965 Law's Provisions*, July 26, 2005. Copy supplied.

Tonya Jameson, Charlotte Observer (N.C.), *Commentary: Progress at the Polls*, July 24, 2005. Copy supplied.

Don Schanche, Macon Telegraph (GA), *Debate on Renewal of Voting Act Heats Up*, May 1, 2005. Copy supplied.

Gil Klein, Tampa Tribune (FL), *Selma: March Into History Hard-Won Rights Remain Under Guard Today*, March 6, 2005. Article supplied.

Sabrina Tavernise, New York Times, *From Manhattan, Lawyers Monitor the Nation's Polls*, November 3, 2004. Copy supplied.

US Newswire, *Five Days to Election Day: Election Protection Coalition Launches Hotline to Protect, Educate & Assist Voters*, October 28, 2004. Copy supplied.

Deborah Barfield Berry, Newsday, *City Sends Out Wrong Date: Despite Glitch, 11,000 Really Can Vote*, October 26, 2004. Copy supplied.

Kelly Brewington, Orlando Sentinel, *Activists Pursue King's Dream for Voting Rights: Getting Blacks to the Polls Remains a Goal as the Nation Honors the Civil-Rights Leader*, January 18, 2004. Copy supplied.

Lisa Funderburg, *Black, White, Other: Biracial Americans Talk About Race and Identity* (1994). Copy supplied.

Good Day New York, 1992. Video file supplied.

Connecticut News 3 WMV Eyewitness News, April 26, 1991. Video file supplied.

Good Morning America, February 1978 (est.). No transcript available.

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

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

I have never held any public office through election or appointment. I have had no unsuccessful candidacies for elective office, nor unsuccessful nominations for appointive office.

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

In 2000, I hosted the first fundraiser for my then-Paul, Weiss colleague, Hakeem Jeffries, who was a candidate for the New York State Assembly. I also served as a volunteer advisor to his unsuccessful 2000 campaign.

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

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

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

I have not served as a clerk to a judge.

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

I have never practiced alone.

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

1994 – 2001
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
Associate (1994 – 2001)
Summer Associate (1993, 1994)

2001 – 2013
NAACP Legal Defense and Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, NY 10013
Special Counsel (2013)
Acting President & Director-Counsel (2012 – 2013)
Associate Director-Counsel/Director of Litigation (2010 – 2012)
Director of Litigation (2007 – 2010)
Associate Director of Litigation (2004 – 2007)
Assistant Counsel (2001 – 2004)

2013 - Present
United States Senate Committee on the Judiciary
224 Dirksen Office Building
Washington, DC 20005
Senior Counsel (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 never served as a mediator or arbitrator.

b. Describe:

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

I began my professional career in 1994 as an associate in the litigation department of Paul, Weiss, Rifkind, Wharton & Garrison (Paul, Weiss) in New York. At Paul, Weiss, I represented major corporate, not-for-profit, public official, and individual clients in contract, patent, antitrust, zoning, civil rights, matrimonial, and capital defense cases, among others. I litigated these cases in federal and state courts or before arbitral panels. The nature, size, stage of the litigation, and my role in it, differed in ways that provided a varied litigation experience.

In 2001, I left Paul, Weiss to become an Assistant Counsel at the NAACP Legal Defense and Educational Fund, Inc. (LDF). LDF's practice involves representations in complex civil rights actions in a wide range of substantive areas, and is primarily focused in federal courts at both the trial and appellate levels. My early work at LDF was focused on non-partisan voting rights litigation, an area in which I developed expertise. In 2004, I became Associate Director of Litigation, which required me to broaden my focus and to assume a role in overseeing LDF's litigation. I became LDF's Director of Litigation in 2007, and after assuming that role, oversaw LDF's litigation program. LDF's practice involves the substantive areas of Education, Economic Justice, Criminal Justice, and non-partisan Political Participation. As Director of Litigation, the scope of my general responsibilities, including review and editing of pleadings across substantive practice areas, increased dramatically; and in particular, I assumed the role of directing LDF's substantial appellate practice, including those frequent circumstances where LDF appeared as amicus curiae in major civil rights or criminal justice cases.

During my tenure as Director of Litigation, LDF argued appeals as amicus curiae and had its amicus briefs cited by the Supreme Court and noted by a

federal appellate court. As Director of Litigation, I directly supervised approximately twenty attorneys and ten additional legal staff members. In 2010, I assumed the title Associate Director-Counsel/Director of Litigation. That title reflected the broader leadership and administrative responsibilities that I assumed in addition to my litigation and litigation oversight roles.

Additionally, following the death of my colleague, LDF's President and Director-Counsel, John Payton, I served as Acting President and Director-Counsel from 2012-2013. In that capacity, I had leadership responsibility for every aspect of LDF. Once Sherrilyn Ifill became President and Director-Counsel, I assumed the title of Special Counsel and argued *Shelby County v. Holder*, 570 U.S. ___ (2013), in the United States Supreme Court shortly before leaving LDF.

After leaving LDF, I became Senior Counsel to the United States Senate Committee on the Judiciary. As Senior Counsel to the Judiciary Committee my focus is now on legislative matters.

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

At Paul, Weiss, my clients consisted of corporations, public officials, not-for-profit entities, and individuals in a wide range of substantive legal areas.

At LDF, I developed an early specialty in voting rights litigation, and later an expertise in civil rights litigation more broadly, including Supreme Court advocacy. For several years I led and directed LDF's comprehensive civil rights practice at both the trial and appellate levels. LDF's clients are typically African Americans or other persons of color seeking to vindicate their civil rights under state or federal, statutory or constitutional law.

I now serve as Senior Counsel to the United States Senate Committee on the Judiciary with a focus on legislative 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.

i. Indicate the percentage of your practice in:

1. federal courts; 89%
2. state courts of record; 7%
3. other courts; 0%
4. administrative agencies 4%

ii. Indicate the percentage of your practice in:
1. civil proceedings; 80%
2. criminal proceedings. 20%

I appeared in court occasionally.

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 4 cases to verdict, judgment or final decision: 2 as chief counsel and 2 as associate counsel.

i. What percentage of these trials were:
1. jury; 0%
2. non-jury. 100%

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

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

Northwest Austin Municipal Utility District No. One v. Holder, 129 S. Ct. 2504 (2010). Copies supplied of the oral argument transcript as well as the Brief for Intervenor-Appellees Rodney and Nicole Louis, et al., and Intervenor-Appellees' Motion to Affirm. And, *Shelby County v. Holder et al.*, 570 U.S. __ (2013). Copies supplied of the oral argument transcript as well as the Brief for Intervenor-Respondents, Earl Cunningham et al., and Intervenor-Appellees' Opposition to Certiorari.

In addition to *Northwest Austin Municipal Utility District No. One v. Holder*, and *Shelby County v. Holder et al.*, I have drafted, edited, or assisted in the preparation of many United States Supreme Court briefs. I have worked on certiorari petitions, oppositions to certiorari, merits briefs, and amicus briefs – copies of which are supplied unless otherwise stated. I have searched my files, the Supreme Court's docket, and internet databases to refresh my memory in an effort to produce a complete list of cases in which I have been involved and listed as counsel on briefs, but it is possible that there are some that I was unable to identify. The matters include:

1. *Arizona et al. v. Inter Tribal Council et al. and Gonzales et al.*, No. 12-71. Amicus brief in support of respondents on behalf of NAACP Legal Defense &

Educational Fund, Inc. (LDF), Leadership Conference on Civil and Human Rights, Anti-Defamation League. Affirmed, 133 S. Ct. 2247 (2013).

2. *Fisher v. University of Texas*, No. 11-345. Amicus brief in support of respondents on behalf of the Black Student Alliance at the University of Texas at Austin, the Black Ex-Students of Texas, Inc., and the LDF as Amici Curiae in Support of Respondents. Reversed and remanded, 133 S. Ct. 2111 (2013).

3. *Magner et al. Gallagher et al.*, No. 10-1032. Amicus brief in support of respondents on behalf of LDF. Dismissed, 132 S. Ct. 1306 (2012).

4. *Miller v. Alabama*, No. 10-9646. Amicus brief in support of petitioner on behalf of LDF, Charles Hamilton Houston Institute for Race and Justice, LatinoJustice PRLDEF, Asian American Legal Defense and Education Fund, Inc. and Leadership Conference on Civil and Human Rights. Reversed and remanded, 132 S. Ct. 2445 (2012).

5. *United States Department of Health and Human Services v. Florida et al.*, No. 11-398. Amicus brief in Support of Petitioners on behalf of LDF, American Civil Liberties Union, and The Leadership Conference for Civil and Human Rights. Affirmed in part and rev'd in part, 132 S. Ct. 604 (2012).

6. *First American Financial Corp. v. Edwards*, No. 10-708. Amicus brief in support of Respondent on behalf of, LDF, The Lawyers' Committee for Civil Rights Under Law, Washington Lawyers' Committee for Civil Rights and Urban Affairs, and National Fair Housing Alliance. Dismissing writ as improvidently granted, 132 S. Ct. 2536 (2012) (per curiam).

7. *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, No. 10-553. Amicus brief in support of Respondent on behalf of LDF, The Lawyers' Committee for Civil Rights Under Law, The National Womens' Law Center, The National Law Partnership for Women and Families, Disability Rights Education and Defense Fund, Disability Rights Advocates, Bazelon Center for Mental Health Law, The National Council on Independent Living. Reversed, 132 S. Ct. 694 (2012).

8. *Wetzel v. Abu-Jamal*, No. 11-49. Brief in opposition. Certiorari denied, 132 S. Ct. 400 (2011).

9. *Maples v. Thomas*, No. 10-63. Amicus brief in support of Petitioner on behalf of LDF. Reversed and remanded, 132 S. Ct. 912 (2012).

10. *Rosario v. Griffin*, No. 10-854. Certiorari petition. Certiorari denied, 131 S. Ct. 2901 (2011).

11. *Wal-Mart Stores, Inc. v. Dukes*, No. 10-277. Amicus brief in support of Respondents on behalf of LDF, National Association for the Advancement of Colored People, Leadership Conference on Civil and Human Rights, AARP, Disability Rights Education and Defense Fund, Inc., LatinoJustice PRLDEF, Asian American Justice Center, Asian Law Caucus, and Lawyers' Committee for Civil Rights Under Law. Reversed, 131 S. Ct. 2541 (2011).

12. *AT&T Mobility LLC v. Concepcion*, No. 09-893. Amicus brief in support of Respondents on behalf of LDF. Reversed and remanded, 563 U.S. __ (2011).

13. *Banks v. Thaler*, No. 09-717. Certiorari petition and reply on behalf of Petitioner Delma Banks. Certiorari denied, 130 S. Ct. 2092 (2010).

14. *Abu-Jamal v. Beard*, No. 08-8483. Amicus brief in support of Petitioner on behalf of LDF. Certiorari denied, 129 S. Ct. 1910 (2009).

15. *Graham v. State of Florida*, Nos. 08-7412, 08-7621. Amicus brief in support of Petitioners on behalf of LDF, Charles Hamilton Houston Institute for Race & Justice, and National Association of Criminal Defense Lawyers. Reversed and remanded, 130 S. Ct. 2011 (2010).

16. *McDonald v. City of Chicago*, No. 08-1521. Amicus brief in support of neither party on behalf of LDF. Reversed and remanded, 130 S. Ct. 3020 (2010).

17. *Berghuis v. Smith*, No. 08-1402. Amicus brief in support of Respondent on behalf of LDF. Reversed and remanded, 130 S. Ct. 1382 (2010).

18. *Lewis v. City of Chicago*, No. 08-974. Opening merits brief and reply on behalf of Arthur Lewis, et al., a class of African-American firefighter applicants. Reversed and remanded, 130 S. Ct. 2191 (2010).

19. *Perdue v. Kenny A.*, No. 08-970. Amicus brief in support of Respondents on behalf of LDF. Reversed and remanded, 130 S. Ct. 1662 (2010).

20. *Cuomo v. The Clearing House Association L.L.C.*, No. 08-453. Amicus brief in support of Petitioner on behalf of Lawyers' Committee for Civil Rights Under Law, National Fair Housing Alliance, and LDF. Affirmed in part and reversed in part, 129 S. Ct. 2710 (2009).

21. *Horne v. Flores*, Nos. 08-289, 08-294. Amicus brief in support of Respondents on behalf of LDF, National Senior Citizens Law Center, National Health Law Program, and New York Lawyers for the Public Interest. Reversed and remanded, 129 S. Ct. 2579 (2009).

22. *Dean v. Leake*, No. 07-1458. Motion to Dismiss or Affirm for Appellee-Intervenor North Carolina State Conference of Branches of the NAACP. Appeal dismissed for want of jurisdiction, 129 S. Ct. 94 (2008).

23. *Ricci v. DeStefano*, Nos. 07-1425, 08-328. Amicus brief in support of Respondents on behalf of LDF. Reversed and remanded, 129 S. Ct. 2658 (2009).

24. *Green v Chilton County Commission*, No. 07-1124. Brief in opposition on behalf of the Chilton County Commission, et al. Certiorari denied, 554 U.S. 918 (2008).

25. *Bartlett v. Strickland*, No. 07-689. Amicus brief in support of Petitioners on behalf of Lawyers' Committee for Civil Rights Under Law, LDF, Demos, and North American South Asian Bar Association. Affirmed, 129 S. Ct. 1231 (2009).

26. *Rothgery v. Gillespie County, Texas*, No. 07-440. Amicus brief in support of Petitioner on behalf of Brennan Center for Justice, LDF, and National Legal Aid and Defender Association. Vacated and remanded, 554 U.S. 191 (2008).

27. *District of Columbia v. Heller*, No. 07-290. Amicus brief in support of Petitioners on behalf of LDF. Affirmed, 554 U.S. 570 (2008).

28. *Riley v. Kennedy*, No. 07-77. Amicus brief in support of Appellees on behalf of LDF. Reversed and remanded, 553 U.S. 406 (2008).

29. *Crawford v. Marion County Election Board*, Nos. 07-21, 07-25. Amicus brief in support of Petitioners on behalf of LDF. Affirmed, 553 U.S. 181 (2008).

30. *League of Latin American Citizens v. Perry*, Nos. 05-204, 05-254, 05-276, 05-439. Amicus brief in support of Appellants on behalf of LDF. Affirmed in part, reversed in part, vacated in part, and remanded, 548 U.S. 399 (2006).

31. *Georgia v. Ashcroft*, No. 02-182. Amicus brief in support of Appellees on behalf of the Georgia Coalition for the Peoples' Agenda. Vacated and remanded, 539 U.S. 461 (2003).

32. *O'Dell v. Netherland*, No. 96-6867. Certiorari petition and reply, opening merits brief, and reply on behalf of Joseph Roger O'Dell. Affirmed, 521 U.S. 151 (1997). I do not have a copy of the certiorari reply.

33. *Shaw v. Hunt*, Nos. 94-923, 94-924. Amicus brief in support of Appellees on behalf of the Congressional Black Caucus. Reversed, 517 U.S. 899 (1996).

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

    a. the date of representation;

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

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

(1) *Shelby County v. Holder et al.* 570 U.S. __ (2013).

United States Supreme Court: Roberts, C.J., and Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan, JJ. Briefed and argued in 2013. *Shelby County v. Holder et al.*, 679 F. 3d 848 (2012). United States Court of Appeals for the D.C. Circuit, Tatel, Griffith and Williams, JJ. United States District Court for the District of Columbia, Bates, J. Litigated from 2010 to 2013.

Description: This case involved a facial constitutional challenge to Sections 4(b) and 5 of the Voting Rights Act of 1965 brought by a county that was subject to the Act's preclearance requirement. The NAACP Legal Defense & Educational Fund, Inc. (LDF) successfully moved to intervene to defend the statute on behalf of black voters living within Shelby County. The action was brought against the United States Attorney General. I served as lead counsel for LDF's clients (joined in that representation by other attorneys from LDF and Holland & Knight) and argued on behalf of Intervenors before the United States Supreme Court, *Shelby County v. Holder et al.* 570 U.S. __ (2013). After the constitutional challenges were rejected by the district court and Court of Appeals, the Supreme Court granted certiorari, and after oral argument, held the geographic coverage provision of the Act unconstitutional and reversed and remanded. Throughout the representation I supervised LDF's representation of its clients, the Cunningham *et al.* Intervenors and argued the case in the United States Supreme Court.

Counsel:

Party:	**Counsel included:**

Party:	Counsel included:
Counsel for Respondent-Intervenors Earl Cunningham, et al.	Sherrilyn Ifill, Elise C. Boddie (then of LDF), Ryan P. Haygood, Dale Ho (then of LDF), Natasha M. Korgaonkar, Leah C. Aden NAACP Legal Defense & Educational Fund, Inc., (LDF) 40 Rector Street, New York NY 10006, (212) 965-2200, and Samuel Spital, William J. Honan, Harold Barry Vasios, Marisa Marinelli, Robert J. Burns, Holland & Knight, LLP. 31 West 52nd Street, New York, NY 10019, (212) 513-3200.
Counsel for other Respondent-Intervenors	Jon M. Greenbaum, Robert Kengle, Mark Posner, Lawyers' Committee for Civil Rights Under Law, 1401 New York Avenue, NW, Suite 400, Washington, DC 20005 (202) 662-8315 and Steven R. Shapiro, American Civil Liberties Union Foundation, 125 Broad Street, New York, NY 10004 (212) 549-2500, Laughlin McDonald, American Civil Liberties Union Foundation 230 Peachtree Street, NW, Atlanta, GA 30303-1504, (404) 523-2721, David I. Schoen, American Civil Liberties Union of Alabama Foundation, 2800 Zelda Road, Montgomery, AL 36106 (334) 395-6611, Arthur B. Spitzer, American Civil Liberties Union of the Nation's Capital, 1400 20th Street, NW, Suite 119, Washington DC 20036 (202) 457-0800, Kim Keenan and Victor Goode, NAACP, 4802 Mt. Hope Drive, Baltimore, MD 21215, (410) 580-5791.
Counsel for Respondent Eric H. Holder Jr.	Donald B. Verrilli, Jr., Thomas E. Perez, Sri Srinivasan, Sarah E. Harrington, Diana K. Flynn, Erin H. Flynn, Department of Justice, Washington DC 20530, (202) 514-2217.

(2) *Lewis v. City of Chicago*, 130 S. Ct. 2191 (2012).

United States Supreme Court: Roberts, C.J., and Stevens, Scalia, Kennedy, Thomas, Ginsburg, Breyer, Alito, and Sotomayor JJ. Briefed and argued in 2009-2010 Litigated from 1995-Present. I oversaw LDF's litigation of the case from 2008-2013 (est.).

Description: This case is a Title VII class action against the City of Chicago that alleged racial discrimination in the hiring of firefighters and challenged the use of a

1995 written examination and cut-off score that had a disparate impact on African-American firefighter applicants. LDF represented a class of African-American firefighter applicants together with Chicago co-counsel. The case was tried in 2004 by co-counsel, and in March 2005, Judge Gottschall entered a liability finding for the plaintiffs, concluding that the 1995 examination had an adverse impact against African-American applicants, was not-job related, and that the City had failed to implement less discriminatory alternatives. *Lewis v. City of Chicago*, 2005 WL 693618 (N.D. Ill. Mar. 22, 2005). The Court subsequently entered judgment for the plaintiffs and ordered injunctive relief including remedial hiring of 132 class members, retroactive seniority, back pay with pension adjustments, prejudgment interest, and attorneys' fees and costs. *See Lewis v. City of Chicago*, 2007 WL 869559 (N.D. Ill. Mar. 20, 2007). On appeal to the Seventh Circuit, the City of Chicago argued only that the underlying EEOC charges were not timely filed. In June 2008, the Seventh Circuit agreed, and held that the plaintiffs' charges were time-barred. The Seventh Circuit held that although the charges were filed within 300 days of the City's use of the discriminatory civil service lists, they were not filed within 300 days of the notice of exam results, which the court considered to be the date on which the claim accrued. *Lewis v. City of Chicago*, 528 F.3d 488 (7th Cir. 2008). LDF and co-counsel filed a petition for certiorari with the United States Supreme Court in January 2009. The Court granted certiorari on September 30, 2009. The Supreme Court heard oral argument in February 2010. On May 24, 2010, the Supreme Court decided unanimously in favor of the plaintiffs. *Lewis v. City of Chicago*, 130 S. Ct. 2191 (2012). The Court held that the City's exclusion of passing applicants who scored below 89 violated Title VII, and a new disparate-impact claim arose, each time the City used this exclusionary practice to hire firefighters. The Seventh Circuit issued its remand ruling on May 13, 2011. *Lewis v. City of Chicago*, 643 F.3d 201 (7th Cir. 2011). On remand to the district court, the court entered a modified injunctive order on August 17, 2011. Several remedy-related orders followed, as well as an attorneys' fees order. In addition, the Seventh Circuit affirmed the district court's denial of an intervention motion by several incumbent firefighters. *Lewis v. City of Chicago*, 702 F.3d 958 (7th Cir. 2012). I supervised the LDF team that briefed the case in the United States Supreme Court, assisted John Payton in his Supreme Court oral argument preparation and oversaw the LDF team that litigated the case on remand and through the initial remedy phases.

Counsel:

Party:	**Counsel included:**
Counsel for Respondents Arthur L. Lewis, Jr. et al.	John Payton (deceased), Elise Boddie (then of LDF), Matthew Colangelo (then of LDF), Ria A. Tabacco, Ryan Downer (then of LDF), NAACP LDF, Inc. 40 Rector Street, 5th Floor, New York, NY 10006, (212) 965-2200 (LDF's New York office) and Josh Civin, 1444 Eye Street, NW, Washington, DC 20037 (LDF's DC office). Matthew Piers, Josh Karsh, Mary

Party:	Counsel included:
	M. Rowland, Hughes Socol Piers Resnick & Dym, Ltd., 70 W Madison Street #4000, Chicago, IL 60602, (312) 580-0100; Judson H. Minor, George F. Galland, Jr., Jeffrey Cummings, Minor, Barhill & Galland, P.C., 14 W Erie Street, Chicago, IL 60654, (312) 751-1170; Patrick O. Patterson, now of the U.S. Equal Employment Opportunity Commission, 131 M Street, Washington, DC 20507, (202) 663-4086; Fay Clayton, Cynthia H. Hyndman, Curley & Clayton, P.C., 300 South Wacker Drive, Chicago, IL 60606; Bridget Arimond, Northwestern Law School, 375 E Chicago Ave, Chicago, IL 60611, (312) 503-5280; Clyde Murphy (deceased), Chicago Lawyers' Committee for Civil Rights Under Law, Inc., 100 North LaSalle Street, Chicago, IL 60602, (312) 630-9744.
Counsel for Appellant, City of Chicago	Mara S. Georges, Christopher S. Norberg, Benna S. Solomon, Myriam Zreczny Kasper, Nadine Jean Wichern, Naomi Ann Avendano, City of Chicago Law Department, 121 N La Salle St # 600, Chicago, IL 60602, (312) 744-0200.
Counsel for Local 2 Chicago Fire Fighters Union Defendants (in District Court)	Stephen Bernard Horowitz, Sugarman & Horowitz, Chicago, IL, 221 N LaSalle Street, Suite 626, Chicago, IL 60601, (312) 629-2920.
Counsel for Fireman's Annuity and Benefit Fund of Chicago Defendants (in District Court)	Blanca R. Dominguez, Edward J. Burke, Vincent Dominick Pinelli, Burke, Burns & Pinelli, Ltd., Chicago, IL. Three First National Plaza, 70 West Madison Street, Suite 4300, Chicago, IL, 60602, (312) 541-8600

(3) *Northwest Austin Municipal Utility District No. One v. Holder*, 129 S. Ct. 2504 (2010).

United States Supreme Court: Roberts, C.J., and Stevens, Scalia, Kennedy, Thomas, Souter, Ginsburg, Breyer, and Alito, JJ. Briefed and argued in 2009. *Northwest Austin Municipal Utility District Number One v. Mukasey*, No. 06-1384, slip op. (D.D.C. Sept. 11, 2008). United States District Court for the District of Columbia (three-judge panel); Friedman, Sullivan, and Tatel, JJ. Litigated from 2006 to 2010.

Description: This case involved two claims: a request by the Northwest Austin Municipal Utility District Number One, a small Texas water district, to be exempted from the requirement that it submit all of its voting changes for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, and a request that Section 5 be declared unconstitutional. The NAACP Legal Defense & Educational Fund, Inc. (LDF) intervened to defend the statute on behalf of black voters living within the water district; other national and local civil rights organizations intervened as defendants on behalf of individual or institutional clients. The action was brought against the United States Attorney General. I served as lead counsel for LDF's clients (joined in that representation by other attorneys from LDF and Holland & Knight) and argued on behalf of Intervenors before a three-judge panel in the district court for the District of Columbia, *Northwest Austin Municipal Utility District Number One v. Mukasey*, No. 06-1384, slip op. (D.D.C. Sept. 11, 2008), and again before the United States Supreme Court, *Northwest Austin Municipal Utility District No. One v. Holder*, 129 S. Ct. 2504 (2010). On direct appeal, the Supreme Court held that the water district was eligible to apply for exemption under the bailout provision of the Voting Rights Act, but it declined to reach the constitutional question. On remand, the water district sought to bailout from coverage under the Voting Rights Act, and the United States and the Defendant-Intervenors agreed that the water district had fulfilled the necessary conditions. The parties filed a joint motion for entry of a consent judgment and decree, which was granted by the three-judge court. *Northwest Austin Municipal Utility District No. One v. Holder*, No. 06-1384 (D.D.C. Nov. 3, 2009).

Counsel:

Party:	**Counsel included:**
Counsel for Defendant-Intervenors Rodney and Nicole Louis, et al.,	John Payton (deceased) and Ryan P. Haygood, LDF, 40 Rector Street, New York, NY 10006, (212) 965-2200 (LDF's New York office); Kristen Clarke, now of the Civil Rights Bureau, New York Attorney General's Office, New York State Attorney General's Office, 120 Wall Street, New York, NY 10005, (212) 416-8252; Samuel Spital, Holland & Knight, LLP, 31 West 52nd Street, New York, NY 10019, (212) 513-3200; Jenigh Garrett, now of the Voting Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 7145-NWB, Washington, DC 20530, (202) 305-0319; Danielle Conley, now of Wilmer Cutler Pickering Hale and Dorr LLP (Wilmer Hale), 1875 Pennsylvania Avenue, NW, Washington, DC 20006, (202) 663-6006; Jacqueline Berrien, now of the U.S.

	Equal Employment Opportunity Commission, 131 M Street, Washington, DC 20507, (202) 663-4900; Norman Chachkin, now retired 36 Cedar Drive, Accord, NY, 12404, (845) 626-3092.
Counsel for other Defendant-Intervenors	Nina Perales, Mexican American Legal Defense & Educational Fund, Inc., 110 Broadway, Suite 300, San Antonio, TX 78205, (210) 224-5476; Seth P. Waxman and Paul Wolfson, of Wilmer Hale, 1875 Pennsylvania Avenue, NW, Washington, DC 20006, (202) 663-6000; Ariel B. Waldman, now of the Office of the Attorney General for the District of Columbia, 441 4th Street NW, Suite 1100S, Washington, DC 20001, (202) 724-6630; Daniel A. Zibel, Bredhoff & Kaiser, 805 15th Street, NW, Suite 1000, Washington, DC 20005, (312) 751-1170; Dennis C. Hayes then of the NAACP, 4802 Mt. Hope Drive, Baltimore, MD 21215, (410) 580-5791; Michael Gottlieb now of Boeis, Schiller, 5301 Wisconsin Avenue, NW, Washington DC, 20015; Jon M. Greenbaum, Lawyers' Committee For Civil Rights Under Law, 1401 New York Avenue, NW, Suite 400, Washington, DC 20005, (202) 663-6000; Benjamin Jay Blustein, Miner, Barnhill & Galland, 14 West Erie Street, Chicago, IL 60610, (312) 751-1170;; Margery F. Baker of People for the American Way Foundation, 2000 M Street, NW, Suite 400, Washington, DC 20036, (202) 467-2334; Kathryn Kolbert, now of the Athena Center for Leadership Studies at Barnard College, 301 Barnard Hall, 3009 Broadway, New York, NY 10027, (212) 854-1264; David J. Becker, now of the Pew Center on the States, 901 E Street, NW, 10th Floor, Washington, DC 20004, (202) 552-2136; J. Gerald Hebert, 5019 Waple Lane, Alexandria, VA 22304, (703) 628-4673; Max Renea Hicks, 101 West Sixth Street, Suite 504, Austin, Texas 78701, (512) 480-8231; Laughlin McDonald, American Civil Liberties Union Foundation, Inc., 230 Peachtree Street, NW, Suite 1440, Atlanta, GA 30303, (404) 523-2721; Arthur B. Spitzer, American Civil

	Liberties Union, 1400 20th Street, NW, Suite 119, Washington, DC 20036, (202) 457-0800; Michael T. Kirkpatrick, Public Citizen Litigation Group, 1600 20th Street, NW, Washington, DC 20009, (202) 588-1000; Jose Garza, now of Texas RioGrande Legal Aid, Inc., 1111 N. Main, San Antonio, TX, 28212, (210) 212-3701; and George Korbel, Texas Riogrande Legal Aid, Inc., 1111 North Main Street, San Antonio, TX 78212, (210) 212-3700; Judith A. Sanders-Castro, Texas RioGrande Legal Aid, Inc., 1111 North Main Avenue, San Antonio, TX 78212, (210) 212-3772; Joseph E. Sandler, Sandler, Reiff, Young & Lamb, 1025 Vermont Ave, NW, Washington, DC 20005, (202) 479-1111; Elliot M. Mincberg, now of the United States Department of Housing and Urban Development, 451 7th St, SW, Room 10126, Washington, DC 20410, (202) 402-6097; Judith Ellen Schaeffer, Constitutional Accountability Center, 1200 18th St, NW, Washington, DC 20036, (202) 296-6889; Michael J. Kator, Kator, Parks & Weiser, PLLC, 1200 18th St, NW, Suite 1000, Washington, DC 20036, (202) 898-4800.
Counsel for Plaintiffs	the late Gregory S. Coleman, and Christian J. Ward, now of Yetter, Coleman, LLP, 221 West Sixth Street, Suite 750, Austin, TX 78701, (512) 533-0150; Erik Scott Jaffe, Erik S. Jaffe, P.C., 5101 34th St, NW, Washington, DC 20008, (202) 237-8165; and Ferdose al-Taie, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549, (202) 942-8088.
Counsel for Defendants	Neal K. Katyal now of Hogan Lovells U.S. LLP, 555 Thirteenth Street, NW, Washington, DC, 20004, (202) 637-5528; and Sarah E. Harrington, Thomas Christian Herren, Jr., of the United States Department of Justice, Washington, DC 20530, (202) 514-2200; and Douglas Hallward-Driemeier, now of Ropes & Gray, One Metro Center, 700 12th Street, NW, Suite 900, Washington, DC 20005, (202) 508-4776.

(4) *Wallace v. Blanco*, No. 05-5519 (E.D. La.).

United States District Court for the Eastern District of Louisiana; Lemelle, J. Litigated from 2005 to 2006.

Description: This case involved a Voting Rights Act challenge to the administration of the first municipal election following Hurricane Katrina in New Orleans, Louisiana. Plaintiffs, represented by LDF, were displaced eligible voters who sought relief under the Voting Rights Act to facilitate voting for those affected by Hurricane Katrina. The Governor and Secretary of State of Louisiana were the primary defendants. *Wallace v. Blanco*, No. 05-5519 (E.D. La. Feb. 14, 2006). Following a two-day evidentiary hearing in the Eastern District of Louisiana, the Court denied relief, except it permitted additional poll monitoring for an extended period. *Wallace v. Blanco*, No. 05-5519 (E.D. La. Feb. 24, 2006) (dismissing plaintiffs' claims without prejudice); *Wallace v. Blanco*, No. 05-5519 (E.D. La. Apr. 10, 2006) (allowing additional election-day monitoring by representatives of named plaintiffs). I served as lead counsel.
Counsel:

Party:	**Counsel included:**
Counsel for Plaintiffs	Roy J. Rodney, Jr. and John K. Etter, Rodney & Etter LLC, 620 North Carrollton Avenue, New Orleans LA, 70119, (504) 483-3224; Damon Todd Hewitt, LDF, 99 Hudson Street, Suite 1600, New York, NY 10013, (212) 965-2200; and Jenigh Garrett, now of the Voting Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 7145-NWB, Washington, DC 20530, (202) 305-0319.
Counsel for Defendants Kathleen Blanco, Governor of Louisiana, and Al Ater, Secretary of State of Louisiana	Roy A. Mongrue, Jr., now of the Teachers' Retirement System of Louisiana, 8401 United Plaza Boulevard, Baton Rouge, LA 70809, (225) 925-6446.

(5) *Louisiana House of Representatives v. Ashcroft*, No. 02-0062 (D.D.C.).

United States District Court for the District of Columbia; Garland, Robertson, and Walton, JJ. Litigated from 2002 to 2003.

Description: This case was a declaratory judgment action regarding the post-2000 redistricting plan for the Louisiana House of Representatives. LDF intervened on behalf of a multiracial coalition of voters to contest the legality of the plan under Section 5 of the Voting Rights Act, arguing that it was retrogressive. I had primary responsibility for discovery, briefing, and argument on behalf of LDF's Intervenor clients. I also argued in opposition to the Louisiana House of Representatives' motion for summary judgment on behalf of LDF's clients before a three-judge panel in the District Court for the District of Columbia. The motion was subsequently denied. *Louisiana House of Representatives, v. Ashcroft*, No. 02-0062 (D.D.C. Dec. 16, 2002). Following the court's order, the parties reached a settlement before trial.

Counsel:

Party:	**Counsel included:**
Counsel for Defendant-Intervenors Beulah Labostrie, et al.,	Todd A. Cox, now of the U.S. Equal Employment Opportunity Commission, 131 M Street, Washington, DC 20507, (202) 663-4086; Damon Todd Hewitt, LDF, 40 Rector Street, New York, NY 10006 (212) 965-2200; and Chinh Q. Le, now of the Legal Aid Society of the District of Columbia, 1331 H Street, NW, Washington, DC 20005, (202) 628-1161; Norman Chachkin, now retired and a resident of 36 Cedar Drive, Accord, NY, 12404, (845) 626-3092.
Counsel for Plaintiff Louisiana House of Representatives	Deanne E.B. Ross, now at 29 Hodges St. Mansfield Center, MA 02048, (508) 339-5639; and William Bradford Reynolds, Baker & Botts, LLP, 1299 Pennsylvania Avenue, NW, Washington, DC 20004, (202) 639-7801.
Counsel for Defendant John Ashcroft	Brian F. Heffernan, United States Department of Justice, 1800 G Street, NW, Room 7260, Washington, DC 20006, (202) 514-2000; Kristen Clarke, now of the Civil Rights Bureau, New York Attorney General's Office, New York State Attorney General's Office, 120 Wall Street, New York, NY 10005, (212) 416-8252; and Timothy C. Lambert, now of the U.S. Department of Housing and Urban Development, Office of General Counsel, Fair Housing Enforcement Division, 451 7th Street, SW, Room 10270, Washington, DC 20410, (202) 402-5383.

Counsel for Defendant-Intervenors Citizens of the State of Louisiana and Members of the Louisiana Legislative Black Caucus	John Hardin Young, Sandler, Reiff & Young PC, 300 M Street, SE, Suite 1102, Washington, DC 20003, (202) 479-1111; and Jeffrey Wice, now of Sandler, Reiff, Young & Lamb, P.C., 1025 Vermont Avenue NW, Suite 300, Washington, DC 20005, (202) 479-1111.

(6) *NAACP v. Smith, et al.*, No. 01-00120 (S.D. Fla.).

United States District Court for the Southern District of Florida; Gold, J. Litigated from 2001 to 2002.

Description: This class action case involved voting claims under the United States Constitution and both federal and state statutes in an effort to remedy election procedures that affected the ability of eligible minority voters to participate in the November 2000 general election. The case named as Defendants the Florida Secretary of State, Director of the Division of Elections, Director of the Department of Highway Safety and Motor Vehicles, Secretary of the Department of Children and Families, the election supervisors of seven Florida counties, and a corporation that acted as Florida's agent for purposes of establishing a voter eligibility or purge list. The state, county, and corporate Defendants each settled the case. I participated in discovery, briefing motions, pre-trial preparations and settlement negotiations involving certain county Defendants and the state Defendants.

Counsel:

Party:	**Counsel included:**
Counsel for Plaintiffs	Theodore M. Shaw, now of Fulbright & Jaworski, LLP, 666 Fifth Avenue, New York, NY 10103, (212) 318-3000; Jacqueline Berrien, now of the U.S. Equal Employment Opportunity Commission, 131 M Street, Washington, DC 20507, (202) 663-4900; Norman Chachkin, now retired and a resident of 36 Cedar Drive, Accord NY, 12404, (845) 626-3092; Janai Nelson, now of St. John's University School of Law, 8000 Utopia Parkway, Queens, NY 11439, (718) 990-2082; Todd A. Cox, now of the U.S. U.S. Equal Employment Opportunity Commission, 131 M Street, Washington, DC 20507, (202) 663-4086; Dennis Courtland Hayes, now of the American Judicature Society, The Opperman Center at Drake University, 2700 University Avenue, Des Moines, IA 50311, (800) 626-

	4089; Angela Ciccolo, now of the Special Olympics, 1133 19th Street, NW, Washington, DC 20036, (202) 628-3630; Bruce Gear, now of the Voting Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 7254-NWB, Washington, DC 20530, (202) 305-0419; Barbara Arnwine, Lawyers' Committee for Civil Rights Under Law, 1401 New York Avenue NW, Suite 400, Washington, DC 20005, (202) 662-8600; Anita Earls, now of The Southern Coalition for Social Justice, 1415 West Highway, Suite 101, Durham, N.C. 27707, (919) 323-3380; Edward Still, now of Edward Still Law Firm, LLC, 130 Wildwood Parkway, Suite 108, Birmingham, AL 35209, (205) 320-2882; Thomas J. Henderson, now of Sanford Wittels & Heisler, LLP, 1666 Connecticut Avenue, NW, Suite 300, Washington, DC 20009, (202) 742-7447; Lori Outzs Borgen, now of Center for Social Justice, Seton Hall University School of Law, One Newark Center, Newark, NJ 07102, (973) 642-8700; Judith A. Browne and Penda Hair, Advancement Project, 1730 M Street NW, Suite 910, Washington, DC 20036, (202) 728-9557; Monique Dixon, now of the Open Society Institute, 201 North Charles Street, Suite 1300, Baltimore, MD 21201, (410) 234-1091; Thomasina H. Williams, formerly of the Ford Foundation, 320 East 43rd Street, New York, NY 10017, (212) 573-4896; Alma C. Henderson, now of Service Employees International Union, 1800 Massachusetts Avenue, NW, Washington, DC 20036, (202) 730-7000; Elliot M. Mincberg, now of the United States Department of Housing and Urban Development, 451 7th St, SW, Room 10126, Washington, DC 20410, (202) 402-6097; and Lawrence S. Ottinger, now of Center for Lobbying in the Public Interest, 1612 K Street, NW, Suite 505, Washington, DC 20006, (202) 387-5072.
Counsel for Defendant Secretary of State	John W. Little, III, now of Gunster, Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401, (561) 650-0701; and Walter J. Harvey, School Board

	of Miami-Dade County, Florida, 1450 N.E. 2nd Avenue, Suite 430, Miami, FL 33132, (305) 995-1304.
Counsel for Defendant ChoicePoint, Inc.,	Mitchell Bloomberg, now of Hinshaw & Culbertson LLC, 9155 South Dadeland Blvd., Suite 1600, Miami, FL 33156, (305) 428-5117; and Raymond W. Bergan, (deceased) then of Williams & Connolly, LLP, 725 Twelfth Street, NW, Washington, DC 2005-5901.
Counsel for Defendant Executive Director of Florida Department of Highway Safety and Motor Vehicles	George L. Waas and Douglas B. MacInnis, both then of Department of Legal Affairs, PL-01, The Capitol, Tallahassee, FL, 32399-1050, (850) 414-3662.
Counsel for Defendant Miami-Dade County Supervisor of Elections	Jeffrey P. Erlich, then of Dade County Attorney's Office, Metro Dade Center, 111 N.W. 1st Street, Suite 2810, Miami, FL 33128, (305) 375-5611; and Tucker Ronzetti, then Assistant County Attorney, Stephen P. Clark Center, 111 NW 1st Street, #2810, Miami, FL 33128-1930, (305) 372-1800.
Counsel for Defendant Orange County Supervisor of Elections	Michael Cirullo, Jr., now of Josias, Goren, Cherof, Doody & Ezrol P.A., 3099 E. Commerical Boulevard, Suite 200, Fort Lauderdale, FL 33308-4348, (954) 771-4500.
Counsel for Defendant Hillsborough County Supervisor of Elections	Ken Tinkler, Julia Mandell, and H. Ray Allen, II, all then of Hillsborough County Attorney's Office, 601 E. Kennedy Boulevard, 27th Floor, Tampa, FL 33602, (813) 272-5670.
Counsel for Volusia County Supervisor of Elections	Daniel D. Eckert, then of County Attorney's Office, 123 West Indiana Office, Deland, FL 32720-4613, (386) 736-5990; David V. Kornreich, then of Muller, Mintz, Kornerich, Caldwell, Casey, 255 South Orange Avenue, Citrus Center, Suite 1525, Orlando, FL, 32801-3462, (407) 843-1410; and William J. Bosch, then Assistant County Attorney for Volusia County, 123 West Indiana Avenue, Deland, FL, 32720-4613, (386) 736-5990.
Counsel for Defendant Election Supervisor for Broward County Supervisor of Elections	Burnadette Norris-Weeks, then of 100 SE 6th Street, Fort Lauderdale, FL 22201, (954) 768-9770.

Counsel for Defendant Duval County Supervisor of Elections	Tracy I. Arpen, Jr., and Jason R. Teal, both then of Office of General Counsel, City of Jacksonville, 117 W. Duval Street, Suite 480, Jacksonville, FL 32203, (904) 630-1835.
Counsel for Defendant Leon County Supervisor of Elections	Chris Haughee, then of Bentley Law Group, 710 Main Street, Bartow, FL 33820-4311, (863) 519-9820.
Counsel for Petitioner	Bryan S. Gowdy, Mills, Creed, & Gowdy P.A. (now Creed & Gowdy), 865 May Street, Jacksonville, FL 32204, (904) 350-0075.
Counsel for Respondent	Scott D. Makar, Solicitor General of Florida, PL-01, The Capitol, Tallahassee, Florida, 32399-1050, (850) 414-3300.

(7) ***African Grain Co. v. Continental Grain Co.*****, No. 96-03949 (S.D.N.Y.).**

United States District Court for the Southern District of New York; Hellerstein, J. Litigated from 1996 to 1999.

Description: African Grain Company sued Continental Grain Company in an attempt to obtain payment from the proceeds of political risk insurance that Continental secured to cover its risk exposure associated with complex international transactions. Representing Continental Grain Company, Paul, Weiss, Rifkind, Wharton, and Garrison LLP (Paul, Weiss) successfully compelled arbitration in this case, which was originally filed in the Southern District of New York. *African Grain Co. v. Continental Grain Co.*, No. 96-03949 (S.D.N.Y. Oct. 23, 1996). I researched and drafted the briefs and submissions, coordinated discovery, and prepared witnesses for the arbitration hearing. Following an arbitration before the American Arbitration Association pursuant to the Grain Arbitration Rules, African Grain Company's claims were substantially rejected and Continental Grain Company was awarded a substantial monetary judgment on its counter-claim. *African Grain Co. v. Continental Grain Co.*, No. 96-03949 (June 17, 1999).

Counsel:

Party:	**Counsel included:**
Co-counsel	Richard A. Rosen, Paul, Weiss, 1285 Avenue of the Americas, New York, NY 10019-6064, (212) 373-3000; and Lawrence G. Weppler, [retired].
Counsel for Plaintiff	Abraham Badway, 920 Hartford Avenue, Johnston, RI, 02919, (401) 273-1460.

(8) *Roniger v. McCall*, No. 97-8009 (S.D.N.Y).

United States District Court for the Southern District of New York; Sweet, J. Litigated from 1997 to 2001.

Description: This case involved the defense of Carl McCall, then New York State Comptroller, in a civil rights action pursuant to 42 U.S.C. § 1983 and § 1985, arising out of the dismissal of a senior employee in the Comptroller's office. Plaintiff alleged that political and retaliatory considerations motivated his dismissal in violation of his First Amendment and statutory rights. The case was settled. I participated in all phases of the litigation including oral argument on pretrial motions, discovery, witness preparation, client communications, legal research, drafting briefs, and motion practice. There were three reported decisions (one unpublished) prior to the settlement of the case without any admission of wrongdoing by the Comptroller. *Roniger v. McCall*, 119 F. Supp. 2d 407 (S.D.N.Y. 2000) (motion on admissibility of newspaper articles granted in part, denied in part); *Roniger v. McCall*, No. 97-8009, 2000 WL 1191078 (S.D.N.Y. Aug. 22, 2000) (motion for an order excluding expert testimony and to try the causation issue of Plaintiff's § 1983 claim before an advisory jury granted in part, denied in part); *Roniger v. McCall*, 72 F. Supp. 2d 433 (S.D.N.Y. 1999) (denying motion for partial summary judgment dismissing Plaintiff's § 1985 conspiracy claim); *Roniger v. McCall*, 22 F. Supp. 2d 156 (S.D.N.Y. 1998) (motion to dismiss denied in part, granted in part).
Counsel:

Party:	**Counsel included:**
Co-Counsel	Maria Keane, Paul, Weiss, 1285 Avenue of the Americas, New York, NY 10019-6064, (212) 373-3000; and Robert S. Smith, now Associate Judge of the New York State Court of Appeals, 20 Eagle Street, Albany, NY 12207, (518) 455-7700.
Counsel for Plaintiff	John A. Beranbaum, now of Beranbaum, Menken, LLP, 80 Pine Street, 33rd Floor, New York, NY 10005, (212) 671-1256.

(9) *Soho Alliance v. New York City Board of Standards and Appeals*, 741 N.E.2d 106 (N.Y. 2000).

Court of Appeals of New York; Kaye, C.J., and Levine, Smith, Ciparick, Wesley, and Rosenblatt, JJ. Briefed and argued in 2000.

Description: This case involved a challenge by neighboring property owners to the decision by the New York City Board of Standards and Appeals to grant use variances permitting development of two properties. After the trial court upheld the variances, Paul, Weiss was retained to defend the housing developer on appeal. I was primarily responsible for drafting the brief on appeal, along with my Paul, Weiss colleague Gerald Harper who argued the case. The trial court's decision was upheld by the New York Court of Appeals. *Soho Alliance v. New York City Board of Standards and Appeals*, 741 N.E.2d 106 (N.Y. 2000).

Counsel:

Party:	**Counsel included:**
Co-counsel for Respondent Broadway HS Corp.	Gerard E. Harper, Paul, Weiss, 1285 Avenue of the Americas, New York, NY 10019-6064, (212) 373-3000.
Counsel for Appellants	Jack L. Lester, 261 Madison Avenue, 26th Floor, New York, NY 10016, (212) 832-5357.
Counsel for Respondent New York City Board of Standards and Appeals	Michael D. Hess, now of Holland & Knight LLP 31 West 52nd Street New York, NY 10019, (212) 513-3404.

(10) *O'Dell v. Netherland*, 521 U.S. 151 (1997).

United States Supreme Court; Rehnquist, C.J., and Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, and Breyer, JJ. Briefed and argued in 1997.

Description: This United States Supreme Court case involved the capital representation of an individual sentenced to death in Virginia. The Defendant Joseph Roger O'Dell chose to represent himself at trial and was found guilty. In the course of the sentencing proceedings, he sought to rebut Virginia's evidence that his future dangerousness was an aggravating factor for the jury to consider, with evidence that he was ineligible for parole if sentenced to life in prison. The judge, applying Virginia law, barred the Defendant's rebuttal evidence, and sentenced him to death on the jury's recommendation. Subsequently, the United States Supreme Court ruled in *Simmons v. South Carolina*, 512 U.S. 154 (1994), that barring a defendant from presenting rebuttal evidence of his ineligibility for parole in such circumstances was unconstitutional under the Due Process Clause. Defendant O' Dell then sought resentencing based on retroactive application of *Simmons*. Paul, Weiss partner Robert S. Smith argued the case in the United States Supreme Court. The Court denied the Defendant's request for the requested retroactive application of *Simmons* by a 5-4 vote. *O'Dell v. Netherland*, 521 U.S. 151 (1997). The Defendant was subsequently denied clemency and executed. I assisted in the Supreme Court brief

research and drafting, moot courts, and subsequent drafting and oral advocacy in support of the unsuccessful clemency petition.

Counsel:

Party:	**Counsel included:**
Co-counsel	Robert S. Smith, now Associate Judge of the New York State Court of Appeals, 20 Eagle Street, Albany, NY 12207, (518) 455-7700; and Paul H. Schoeman, now of Kramer, Levin, Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036, (212) 715-9100; Alan Effron, now of Pelosi Wolf Effron & Spates LLP, 233 Broadway, 22nd Floor, New York, NY 10279, (212) 334-4801; and Michele J. Brace, Virginia Capital Representation Resource Center, 2421 Ivy Road, Suite 301, Charlottesville, VA 22903, (434) 817-2970.
Counsel for Respondents	James S. Gilmore, III, now of Free Congress Foundation, 1423 Powhatan Street, Alexandria, VA 22314, (703) 837-0030; David E. Anderson, now of LeClair Ryan, Riverfront Plaza, East Tower, 951 East Byrd Street, Eighth Floor, Richmond, Virginia 23219, (804) 783-7526; and Katherine P. Baldwin, Virginia Attorney General's Office, 900 East Main Street, Richmond, Virginia 23219, (804) 786-2071.

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

I have litigated a number of significant voting related cases including *Shelby County v. Holder et al.*, 570 U.S. __ (2013); *Northwest Austin Municipal Utility District No. One v. Mukasey*, No. 06-1384 (D.D.C.), *Northwest Austin Municipal Utility District No. One v. Holder*, No. 08-322 (U.S.), *Louisiana House of Representatives v. Ashcroft*, No. 02-0062 (D.D.C.), and *NAACP v. Smith, et al.*, No. 01-00120 (S.D. Fla.), among others. These cases were not tried but each represents an important application or defense of core civil rights protections. I was lead counsel for LDF's clients in the *Shelby County, Northwest*

Austin and *Louisiana House of Representatives* cases, and in the cases of *Shelby* and *Northwest Austin*, I argued the cases before the Supreme Court on behalf of LDF's clients and a larger group of intervenors.

On behalf of the NAACP Legal Defense & Educational Fund, Inc. (LDF), I worked extensively on the legislative effort to reauthorize the temporary provisions of the Voting Rights Act of 1965 during 2005 and 2006. In connection with that effort, I testified before the House Judiciary Sub-Committee on the Constitution, and the Senate Judiciary Sub-Committee on the Constitution, Civil Rights, and Property Rights. I also spent a limited amount of time lobbying for LDF at the federal and state level on other voting and civil rights matters.

While I was an associate at Paul, Weiss, Rifkind, Wharton and Garrison, I litigated cases for corporate clients involving substantial real or intellectual property interests, and defended a state public official against civil rights claims. Additionally, I represented a prisoner under sentence of death in his appeal to the Supreme Court and in connection with a clemency petition to the Governor in *O'Dell v. Netherland*.

I now serve as Senior Counsel to the Senate Judiciary Committee in which capacity I work on the legislative response to *Shelby County v. Holder et al.*

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

    I have not taught any formal courses since law school, though I have guest lectured periodically. During law school I co-taught one class entitled "Unlearning Stereotypes" at Thomas Jefferson High School, a New York City public school in East New York, Brooklyn as a part of an initiative organized by the New York Civil Rights Coalition. Syllabus not available.

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

    My former employer the NAACP Legal Defense & Educational Fund, Inc. (LDF) has a defined benefit plan for which I am eligible. I also have a 403(b) established during my employment at LDF. As a federal employee, I also participate in the Thrift Savings Plan.

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

None.

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

    See SF-278.

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

    See attached net worth statement.

22. **Potential Conflicts of Interest**:

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

        In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

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

        In the event of a potential conflict of interest, I would consult the Department's designated agency ethics official.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

As a not-for-profit, the NAACP Legal Defense & Educational Fund, Inc. represents all of its clients without charge, and its founding charter places special emphasis on the mission of representing poor African Americans. LDF's legal staff also engages in extensive public education regarding civil rights and constitutional issues. I was actively engaged in LDF's representations and public education efforts during my years there.

At Paul, Weiss, Rifkind Wharton & Garrison LLP, as a summer associate and as an associate, I rendered pro bono service to clients in matters, involving a Supplemental Security Income disability benefit hearing, orders of protection and related divorce, visitation, and custody proceedings, and with respect to a capital sentence. I also coached moot court teams at various public high schools, and made presentations to high school students regarding higher education, law school, law firm practice, and the importance of the United States Constitution.

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		35	984	Notes payable to banks-secured			0
U.S. Government securities			0	Notes payable to banks-unsecured			0
Listed securities – see schedule		169	291	Notes payable to relatives			0
Unlisted securities			0	Notes payable to others			0
Accounts and notes receivable:				Accounts and bills due		42	016
Due from relatives and friends		7	600	Unpaid income tax			
Due from others		2	000	Other unpaid income and interest			
Doubtful			0	Real estate mortgages payable – personal residence Wells Fargo		686	333
Real estate owned – add schedule	1	600	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			
Autos and other personal property		27	000	The Standard (LDF 403b)		22	349
Cash value-life insurance			0				

Other assets itemize:							
NY Civil Employees' Retirement System (spouse)		22	213				
LDF Defined Benefit Pension Plan		84	969				
U.S. Senate TSP		1	544	Total liabilities		750	698
				Net Worth	1	199	903
Total Assets	1	950	601	Total liabilities and net worth	1	950	601
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)	No		
On leases or contracts			0	Are you defendant in any suits or legal actions?	No		
Legal Claims			0	Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax			0				
Other special debt			0				

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AT&T stock	$2,197
Microsoft	2,009
Principal Bond & Mortgage Securities	10,293
Principal Int'l Emerging Mkts Fund	6,538
Principal Large Cap Blend II	20,929
Principal Mid Cap Value III	22,109
Principal Real Estate Securities Fund	7,259
Principal Small Cap Blend	13,897
Goldman Sachs Fs Prime Ob Inv	6,183
Vanguard Total Bdmkt Idx Inv	18,572
Vanguard Value Index Inv	6,053
Vanguard 500 Index Inv	11,675
Vanguard Growth Index Fund	6,302
Vanguard Mid Cap Val Idx Inv	1,853
Vanguard Mid Cap Growth Idx Inv	1,889
Vanguard Small Cap Index Inv	3,779
Dreyfus Int'l Stock Index	5,777
Mutual of America Small Cap Values	5,564
Mutual of America Mid Cap Value Fund	5,518
Fidelity Investments VIP Cap Portfolio	3,811
Vanguard VIF Int'l Portfolio	3,743
UBS Opportunity Fund Class C	3,341
Total Listed Securities	$169,291

Real Estate Owned	
Personal Residence in New York, NY	$1,600,000

AFFIDAVIT

I, Debo P. Adegbile, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

December 6, 2013
(DATE)

(NAME)

(NOTARY)

District of Columbia
Subscribed and sworn to before me this 6th day of December 2013
Notary Public

REGINA E. ADAMS NOTARY PUBLIC DISTRICT OF COLUMBIA EXPIRES APR 14, 2018

January 6, 2014

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

Dear Mr. Chairman:

I reviewed the Senate Judiciary Questionnaire filed on December 6, 2013, in connection with my nomination to be Assistant Attorney General for Civil Rights. I certify that the information contained in that document is and remains, to the best of my knowledge, true and accurate.

I am also submitting an updated Financial Statement (Net Worth), which is enclosed.

Thank you and the Committee for consideration of my nomination.

Sincerely,

Debo P. Adegbile

cc: The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Enclosure

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 (est.)		16	000	Notes payable to banks-secured			0
U.S. Government securities			0	Notes payable to banks-unsecured			0
Listed securities – see schedule		169	291	Notes payable to relatives			0
Unlisted securities			0	Notes payable to others			0
Accounts and notes receivable:				Accounts and bills due		42	016
Due from relatives and friends		7	600	Unpaid income tax			
Due from others		2	000	Other unpaid income and interest			
Doubtful			0	Real estate mortgages payable – personal residence Wells Fargo		686	333
Real estate owned – add schedule (est.)	1	600	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			
Autos and other personal property		27	000				
Cash value-life insurance			0				
Other assets itemize:							
NY Civil Employees' Retirement System (spouse)		22	213				
LDF Defined Benefit Pension Plan		84	969				
U.S. Senate TSP		1	544	Total liabilities		728	319
				Net Worth	1	202	268
Total Assets	1	930	617	Total liabilities and net worth	1	930	617
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)	No		
On leases or contracts			0	Are you defendant in any suits or legal actions?	No		
Legal Claims			0	Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax			0				
Other special debt			0				

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AT&T stock	$2,197
Microsoft	2,009
Principal Bond & Mortgage Securities	10,293
Principal Int'l Emerging Mkts Fund	6,538
Principal Large Cap Blend II	20,929
Principal Mid Cap Value III	22,109
Principal Real Estate Securities Fund	7,259
Principal Small Cap Blend	13,897
Goldman Sachs Fs Prime Ob Inv	(est.) 6,183
Vanguard Total Bdmkt Idx Inv	(est.) 18,572
Vanguard Value Index Inv	(est.) 6,053
Vanguard 500 Index Inv	(est.) 11,675
Vanguard Growth Index Fund	(est.) 6,302
Vanguard Mid Cap Val Idx Inv	(est.) 1,853
Vanguard Mid Cap Growth Idx Inv	(est.) 1,889
Vanguard Small Cap Index Inv	(est.) 3,779
Dreyfus Int'l Stock Index	(est.) 5,777
Mutual of America Small Cap Values	5,564
Mutual of America Mid Cap Value Fund	5,518
Fidelity Investments VIP Cap Portfolio	3,811
Vanguard VIF Int'l Portfolio	3,743
UBS Opportunity Fund Class C	3,341
Total Listed Securities	$169,291

Real Estate Owned	
Personal Residence in New York, NY	$1,600,000 (est.)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   James Donald Peterson

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

   United States District Judge for the Western District of Wisconsin

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.

   Godfrey & Kahn, S.C.
   One East Main Street, Suite 500
   P.O. Box 2719
   Madison, Wisconsin 53701

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

   1957; Lake Charles, Louisiana

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 Wisconsin Law School; J.D., 1998
   1982 – 1986, University of Wisconsin–Madison; Ph.D., 1986
   1980 – 1982, University of Wisconsin–Madison; M.A., 1984
   1980, University of Wisconsin–Whitewater; no degree
   1976 – 1979, University of Wisconsin–Madison; B.S., 1979
   1975 – 1976, University of Wisconsin–Oshkosh; 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, 1997 – 1998
   Godfrey & Kahn, S.C.
   (includes LaFollette Sinykin, which merged with Godfrey & Kahn on January 1, 2000,

and LaFollette Godfrey & Kahn, the name by which the Madison office was known from 2000 – 2007)
One East Main Street, Suite 500
P.O. Box 2719
Madison, Wisconsin 53701
Shareholder (2007 – present)
Associate (1999 – 2006)
Law Clerk (1997 – 1998)

2001, 2005, 2011 – 2013
University of Wisconsin Law School
975 Bascom Mall
Madison, Wisconsin 53706
Adjunct Instructor

1998 – 1999
State of Wisconsin Court of Appeals, District IV
110 East Main Street, Suite 215
Madison, Wisconsin 53703
Clerk to the Hon. David G. Deininger

Summer 1996
State of Wisconsin Department of Justice, Civil Litigation Unit
P.O. Box 7857
17 West Main Street
Madison, Wisconsin 53703
Law clerk

Spring 1996
Stafford Rosenbaum Reiser & Hansen
222 West Washington Avenue, Suite 900
Madison, Wisconsin 53701
Law clerk

1994 – 1995, 1981 – 1986
University of Wisconsin–Madison
Department of Communication Arts
821 University Avenue
Madison, Wisconsin 53706
Lecturer (1994 – 1995)
Research Fellow (1985 – 1986)
Teaching Assistant (1981 – 1985)

1993 – 1995
State Bar of Wisconsin
5302 Eastpark Boulevard

Madison, Wisconsin 53716
Member programs coordinator

1986 – 1993
University of Notre Dame
Department of Film, Television and Theatre
DeBartolo Performing Arts Center, Room 230
Notre Dame, Indiana 46556
Assistant Professor

1982 – 1986
Gino's Restaurant
540 State Street
Madison, Wisconsin 53703
Host (part time)

1982 – 1983
Kinko's Copies (later acquired by FedEx)
622 University Avenue
Madison, Wisconsin 53715
Clerk/operator (part time)

1979 – 1981
Johnson Hill Press (later acquired by Cygnus Business Media)
1233 Janesville Avenue
Fort Atkinson, Wisconsin 53538
Camera department supervisor

1979
Schweiger Furniture (closed 2004)
351 Collins Road
Jefferson, Wisconsin 53594
Sample frame builder

Other affiliations (uncompensated):

2008 – present
Western District of Wisconsin Bar Association
P.O. Box 44578
Madison, Wisconsin 53744
Board of Governors (2008 – present)
Treasurer (2010 – 2012)
President-elect (2012 – 2013)
President (2013 – 2014)

2010 – present
GK Phenomenal Fund, LLC

One East Main Street, Suite 500
Madison, Wisconsin 53703
Member

2011 – present
2011 Water Street Investors I, LLC
780 North Water Street
Milwaukee, Wisconsin 53202
Member

2011 – present
2011 Water Street Investors II, LLC
780 North Water Street
Milwaukee, Wisconsin 53202
Member

2005 – 2008
Madison West Athletic Booster Association, Inc.
30 Ash Street
Madison, Wisconsin 53705
Board Member

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

   I have not served in the military. I was not required to have registered for the selective service.

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

   Best Lawyers in America (2011, 2012, 2013)

   Wisconsin Super Lawyer (2012, 2013)

   Benchmark Litigation Wisconsin Litigation Star (2012)

   Law and Politics Wisconsin Rising Star (2007, 2008)

   Order of the Coif (1998)

   Mrs. Minnie Riess Detling Fellowship (1985 – 1986)

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

American Bar Association (1998 – present)

Federal Circuit Bar Association (2006 – present)

James E. Doyle American Inns of Court (1998 – 2012)

State Bar of Wisconsin (1998 – present)
Communications Committee (2000 – 2008)
Chair (2003 – 2005)

Western District of Wisconsin Bar Association (2005 – present)
Board of Governors (2008 – present)
Website Committee (2009 – 2012)
Chair
Electronic Filing Improvement Working Group (2009 – 2010)
Chair
Treasurer (2010 – 2012)
President-elect (2012 – 2013)
President (2013 – 2014)

Wisconsin Intellectual Property Law Association (2001 – 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.

Wisconsin, 1998

There has been no lapse in membership.

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

State of Wisconsin Supreme Court, 1998

United States District Court for the Western District of Wisconsin, 1998

United States District Court for the Western District of Michigan, 2001

United States Court of Appeals for the Seventh Circuit, 2003

United States Supreme Court, 2004

United States Court of Appeals for the Federal Circuit, 2005

United States District Court for the Eastern District of Wisconsin, 2006

United States District Court for the Eastern District of Texas, 2009

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.

Cherokee Country Club (1998 – 2001)

Editorial board of *Intellectual Property Litigation* (2004 – 2005)

Lake Ripley Country Club (1993 – 1998)

Madison West Athletic Booster Association (2005 – 2008)
Board Member

Nakoma Golf Club (2005 – present)

Wisconsin Golf Association (2005 – present)

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

To the best of my knowledge none of the organizations of which I am a member currently discriminate or have 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.

Annual Meeting to Feature Patrick Fitzgerald (anonymously), NEWSLETTER OF THE WESTERN DISTRICT BAR ASSOCIATION (Vol. 22, No. 2, May 2013). Copy supplied.

With Kerry Gabrielson, *Copyright*, chapter of Wisconsin Attorneys Desk Reference (State Bar of Wisconsin, 2013). Copy supplied.

No More Mr. Nice Guy, Honorable John C. Shabaz, 1931 – 2012 (anonymously), NEWSLETTER OF THE WESTERN DISTRICT BAR ASSOCIATION (Vol. 21, No. 3, Dec. 2012). Copy supplied.

Watch Out for Trademark Scams, Godfrey & Kahn Intellectual Property FLASH, February, 2012. Copy supplied.

With Jennifer Gregor, *Attorneys At Work: A Flexible Notion of Plagiarism,* LAW 360 (Oct. 7, 2011). Copy supplied.

With Jennifer Gregor, *Copycat: Plagiarism, Copyright Infringement, and Lawyers*, WISCONSIN LAWYER (June 2011). Copy supplied.

With Benjamin Freedland, *Motions to Transfer After In re Genentech: The Effect of Federal Circuit Writs of Mandamus on Western District Litigation* (with Benjamin Freedland), NEWSLETTER OF THE WESTERN DISTRICT OF WISCONSIN (Vol. 19, No. 1, February 2010). Copy supplied.

IP Experts 101 for Young Lawyers, INTELLECTUAL PROPERTY LITIGATION (ABA Section of Litigation, Fall 2004). Copy supplied.

Beyond Copyright: Protecting Databases, Godfrey & Kahn client update, October 1, 2002. Copy supplied.

Supreme Court Clarifies Portion of Electronic Republication Rights Uncertainty, Godfrey & Kahn client update, October 1, 2001. Copy supplied.

Behind the Curtain of Privacy: How Obscenity Law Inhibits the Expression of Ideas About Sex and Gender, Wisconsin Law Review (Vol. 1998, No. 2). Copy supplied.

Postmodernism and Film, chapter 2.3 of Hans Bertens & Douwe Fokkema, eds., International Postmodernism: Theory and Literary Practice, published as Volume

11 of the series, A Comparative History of Literatures in European Languages (John Benjamins Publishing Co. 1997). Copy supplied.

Is a Cognitive Approach to the Avant-Garde Cinema Perverse?, chapter 5 of David Bordwell & Nöel Carroll, eds., Post-Theory: Reconstructing Film Studies (Univ. of Wisconsin Press 1996). Copy supplied.

What's the Fuss? Clarifying the Citation Debate, WISCONSIN LAWYER (Feb. 1995). Copy supplied.

Fee Arbitration: An Alternative to Litigation, WISCONSIN LAWYER (Aug. 1994). Copy supplied.

DREAMS OF CHAOS, VISIONS OF ORDER (Wayne State Univ. Press 1994). Copy supplied.

Nöel Carroll, The Philosophy of Horror, or Paradoxes of the Heart (review essay), WIDE ANGLE: A QUARTERLY JOURNAL OF FILM HISTORY, THEORY, CRITICISM & PRACTICE (Ohio Univ. College of Fine Arts & Athens Center for Film & Video, Jan. 1992). Copy supplied.

A War of Utter Rebellion: Kinugasa's Page of Madness and the Japanese Avant-Garde of the 1920s, CINEMA JOURNAL (Univ. of Ill. Press, Fall 1989). Copy supplied.

Bruce Conner and the Compilation Narrative, WIDE ANGLE: A QUARTERLY JOURNAL OF FILM HISTORY, THEORY, CRITICISM & PRACTICE (Ohio Univ. College of Fine Arts & Athens Center for Film & Video, July/Oct. 1986). Copy supplied.

The Artful Mathematicians of the Avant-Garde, WIDE ANGLE: A QUARTERLY JOURNAL OF FILM HISTORY, THEORY, CRITICISM & PRACTICE (Ohio Univ. College of Fine Arts & Athens Center for Film & Video, July 1985). 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 a member of the Communication Committee of the State Bar of Wisconsin, I was a member of the editorial board of *Wisconsin Lawyer* magazine from 2000 to 2008, which included a term as chair from 2003 to 2005. Although the Editor, who was a paid staff member of the State Bar of Wisconsin, was directly responsible for the direction of the magazine, the members of the editorial board also approved or rejected the feature articles and provided comments and suggestions for revision for those selected for publication. Back issues of

Wisconsin Lawyer since 2002 are available at: http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Archive.aspx?Volume=75.

Improvements to Electronic Case Filing System, report of the Electronic Filing Improvement Working Group of the Western District Bar Association (May 13, 2010). Copy supplied.

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

I have not issued or provided any such communications.

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

To respond to this question, I have relied on my recollection, a review of my files, and a search of the Internet and electronic news databases. During my academic career, as a graduate student and then as an assistant professor, I presented scholarly papers at academic conferences, perhaps once or twice a year from 1984 to 1992. I have no notes, transcripts, or recordings of these scholarly papers, but the substance of the papers was generally incorporated into my scholarly publications, copies of which are provided in response to question 12.a. I am reasonably confident, although not fully certain, that I have located information concerning all public presentations that I have made since I began my legal career.

March 19, 2013: I spoke on the topic of copyright law principles for educators to staff of the Verona Area School District, in Verona Wisconsin. The outline, which I also distributed as a handout, is supplied.

Summer 2001 – Summer 2012: I spoke annually on the subject of "Press Rights and Obligations" for high school journalism students at the Kettle Moraine Press Association Summer Journalism Workshop in Whitewater, Wisconsin. A copy of the 2008 outline, which was also distributed as a handout, is supplied.

January 5, 2012: I spoke on the topic of copyright law principles for educators at the Blackhawk Technical College Teacher In-Service Program, in Janesville, Wisconsin. I have no notes, transcript, or recording, but the presentation would

have been substantially similar to the one on March 19, 2013, for which notes have been supplied.

June 2011: I made a presentation with Jennifer L. Gregor for on-line distribution on the subject of "Copyright Infringement by Lawyers: What Constitutes Plagiarism?" Video available at: http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=84&Issue=6&ArticleID=2252.

April 1, 2011: I participated in a writing workshop for law students at the University of Wisconsin Law School, in Madison, Wisconsin, making a presentation entitled "Five Techniques That Will Improve Your Writing In Fifteen Minutes." A copy of the outline, which was distributed as a handout, is supplied.

May 21, 2010: I made a presentation to the annual meeting of the Western District of Wisconsin Bar Association on the work of the Electronic Filing Sub-Committee. I have no notes, transcript, or recording, but the substance of the presentation was contained in the Improvements to Electronic Case Filing System report, which was distributed in the meeting materials. A copy of the report is supplied in response to question 12.b.

February 24, 2010: I participated in a writing workshop for law students at the University of Wisconsin Law School, in Madison, Wisconsin, making a presentation entitled "Five Techniques That Will Improve Your Writing In Fifteen Minutes." The outline, which was distributed as a handout, is the same as used on April 1, 2011, a copy of which has been provided.

Winter 2003 – Winter 2008: I spoke annually on the topic of copyright law principles for educators at Madison Area Technical College Teacher In-Service Programs, in Madison, Wisconsin. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on March 19, 2013, for which notes have been supplied.

November 6, 2007: I delivered a presentation entitled "Intellectual Property Issues for Wisconsin Technical Colleges" to the Wisconsin Technical College Convocation in Waukesha, Wisconsin. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on March 19, 2013, for which notes have been supplied.

October 17, 2007: I delivered a presentation entitled "Making the Most of Demonstrative Evidence in the 21st Century" to the James E. Doyle Chapter of the American Inns of Court in Madison, Wisconsin. A copy of the PowerPoint slides used with the presentation is supplied.

May 20, 2007: I delivered a presentation entitled "Plan Stealing – Preventing Infringement of Construction Drawings and Architectural Work" to the Metropolitan Area Builders Association in Milwaukee, Wisconsin. The outline, which was also distributed as a handout, is supplied.

May 18, 2005: I delivered a presentation on the topic of open source work and the protection of confidential information to a seminar for business clients of LaFollette Godfrey & Kahn in Madison, Wisconsin. A copy of the PowerPoint slides used with the presentation is supplied.

March 15, 2005: I gave a presentation entitled "Tolerating Confusion: The Evolving Concept of Trademark Fair Use" to a meeting of the Wisconsin Intellectual Property Law Association in Madison, Wisconsin. The outline, which was also distributed as a handout, is supplied.

March 26, 2004: I spoke on the topic of copyright law principles for educators to music teachers at the Hamilton School District in Sussex, Wisconsin. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on March 19, 2013, for which notes have been supplied.

November 6, 2003: I spoke on the topic of copyright law principles for university faculty at a University of Wisconsin–Madison in-house program in Madison, Wisconsin. I have no notes, transcript, or recording, but the presentation would have been substantially similar to the one on March 19, 2013, for which notes have been supplied.

January 14, 2003: I spoke on the topic of copyright law principles for educators at an Edgewood College faculty seminar in Madison, Wisconsin. The outline, which was also distributed as a handout, is supplied.

September 19, 2002: I delivered a presentation on basic copyright law principles to the University of Wisconsin Film Studies Colloquium in Madison, Wisconsin. The outline, which was also distributed as a handout, is supplied.

March 27, 2002: I delivered a presentation entitled "From Gutenberg to Napster: Copyright 2002" to the International Association of Business Communicators in Madison, Wisconsin. The outline, which was also distributed as a handout, is supplied.

March 14, 2002: I delivered presentations entitled "Copyright Protection in the Digital Age and "Leveraging Your Intellectual Property Assets" to a seminar for business clients of LaFollette Godfrey & Kahn in Madison, Wisconsin. Copies of the PowerPoint slides used with the presentations are supplied.

May 10, 2001: I delivered presentations on "Copyright Basics 2001" and "Trademark and other Related IP Rights" to a meeting of the Madison Center for Photography in Madison, Wisconsin. Outlines supplied.

April 7, 2001: I delivered presentations on "Copyright Basics 2001" and "Trademark and other Related IP Rights" to a meeting of the Wisconsin Association of Public Access Channels in Wisconsin Dells, Wisconsin. I used the same outlines for the presentation on May 10, 2010, copies of which have been supplied.

August 4, 2000: I delivered a presentation on the subject of libel and invasion of privacy entitled "Writing About Real People" to the UW Extension Writer's Workshop in Madison, Wisconsin. Outline supplied.

August 3, 2000: I delivered a presentation entitled "Anatomy of Publishing Contract" to the UW Extension Writer's Workshop in Madison, Wisconsin. 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.

From time to time, I have responded to questions from the media, most commonly concerning intellectual property issues, and sometimes concerning cases in which I have been involved. To respond to this question, I have relied on my recollection and on a search of the Internet and electronic news databases. I am reasonably confident, although not fully certain, that I have located all published stories in which I have been cited or quoted.

On August 22, 2013, I answered questions for Erin Geiger Smith, a Reuters correspondent, concerning one of my cases, *Kienitz v. Sconnie Nation, LLC et al.*, W.D. Wis. Case No. 12-CV-464-SLC. To my knowledge, the reporter has not yet published a story on this case.

Stacy Vogel Davis, *Waukesha Firm Hit For $8.9m For Junk Faxes*, THE BUSINESS JOURNAL OF MILWAUKEE, August 3, 2012. Copy supplied.

Jack Zemlicka, *State Bar Sues Competing Service Provider Over Similar Logo*, WISCONSIN LAW JOURNAL, August 24, 2011. Copy supplied.

Todd Richmond, *Wis. GOP Accuses Senator of Copying Husband's Work*, WISCONSIN STATE JOURNAL, August 9, 2010. Copy supplied.

Dianna Marrero, *Drug-makers, High Tech Companies Clash Over Patents*, MILWAUKEE JOURNAL SENTINEL, May 27, 2008. Copy supplied.

Red Cross President Vows to Fight Logo Lawsuit, WKOW-27, October 10, 2007. Copy supplied.

Jack Zemlicka, *Wisconsin State Bar Keeps An Eye On Its Trademark*, WISCONSIN LAW JOURNAL, April 9, 2007. Copy supplied.

Judge Dismisses Infringement Suit Against Google Products, DOW JONES NEWS SERVICE, December 22, 2006. Copy supplied.

Rick Rommel, *Power Chord Struggle*, MILWAUKEE JOURNAL SENTINEL, October 29, 2006. Copy supplied.

Jeff Richgels, *Prairie Du Sac Firm Wins 'No Glare" Patent Suit*, THE CAPITAL TIMES, September 22, 2005. Copy supplied.

Ed Treleven, *Judge Rules For Elections Board*, WISCONSIN STATE JOURNAL, June 3, 2005. Copy supplied.

Judith Davidoff, *Accenture Voter ID List Survives Test; Judge Rules Contract Is Legal*, THE CAPITAL TIMES, June 3, 2005. Copy supplied.

Diane Molvig, *A Good Run: Wisconsin Lawyer Looks Back on 75 Years*, WISCONSIN LAWYER, September 2003. Copy supplied.

Gretchen Schuldt, *Racine, Wis., Firm Seeks to Halt Competitor from Using "Referee" in Web Name*, MILWAUKEE JOURNAL SENTINEL, February 23, 2001. Copy supplied.

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

I have not held judicial office.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

I have not held judicial office.

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

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

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

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

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

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held public office. 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 public office or served as a member or officer of a political party or election committee.

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

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

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

From 1998 to 1999, I served as judicial clerk to Judge David G. Deininger of the State of Wisconsin Court of Appeals.

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

I have never practiced law alone.

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

1999 – present
Godfrey & Kahn, S.C.
(includes LaFollette Sinykin, which merged with Godfrey & Kahn on January 1, 2000, and LaFollette Godfrey & Kahn, the name by which the Madison office was known from 2000 – 2007)
One East Main Street, Suite 500
P.O. Box 2719
Madison, Wisconsin 53701
Shareholder (2007 – present)
Associate (1999 – 2006)

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

I have not served as a mediator or arbitrator.

b. Describe:

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

My practice at Godfrey & Kahn (and its predecessors) has focused on litigation and intellectual property. In the first few years of my practice, I did a broad range of general litigation in both state and federal courts. In some of the more significant cases in the first years of my practice I represented firm clients on state and federal constitutional matters. By about 2005, my litigation work began to focus on intellectual property. My law practice is now predominantly civil litigation, mostly involving intellectual property and technology litigation. Throughout my career in private practice, I have also advised clients on intellectual property strategy outside the litigation context.

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

My intellectual property clients are typically mid-sized Wisconsin-based businesses. I also advise individual authors, scholars, artists, and architects on the protection of their intellectual property. I represent large national or multi-national corporations as local counsel in patent litigation in this district.

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

My practice is approximately 90 percent litigation, exclusively civil, so I have appeared regularly in court throughout my career. Over time, my litigation work has focused more on intellectual property and technology matters, which now brings me almost exclusively into federal court. In the first six or seven years of practice, I litigated in state court approximately 50 percent of the time. My work also involves some matters in administrative tribunals, including the Trademark Trial and Appeal Board and the Patent Trial and Appeal Board, amounting to perhaps five percent of my matters. Although in the last few years, my work has tended to be in federal district court, I also have appellate experience, including oral argument in the Seventh Circuit, the Federal Circuit, and the Wisconsin Supreme Court.

i. Indicate the percentage of your practice in:
   1. federal courts: 85%
   2. state courts of record: 10%
   3. other courts: 0%
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

I have been lead counsel in at least 15 civil cases that have been litigated to judgment. I have actively participated in approximately nine jury trials. I have been lead counsel in three cases tried to juries and three cases tried to a court. I have been associate counsel in at least five additional cases decided by dispositive motion.

i. What percentage of these trials were:
   1. jury: 85%
   2. non-jury: 15%

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

I have written and filed two amicus briefs in the Supreme Court of the United States: *McCreary County v. ACLU of Kentucky*, 545 U.S. 844 (2005), Brief of Freedom From Religion Foundation As Amicus Curiae In Support of the Respondents; *Van Orden v. Perry*, 545 U.S. 677 (2005), Brief of Freedom From Religion Foundation As Amicus Curiae In Support of the Petitioner. Copies 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. *Essociate, Inc. v. Azoogle.com, Inc., et al.*, Case No. 11-CV-727 (W.D. Wis.), Judge Barbara B. Crabb and Magistrate Judge Stephen L. Crocker; 2011 – 2013.

The plaintiff in this case held a patent on a method of operating an Internet affiliate program, a form of Internet advertising. I was lead counsel for the defendants, one of whom had operated the largest Internet affiliate program in the United States. The other defendant was an affiliated company, against which the plaintiff alleged various theories of successor or alter ego liability. The court granted summary judgment of non-infringement on May 17, 2013 (the court did not reach several other defenses, including invalidity and inequitable conduct). The case had generated significant interest because the plaintiff had sued approximately a dozen other affiliate systems. This was the first case involving this patent to be litigated to judgment, and the court's decision will have a significant impact on the several cases that are still pending.

Counsel for Plaintiff Essociate, Inc.:
Derek A. Newman
John Du Wors
Derek Linke
Newman Du Wors LLP
1201 Third Avenue, Suite 1600
Seattle, Washington 98101
206-274-2800

2. *Stayart v. Google Inc.*, 783 F. Supp. 2d 1055 (E.D. Wis. 2011) (Lynn Adelman, J.); *aff'd.*, 710 F.3d 719 (7th Cir. 2013) (Williams, J.); 2010 – 2013.

This is a Wisconsin law right of publicity case that attracted a great deal of attention because of its potential impact on the operation of Internet search engines. I was lead counsel for the defendant Google, and I argued the appeal in the Seventh Circuit. The plaintiff, Stayart, had sued Yahoo! for associating her name with sexual dysfunction medications. The case was dismissed, but it garnered significant coverage from Internet bloggers, who closely monitor cases that might affect Internet commerce. Thus, when Stayart searched her own name on Google's search engine, Google returned suggested searches that linked Stayart to sexual dysfunction medications. Stayart sued Google, alleging that her Wisconsin law right of publicity had been violated. The district court dismissed the complaint, and the judgment was affirmed on appeal. The Seventh Circuit's reported decision provides useful guidance on the application of Wisconsin's right of publicity to matters of public interest.

Counsel for Plaintiff Stayart:
Gregory A. Stayart

7505 Stillman Valley Road
Rockford, Illinois 61109
262-745-7395

3. *Extreme Networks, Inc. v. Enterasys Networks, Inc.*, 558 F. Supp. 2d 909 (W.D. Wis. 2008) (decision on summary judgment); 2008 WL 4621440 (W.D. Wis. May 16, 2008) (decision on motion in limine); Judge Barbara B. Crabb and Magistrate Judge Stephen L. Crocker; 2007 – 2013.

This protracted patent infringement case involved computer network switches and routers. It was resolved by a partial summary judgment, a jury trial, an appeal, and finally a second jury trial. I represented the plaintiff, Extreme Networks, with a team from McDermott Will & Emery. Enterasys asserted counterclaims for infringement of its own patents against Extreme Networks. Enterasys dismissed the counterclaims based on one patent after the claim construction ruling, and its remaining counterclaims were dismissed on summary judgment. Extreme Networks' infringement case was tried to a jury, which returned a verdict for Extreme Networks on all counts. Enterasys secured a partial reversal on appeal, and a portion of its case was remanded to the district court and tried to a jury. Extreme Networks again secured a verdict in its favor in the second trial. My role began as local counsel for McDermott Will & Emery's Chicago office. I argued the half of the claim construction hearing devoted to the patents asserted against Extreme Networks. From then on I served with McDermott's partner-level litigators on the case. I briefed and argued the motion in limine that excluded Enterasys' technical expert from the case, which was a turning point in the first trial. I also briefed and argued a successful motion for sanctions against Enterasys for discovery abuse, which was a turning point in the second trial.

Co-counsel for Plaintiff Extreme Networks, Inc.:
Terrence P. McMahon
David H. Dolkas
David L. Larson
McDermott Will & Emery, LLP
275 Middlefield Road, Suite 100
Menlo Park, California 94025
650-815-7501

Margaret M. Duncan
Krista Vink Venegas
John George Bisbikis
Amol A. Parikh
McDermott Will & Emery, LLP
227 West Monroe Street
Chicago, Illinois 60606
312-372-2000

Christopher D. Bright
Daniel R. Foster

McDermott Will & Emery LLP
4 Park Plaza, Suite 17
Irvine, California 92614
949-851-0633

Counsel for Defendant Enterasys Networks, Inc.:
Jan M. Conlin
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800 LaSalle Avenue
2800 LaSalle Plaza
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612-349-8218

Alan E McKenna
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William J. Rocha
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25th Floor
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617-859-2719

Marla R. Butler
Robins, Kaplan, Miller & Ciresi L.L.P.
2600 One Atlanta Plaza
950 East Paces Ferry Road, N.E.
Atlanta, Georgia 30326
404-760-3800

Lester A. Pines
Cullen Weston Pines & Bach LLP
122 West Washington Avenue
Suite 900
Madison, Wisconsin 53703
608-251-0101

4. *Silicon Graphics, Inc. v. ATI Technologies, Inc.*, 741 F. Supp. 2d 970 (W.D. Wis. 2010) (decision on motion for disqualification); Judge Barbara B. Crabb and Magistrate Judge Stephen L. Crocker; 2010 – 2011.

This was a patent infringement case on which I served as local counsel to the defendant, ATI Technologies. My firm also served as counsel to Robins, Kaplan, the law firm that was lead counsel for ATI. Plaintiff Silicon Graphics moved to disqualify Robins, Kaplan alleging that a conflict of interest arose when Robins, Kaplan hired an attorney who had performed work for the plaintiff at a previous firm. Robins, Kaplan hired Godfrey & Kahn to represent the firm in opposing the disqualification. The motion involved several novel issues concerning the Wisconsin Rules of Professional Conduct and the

applicability of those rules in federal litigation. The court denied the motion for disqualification in a comprehensive opinion on attorney disqualification from Judge Crabb.

Co-counsel for defendant ATI Technologies, Inc.:
William H. Manning
Logan James Drew
Samuel L Walling
Aaron Robert Fahrenkrog
Andrew Martin Kepper
Jacob Zimmerman
Sara Poulos
Robins, Kaplan, Miller & Ciresi, LLP
800 LaSalle Avenue
2800 LaSalle Plaza
Minneapolis, Minnesota 55402
612-349-8461

Counsel for plaintiff Silicon Graphics, Inc.:
James M. Bollinger
Daniel Allen Ladow
Laura E. Krawczyk
Troutman Sanders LLP
The Chrysler Building
405 Lexington Avenue
New York, New York 10174
212-704-6113

Edward J. Pardon
Merchant & Gould, P.C.
10 East Doty Street, Suite 600
Madison, Wisconsin 53703
612-332-5300

5. *Muth Mirror Systems, LLC v. Gentex Corporation*, Adversary Proceeding No. 06-2470 (U.S. Bankruptcy Court, Eastern District of Wisconsin); Magistrate Judge Margaret Dee McGarity; 2006 – 2008.

This case began as a patent and contractual dispute between two makers of automotive rear view mirrors, the type of outside rear view mirror that incorporates a turn signal that shines through the glass. Both Muth and Gentex held patents on aspects of the technology. Gentex sued Muth on patent, contract, and tort claims in the Eastern District of Michigan; Muth filed suit making similar allegations against Gentex in the Western District of Wisconsin.

After Muth filed for bankruptcy protection in the Eastern District of Wisconsin, the patent suits were transferred to the bankruptcy court, where they were consolidated and

tried as an adversary proceeding. After the bankruptcy action was filed, Godfrey & Kahn was appointed special patent litigation counsel, and I served as lead counsel on the patent litigation. Gentex's patent infringement allegations against Muth were defeated on summary judgment; Muth's patent infringement allegations against Gentex were defeated at trial. Muth prevailed on a breach of contract claim against Gentex and won damages of approximately $2 million.

Co-counsel for Plaintiffs Muth Mirror Systems, LLC, and K.W. Muth Company:
Jerome R. Kerkman
Kerkman & Dunn
757 North Broadway, No. 300
Milwaukee, Wisconsin 53202
414-277-8200

Counsel for Defendant Gentex Corporation:
William J. McCabe
Brian P. Biddinger
Marc F. Skapof
Stuart Hirshfield
Ropes & Gray LLP
1211 Avenue of the Americas
New York, New York 10036
212-596-9018

Frank W. DiCastri
Thomas L. Shriner, Jr.
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
414-271-2400

6. *Lands' End, Inc. v. Remy*, 447 F. Supp. 2d 941 (W.D. Wis. 2006); Judge Barbara B. Crabb and Magistrate Judge Stephen L. Crocker; 2005 – 2006.

Lands' End brought this action to break up the "typosquatting" schemes operated by the defendants. Lands' End operated an affiliate program through which it paid a commission to operators of other web sites for referring Internet traffic to the Lands' End web site. The defendants joined the Lands' End affiliate program, but they did not refer traffic from legitimate web sites. Instead, they had registered many typosquatting domain names consisting of common mis-typings of landsend.com, such as landswnd.com. They directed traffic from these domain names to the Lands' Ends web site, thereby collecting commissions. Lands' End sued for breach of contract, fraud, and violation of the Anti-cybersquatting Consumer Protection Act (ACPA). The question of whether the defendants' typosquatting schemes constituted a breach of contract, fraud, and a violation of the ACPA was decided in favor of Lands' End on summary judgment, creating significant early precedent on the application of the ACPA to this form of Internet fraud.

Counsel for Defendants Braderax, Inc., Thinkspin, Inc., Tihan Seale and Michael Seale:
Andrew J. Clarkowski
Michael J. Modl
Axley Brynelson, LLP
Two East Mifflin Street, Suite 200
Madison, Wisconsin 53701
608-283-6705

Stevan Lieberman
Greenberg & Lieberman
2141 Wisconsin Avenue, NW, Suite C-2
Washington, D.C. 20007
202-625-7000

The other defendants were unrepresented.

7. *St. Paul Fire & Marine Insurance Co. v. Keltgen*, 2003 WI App 53, 260 Wis. 2d 523, 659 N.W.2d 906, *affirmed by* 2004 WI 37, 270 Wis. 2d 315, 677 N.W.2d 297 (evenly divided Wisconsin Supreme Court); 2004 – 2005.

Keltgen is a developmentally disabled adult who was sexually assaulted by a co-worker in a sheltered workshop. Keltgen received worker's compensation benefits for his injuries, but he also brought numerous claims against the co-worker, the workshop, and the workshop's insurers. Robert Dreps of Godfrey & Kahn represented one of the workshop's insurers, Wausau Insurance Company. I became involved in the case on appeal, where the primary issue was whether Keltgen's claim for a violation of the state Mental Health Act was barred by the exclusive remedy provision of the Worker's Compensation Act. The Wisconsin Court of Appeals held that the Mental Health Act claims were barred. I argued the case in the Wisconsin Supreme Court, which upheld the Court of Appeals by a 3-3 decision.

Counsel for Plaintiff/Third-Party Defendant St. Paul Fire & Marine Insurance Company and Third-Party Defendant L E Phillips Career Development Center, Inc.:
John P. Richie
Richie, Wickstrom & Wachs, LLP
101 Putnam Street
P.O. Box 390
Eau Claire, Wisconsin 54702
715-839-9500

Counsel for Third-Party Defendant Venture Insurance Company:
James A. Pelish
Thrasher, Pelish, Franti & Smith, Ltd.
13 East Eau Claire Street
P.O. Box 31
Rice Lake, Wisconsin 54868
715-234-8105

Co-Counsel for Third-Party Defendant L E Phillips Career Development Center, Inc. and Third-Party Defendant Venture Insurance Company:
Gregory Deckert
Deckert & Van Loh, P.A.
Maple Grove Business
12912 63rd Avenue North
Maple Grove, Minnesota 55369
763-587-7100

Counsel for Defendant/Third-Party Plaintiff C. Keltgen and for Third-Party Plaintiff P. Keltgen:
Phillip Todryk
Todryk Law Office, S.C.
132 Seventh Street
P.O. Box 779
Hudson, Wisconsin 54016
715-386-1099

Counsel for Third-Party Defendant Smith:
George W. Hallstein (now deceased)
formerly of: Votel, McEachron & Godfrey
1250 UBS Plaza
444 Cedar Street
Saint Paul, Minnesota 55101
651-228-1770

8. *Frankenmuth Mutual Insurance Co. v. Design Electric, Inc.*, Case No. 2003 CV 1048 (Dane County (Wisconsin) Circuit Court); Judge Robert DeChambeau; 2003 – 2005.

This was an action for negligence arising from an electrical fire in a commercial building, which occurred after the building had been remodeled for the tenant business. The building owner and the tenant accused the electrical contractor on the remodeling work of negligently installing the outlet in which the fire started. We represented the electrical contractor, Design Electric, and its insurer, Unitrin Property & Casualty Insurance Group. We negotiated a settlement with the building owner and his insurer, and the claims of the tenant were tried to a jury, which deliberated only 20 minutes before returning a verdict exonerating the electrical contractor.

Counsel for Plaintiff Frankenmuth Mutual Insurance Co.:
Christopher M. Miller
QBE Americas, Inc.
One General Drive
Sun Prairie, Wisconsin 53596
608-825-5733

John V. Burns
Ritger Law Office

675 Wolf Road
P.O. Box 371
Random Lake, Wisconsin 53075
920-994-4313

Counsel for Defendants Lakeside School of Massage Therapy and Cincinnati Insurance Co.:
Arthur E. Kurtz
Axley Brynelson, LLP
Two East Mifflin Street, #200
P.O. Box 1767
Madison, Wisconsin 53701-1767
608-257-5661

9. *Wisconsin Realtors Association v. Ponto*, 229 F. Supp. 2d 889 (W.D. Wis. 2002) (denying defendants' motion for abstention); 233 F. Supp. 2d 1078 (W.D. Wis. 2002) (granting motion for judgment on the pleadings); Judge Barbara B. Crabb and Magistrate Judge Stephen L. Crocker; 2002.

Godfrey & Kahn represented the plaintiffs, who challenged numerous provisions of Wisconsin's campaign finance reform law as violating the First and Fourteenth Amendments of the U.S. Constitution. Of particular note were provisions of the campaign finance reform act that required prior reporting of certain campaign-related communications and that imposed restrictions on "issue advocacy" in the 60 days before an election. I worked with Michael Wittenwyler and Brady Williamson of our office, and Mr. Wittenwyler and I took the lead in preparing the briefs and supporting materials for our motion for judgment on the pleadings. The court declared all but one of the challenged provisions void and unconstitutional, and it dismissed the remaining challenge to provisions relating to broadcast regulation as not yet ripe because it required administrative rulemaking, which had not yet occurred.

Counsel for Defendants Ponto, et al.:
William J. Mulligan
Davis & Kuelthau, S.C.
111 East Kilbourn Avenue, No. 1400
Milwaukee, Wisconsin 53202
414-225-1429

10. *McCabe v. Kennedy*, Case No. 04-CV-4022 (Dane County (Wisconsin) Circuit Court); Judge C. William Faust; 2004 – 2005.

Godfrey & Kahn represented the Wisconsin State Elections Board (SEB) and its executive director, Kevin Kennedy, in an action for mandamus challenging the state's granting of a contract to Accenture for the preparation of Wisconsin's state-wide voter registration database. The plaintiffs accused the SEB of violating state election law and open meetings law in granting the software development contract to Accenture, whose

performance on similar contracts had been controversial. We secured dismissal of the case on a motion for judgment on the pleadings.

Counsel for Defendant Accenture, LLP:
Waltraud A. Arts
(no current business address available)

Counsel for Plaintiffs McCabe, et al.:
Edward R. Garvey
Garvey McNeil & Associates
One Odana Court
Madison, Wisconsin 53719
608-256-1003

Christa Westerberg
McGillivray Westerberg & Bender LLC
211 South Paterson Street, Suite 320
Madison, Wisconsin 53703
608-310-3561

Glenn M. Stoddard
316 North Barstow Street, Suite B
P.O. Box 227
Eau Claire, Wisconsin 54702
715-852-0345

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

Most of my non-litigation work now involves advising clients on how to protect their intellectual property and avoid infringing the rights of others. I regularly screen potential trademarks and help my clients secure trademark registrations.

For example, I was part of the legal team advising a non-profit broadcaster of state government proceedings, in connection with the unauthorized use of the broadcaster's coverage of a state senate session by an Internet blogger. The infringement analysis was straightforward, but the matter quickly escalated into a political controversy when members of the state assembly asked the broadcaster to resist the use of the coverage by bloggers. As the senior intellectual property attorney for the broadcaster, I was called upon to explain our clients' copyright policies in a meeting with the legislative leadership.

I also represented a prominent scholar and author who had written a book on the impact of a major motion picture series on the contemporary film industry. The book was extensively researched, and the scholar had interviewed many of the participants in the production and marketing of the films. She hoped to use many illustrations that she had collected, but when the film producer heard about her work, it threatened to sue her publisher, a university press. The university press was unwilling to proceed with the book until I prepared an extensive memorandum demonstrating that the scholar's use of the material was an acceptable fair use. The book has been published and well received, and the producer did not seek any further action.

I have not performed any lobbying services for anyone.

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.

2001, 2005, 2011 – 2013, University of Wisconsin Law School:

Copyright Law (2001, 2005): This course provided a survey of the essential principles of copyright law. Syllabi are attached.

Public Speaking for Lawyers (2011 – 2013): This was a workshop to improve the speaking skills of students in non-litigation contexts. Syllabi are attached.

1994, University of Wisconsin–Madison, Department of Communication Arts:

Motion Picture Production: This course was an introduction to 16mm film production. I no longer have a copy of the syllabus.

1986 – 1993, University of Notre Dame:

During my appointment, I taught four to six courses per year. Generally this would include one or two introductory survey courses, one or two video production courses, and electives of my choosing subject to the approval of the department. I no longer have my teaching files and accordingly I cannot identify precisely which courses were taught in which year:

Introduction to Mass Communication: This course was a survey of the study of the mass media. I no longer have a copy of the syllabus.

Introduction to Film Studies: This course was an introduction to the basic principles of film production, history and analysis. I no longer have a copy of the syllabus.

Video Production: This course was an introduction to small format video and studio television production. I no longer have a copy of the syllabus.

Documentary Film and Television: This course covered the history and practice of non-fiction film and television. I no longer have a copy of the syllabus.

Avant-garde Film: This course surveyed the American avant-garde/experimental film genre. I no longer have a copy of the syllabus.

The Horror Film: This course covered the history of American horror film and its sub-genres. I no longer have a copy of the syllabus.

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

    Upon termination of my employment with Godfrey & Kahn, S.C., the value of my stock (currently approximately $14,640) will be paid to me. As a shareholder of Godfrey & Kahn, I have loaned the firm $50,000, interest on which is paid quarterly with the principle to be repaid over five years beginning in 2019. Should I be confirmed, I anticipate that the firm would repay the loan upon termination of my employment with the firm.

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 or commitments if confirmed. However, if possible within the confines of my duties, I would consider continuing to teach at the University of Wisconsin Law School.

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 anticipate that for an appropriate period, I will recuse myself from hearing any matter in which a party is represented by my current firm, Godfrey & Kahn, S.C. Generally, if any matter were to arise that involved an actual or potential conflict of interest, I would handle it by careful, diligent application of the Code of Conduct for United States Judges and any other relevant ethical canon, regulation or statute.

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 any real or potential conflict of interest by reference to 28 U.S.C. 455, Canon 3 of the Code of Conduct for United States Judges, and all other laws, rules and practices governing judicial conflicts of interest.

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

From July 2000 to July 2001, I served as court-appointed counsel with Todd G. Smith of Godfrey & Kahn in the Western District of Wisconsin representing a Wisconsin state prison inmate who challenged the denial of medical care while in a county jail. I served as second chair on the case. The jury found that the inmate suffered from a serious mental illness, but that the denial of care was not the result of deliberate indifference. In addition to this court-appointed case, my firm participates in the State Bar's Lawyer's Hotline, and I have volunteered to return Hotline calls one evening almost every quarter since I have been in private practice. I volunteered every year from 1999 to 2011.

I also participate in educational activities in the legal community. I serve regularly as a guest instructor in the General Practice Skills Program at the University of Wisconsin Law School. For each of the last 12 years, I have made one or two presentations on press law to student journalists and their advisers at conferences and meetings of KEMPA, an organization of high school journalism teachers in Wisconsin and northern Illinois.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or

communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On April 29, 2013, the Federal Nominating Commission for Wisconsin announced via email from the State Bar of Wisconsin that it was accepting applications and reviewing candidates for the position of United States District Judge for the Western District of Wisconsin. On May 29, 2013, I submitted my application. On July 23, 2013, I interviewed with the Commission in Madison, Wisconsin. On July 29, 2013, the Commission informed me that Senators Ron Johnson and Tammy Baldwin had recommended me to the President for nomination to the position of district judge. Since August 2, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 5, 2013, Senator Johnson called me to offer congratulations. On September 12, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. I also met briefly with Senator Baldwin in her Washington, D.C. office later that day. On November 7, 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
Peterson, James D.	District Court - Western District of Wisconsin	11/07/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge Active Status	☑ Nomination Date 11/7/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 10/29/2013
7. Chambers or Office Address		
Godfrey & Kahn, S.C One East Main Street, Suite 500 Madison, Wisconsin 53703		

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Shareholder	Godfrey & Kahn, S.C
2. President	Western District Bar Association
3. President-elect	Western District Bar Association
4. Treasurer	Western District Bar Association
5. Co-trustee	Trust No. 1

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 1998-1999	Wisconsin Retirement System Plan; balance payable at retirement
2. 2009	Promissory Note - Godfrey & Kahn, S.C.; payable from 2019-2023
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Peterson, James D.	Date of Report 11/07/2013

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	Godfrey & Kahn, S.C. - salary	$110,833.00
2.	2012	Godfrey & Kahn, S.C. - salary	$293,772.00
3.	2011	Godfrey & Kahn, S.C. - salary	$315,159.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2013	Associated Banc-Corp - salary and bonus
2.	2012	Associated Banc-Corp - salary and bonus
3.	2012	BMO-Harris Bank - salary and bonus
4.		

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Peterson, James D.	Date of Report 11/07/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Peterson, James D.	11/07/2013

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. Ally Bank cash account	B	Interest	M	T	Exempt				
2. Associated Bank cash account	A	Interest	J	T					
3. UW Credit Union cash account	A	Interest	J	T					
4. Promissory Note - Godfrey & Kahn, S.C.	C	Interest	K	T					
5. Associated Banc-Corp Stock	A	Dividend	K	T					
6. BMO Financial Group Stock	A	Dividend	K	T					
7. Fidelity National Information Services Stock	A	Dividend	J	T					
8. American Funds EuroPacific Growth Fund	A	Int./Div.	J	T					
9. BMO Short-Intermediate Bond Fund	C	Int./Div.	M	T					
10. Columbia Acorn Fund	E	Int./Div.	N	T					
11. Columbia Mid Cap Value Fund	A	Int./Div.	K	T					
12. CREF Stock		None	L	T					
13. Dodge & Cox Stock Fund	A	Int./Div.	K	T					
14. Fidelity Government Money Market Fund	A	Int./Div.	L	T					
15. Fidelity Small Cap Value Fund	A	Int./Div.	J	T					
16. Franklin Templeton Moderate Allocation Fund	A	Int./Div.	K	T					
17. Harbor International Institutional Fund	A	Int./Div.	K	T					

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting **Peterson, James D.**	Date of Report 11/07/2013

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. Spartan 500 Index Fund	A	Int./Div.	K	T					
19. Spartan Mid Cap Index Fund	A	Int./Div.	J	T					
20. Spartan Small Cap Index Fund	A	Int./Div.	J	T					
21. T. Rowe Price Growth Stock Fund	A	Int./Div.	K	T					
22. Vanguard 500 Index Fund	C	Int./Div.	M	T					
23. Vanguard Balanced Index Fund	D	Int./Div.	N	T					
24. Godfey & Kahn, S.C. Stock		None	J	U					
25. GK Phenomenelle Fund LLC Membership		None	K	U					
26. 2011 Water Street Investors I		None	J	U					
27. 2011 Water Street Investors II		None	J	U					
28. Northwestern Mutual Universal Life	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
I =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Peterson, James D.	Date of Report 11/07/2013

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

Trust No. 1 has no reportable assets.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Peterson, James D.	Date of Report 11/07/2013

IX. CERTIFICATION.

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

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

Signature: s/ James D. Peterson

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		168	524	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	268	862	Notes payable to relatives			
Unlisted securities – see schedule		35	419	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		50	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		199	499
Real estate owned – personal residence		347	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		82	000				
Cash value-life insurance		4	569				
Other assets itemize:							
Wisconsin Retirement System Pension Plan		5	210				
				Total liabilities		199	499
				Net Worth	1	762	085
Total Assets	1	961	584	Total liabilities and net worth	1	961	584
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		15	300	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds EuroPacific Growth Fund.	$ 14,043
Associated Banc-Corp stock.	40,102
BMO Financial Group stock.	22,223
BMO Short-Intermediate Bond Fund.	124,502
Columbia Acorn Fund.	304,648
Columbia Mid Cap Value Fund.	12,133
CREF Stock.	58,498
Dodge & Cox Stock Fund.	30,376
Fidelity Government Money Market Fund.	88,707
Fidelity National Information Services stock.	732
Fidelity Small Cap Value Fund.	7,646
Franklin Templeton Moderate Allocation Fund.	31,440
Harbor International Institutional Fund.	38,108
Spartan 500 Index Fund.	26,832
Spartan Mid Cap Index Fund.	7,583
Spartan Small Cap Index Fund.	5,817
T. Rowe Price Growth Stock Fund.	27,813
Vanguard 500 Index Fund.	139,303
Vanguard Balanced Index Fund.	288,356
Total Listed Securities	$ 1,268,862

Unlisted Securities	
Godfrey & Kahn, S.C.	$ 14,640
GK Phenomelle Fund LLC	18,484
2011 Water Street Investors I	657
2011 Water Street Investors II	1,638
Total Unlisted Securities	$ 35,419

AFFIDAVIT

I, JAMES D. PETERSON, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

NOVEMBER 7, 2013
(DATE)

James D. Peterson
(NAME)

Susan A. Wilson
(NOTARY)

James D. Peterson
3017 Irvington Way
Madison, WI 53713

January 6, 2014

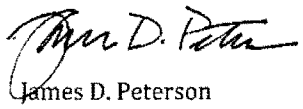
The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I filed in connection with my nomination on November 7, 2013, to be a United States District Judge for the Western District of Wisconsin. I certify that to the best of my knowledge the information in that document is and remains true and accurate.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Very truly yours,



James D. Peterson

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

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
Peterson, James D.	District Court - Western District of Wisconsin	01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge Active Status	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/22/2013
7. Chambers or Office Address		
Godfrey & Kahn, S.C. One East Main Street, Suite 500 Madison, Wisconsin 53703		

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Shareholder	Godfrey & Kahn, S.C.
2.	President	Western District Bar Association
3.	President-elect	Western District Bar Association
4.	Co-trustee	Trust No. 1
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	1998-1999	Wisconsin Retirement System Plan; balance payable at retirement
2.	2009	Promissory Note - Godfrey & Kahn, S.C.; payable from 2019-2023
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Peterson, James D.	Date of Report 01/06/2014

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	Godfrey & Kahn, S.C. - salary	$171,167.00
2.	2012	Godfrey & Kahn, S.C. - salary	$293,772.00
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2013	Associated Banc-Corp - salary and bonus
2.		
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Peterson, James D.	Date of Report 01/06/2014

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Peterson, James D.	Date of Report 01/06/2014

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. Ally Bank cash account	A	Interest	M	T	Exempt				
2. Associated Bank cash account	A	Interest	J	T					
3. UW Credit Union cash account	A	Interest	J	T					
4. Promissory Note - Godfrey & Kahn, S.C.	B	Interest	K	T					
5. Associated Banc-Corp Stock	A	Dividend	K	T					
6. BMO Financial Group Stock	A	Dividend	K	T					
7. Fidelity National Information Services Stock	A	Dividend	J	T					
8. American Funds EuroPacific Growth Fund	A	Int./Div.	J	T					
9. BMO Short-Intermediate Bond Fund	B	Int./Div.	M	T					
10. Columbia Acorn Fund	E	Int./Div.	N	T					
11. Columbia Mid Cap Value Fund	B	Int./Div.	J	T					
12. CREF Stock		None	L	T					
13. Dodge & Cox Stock Fund	A	Int./Div.	K	T					
14. Fidelity Government Money Market Fund	A	Int./Div.	J	T					
15. Fidelity Small Cap Value Fund	A	Int./Div.	J	T					
16. Franklin Templeton Moderate Allocation Fund	A	Int./Div.	K	T					
17. Harbor International Institutional Fund	A	Int./Div.	K	T					

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

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Peterson, James D.	Date of Report 01/06/2014

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. Spartan 500 Index Fund	A	Int./Div.	M	T					
19. Spartan Mid Cap Index Fund	A	Int./Div.	J	T					
20. Spartan Small Cap Index Fund	A	Int./Div.	J	T					
21. T. Rowe Price Growth Stock Fund	A	Int./Div.	K	T					
22. Vanguard Institutional Index Fund	A	Int./Div.	M	T					
23. Vanguard Balanced Index Fund	B	Int./Div.	N	T					
24. Godfrey & Kahn, S.C. Stock		None	J	U					
25. GK Phenomenelle Fund LLC Membership		None	K	U					
26. 2011 Water Street Investors I		None	J	U					
27. 2011 Water Street Investors II		None	J	U					
28. Northwestern Mutual Universal Life	A	Interest	J	T					
29. Vanguard 500 Index Fund	B	Int./Div.							
30. Alger Spectra Fund	A	Int./Div.							
31. Nuveen Real Estate Securities Fund	A	Int./Div.							

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes (See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Peterson, James D.	Date of Report 01/06/2014

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

Trust No. 1 has no reportable assets.
The Alger Spectra Fund and the Nuveen Real Estate Securities Fund listed in Part VII were inadvertently omitted from the previous Nomination Report dated November 7, 2013.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Peterson, James D.	Date of Report 01/06/2014

IX. CERTIFICATION.

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

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

Signature: s/ James D. Peterson

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		169	495	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	322	701	Notes payable to relatives			
Unlisted securities – see schedule		36	294	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		50	000	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		197	202
Real estate owned – personal residence		347	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		82	000				
Cash value-life insurance		5	851				
Other assets itemize:							
Wisconsin Retirement System Pension Plan		5	210				
				Total liabilities		197	202
				Net Worth	1	821	314
Total Assets	2	018	551	Total liabilities and net worth	2	018	551
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		7	650	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds EuroPacific Growth Fund.	$ 14,183
Associated Banc-Corp stock.	42,043
BMO Financial Group stock.	20,879
BMO Short-Intermediate Bond Fund.	128,948
Columbia Acorn Fund.	321,863
Columbia Mid Cap Value Fund.	12,637
CREF Stock.	59,485
Dodge & Cox Stock Fund.	31,753
Fidelity Government Money Market Fund.	3,708
Fidelity National Information Services stock.	782
Fidelity Small Cap Value Fund.	7,825
Franklin Templeton Moderate Allocation Fund.	38,120
Harbor International Institutional Fund.	37,422
Spartan 500 Index Fund.	115,354
Spartan Mid Cap Index Fund.	7,735
Spartan Small Cap Index Fund.	5,960
T. Rowe Price Growth Stock Fund.	29,142
Vanguard Institutional Index Fund.	149,062
Vanguard Balanced Index Fund.	295,801
Total Listed Securities	$ 1,322,701

Unlisted Securities	
Godfrey & Kahn, S.C.	$ 14,640
GK Phenomelle Fund LLC	18,484
2011 Water Street Investors I	1,032
2011 Water Street Investors II	2,138
Total Unlisted Securities	$ 36,294

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Nancy Jo Rosenstengel (maiden name: Nancy Jo Niemeier)

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

   United States District Judge for the Southern 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 District Court
   750 Missouri Avenue
   East St. Louis, Illinois 62201

   Residence: Belleville, Illinois

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

   1968; Alton, Illinois

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

   1990-1993, Southern Illinois University School of Law; J.D., (*cum laude*), 1993

   1986-1990, University of Illinois; B.A, (*cum laude*), 1990

   Summer 1988, Lewis and Clark Community College; no degree awarded

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

2009 – present
United States District Court
Southern District of Illinois
750 Missouri Avenue
East St. Louis, Illinois 62201
Clerk of Court

1998 – 2009
Honorable G. Patrick Murphy, District Judge
United States District Court
Southern District of Illinois
750 Missouri Avenue
East St. Louis, Illinois 62201
Law Clerk (Career)

August – December 2004
Southwestern Illinois College
2500 Carlyle Avenue
Belleville, Illinois 62221-5899
Legal Research and Writing Instructor (Paralegal Studies)

1993 – 1998
Sandberg, Phoenix & von Gontard
600 Washington Avenue
15th Floor
St. Louis, Missouri 63101
Associate

Spring Semester 1993
Southern Illinois University School of Law
1150 Douglas Drive
Carbondale, IL 62901
Teaching Assistant (Moot Court Board President) for Professor Eugene Basanta

Summer 1992
Sandberg, Phoenix & von Gontard
600 Washington Avenue
15th Floor
St. Louis, Missouri 63101
Summer Associate

Summer 1991
Madison County State's Attorney's Office (William R. Haine)
157 North Main Street, Suite 402
Edwardsville, Illinois 62025
Summer Law Clerk

Fall Semester 1992, Spring Semester 1992, Fall Semester 1991
Southern Illinois University School of Law
1150 Douglas Drive
Carbondale, Illinois 62901
Teaching Assistant for Professor Mark Lee (Fall Semester 1992)
Teaching Assistant for Professor Thomas McAfee (Spring Semester 1992)
Teaching Assistant for Professor Maria Frankowska (Fall Semester 1991)

1987 – 1992
Amoco Petroleum Additives Company (no longer in business)
Wood River, Illinois 62095
Clerical Assistant (during summers and holiday breaks)

Other Affiliations (uncompensated):

2007 – 2009
Mascoutah Elementary School Parent-Teacher Organization
533 North Sixth Street
Mascoutah, Illinois 62258
Secretary

1993 – 1998
Southern Illinois University School of Law Alumni Association
1150 Douglas Drive
Carbondale, Illinois 62901
Secretary

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

   I did not serve 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.

   National Association of Women Lawyers Award for academic achievement, tenacity, and drive, contributions to the advancement of women in society, promotion of issues and concerns of women in the legal profession and an expectation to continue to contribute to the advancement of women in society, and respect of the faculty (1993)

   Donny J. Schmeder Memorial Scholarship for pursuing a career related to health law and for being from southern Illinois (1993)

Judge Richard E. Richman Award for character, verbal skills, humanity, and compassion (1993)

Lincoln's Inn Award for outstanding leadership and service to the law school and an expectation of continued leadership and service to the law school and the legal profession (1993)

Southern Illinois University School of Law, Moot Court Board President (1993)

Southern Illinois University Law Journal, Casenote & Comment Editor (1992 – 1993)

Southern Illinois University School of Law National Moot Court Team (1991 – 1993)

Southern Illinois University Law Journal, Best Casenote Award (1992)

Southern Illinois University Law Journal (1991 – 1992)

Freshman Moot Court Finalist, Southern Illinois University School of Law (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.

   Madison County Bar Association
   St. Clair County Bar Association
   East St. Louis Bar Association
   Seventh Circuit Bar Association
   Illinois State Bar Association
   American Bar Association

10. **Bar and Court Admission**:

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

       Illinois, 1993
       Missouri, 1994 (inactive)

       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.

Eastern District of Missouri, 1993
Southern District of Illinois, 1994

There have been no lapses in membership.

11. **Memberships**:

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

Federal Court Clerks Association (2009 – present)

Judge Joseph F. Cunningham Fellowship Program (2012 – present)

Mascoutah Community Unit School District #19 Ad Hoc Policy Review Committee (2012 – present)

Mascoutah Elementary School Parent-Teacher Organization (2004 – 2009)
Secretary (2007 – 2009)

Mascoutah High School After Prom Committee (2013 – present)

Mascoutah High School Music Boosters (2012 – present)
Co-Coordinator (2013 – present)

Mid-America Medical District Commission Advisory Council (2009 – 2010)

National Association of Court Managers (2009 – present)

National Association of Professional Women (2011 – 2013)

Pi Beta Phi Women's Fraternity (1987 – present)

Southern Illinois University School of Law 2013 Class Reunion Committee (2013)

Southwestern Illinois College Paralegal Advisory Board (2010 – 2013)

Southern Illinois University School of Law Alumni Association (1993 – present)
Secretary (1993 – 1998)

YMCA of Southwest Illinois (2002 – present)
Lamplighter's Society

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

Membership in the National Association of Professional Women and Pi Beta Phi Women's Fraternity remains restricted to women. To my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

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

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

Note, *Defining "Prompt" Under* Gerstein v. Pugh*: A Bright-Line Rule*, 17 S.Ill.U. L.J. 637 (1993) (published in name of Nancy J. Niemeier).

Comment, *The Right to Trial by Jury in Copyright Infringement Suits Seeking Statutory Damages*, 17 S.Ill.U. L.J. 135 (1992) (published in name of Nancy J. Niemeier).

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 Clerk of Court, I have contributed to the preparation of court plans and internal administrative policies. Court plans include the Court Reporter Management Plan, the Criminal Justice Act Plan, the Plan for the Random Selection of Jurors, the Plan for the Administration of the District Court Fund, and the Transcript Policy. I also assisted with drafting the current version of the district court's Local Rules. 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.

None.

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

The following list includes seminars and sessions that I have identified from my files, personal recollections, and searching public databases and the Internet.

August 23, 2013: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on Medical Issues in Prisoner Civil Rights Litigation, sponsored by the United States District Court for the Southern District of Illinois, Collinsville, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

June 7, 2013: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on "Anatomy of a Prisoner Civil Rights Case," sponsored by the United States District Court for the Southern District of Illinois, Collinsville, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

April 19, 2013: Informal Remarks to Prospective Law Students, Southern Illinois University School of Law, Carbondale, Illinois. I spoke to a group of potential new students about my decision to attend Southern Illinois University School of Law and my law school experience in general. I have no notes, transcript, or recording. The address for the Southern Illinois University School of Law is 1150 Douglas Drive, Carbondale, Illinois 62901.

March 22, 2013: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on "Exhaustion of Administrative Remedies in Prisoner Civil Rights Litigation," sponsored by the United States District Court for the Southern District of Illinois, East St. Louis, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

February 25-27, 2013: Question and Answer session, Central and East European Law Initiative Institute. During this three day period, I logged onto an exchange website from my office in East St. Louis, Illinois, and answered questions posed by participants in the Central & Eastern European Judicial Exchange Network about best practices to streamline case management. The questions and my responses were translated. Copy supplied.

January 25, 2013: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on "Medical Issues in Prisoner Civil Rights Litigation," sponsored by the United States District Court for the Southern District of Illinois, Fairview Heights, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

October 26, 2012: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on "Anatomy of a Prisoner Civil Rights Case," sponsored by the United States District Court for the Southern District of Illinois, Collinsville, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

September 24-25, 2012: Welcoming Remarks, Conference on Emergency Preparedness, sponsored by the United States District Court for the Southern District of Illinois for other district courts in the Seventh Circuit, St. Louis, Missouri. As Clerk of Court, I welcomed participants to the conference, provided basic information about the program and facility, and introduced speakers. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

May 18, 2012: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on Exhaustion of Administrative Remedies in Prisoner Civil Rights Litigation, sponsored by the United States District Court for the Southern District of Illinois, East St. Louis, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

April 27, 2012: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on Medical Issues in Prisoner Civil Rights Litigation, sponsored by the United States District Court for the Southern District of Illinois, East St. Louis, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

March 8, 2012: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on "Anatomy of a Prisoner Civil Rights Case," sponsored by the United States District Court for the Southern District of Illinois, East St. Louis, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

June 10, 2011: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on "Anatomy of a Prisoner Civil Rights Case," sponsored by the United States District Court for the Southern District of Illinois, East St. Louis, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

September 16-17, 2010: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminars on Prisoner Civil Rights Litigation, sponsored by the United States District Court for the Southern District of Illinois, Carbondale, Illinois (September 16) and East St. Louis, Illinois (September 17). As the Clerk

of Court, I welcomed participants to the court-sponsored seminars and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

December 11, 2009: Welcoming Remarks, Naturalization Ceremony for the United States District Court for the Southern District of Illinois, Belleville, Illinois. Transcript supplied.

October 2009: Panel Discussion, Continuing Legal Education program on Prisoner Civil Rights Litigation, sponsored by the United States District Court for the Southern District of Illinois, East St. Louis, Illinois. As Clerk of Court, I participated in a panel discussion concerning matters of interest to lawyers appointed by the court to represent indigent litigants in civil rights cases. I have no notes, transcript, or recording. The address for the United States District Court for the Southern District of Illinois is 750 Missouri Avenue, East St. Louis, Illinois 62201.

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.

Press Release announcing Naturalization Ceremony, United States District Court for the Southern District of Illinois, October 30, 2013. Copy supplied.

Press Release announcing Naturalization Ceremony, United States District Court for the Southern District of Illinois, September 2013. Copy supplied.

Bill Grimes, *Fed Court Officials Warn of Jury Scam*, Effingham Daily News, August 20, 2013. Copy supplied.

Press Release announcing Naturalization Ceremony, United States District Court for the Southern District of Illinois, June 2013. Copy supplied.

Press Release announcing Naturalization Ceremony, United States District Court for the Southern District of Illinois, April 2013. Copy supplied.

Press Release announcing Naturalization Ceremony, United States District Court for the Southern District of Illinois, February 4, 2013. Copy supplied.

Press Release announcing Congressional Swearing-in Ceremony, United States District Court for the Southern District of Illinois, January 17, 2013. Copy supplied.

Mark Karlinsky, *Murphy Reflects on 16 Years in U.S. Judiciary Downstate*, Chicago Daily Law Bulletin, January 16, 2013. Copy supplied.

Press Release announcing Naturalization Ceremony, United States District Court for the Southern District of Illinois, November 5, 2012. Copy supplied.

"Testimonial," Southern Illinois University School of Law Alumni Profiles, 2011. Copy supplied.

David van den Berg, *Zion Lutheran Opens $4.5 Million Addition to Church, School*, Belleville News-Democrat, May 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 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 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 a membership or an office in any political party or election committee.

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

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

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

From May 5, 1998, to September 30, 2009, I served as a Career Law Clerk to District Judge G. Patrick Murphy in the United States District Court for the Southern 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.

1993 – 1998
Sandberg, Phoenix, and von Gontard, P.C.
600 Washington Avenue, 15th Floor
St. Louis, Missouri 63101
Associate

1998 – 2009
Honorable G. Patrick Murphy, District Judge
United States District Court
Southern District of Illinois
750 Missouri Avenue
East St. Louis, Illinois 62201
Law Clerk (Career)

2009 – present
United States District Court
Southern District of Illinois
750 Missouri Avenue
East St. Louis, Illinois 62201
Clerk of Court

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

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

b. Describe:

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

From 1993 to 1998, I worked for the law firm of Sandberg, Phoenix, and von Gontard as a litigation associate. I practiced in the areas of medical malpractice, products liability, employment discrimination, and maritime litigation. I handled the full range of litigation practice, including client contact, depositions, motion practice, court appearances, trial preparation, settlement negotiations, and trial. I appeared frequently in the City of St. Louis Circuit Court, state courts in Illinois and Missouri, and federal courts, including the Southern District of Illinois, Eastern District of Missouri, and Western District of Kentucky.

From 1998 to 2009, I served as a Career Law Clerk to District Judge G. Patrick Murphy. As such, I assisted Judge Murphy in every aspect of civil and criminal cases before the court, including, but not limited to, evaluation of the court's subject matter jurisdiction, pre-trial motions, motions to remand, motions to dismiss, motions for summary judgment, evidentiary rulings before and during trial, jury instructions, post-trial motions, criminal changes of plea and sentencing.

Since October 1, 2009, I have served as Clerk of Court in the United States District Court for the Southern District of Illinois. In this position, I manage the operational and administrative duties of the court and ensure compliance with statutory requirements. This includes developing court policies, plans, and procedures, managing case processing, jury operations, and other administrative matters.

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

At Sandberg, Phoenix, and von Gontard, my typical clients included hospitals, insurance companies, automobile manufacturers, casinos, barge companies, retailers, and others in need of defense against negligence and products liability claims.

As a Career Law Clerk and as the Clerk of Court, I had no clients.

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

100% of my practice at Sandberg, Phoenix, and von Gontard was in litigation. During that time, I appeared in court frequently. As a Career Law Clerk, I handled or oversaw cases before the district court. The majority of the cases filed were resolved through settlement or summary judgment, but I participated in at least 40 jury trials and several bench trials. Below, I have provided estimates based on my practice at Sandberg, Phoenix, and von Gontard. As a Career Law Clerk, my experience was 100% federal and evenly divided between civil and criminal proceedings.

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

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings: 0%

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

I tried two cases to verdict in a jury trial and had one bench trial as associate counsel at Sandberg, Phoenix, and von Gontard. I also arbitrated one case as solo counsel in front of a St. Clair County Arbitration Panel. In addition to this trial experience as an advocate, I assisted with more than 40 jury trials during my federal clerkship with District Judge G. Patrick Murphy. This experience included researching evidentiary issues, analyzing the evidence, and preparing the jury instructions for the court and parties in civil and criminal cases. The civil cases involved a variety of claims, some based on the court's federal question jurisdiction and others on the court's diversity of citizenship jurisdiction. In addition, I participated in approximately five bench trials during this same period

and drafted the findings of fact and conclusions of law following the trial. Below, I have provided an estimate based on my trial experience at Sandberg, Phoenix, and von Gontard.

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. Dodds v. Western Kentucky Navigation, Case No. 94-130 (Circuit Court in Madison County, Illinois; Judge P.J. O'Neill); Dodds v. Western Kentucky Navigation, 697 N.E.2d 452 (Ill. App. Ct. 5th Dist. 1998); 1994-1998.

I represented Western Kentucky Navigation in this Jones Act case brought by a first mate against his employer, Western Kentucky Navigation. The plaintiff, Dodds, alleged that he sustained injuries to his back and arm when a line seized on a timberhead and then "shot," throwing Dodds into the steel deck of a barge while the tow was entering a lock. I assisted with the defense of the case on behalf of Western Kentucky Navigation. My participation in the case included all aspects of written discovery and depositions, motion practice, client and witness preparation, and trial, including witness examinations and cross-examinations. I also drafted and filed a third-party complaint against Occidental Chemical Corporation, the owner of the barge on which the plaintiff was injured. The jury found Dobbs to be 50% at fault and entitled to damages in the amount of $100,000. After the trial court granted a setoff for the plaintiff's prior settlement with Occidental, judgment was entered against

Western Kentucky Navigation for $0. The plaintiff appealed, and the Fifth District reversed. The case ultimately settled.

Co-counsel:
Ronald E. Fox
(formerly at Sandberg, Phoenix & von Gontard, P.C.)
Fox, Galvin LLC
One South Memorial Drive
12th Floor
St. Louis, MO 63102
314-588-7000

Plaintiff's counsel:
Morris Chapman (deceased)

Counsel for Third-Party Defendant, Occidental Chemical Corporation:
Robert W. Wilson
1363 Niedringhaus Avenue,
Granite City, IL 62040
618-451-5558

2. Ellis v. Dr. Parich, Case No. 94-766 (Circuit Court Madison County, Illinois; Judge Phillip Kardis); (1994-1997).

I defended Dr. Parich in this medical malpractice case. The plaintiff alleged Dr. Parich negligently prescribed the antibiotic Erythromycin to her and that the medication caused a bowel obstruction. I assisted with the defense of Dr. Parich's case on behalf of the firm's client, Illinois State Medical Insurance Exchange. My participation included filing and responding to written discovery, conducting depositions, drafting, filing, and arguing motions, preparing the client and witnesses for trial, and trial, including direct and cross-examination of the parties, fact witnesses, and expert witnesses. Abbott Laboratories, the manufacturer of Erythromycin, was a co-defendant in the case, but was dismissed before trial on summary judgment. The jury returned a verdict in favor of Dr. Parich.

Co-counsel:
Peter von Gontard
Sandberg, Phoenix & von Gontard, P.C.
600 Washington Avenue
15th Floor
St. Louis, MO 63101
314-231-3332

Plaintiff's counsel:
Burt Shostak
8015 Forsyth Boulevard

St. Louis, MO 63105
314-725-3200

Michael Ghidina
112 South Hanley Road
St. Louis, MO 63105
314-726-6106

Counsel for co-defendant Abbott Laboratories:
Deirdre Gallagher
Foley & Mansfield
1001 Highlands Plaza Drive West
St. Louis, MO 63110
314-925-5700

3. Taylor, et al. v. Casino Queen, Case No. 96-AR-474 (Circuit Court, St. Clair County, Illinois; Judge Robert LeChien); 1996.

I defended the Casino Queen in this arbitration case. The plaintiffs alleged that they were subjected to food poisoning at a breakfast buffet at the Casino Queen in East St. Louis, Illinois. I handled all investigations, written discovery, and depositions, and defended the Casino Queen at the arbitration. This included an opening statement, direct and cross examination of the witnesses, and a closing argument before the arbitration panel. Following the arbitration, judgment was entered in favor of the Casino Queen.

Plaintiffs' counsel:
Lloyd Nolan
225 South Meramec, Suite 512
St. Louis, MO 63105
314-725-1880

4. Hoggatt v. Alton Memorial Hospital, Case No. 94-L-1123 (Circuit Court in Madison County, Illinois; Judge Nicholas Byron); 1994-1998.

I represented Alton Memorial Hospital in this medical malpractice case. The plaintiff alleged that the emergency room staff at Alton Memorial Hospital failed to diagnose and properly treat a dissecting aortic aneurysm. I prepared the case for trial, including working extensively to retain, disclose, and prepare the defense expert witnesses. My responsibilities also included written discovery, depositions of the parties and witnesses, and motion practice. The case settled before trial.

Co-counsel:
Ronald E. Fox
(formerly at Sandberg, Phoenix & von Gontard, P.C.)
Fox, Galvin LLC

One South Memorial Drive
12th Floor
St. Louis, MO 63102
314-588-7000

Plaintiff's counsel:
Thomas O. Falb
603 Henry Street
Alton, IL 62002
618-462-1077

5. Kerr v. Toyota Motor Distributors, Inc., Case No. 95-4430-NKL (United Stated District Court, Western District of Missouri; District Judge Nanette Laughrey); 1995-1998.

I defended Toyota in this products liability action alleging negligent design of a seat in a Toyota Corolla. Mazda Motor Company of America was a co-defendant in the case. The plaintiff alleged she was injured by a Mazda vehicle in one accident and a Toyota vehicle in another. My involvement in the case included filing and responding to written discovery, conducting depositions, and attending discovery dispute conferences. In addition, I attended product inspections, conducted expert witness research, handled the discovery and disclosure of expert witnesses, and prepared witness outlines in anticipation of trial. Toyota settled with the plaintiff, and the case proceeded to trial against Mazda. In February 1998, a jury returned a verdict in favor of Mazda.

Co-counsel:
G. Keith Phoenix
Sandberg, Phoenix & von Gontard
600 Washington Avenue
15th Floor
St. Louis, MO 63101
314-231-3332

Plaintiff's counsel:
William McDonald
William H. McDonald & Associates, P.C.
300 South Jefferson Avenue
Springfield, MO 65806
417-869-0581

Counsel for co-defendant Mazda:
David L. Boman
South & Associates, P.C.
6363 College Boulevard, Suite 100

Overland Park, KS 66211
913-825-4650

6. Little v. Western Kentucky Navigation, Case No. 93-1330 (Circuit Court of Madison County, Illinois; Judge Randall Bono and Judge George Moran); 1993-1997.

   I defended Western Kentucky Navigation in this Jones Act negligence case filed by Little against her employer, Western Kentucky Navigation. I had primary responsibility for all discovery, motions, depositions, and trial preparation, including client and witness preparation and outlines for all direct and cross examinations. The case settled the day before trial was scheduled to begin. The plaintiff then alleged that her counsel had settled the case without her consent, and he was discharged. She obtained new counsel, the case was re-opened, and additional discovery was completed. The case was settled again before trial.

   Plaintiff's counsel:
   Dennis Nalick (deceased)

   Marc Parker
   Parker Law, P.C.
   2814 North Center Street
   Maryville, IL 62062
   618-288-6200

7. Neighbors v. Wolfson, M.D. (Missouri Court of Appeals, Eastern District, St. Louis, Missouri; Judge James Pudlowski); Neighbors v. Wolfson, 926 S.W.2d 35 (Mo. Ct. App. 1996); 1993-1996.

   This was a medical malpractice case brought by Neighbors against Dr. Eli Wolfson alleging negligence during the birth of her child. I assisted with preparation of the appellate brief on behalf of Dr. Wolfson following the entry of judgment on his behalf in the City of St. Louis (prior to my involvement in the case). The Missouri Court of Appeals affirmed the judgment.

   Co-counsel:
   Kathleen L. Pine
   Sandberg, Phoenix & von Gontard
   2015 West Main Street
   Suite 111
   Carbondale, IL 62901
   618-351-7200

   Plaintiff's counsel:
   Art Muegler (deceased)

Donald Nangle
1935 Marconi Avenue
St. Louis, MO 63110
314-781-9503

8. Hays v. Sears, Roebuck & Company, Case No. 95-L-51 (Circuit Court in Williamson County, Illinois; Judge William Wilson); 1995-1996.

I represented Sears, Roebuck & Company in this case where the plaintiff alleged that she was subjected to false imprisonment after she was questioned by loss prevention personnel at a Sears store in Marion, Illinois. I had primary responsibility for all pretrial matters, including client contact, interviews of defense witnesses, written discovery, pretrial motions, and depositions. Following written discovery and depositions, it was determined that the plaintiff was perpetrating fraud on Sears. Specifically, the plaintiff was acquiring discounted apparel from another retailer and returning it to Sears for a refund. When confronted with this evidence obtained during investigation and discovery, the plaintiff's counsel immediately withdrew from the case. The case was later voluntarily dismissed.

Co-counsel:
Reed W. Sugg
Sandberg, Phoenix & von Gontard
600 Washington Avenue
15th Floor
St. Louis, MO 63101
314-231-3332

Plaintiff's counsel:
Michael Maurizio
1508 West Main Street
Marion, IL 62959
618-998-1515

9. Odom v. Hospice of Southern Illinois, Case No. 96-4202-JPG-PMF (United States District Court, Southern District of Illinois, District Judge J. Phil Gilbert and Magistrate Judge Philip M. Frazier); 1996-1998.

I defended Hospice of Southern Illinois in this employment discrimination case brought by an employee of Hospice. My involvement included discovery conferences, propounding and responding to written discovery, conducting depositions of the parties and witnesses, and preparation of a motion for summary judgment. The case proceeded to trial after I left the firm. The jury returned verdicts in favor of Hospice on three counts and in favor of the plaintiff on one count. After post trial motions were filed, the court entered judgment in favor of plaintiff on one count and in favor of Hospice on three counts. Both parties appealed. Additional post trial motions were filed by Hospice and, while the case was on appeal to the Seventh

Circuit, the district court entered an order indicating it was inclined to grant Hospice's post trial motions. The case was remanded to the district court and ultimately judgment was entered in favor of Hospice.

Co-counsel:
Kenneth W. Bean
Sandberg, Phoenix & von Gontard
600 Washington Avenue
15th Floor
St. Louis, MO 63101
314-231-3332

Plaintiff's counsel:
Patricia Hayes
915 South Fourth Street
Springfield, IL 62704
217-753-1580

10. Dellarosa v. American Commercial Barge Line Company, Case No. 94-485-WDS (United States District Court, Southern District of Illinois; District Judge William D. Stiehl, Magistrate Judge Gerald B. Cohn); 1994-1996.

I represented American Commercial Barge Line Company in this Jones Act case where the plaintiff alleged he was injured during the course of his employment as an American Commercial Barge Line Company crew member. I had primary responsibility for all pretrial motions, written discovery, product inspections, and depositions. The case was settled at a settlement conference held by the court.

Co-counsel:
Ronald E. Fox
(formerly at Sandberg, Phoenix & von Gontard, P.C.)
Fox, Galvin LLC
One South Memorial Drive
12th Floor
St. Louis, MO 63102
314-588-7000

Counsel for Plaintiff:
Christopher Kuebler and Dennis O'Bryan
O'Bryan, Baun
401 South Old Woodward, Suite 450
Birmingham, MI 48009
248-258-6262

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, my practice at Sandberg, Phoenix, and von Gontard involved preparation of numerous other civil matters for trial, including motion practice, written discovery, discovery disputes, depositions, research and retention of expert witnesses, and trial preparation. Typical cases included products liability actions involving forklifts and automobiles, medical malpractice claims, Jones Act cases, and employment discrimination suits.

In addition to my practice at Sandberg, Phoenix, and von Gontard, I assisted with numerous civil and criminal hearings and trials as a Career Law Clerk to District Judge G. Patrick Murphy. I assisted Judge Murphy in every aspect of cases before the court, from the initial filing to the disposition of each case. I drafted orders, memoranda, and jury instructions in civil and criminal cases. This involved extensive research of the law and required knowledge of the Federal Rules of Civil and Criminal Procedure, as well as the court's local rules, administrative orders, policies, and procedures. It was Judge Murphy's practice to hold a hearing on every dispositive motion filed (including motions to remand, motions to transfer venue, motions for temporary restraining order and/or preliminary injunction, motions to dismiss, and motions for summary judgment). Before each hearing, I would review the pleadings, research the law, brief Judge Murphy on the issues presented, and suggest areas of inquiry with the attorneys. After each hearing, Judge Murphy and I would review the arguments made by each party, and I would draft a Memorandum and Order for Judge Murphy's final approval and filing.

In addition, I assisted Judge Murphy throughout bench and jury trials, researching legal issues as needed and drafting findings of fact and conclusions of law following bench trials. I attended the entire trial, starting with pre-trial conferences and jury selection. During jury trials, I was actively involved in preparation of the jury instructions and verdict forms in both civil and criminal cases. Specifically, I received proposed jury instructions and verdict forms before trial from the parties, and from those proposed documents, I would compile a packet of jury instructions and verdict forms based on the evidence presented at trial. It was my duty to draft appropriate instructions for the court to issue in light of the rulings and evidence presented at trial. Judge Murphy would review the packet of instructions I compiled with the parties informally and then hold a formal jury instruction conference. From time to time, questions would arise during jury deliberations, and it was my responsibility to advise the judge as to the applicable law.

As a Career Law Clerk, I also helped manage the judge's caseload daily, including with rulings on dispositive and non-dispositive issues. My work required research on a variety of legal issues relating to federal subject matter jurisdiction, claims, and rules of procedure, as well as the federal sentencing guidelines. Additionally, I drafted orders on motions to certify class actions, bankruptcy appeals, social security appeals, appeals from

rulings of magistrate judges, and habeas petitions. I also reviewed draft orders from the pro se law clerks, worked with them to finalize a draft for Judge Murphy's review and signature, and met with the pro se law clerks regularly to monitor prisoner cases on Judge Murphy's docket.

In criminal cases, I attended every hearing, including, but not limited to, change of plea hearings, pre-trial motion hearings, and sentencing hearings. During change of plea hearings, I would listen to the colloquy and ensure that all matters were properly covered with the defendant and the necessary elements stated on the record. Before a sentencing hearing, I would review the Presentence Investigation Report, research the objections, review the relevant case law, meet with the Probation Officer, and brief the judge on the issues before the hearing. During the hearing, I would ensure that all matters were addressed and research legal issues as they arose. This required extensive knowledge of the federal sentencing guidelines and the United States Supreme Court decisions interpreting them. In addition, when the Retroactive Crack Amendment to the Sentencing Guidelines was passed, I ensured that the cases where the amendment might apply were identified and counsel was appointed when appropriate. The judge was briefed on whether or not the defendant was eligible to receive a reduced sentence, and, where the defendant was deemed eligible, an order was entered granting the appropriate relief.

During the four years I have been Clerk of Court, I have also pursued various legal issues concerning procedural and administrative matters at the district court. Such issues include local rules, development of court plans, service of process, public access to court records, and federal appropriations law. My responsibilities also require frequent analysis regarding employment and jury selection matters as well as other general management duties concerning information technology, procurement, training, and financial operations for the district court (including judges and chambers staff). In addition, I have worked extensively to develop a panel of pro bono volunteers to represent indigent prisoner plaintiffs in civil rights litigation. As part of this effort, I have organized and facilitated numerous free continuing legal education seminars sponsored by the district court. Finally, I have implemented numerous changes related to the court's processing of civil prisoner cases, resulting in more efficient processing of the cases and reduced time from filing to disposition.

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 Legal Research and Writing to paralegal students at Southwestern Illinois College, in Belleville, Illinois, for one semester during the Fall 2004 semester. I have been unable to locate a copy of the Syllabus.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business

relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

As an employee of the federal district court, I am a participant in the Federal Employees' Retirement System and have an interest in the federal Thrift Savings Plan. If confirmed, these funds will stay in the Plan. During my several months of employment by Southwestern Illinois College as a legal writing instructor, I also made contributions to the State Universities Retirement System of Illinois. If confirmed, the funds I contributed to the system will be withdrawn, and I will have no interest in the system. Other than these retirement funds, I do not expect to derive any deferred income or future benefits from any previous business relationships, professional services, firm memberships, former employers, clients, or customers.

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

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

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges, as well as all applicable policies and procedures of the United States courts. I would recuse in cases involving my family, cases where my husband, Jon Rosenstengel, and/or his law

partner, Jerald J. Bonifield, are counsel of record, and cases involving companies in which I have a financial interest or an ongoing business relationship.

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. I would use the district court's Case Management and Electronic Case Filing ("CM/ECF") program to identify conflicts by scheduling and reviewing daily reports. I would post a list of my financial conflicts on the court's website and personally review each case assigned to me immediately upon filing.

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

My employment with the district court, both as a Career Law Clerk and Clerk of Court, prohibits me from practicing law, except in very limited circumstances (Code of Judicial Conduct for Judicial Employees, Canon 4).

As a court employee, however, I have been active in the Joint Community Outreach Committee, a committee comprised of employees from all local federal agencies. Specifically, I was instrumental in development of a courthouse cookbook, which raised a substantial amount of money for the committee in 2005 (and repeated in 2012). I also spearheaded the effort to add the St. Vincent DePaul Soup Bus to the committee's activities and have personally served on the Soup Bus. In addition, I helped to organize a Christmas party for underprivileged children at the Christian Activity Center in East St. Louis, Illinois, in December 2012, and my entire family participated in the event. I also assisted with a recent school supply/backpack campaign for local schools and a book drive for local charities. As a Court Unit Executive, I have strongly supported the committee's efforts in a variety of community events and fundraising efforts to promote the committee's programs.

Finally, I attend meetings of the Court Assisted Program, a group led by Magistrate Judge Donald J. Wilkerson, which works to integrate offenders on supervised release back into the community. We recently led a clothing drive to solicit donations for local charities, and we are currently holding a canned good and book drive as a joint activity with the Joint Community Outreach Committee. The canned goods will be donated to local food pantries, and the books will be delivered to local jails.

26. **Selection Process**:

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

In April 2013, Senator Richard J. Durbin formed a bipartisan committee to evaluate and recommend applicants for this position. On May 10, 2013, I delivered my application to Senator Durbin's office in Springfield, Illinois. On June 5, 2013, I interviewed with the committee in East St. Louis, Illinois. On July 3, 2013, I interviewed with Senator Durbin in Springfield, Illinois. On or about July 10, 2013, I was informed by Senator Durbin's office that my name was being sent to the President for consideration. Since July 12, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 16, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On November 7, 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
ROSENSTENGEL, NANCY J.	UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS	11/07/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Court Judge	☑ Nomination Date 11/07/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 10/30/2013
7. Chambers or Office Address		
UNITED STATES DISTRICT COURT MELVIN PRICE FEDERAL BUILDING AND COURTHOUSE 750 MISSOURI AVENUE, ROOM 104 EAST ST. LOUIS, ILLINOIS 62201		

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 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 11/07/2013

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	BONIFIELD AND ROSENSTENGEL, INC. ATTORNEY AT LAW - SALARY
2.	2013	BONIFIELD AND ROSENSTENGEL, INC. ATTORNEY AT LAW - SALARY
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 11/07/2013

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.	FCB BANK	MORTGAGE ON OFFICE PROPERTY (Part VII, line 87)	L
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 11/07/2013

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. REGIONS BANK CASH ACCOUNTS	A	Interest	L	T	Exempt				
2. BONIFIELD AND ROSENSTENGEL STOCK	D	Dividend	N	W					
3. HUNTLEIGH CASH ACCOUNT	A	Interest	J	T					
4. FEDERATED PRIME CASH	A	Interest							
5. CLAYMORE GUGGENHEIM MULTI ASSET INCOME	B	Dividend							
6. IPATH DOW JONES UBS GRAIN TOTAL RETURN	A	Dividend							
7. ISHARE BARCLAYS MBS BOND FUND	A	Dividend							
8. SPDR BARCLAYS HIGH YIELD BONDS	A	Interest							
9. SPDR GOLD TRUST	A	Dividend	J	T					
10. UNITED STATES OIL FUND	A	Dividend							
11. VANGUARD SHORT TERM BOND	A	Interest							
12. VANGUARD TOTAL BOND	B	Interest							
13. ISHARE S&P US PFD STK	A	Dividend							
14. ISHARE JP MORGAN EMGR MARKET BONDS	A	Int./Div.							
15. FIRST TRUST IND/PROD DURABLE ALP FUND	A	Dividend	J	T					
16. SELECT SCT SPDR F HEALTH CARE	A	Distribution							
17. POWERSHARE SENIOR LOAN PORT	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 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 11/07/2013

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. FIRST TR FINANCIAL ALPHADEX FUND	A	Dividend	J	T					
19. FIRST CHINA APLHADEX FD	A	Dividend							
20. ISHARE MSCI BRAZIL INDX	A	Dividend							
21. ISHARE S&P 500 GROWTH INDX FD	A	Dividend	J	T					
22. ISHARE TR DOW US REAL ESTATE INDX FD	A	Dividend							
23. FIRT TR MULTI ASSET DIV INC INDX FD	A	Dividend							
24. PROSHARES TRUST SHORT 20+ TR TREASURY	A	Dividend	J	T					
25. SPDR BARCLAYS CAPITAL HI YIELD BOND	A	Int./Div.	J	T					
26. ISHARE CORE S&P MID-CAP	A	Dividend	J	T					
27. FRANKLIN INCOME FUND A	A	Dividend	J	T					
28. BRIGHT STAR COLLAGE SAV AGE BASED 10-11	A	Dividend	J	T					
29. BRIGHT STAR COLLAGE SAV AGE BASED 12-14	A	Dividend	J	T					
30. BRIGHT STAR COLLAGE SAV AGE BASED 15-17	A	Dividend	J	T					
31. COCA COLA STOCK	A	Dividend	J	T					
32. EDWARD JONES PUTNUM NEW OPT	A	Dividend	J	T					
33. BRIGHT START ADVISOR EQUITY H	A	Dividend							
34. NML LIFE INSURANCE- WHOLE LIFE CASH VALUE	D	Dividend	M	T					

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 6 of 11	**Name of Person Reporting** ROSENSTENGEL, NANCY J.	**Date of Report** 11/07/2013

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. COUNTRY COMPANIES WHOLE LIFE INSURANCE CV	C	Dividend	L	T					
36. HARTFORD LIFE W-LIFE INSURANCE POLICY-CASH VALUE	B	Dividend	K	T					
37. JJB PROFIT SHARING PLAN AC	G	Int./Div.	P1	T					
38. - ARCH COAL									
39. - AUTOMOTIVE DATA PROCESSING									
40. - AT&T INC									
41. - BANK OF AMERICA									
42. - BANK OF AMERICA									
43. - CATERPILLAR INC									
44. - CHEVRON CORPORATIO									
45. - CLAYMORE GUGGENHEIM ET MULTI ASSET INCOME									
46. - CREDO PETROLEUM									
47. - DELL									
48. - EXXON MOBLE									
49. - JOHNSON & JOHNSON									
50. - GENERAL ELECTRIC									
51. - ISHARE BARCLAYS									

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 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 11/07/2013

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. - ISHARE S&P U.S. PRF STOCK									
53. - ISHARES JP MORGAN EMERG MTK BOND FUND									
54. - NIKE INC									
55. - PEABODY ENERGY									
56. - MERCK & CO									
57. - MICROSOFT									
58. - PFIZER INCORP									
59. - REGIONS FINANCIAL									
60. - T ROW PRICE MID-CAP GR									
61. - SPDR BARCLAYS CAP HI YIELD BOND									
62. - TELLABS INC									
63. - UNION PACIFIC CORP									
64. - VERIZON COMMUNICATIONS									
65. - WALL-MART STORES INC									
66. - WESTERN UNION CO									
67. - UST BONDS									
68. - HUNTLEIGH FEDERAL PRIME SERIES									

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 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 11/07/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
69. - FRONTIER COMMUNICATION									
70. - PATRIOT COAL CORP									
71. - PROCTOR AND GAMBLE									
72. - VANGUARD SHORT TERM ET CORP BONDS									
73. - UNITED TECHNOLOGIES									
74. - JP MORGAN PRIME MONEY MARKET									
75. - ZOLTEK COS INC									
76. - WELLS FARGO COMP									
77. - UNITED HEALTH GROUP INC									
78. - PROSHARES ULTRA HEAL CARE-2X									
79. - GUGGENHIEM S&P 500 EQ WGT FIN									
80. - JP MORGAN CHASE									
81. - HOME DEPOT INC									
82. - HENNESSY FUNDS TR									
83. - SPDR BARCLAYS SHT TERM HI YIELD BOND									
84. - APPLE INC									
85. - FIRT TR CONSUMER DSI ALPHADEX FD									

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

FINANCIAL DISCLOSURE REPORT Page 9 of 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 11/07/2013

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)
86. - NORFOLK SOUTHERN COR									
87. OFFICE PROPERTY, BELLEVILLE, ILLINOIS	D	Rent	M	W					

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

A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
Q =Appraisal
U =Book Value

B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Assessment
W =Estimated

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

E =$15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting	Date of Report
	ROSENSTENGEL, NANCY J.	11/07/2013

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

LINE 35 THE HARTFORD LIFE INSURANCE POLICY AND CASH VALUE IS OWNED BY THE NOMINEE AND THE INSURED IS THE MOTHER OF THE NOMINEE. IT WAS NOT REPORTED AS AN INVESTMENT ON THE PRIOR REPORT.

LINE 85 THE OFFICE PROPERTY WAS NEWLY AQUIRED ON DECEMBER 31,2012 AND WAS NOT REPORTED AS AN INVESTMENT ON THE PRIOR REPORT.

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 11/07/2013

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 J. ROSENSTENGEL

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		79	473	Notes payable to banks-secured (auto)		20	692
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		121	770	Notes payable to relatives			
Unlisted securities – see schedule		250	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		93	900	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – office property		84	633
Real estate owned – see schedule		555	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		142	000				
Cash value-life insurance		231	286				
Other assets itemize:							
Bonifield & Rosenstengel Profit Sharing		392	828				
Thrift Savings Plan		304	330				
				Total liabilities		105	325
				Net Worth	2	065	262
Total Assets	2	170	587	Total liabilities and net worth	2	170	587
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	
Coca Cola Co. stock	$ 3,404
First Trust AlphaDEX Fund	9,248
First Trust Industrials/Producer Durables AlphaDEX Fund	8,332
First Trust Multi-Asset Diversified Income Index Fund	5,971
Franklin Income Fund	8,004
Illinois Bright Start College Savings Age Based 10-11 Portfolio	11,464
Illinois Bright Start College Savings Age Based 12-14 Portfolio	11,102
Illinois Bright Start College Savings Age Based 15-17 Portfolio	10,881
iShares Dow Jones US Real Estate Index Fund	7,655
iShares S&P Core Mid-Cap	5,835
iShares S&P 500 Growth Index Fund	10,991
PowerShares Senior Loan Portfolio Fund	7,503
Putnam Multi-Cap Growth Fund	9,270
SPDR Barclays Capital High Yield Bond ETF	9,803
SPDR Gold Trust ETF	2,307
Total Listed Securities	$ 121,770
Unlisted Securities	
Bonifield & Rosenstengel	$ 250,000
Total Unlisted Securities	$ 250,000
Real Estate Owned	
Personal residence	$ 375,000
Office property	150,000
Timeshare	30,000
Total Real Estate Owned	$ 555,000

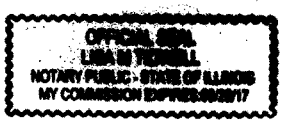
AFFIDAVIT

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

November 7, 2013
(DATE)

Nancy J. Rosenstengel
(NAME)

Lisa M. Tidwell
(NOTARY)



Nancy J. Rosenstengel
750 Missouri Avenue
East St. Louis, IL 62201

January 6, 2014

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

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on November 7, 2013, to be a United States District Judge for the Southern District of Illinois. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Q. 12(d) – Public Statements

November 15, 2013: Welcoming Remarks and Discussion of District Court Procedures for Appointed Counsel in Prisoner Civil Rights Cases, Continuing Legal Education seminar on "Anatomy of a Prisoner Civil Rights Case," sponsored by the United States District Court for the Southern District of Illinois, Fairview Heights, Illinois. As the Clerk of Court, I welcomed participants to the court-sponsored seminar and explained various court procedures. I have no notes, transcript, or recording. The address for the United States District Court is 750 Missouri Avenue, East St. Louis, Illinois 62201.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report, as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Nancy J. Rosenstengel

Nancy J. Rosenstengel

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

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
ROSENSTENGEL, NANCY J.	UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF ILLINOIS	01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Court Judge	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/27/2013
7. Chambers or Office Address		
UNITED STATES DISTRICT COURT MELVIN PRICE FEDERAL BUILDING AND COURTHOUSE 750 MISSOURI AVENUE, ROOM 104 EAST ST. LOUIS, ILLINOIS 62201		

***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 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 01/06/2014

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.	2013	BONIFIELD AND ROSENSTENGEL, INC. ATTORNEY AT LAW - SALARY
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 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 01/06/2014

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.	FCB BANK	MORTGAGE ON OFFICE PROPERTY (Part VII, line 87)	L
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 01/06/2014

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. REGIONS BANK CASH ACCOUNTS	A	Interest	L	T	Exempt				
2. BONIFIELD AND ROSENSTENGEL STOCK	A	Dividend	N	W					
3. HUNTLEIGH CASH ACCOUNT	A	Interest	J	T					
4. FEDERATED PRIME CASH	A	Interest							
5. CLAYMORE GUGGENHEIM MULTI ASSET INCOME	B	Dividend							
6. IPATH DOW JONES UBS GRAIN TOTAL RETURN	A	Dividend							
7. ISHARE BARCLAYS MBS BOND FUND	A	Dividend							
8. SPDR BARCLAYS HIGH YIELD BONDS	A	Interest							
9. SPDR GOLD TRUST	A	Dividend	J	T					
10. UNITED STATES OIL FUND	A	Dividend							
11. VANGUARD SHORT TERM BOND	A	Interest							
12. VANGUARD TOTAL BOND	B	Interest							
13. ISHARE S&P US PFD STK	A	Dividend							
14. ISHARE JP MORGAN EMGR MARKET BONDS	A	Int./Div.							
15. FIRST TRUST IND/PROD DURABLE ALP FUND	A	Dividend	J	T					
16. SELECT SCT SPDR F HEALTH CARE	A	Distribution							
17. POWERSHARE SENIOR LOAN PORT	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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 5 of 11

Name of Person Reporting	Date of Report
ROSENSTENGEL, NANCY J.	01/06/2014

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. FIRST TR FINANCIAL ALPHADEX FUND	A	Dividend	J	T					
19. FIRST CHINA APLHADEX FD	A	Dividend							
20. ISHARE MSCI BRAZIL INDX	A	Dividend							
21. ISHARE S&P 500 GROWTH INDX FD	A	Dividend	J	T					
22. ISHARE TR DOW US REAL ESTATE INDX FD	A	Dividend							
23. POWER SHARES QQQTR SERIES 1	A	Dividend	J	T					
24. FIRT TR MULTI ASSET DIV INC INDX FD	A	Dividend							
25. FIRT TR SMALL CAP CORE ALPHHADEX FUND	A	Dividend	J	T					
26. PROSHARES TRUST SHORT 20+ TR TREASURY	A	Dividend	J	T					
27. SPDR BARCLAYS CAPITAL HI YIELD BOND	A	Int./Div.	J	T					
28. ISHARE CORE S&P MID-CAP	A	Dividend	J	T					
29. FRANKLIN INCOME FUND A	A	Dividend	J	T					
30. BRIGHT STAR COLLAGE SAV AGE BASED 10-11	A	Dividend	J	T					
31. BRIGHT STAR COLLAGE SAV AGE BASED 12-14	A	Dividend	J	T					
32. BRIGHT STAR COLLAGE SAV AGE BASED 15-17	A	Dividend	J	T					
33. COCA COLA STOCK	A	Dividend	J	T					
34. PUTNUM MULTI -CAP GROWTH FUND	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4) — A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000; 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 11

Name of Person Reporting	Date of Report
ROSENSTENGEL, NANCY J.	01/06/2014

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. BRIGHT START ADVISOR EQUITY H	A	Dividend							
36. NML LIFE INSURANCE- WHOLE LIFE CASH VALUE	B	Dividend	M	T					
37. COUNTRY COMPANIES WHOLE LIFE INSURANCE CV	B	Dividend	L	T					
38. HARTFORD LIFE W-LIFE INSURANCE POLICY-CASH VALUE	B	Dividend	K	T					
39. JJB PROFIT SHARING PLAN AC	F	Int./Div.	P1	T					
40. - AT&T INC (Y)									
41. - ARCH COAL (Y)									
42. - BANK OF AMERICA (Y)									
43. - AUTOMOTIVE DATA PROCESSING (Y)									
44. - BANK OF AMERICA (Y)									
45. - CATERPILLAR INC (Y)									
46. - CHEVRON CORPORATION (Y)									
47. - DELL (Y)									
48. - EXXON MOBLE (Y)									
49. - JOHNSON & JOHNSON (Y)									
50. - GENERAL ELECTRIC (Y)									
51. - ISHARE BARCLAYS (Y)									

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
ROSENSTENGEL, NANCY J.	01/06/2014

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. - ISHARE S&P U.S. PRF STOCK (Y)									
53. - ISHARES JP MORGAN EMERG MKT BOND FUND (Y)									
54. - NIKE INC (Y)									
55. - PEABODY ENERGY (Y)									
56. - MERCK & CO (Y)									
57. - MICROSOFT (Y)									
58. - PFIZER INCORP (Y)									
59. - T ROW PRICE MID-CAP GR (Y)									
60. - SPDR BATCLAYS CAP HI YIELD BOND (Y)									
61. - TELLABS INC (Y)									
62. - UNION PACIFIC CORP (Y)									
63. - VERIZON COMMUNICATIONS (Y)									
64. - WALL-MART STORES INC (Y)									
65. WESTERN UNION (Y)									
66. - PROCTOR AND GAMBLE (Y)									
67. - FRONTIER COMMUNICATION (Y)									
68. - VANGUARD SHORT TERM ET CORP BONDS (Y)									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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
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P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market

3. Value Method Codes (See Column C2)
U =Book Value
V =Other
W =Estimated

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Name of Person Reporting	Date of Report
ROSENSTENGEL, NANCY J.	01/06/2014

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
69. - UNITED TECHNOLOGIES (Y)									
70. - JP MORGAN PRIME MONEY MARKET (Y)									
71. - ZOLTEK COS INC (Y)									
72. - WELLS FARGO COMP (Y)									
73. - UNITED HEALTH GROUP INC (Y)									
74. - GUGGENHIEM S&P 500 EQ WGT FIN (Y)									
75. - JP MORGAN CHASE (Y)									
76. - HOME DEPOT INC (Y)									
77. - HENNESSY FUNDS TR (Y)									
78. - SPDR BARCLAYS SHT TERM HI YIELD BOND (Y)									
79. - APPLE INC (Y)									
80. - FIRT TR CONSUMER DSI ALPHADEX FD (Y)									
81. - NORFOLK SOUTHERN COR (Y)									
82. - JP MORGAN US TREAS SECURITIES MOMEY (X) MARKET (X)									
83. - WISDOMTREE US DIV GROWTH FUND (X)									
84. - U.S. TREASURY BONDS (X)									
85. - PROSHARES TRUST SHORT 20 YR TREASURY (X)									

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

A =$1,000 or less
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M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
ROSENSTENGEL, NANCY J.	01/06/2014

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. - SPDR GOLD TRUST (X)									
87. - SPDR BARCLAYS SHORT TERM HIGH YIELD (X)									
88. - SELECT SECTOR SPDR T HEALTH CARE (X)									
89. - POWERSHARES SENIOR LOAN PORTFOLIO (X)									
90. - MARKET VECTORS TRUST BUSINESS DEVELOPMENT CO (X)									
91. - FIRST TRUST FUND IV SENIOR LOAN FUND (X)									
92. - FIRST TRUST SMALL CAP CORE ALPHADEX FUND (X)									
93. - FIRST TRUST INDUST PRODUC DURABLES ALPHADEX FUND (X)									
94. - FIRST TRUAT VI MULTI-ASSET DIV INCOME INDEX FUND (X)									
95. OFFICE PROPERTY, BELLEVILLE, ILLINOIS	D	Rent	M	W					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
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2. Value Codes (See Columns C1 and D3)
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FINANCIAL DISCLOSURE REPORT Page 10 of 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 01/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting ROSENSTENGEL, NANCY J.	Date of Report 01/06/2014

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 J. ROSENSTENGEL

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		66	000	Notes payable to banks-secured (auto)		19	522
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		132	622	Notes payable to relatives			
Unlisted securities – see schedule		250	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others		93	900	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – office property		83	638
Real estate owned – see schedule		555	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		142	000				
Cash value-life insurance		238	627				
Other assets itemize:							
Bonifield & Rosenstengel Profit Sharing		414	045				
Thrift Savings Plan		325	495				
				Total liabilities		103	160
				Net Worth	1	114	529
Total Assets	2	217	689	Total liabilities and net worth	2	217	689
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	
Coca Cola Co. stock	$ 3,482
First Trust AlphaDEX Fund	10,132
First Trust Industrials/Producer Durables AlphaDEX Fund	9,417
First Trust Small Trust Cap Core AlphaDEX Fund	9,208
Franklin Income Fund	8,025
Illinois Bright Start College Savings Age Based 10-11 Portfolio	11,961
Illinois Bright Start College Savings Age Based 12-14 Portfolio	11,519
Illinois Bright Start College Savings Age Based 15-17 Portfolio	11,125
iShares S&P 500 Growth Index Fund	12116
iShares S&P Core Mid-Cap Fund	6,259
Powershares QQQ Trust, Series 1	8,335
Powershares Senior Loan Portfolio Fund	7,548
ProShares UltraShort 20+ Year Treasury Fund	3,874
Putnam Multi-Cap Growth Fund	7,588
SPDR Barclays Capital Short Term High Yield Bond ETF	9,932
SPDR Gold Trust ETF	2,101
Total Listed Securities	$132,622

Unlisted Securities	
Bonifield & Rosenstengel PC Stock	$ 250,000
Total Unlisted Securities	$ 250,000

Real Estate Owned	
Personal residence	$ 375,000
Office property	150,000
Timeshare	30,000
Total Real Estate Owned	$ 555,000

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Indira Talwani

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

   United States District Judge for the District of Massachusetts

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

   Office: Segal Roitman, LLP
   111 Devonshire Street
   Fifth Floor
   Boston, Massachusetts 02109

   Residence: Auburndale, Massachusetts

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

   1960; Englewood, New Jersey

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

   1985 – 1988, University of California, Berkeley, School of Law; J.D. (Order of the Coif), 1988

   Spring 1984, City College of San Francisco; no degree

   1978 – 1982, Harvard / Radcliffe College; B.A. (*cum laude*), 1982

   Summer 1980, Columbia 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
Segal Roitman, LLP (and its predecessor, Segal, Roitman & Coleman, LLP)
111 Devonshire Street
Fifth Floor
Boston, Massachusetts 02109
Partner (2003 – present)
Of Counsel (1999 – 2002)

November 2011 – February 2012
Northeastern University Law School
400 Huntington Avenue
Boston, Massachusetts 02115
Part-time Lecturer

Summer 1987, 1989 – 1999
Altshuler, Berzon, Nussbaum, Berzon and Rubin (and its predecessor, Altshuler & Berzon, now Altshuler Berzon LLP)
177 Post Street
Suite 300
San Francisco, California 94108
Partner (1996 – 1999)
Associate (1989 – 1995)
Summer Associate (1987)

September – December 1997
City College of San Francisco
Labor and Community Studies
(current address)
50 Phelan Avenue
San Francisco, California 94112
Part-time Instructor

1988 – 1989
Honorable Stanley A. Weigel (deceased)
United States District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102
Law Clerk

1987 – 1988
Neyhart, Anderson, Nussbaum, Reilly and Freitas (now Neyhart, Anderson, Flynn & Grosboll)
(current address)

369 Pine Street, Suite 800
San Francisco, California 94104-3323
Law Clerk (part-time)

January – May 1987
Boalt Hall School of Law
Berkeley, California 94720
Academic Support Program Tutor (part-time)

1986 – 1987
Mocine & Eggleston (no longer exists)
(former address)
1440 Broadway
Oakland, California 94612
Law Clerk (part-time)

Summer 1986
Law Offices of Mary Louise Frampton (no longer exists)
(former address)
2444 Main Street
Fresno, California 93721
Law Clerk (part-time)

Summer 1986
Law Offices of Paul Ostroff (no longer exists)
(former address)
925 N Street
Fresno, California 93721
Law Clerk (part-time)

1984 – 1985
Service Employees International Union, Local 250 (now, SEIU – United Healthcare West)
(current address)
560 Thomas L. Berkley Way
Oakland, California 94612
Organizer (Fresno and Merced)

1983 – 1984
TemPositions
(current address)
140 Geary Street
San Francisco, California 94108
Document Coder

October 1982 – March 1983
National Union of Hospital and Health Care Employees, District 1199 (now, 1199SEIU, United Healthcare Workers East)
(current address)
150 Mt. Vernon Street
Third Floor
Boston, Massachusetts 02125
Clerical

September 1982
Massachusetts Fair Share
(current address)
44 Winter Street, Fourth Floor
Boston, Massachusetts 02108
Canvasser

Other Affiliations (uncompensated)

2011 – present
Lawyers Coordinating Committee of the AFL-CIO
815 16th Street, N.W.
Sixth Floor
Washington, D.C. 20037
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 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.

   Martindale-Hubbell Peer Review AV rated (2000 – present)
   Selected for inclusion in The Best Lawyers in America for Employment Law – Individuals for 2013 and 2014 (2012, 2013)
   Selected for inclusion in Massachusetts Super Lawyers (2012, 2013)
   Chinese Progressive Association, Workers Justice Award (2012)
   Massachusetts Lawyers Weekly, Leaders in the Law, Lawyer of the Year (2010)
   Order of the Coif, University of California, Berkeley (1988)
   Cowell Labor Fellowship (1986 – 1987)

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

American Bar Association Law Student Trial Advocacy Competition in Employment Law
Boston Regional Co-chair (2009 – 2010)
Bar Association of San Francisco
Lawyers Coordinating Committee of the AFL-CIO
Member of Board of Directors (2011 to present)
Massachusetts Bar Association
Massachusetts Employment Lawyers Association
South Asian Bar Association of Greater Boston

10. **Bar and Court Admission**:

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

Massachusetts, 1999
California, 1988

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, 2013
United States Court of Appeals for the First Circuit, 2002
United States Court of Appeals for the Ninth Circuit, 1988
United States Court of Appeals for the Tenth Circuit, 1996
United States District Court for the Central District of California, 1993
United States District Court for the Eastern District of California, 1989
United States District Court for the Northern District of California, 1988
United States District Court for the District of Massachusetts, 2001
California State Courts, 1988
Courts of the Commonwealth of Massachusetts, 1999

There have been no lapses in membership.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which

you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Auburndale Community Library (2009 – 2010)
Burr Elementary School Parent-Teacher Organization
(2000 – 2006, 2009 – present)
Day Middle School Parent-Teacher Organization (2001 – 2004, 2006 – 2008)
Kaiser Elementary School Parent-Teacher Organization (1995 – 1999)
Newton North High School Parent-Teacher Organization (2004 – 2012)
Oakland Ski Club (1996 – 1999)
Penguin Ski Club (2000 – 2006)

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

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

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

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

With Janine M. Martin & Catherine J. Trafton, Leave for Employee and Family Health Conditions: The Interplay of the ADA, FMLA, Workers' Compensation and Collective Bargaining Agreements (June 3, 2010) (AFL-CIO Lawyers Coordinating Committee Conference Paper). Copy supplied.

FMLA Update: Recent FMLA Changes and Strategies for Union Lawyers (April 17, 2009) (American Federation of Teachers Lawyers Conference Paper). Copy supplied.

FMLA Update: Strategies for Union Lawyers (May 20, 2008) (AFL-CIO Lawyers Coordinating Committee Conference Paper). Copy supplied.

THE FAMILY AND MEDICAL LEAVE ACT (Michael J. Ossip & Robert M. Hale, Editors in Chief, Gail Coleman & Indira Talwani, Associate Editors, American Bar Association and Bureau of National Affairs, 2006). One hard copy supplied.

Strategic Litigation of Medical Issues Under the Family and Medical Leave Act (June 24, 2004) (National Employment Lawyers Association Conference Paper). Copy supplied.

Labor Law Issues for the Non-Union Worksite in HANDLING DISCIPLINE AND DISCHARGES (Massachusetts Continuing Legal Education, 2003). Copy supplied.

Nine Years after Passage of the Family and Medical Leave Act: The Current State of the Law (August 13, 2002) (American Bar Association Annual Meeting, Section of Labor and Employment Law Conference Paper). Copy supplied.

With Robert M. Hale, Key Issues of the Family and Medical Leave Act in Massachusetts (April 24, 2002) (National Business Institute Conference Paper). Copy supplied.

Settlement and Mediation of Individual Employment Disputes in the Unionized Workplace (March 20, 2002) (ABA Section of Labor and Employment Law, Equal Employment Opportunity Committee, Conference Paper). Copy supplied.

Significant Common Law Tort Cases of 2001, 4TH ANNUAL MASSACHUSETTS EMPLOYMENT LAW CONFERENCE (Massachusetts Continuing Legal Education, December 7, 2001). Copy supplied.

With Robert M. Hale, *Family and Medical Leave Act Basics*, (ABA Section of Labor and Employment Law, December 6, 2001). Copy supplied.

Letter to the Editor, *Phelan's Dismissal Puts Harvard Arts in Peril*, THE HARVARD CRIMSON, June 4, 2001. Copy supplied.

With Scott Kronland, *Organizing-Related State and Local Legislation*, 2001 AFL-CIO Union Lawyers Conference, San Francisco (May 2001). Copy supplied.

"Is the Low-Wage Worker an 'Employee' Under Wage and Hour Laws?" *Handling Wage and Hour Cases for Low Income Workers* (Massachusetts Continuing Legal Education, Inc., 2000). 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.

According to the minutes of the Board of Supervisors of the City and County of San Francisco, on July 29, 1996, I was given an opportunity to speak regarding a proposed Charter amendment to the San Francisco city charter. The minutes reflect that the amendment concerned collective bargaining and that I took no position. I have no recollection of the hearing, but I would have been there on behalf of a client, the Municipal Attorney's Association of San Francisco, and not on my own behalf. Minutes supplied.

I have not otherwise issued or provided or had others present on my behalf any such communication to public bodies or public officials.

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

March 22, 2013: Panelist, "The Triangulation of Employment Relations," "Employed or Just Working? Rethinking Employment Relationships in the Global Economy" Symposium, Northeastern University Law Journal Symposium, Boston, Massachusetts. I discussed the decision of the Massachusetts Supreme Judicial Court in *Coverall N. Am., Inc. v. Com'r of Div. of Unemployment Assistance*, 447 Mass. 852 (2006). I have no notes, transcript or recording. The address of the Northeastern University Law Journal is 400 Huntington Avenue, Boston, Massachusetts 02115.

February 2, 2013: Speaker, "How to Negotiate a Post-Residency Employment Contract," the Committee of Interns and Residents, Service Employees International Union's Post-Residency Life Workshop, Boston, Massachusetts. PowerPoint on which the presentation was based supplied.

May 22, 2012: Moderator, "The Rules of the Road of the Fair Labor Standards Act," 2012 AFL-CIO Union Lawyers Conference, Chicago, IL. The panel's first session addressed employee rights under the Fair Labor Standards Act and the second session addressed litigation issues arising in Fair Labor Standards Act cases. I have no notes, transcript or recording. The address of the Coordinating Committee of the AFL-CIO is 815 16th Street, N.W., Sixth Floor, Washington, D.C. 20037.

January 28, 2012: Speaker, "How to Negotiate a Post-Residency Employment Contract," the Committee of Interns and Residents, Service Employees International Union's Post-Residency Life Workshop, Boston, Massachusetts. The topic was substantially the same as the topic for the February 2, 2013 event, for which a PowerPoint has been supplied.

January 29, 2011: Speaker, "How to Negotiate a Post-Residency Employment Contract," the Committee of Interns and Residents, Service Employees International Union's Post-Residency Life Workshop, Boston, Massachusetts. The topic was substantially the same as the topic for the February 2, 2013 event, for which a PowerPoint has been supplied.

June 3, 2010: Panelist, "Leave for Employee and Family Health Conditions: The Interplay of the ADA, FMLA, Workers' Compensation and Collective Bargaining Agreements," 2010 AFL-CIO Union Lawyers Conference, Washington, D.C. I have no notes, transcript, or recording but the paper on which the presentation was based is supplied in response to question 12.a.

May 27, 2010: Speaker, "How to Deal with Sexual Harassment and Discrimination Complaints," Segal Roitman Seminar, Boston, Massachusetts. This presentation for union representatives addressed handling sexual harassment and discrimination complaints brought by union members against supervisors and other union members, and handling discipline imposed on union members in response to sexual harassment and discrimination complaints. I have no notes, transcript, or recording. Segal Roitman LLP's address is 111 Devonshire Street, Fifth Floor, Boston, MA 02109.

February 6, 2010: Speaker, "How to Negotiate a Post-Residency Employment Contract," the Committee of Interns and Residents, Service Employees International Union's Post-Residency Life Workshop, Boston, Massachusetts. The topic was substantially the same as the topic for the February 2, 2013 event, for which a PowerPoint has been supplied.

2010: Panelist, "Advanced FMLA Issues: A Guide for the Perplexed" (teleconference and live audio webcast), American Bar Association, Section of Labor and Employment Law and the ABA Center for Continuing Legal Education (2010). I spoke on Family and Medical Leave issues relating to collective bargaining, employer and employee obligations for notice under the Family and

Medical Leave Act, medical certifications and intermittent leave. A copy of the outline for the teleconference is supplied.

December 10, 2009: Panelist, "What Union Lawyers Need to Know About the Family and Medical Leave Act," AFL-CIO Lawyers Coordinating Committee Northeastern Regional Meeting, New York, New York. This presentation reviewed Department of Labor Fact Sheets on the Family and Medical Leave Act. I have no notes, transcript or recording. The address of the Coordinating Committee of the AFL-CIO is 815 16th Street, N.W., Sixth Floor, Washington, D.C. 20037.

November 7, 2009: Panel Member, "Unraveling Statutory Protections for Workplace Leaves and Absences," ABA Section of Labor & Employment Law Conference, Washington, D.C. A copy of the panel's PowerPoint presentation (prepared primarily by my co-panelist, Pamela Hemminger, but with my minor contributions) on which the presentation was based is supplied.

May 6, 2009: Panel Member, "Non-Traditional Workers and the Employment Laws," Massachusetts Continuing Legal Education, Boston, Massachusetts. I spoke on federal and state enforcement of wage and hour laws. I have no notes, transcript or recording. The address of Massachusetts Continuing Legal Education is 10 Winter Place, Boston, Massachusetts 02108.

April 17, 2009: Speaker, "FMLA Update: Recent FMLA Changes and Strategies for Union Lawyers, American Federation of Teachers Lawyers Conference," Philadelphia, Pennsylvania. Paper on which presentation was based supplied in response to question 12.a.

February 26, 2009: Speaker, "Using the Family Medical Leave Act Strategically: On the Job, In Grievance Proceedings, and in Collective Bargaining," Segal Roitman Seminar, Boston, Massachusetts. This presentation for union officers and staff provided information on Family and Medical Leave Act rights and responsibilities. I have no notes, transcript, or recording. The address of Segal Roitman LLP is 111 Devonshire Street, Fifth Floor, Boston, Massachusetts 02109.

May 20, 2008: Panelist, "FMLA Update: Strategies for Union Lawyers," 2008 AFL-CIO Union Lawyers Conference, Seattle, Washington. I have no notes, transcript, or recording but the paper on which the presentation was based is supplied in response to question 12.a.

March 24, 2008: Panelist, American Bar Association – Section of Labor and Employment Law. The panel was about career opportunities in this field of law. It took place at Boston University School of Law. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

September 25, 2007: Panelist, FMLA Roundtable, Massachusetts Bar Association, Worcester, Massachusetts. The panel discussed recent developments under the FMLA. I have no notes, transcript, or recording. The address of the Massachusetts Bar Association is 20 West Street, Boston, Massachusetts 02111.

May 9, 2007: Panelist, "The Scope of Judicial Review of an Arbitrator's Award," Massachusetts Bar Association 28th Annual Labor and Employment Law Spring Conference, Boston, Massachusetts. Materials on which presentation was based are supplied.

June 24, 2005: Panelist, "Family and Medical Leave Act Basic Law and Procedure," ABA Section of Labor and Employment Law Committee and the Center for Advanced Legal Studies at Suffolk University Law School, Boston, Massachusetts. PowerPoint on which the presentation was based is supplied.

June 24, 2004: Panelist, "Strategic Litigation of Medical Issues under the Family and Medical Leave Act," National Employment Lawyers Association conference, San Antonio, Texas. I have no notes, transcript or recording, but the paper on which presentation was based is supplied in response to question 12.a.

2003: Speaker, "Labor Law Issues for the Non-Union Worksite." This talk was part of a continuing education program entitled "Handling Discipline and Discharges," presented by Massachusetts Continuing Legal Education, in Boston, Massachusetts. I have no notes, transcript, or recording but the paper on which presentation was based is supplied in response to question 12.a.

2003: Speaker, "Lessons Learned from the Janitors' Strike," Massachusetts Bar Association, Boston, Massachusetts. I spoke at this roundtable discussion about union member participation in negotiations and fears of reprisals. I have no notes, transcript, or recording but press coverage is supplied. The address of the Massachusetts Bar Association is 20 West Street, Boston, Massachusetts 02111.

August 13, 2002: Speaker, "Nine Years after Passage of the Family and Medical Leave Act: The Current State of the Law," American Bar Association Annual Meeting, Section of Labor and Employment Law, Washington, D.C. I have no notes, transcript, or recording but the paper on which presentation was based is supplied in response to question 12.a and press coverage is supplied.

April 24, 2002: Panelist, "Key Issues of the Family and Medical Leave Act in Massachusetts," National Business Institute, Boston, Massachusetts. I have no notes, transcript, or recording but the paper on which presentation was based is supplied in response to question 12.a.

March 20, 2002: Speaker, "Settlement and Mediation of Individual Employment Disputes in the Unionized Workplace," ABA Section of Labor and Employment

Law Equal Employment Opportunity Committee, 2002 Midwinter Meeting, San Diego, California. I have no notes, transcript, or recording but the paper on which presentation was based is supplied in response to question 12.a.

December 7, 2001: Speaker, "Significant Common Law Tort Cases of 2001," Fourth Annual Massachusetts Employment Law Conference, Massachusetts Continuing Legal Education, Boston, Massachusetts. I have no notes, transcript, or recording but the paper on which presentation was based is supplied in response to question 12.a.

December 6, 2001: Panelist, "Family and Medical Leave Act Basics," ABA Section of Labor and Employment Law Conference, Washington, D.C. I have no notes, transcript, or recording but the paper on which presentation was based is supplied in response to question 12.a.

August 6, 2001: Panelist, "Family and Medical Leave Act Basics," ABA Annual Meeting – Section of Labor and Employment Law, Chicago, Illinois. I have no notes, transcript or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

May 2001: Panelist, "Organizing-Related State and Local Legislation," 2001 AFL-CIO Union Lawyers Conference in San Francisco, California. I have no notes, transcript, or recording but the paper on which presentation was based is supplied in response to question 12.a.

2000: Panelist, "Is the Low-Wage Worker an 'Employee' Under Wage and Hour Laws?" This panel was part of a continuing education program entitled "Handling Wage and Hour Cases for Low Income Workers," hosted by Massachusetts Continuing Legal Education, Boston, Massachusetts (2000). I have no notes, transcript, or recording but the paper on which presentation was based is supplied in response to question 12.a.

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.

Thomas E. Egan and Al Turco, *Retaliation Allowed in the Mutual Fund Industry*, MASS. LAW. WKLY., Feb. 14, 2012. Copy supplied.

"Honesty without Fear" interview on the Progressive Radio Network, regarding the First Circuit's interpretation of the Sarbanes-Oxley's whistleblower provision, on February 7, 2012. I have been unable to obtain a copy.

No SOX Protection for Whistleblowers Working for Contractors of Public Companies, LAW. FOR CIV. JUST., Feb. 6, 2012. Copy supplied.

Christina Pazzanese, *Deal Close in Grocery Dispute*, BOSTON GLOBE, Sept. 24, 2011. Copy supplied.

Profiles of our 2010 Lawyers of the Year, MASS. LAW. WKLY., Jan. 7, 2011. Copy supplied.

Lawyers of the Year 2010, MASS. LAW. WKLY., Jan. 3, 2011. Copy supplied.

David E. Frank, *Sarbanes-Oxley Act Applies to the Mutual Fund Industry,* MASS. LAW. WKLY., Apr. 19, 2010. Copy supplied.

Elise Czajkowski, *Fidelity Whistleblower Suits Get Green Light*, LAW 360, Apr. 1, 2010. Copy supplied.

Ross Kerber, *Mutual Fund Workers Get Whistle-Blower Cover - Judge*, REUTERS NEWS, Mar. 31, 2010. Copy supplied (reprinted in multiple outlets).

Ross Kerber, *Layoff Warning Law Falls Short*, BOSTON GLOBE, Dec. 23, 2008. Copy supplied.

Jonathan Saltzman, *Marshal Awarded $150,000, Jury Found Boss Used Retaliation*, BOSTON GLOBE, June 25, 2008. Copy supplied.

Jonathan Saltzman, *Former US Marshal Loses Sex Discrimination Case*, BOSTON GLOBE, June 24, 2008. Copy supplied.

Ross Kerber, *Fidelity Fund Costs Questioned: Ex-employee Says She Was Forced Out After Raising Issue*, BOSTON GLOBE, Mar. 27, 2008. Copy supplied.

John C. Bailar, III, et al., *IBM, Elsevier Science, and Academic Freedom*, 13 INT. J. OCCUPATIONAL ENVTL. LAW 2007: 312-17. Copy supplied.

Sean P. Murphy, *US Probe of Marshal Completed in March*, BOSTON GLOBE, June 3, 2005. Copy supplied.

Sean P. Murphy, *US Marshal Said to Face Earlier Probe*, BOSTON GLOBE, Nov. 1, 2004. Copy supplied.

Michael Blanding, *The Man Who Knew Too Much*, BOSTON MAG., Aug. 2004. Copy supplied.

Dan Ferber, *A Response from IBM*, SCIENCE, Vol. 305, July 16, 2004. Copy supplied.

Antonio Regalado and William M. Bulkeley, *IBM Cancer Data Fuel Debate Over*

Publication, WALL ST. J., June 24, 2004. Copy supplied.

Meredith Wadman, *Scientists Cry Foul as Elsevier Axes Paper on Cancer Mortality,* NATURE, VOL. 429, June 17, 2004. Copy supplied (reprinted in multiple outlets).

Appeal Dropped in Globe Freelance Case, MASS. LAW. WKLY., Jan. 26, 2004. Copy supplied.

Freelancers Drop Appeal of Lawsuit Against Boston Globe, AP ALERT – MASS., Jan. 16, 2004. Copy supplied (reprinted in multiple outlets).

Mark Jurkowitz, *Freelancers Drop Globe Ruling Appeal,* BOSTON GLOBE, Jan. 16, 2004. Copy supplied.

Jay DeFoore, *Plaintiffs To Appeal Boston Globe Decision*, FILM J., Jan. 2, 2003. Copy supplied.

Freelancers Lose Copyright Battle with Boston Globe, REP. COMMITTEE FOR FREEDOM OF THE PRESS, December 9, 2002. Copy supplied.

Meg Weaver, *News Alert*, THE WOODEN HORSE PUB. NEWS, Dec. 6, 2002. Copy supplied.

Mark Jurkowitz, *Judge Rules in Favor of the Globe in a Suit Filed by Freelancers,* BOSTON GLOBE, Nov. 27, 2002. Copy supplied.

Tasini Ruling Will Give Databases a Shake, NEWSINC, July 2, 2001. Copy supplied.

Mark Jurkowitz, *Publishers Plan to Delete Archive Material*, BOSTON GLOBE, June 26, 2001. Copy supplied.

Peter Geier, *Union Sues Hagerstown-Based Allegheny Power over Intermittent Leave Policy,* DAILY REC. (Baltimore, MD), May 23, 2001. Copy supplied.

Mark Jurkowitz, *MBTA in Talks for Free Daily*, BOSTON GLOBE, Feb. 1, 2001. Copy supplied.

Wendy L. Pfaffenbach, *Newspaper Can Be Sued for Ch. 93A Violation*, MASS. LAW. WKLY., Jan. 29, 2001. Copy supplied.

Colin Meek, *Freelancers Lose Action Against 'Cyberspace Sweatshop'*, JOURNALISM.COM, Aug. 16, 2000. Copy supplied.

Attorney: Don't Let E-World Abrogate Rights, TEXT & ACAD. AUTHOR ASS'N, Aug. 11, 2000. Copy supplied.

Boston E-Rights Battle Destined to Stay in Courts, TEXT & ACAD. AUTHOR ASS'N, Aug. 1, 2000. Copy supplied.

Mark Jurkowitz, *Judge Denies Request for Injunction Against Globe Clears Way for Pact with Free-Lancers*, BOSTON GLOBE, June 27, 2000. Copy supplied.

Judith Kelliher, *Freelancers Lose Injunction Against Boston Globe*, LAW.COM, June 27, 2000. Copy supplied.

Mark Jurkowitz, *Judge to Rule Soon on Challenge to Globe's Terms for Freelancers*, BOSTON GLOBE, June 24, 2000. Copy supplied.

Ruling Favors Billboard Industry Firms Challenge Limit on Liquor Advertising, SAN JOSE MERCURY NEWS, Jan. 19, 1999 (reprinted in multiple outlets). Copy supplied.

Dale Rodebaugh, *Lawsuit Against UFW Dropped Charges: Women Said Union Official Suggested They Use Sex to Sign up Workers*, SAN JOSE MERCURY NEWS, Aug. 6, 1997. Copy supplied.

Stephen Schwartz, *Union Can't Intercede for Fired DAs, Judge Says*, SAN FRANCISCO CHRON., Aug. 7, 1996. Copy supplied.

Kathleen Sullivan, *Workers' Comp Law Survives Challenge Court Tells Firm It Must Comply*, SAN FRANCISCO EXAMINER, Mar. 18, 1993. Copy supplied.

California: Enviro Groups, State Settle on Prop 65, ENV'T & ENERGY PUB., Jan. 8, 1993. Copy supplied.

Environmentalists and Wilson Administration Agree to Settle Long-Standing Proposition 65 Dispute, BUS. WIRE, Jan. 4, 1993. Copy supplied.

US Appeals Court Prohibits Use of Cancer-Causing Pesticides in Food, J. COM. 7A, July 10, 1992. Copy supplied.

U.S. Industry Group Criticizes Ruling on Pesticides, REUTERS, July 9, 1992. Copy supplied.

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

I have not held any judicial offices.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system

by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

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

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

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

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

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

I have never 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.

2006: Deval Patrick for Massachusetts Governor. On two occasions, I volunteered to hold signs for the campaign.

2008: Barack Obama for President. I volunteered to knock on doors on one occasion and on another occasion, I held signs.

2010: Martha Coakley for United States Senate. On one occasion, I volunteered to hold signs for the campaign.

2012: Elizabeth Warren for United States Senate. On several occasions, I volunteered to knock on doors and make phone calls.

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 1988 to 1989, I clerked for the Honorable Stanley A. Weigel, District Judge of the United States District Court for the Northern District of California.

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

I have not practiced alone.

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

1989 – 1999
Altshuler, Berzon, Nussbaum, Berzon and Rubin (and its predecessor, Altshuler & Berzon, now Altshuler Berzon LLP)
177 Post Street
Suite 300
San Francisco, California 94108
Associate (1989 – 1995)
Partner (1996 – 1999)

1999 – present
Segal Roitman, LLP (and its predecessor, Segal, Roitman & Coleman, LLP)
111 Devonshire Street
Fifth Floor
Boston, Massachusetts 02109
Of Counsel (1999 – 2002)
Partner (2003 – present)

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

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

b. Describe:

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

My law practice since 1989 has focused primarily on civil litigation in state and federal court.

From 1989 to 1999, I was with Altshuler, Berzon, Nussbaum, Berzon and Rubin (and its predecessor). My practice included litigation, grievance and interest arbitrations, and agency hearings on a range of workplace issues, including gender and race discrimination, sexual harassment, terminations without just cause, and occupational safety and health issues. I handled depositions and other discovery, and drafted motions and supporting memoranda. I also argued motions in the state trial court and in federal district court. As I became more senior, I took on primary responsibility for a number of these cases. I also participated in the drafting of appellate briefs, particularly during my first five years at the firm. After my first few years of practice, I also regularly handled numerous labor arbitrations, where I was the sole attorney representing our clients.

From 1999 to the present, my practice has been with Segal Roitman, LLP (and its predecessor). My practice has continued to focus on litigation, grievance arbitration, and agency hearings on a range of workplace issues. I have served as lead or sole attorney on most of my cases, and have represented our clients through discovery, pre-trial motions, trials (with co-counsel), appeals and remand. I have also continued to handle labor arbitrations.

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

At Altshuler, Berzon, my typical clients were labor organizations, ranging from local unions to labor federations. I also represented individuals and groups of employees, and California Rural Legal Assistance. The primary focuses of my practice were labor and employment and environmental law.

At Segal, Roitman, I have continued to represent labor unions, handling complex litigation for my partners' private sector union clients (including in a major antitrust case), and I have also represented several public sector unions in negotiations, arbitrations and proceedings before the Commonwealth's Department of Labor Relations. A significant portion of my practice now includes representing individual employees and groups of workers in employment 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.

I estimate that 80% of my practice has been in litigation. During my first ten years of practice, I was in court occasionally and, after the first two years of practice, I also had numerous arbitration cases. During the past fourteen years, I have been in court frequently (including trials), and have had one to three arbitration cases per year:

i. Indicate the percentage of your practice in:
   1. federal courts: 40%
   2. state courts of record: 35%
   3. other courts: 15% (arbitrations)
   4. administrative agencies: 10%

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.

In addition to trying to final decision approximately 25 cases before neutral arbitrators, I have tried three cases in courts of record to verdict, final judgment or final decision. These cases included four trials because one case was tried twice. I tried two as chief counsel and two as co-counsel.

i. What percentage of these trials were:
   1. jury: 50%
   2. non-jury: 50%

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

oral argument transcripts before the Supreme Court in connection with your practice.

In a pending matter, *Lawson v. FMR LLC*, Supreme Court docket 12-3, I have assisted in drafting the petition for certiorari (2012 WL 2516707), petitioners' reply brief (2012 WL 3875293), petitioners' supplemental brief (2013 WL 1751485), petitioner's brief on the merits (2013 WL 3972434), and petitioner's reply brief (copy supplied).

In *Ragsdale v. Wolverine Worldwide, Inc.*, 535 U.S. 81 (2002), I assisted in drafting an amicus brief in support of petitioners, 2001 WL 1077951, on behalf of the American Federation of Labor and Congress of Industrial Organizations and others.

In *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), I assisted in drafting an amicus brief in support of petitioner, 1998 WL 898907, on behalf of the American Federation of Labor and Congress of Industrial Organizations.

In *National Agr. Chemicals Ass'n v. Les, petition for writ of certiorari denied*, 507 U.S. 950 (1993), I assisted in drafting a brief and a supplemental brief in opposition to the petition for certiorari. Copies supplied.

I have not been counsel of record in any case 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) *Am. Steel Erectors, Inc. v. Local Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers*, No. 04-12536, 932 F.Supp. 2d 240 (D. Mass. Mar. 25, 2013) (Judge Richard G. Stearns) , *appeal docketed*, No. 13-1531 (Apr. 25, 2013), *cross-appeal docketed*, No. 13-1665 (May 21, 2013); *Am. Steel Erectors, Inc. v. Local Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers*, 2010 WL 3946345 (D. Mass. Oct. 8, 2010) (Judge Richard G. Stearns); *Am. Steel Erectors, Inc. v. Local Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers*, 2009 WL 1690941 (D. Mass. June 17, 2009) (Judge Richard G. Stearns); *Am. Steel Erectors, Inc. v. Local Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers*, 480 F.Supp. 2d 471 (D. Mass. 2007) (Judge Richard G. Stearns), *rev'd*, 536 F.3d 68 (1st Cir. 2008) (Judge Norman H. Stahl, Judge Jeffrey R. Howard, and Judge Eugene Siler (of the Sixth Circuit)); 2004 – present.

Together with colleagues at my firm, I defended Local Union No. 7 of the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers in a suit brought by five nonunion steel erectors who alleged that the union conspired with unionized employers to monopolize the structural steel erection industry in the greater Boston area in violation of both antitrust and labor laws. Plaintiffs sought damages in excess of $10,000,000, treble damages, and injunctive relief on the antitrust counts.

I participated in drafting the union's initial briefs on summary judgment, where we prevailed in the district court. I also participated in drafting our brief in the first appeal, but did not argue the appeal. After the district court was reversed by the First Circuit, I participated as co-counsel in a jury trial on the labor law count, where the court entered judgment as a matter of law in favor of the union as to three of the plaintiffs and judgment against the union as to two of the plaintiffs. I then drafted further summary judgment papers, with assistance from my co-counsel, and argued the final summary judgment motion on the antitrust counts. We prevailed on the motion, with the court concluding that the union's job targeting program did not violate the antitrust laws, and instead promoted competition. Plaintiffs' second appeal and defendant's cross-appeal are currently pending in the First Circuit. I have recently participated in drafting the defendant's brief in this appeal and cross-appeal.

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(2) *Lawson v. FMR LLC*, 724 F. Supp. 2d 141 (D. Mass. 2010) (Judge Douglas P. Woodlock, *rev'd*, 670 F.3d 61 (1st Cir. 2012) (Chief Judge Sandra L. Lynch, Judge Jeffrey R. Howard and Judge O. Rogeriee Thompson), *cert. granted*, 2013 WL 2149801 (U.S. May 20, 2013); 2008 – present.

I represent plaintiff Lawson, who contends that she was retaliated against for reporting violations of rules and regulations of the Securities and Exchange Commission or other federal laws concerning fraud against shareholders. The litigation has focused on the scope of the whistleblower protections under the Sarbanes Oxley Act ("SOX"). The District Court denied the defendants' motion to dismiss the action, but on interlocutory appeal, a divided panel of the First Circuit concluded that employees of contractors of public companies are not protected by SOX. In May, our petition for writ of certiorari to the First Circuit was granted. I served as plaintiff's sole counsel in the District Court and at the United States Court of Appeals, and am assisting counsel of record at the Supreme Court.

Co-counsel (Counsel of record before the United States Supreme Court):
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(3) *Liu v. Winvest LLC*, Civil Action SUCV2009-4154, Suffolk Superior Court, consolidated with *Wong v. Luu*, Civil Action SUCV 2009-3472, Suffolk Superior Court (lead case), *Wincent International, Inc. v. Luu*, Civil Action SUCV2009-3473, Suffolk Superior Court, *Tin World, Inc. v. Super 88, LLC,* Civil Action SUCV2009-0368, Suffolk Superior Court, *Hop Lee Trading Co., Inc. v. Wincent International, Inc.*, SUCV2009-3959, Suffolk Superior Court; *Cheng Lee Co., Inc. v. Super 88 Allston LLC,* Civil Action SUCV2010-0668, Suffolk Superior Court, *Wong v. Haymarket Capital, LLC*, Civil Action SUCV2010-4961, Suffolk Superior Court; and *Chang and Sons Enterprises, Inc. v. Super 88 Supermarket II, Inc.,* Civil Action SUCV 2012-2128 Suffolk Superior Court (Judge D. Lloyd Macdonald), 2009 – present; *In re Cheng Kwong Sea Food Market, Inc.*, Case 09-20089 (Bankr. D. Mass.), *Super 88, LLC*, Case 09-20143 (Bankr. D. Mass.), *Super 88 Market Malden II, LLC*, Case 09-20152 (Bankr. D. Mass.), *Super 88 Supermarket II, Inc.*, Case 09-20144 (Bankr. D. Mass.), and *Super 88 Warehouse, LLC*, Case 09-20150 (Bankr. D. Mass.) (Judge William C. Hillman); 2009 – present.

I served as lead counsel for plaintiffs Liu and Zhu and worked together throughout the litigation with Cynthia Mark of Greater Boston Legal Services. We filed this class action on behalf of over 200 former employees of the Super 88 grocery store chain, seeking minimum wage, overtime and holiday pay under Massachusetts law. We obtained injunctive relief in the state court to secure assets during the pendency of the suit, participated in the bankruptcy proceeding that resulted in the dismissal of the defendants' bankruptcy petitions as fraudulent, obtained class certification, were appointed class counsel, and negotiated the settlement approved by the Court. The wage case ultimately settled, with formal court approval, with a $950,000 judgment for the plaintiffs. The case is consolidated with cases brought by creditors and competing buyers, and although class members have now been paid and the sale of one store has been finalized, the claims of trade creditors remain pending and final judgment has not yet entered.

Co-counsel:
Cynthia Mark

Greater Boston Legal Services
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(4) *DeCaire v. Gonzales*, 474 F. Supp. 2d 241 (D. Mass. 2007) (Judge William G. Young), *vacated sub nom. DeCaire v. Mukasey*, 530 F.3d 1 (1st Cir. 2008) (Judge Juan R. Torruella, Judge Sandra L. Lynch and Judge Kermit V. Lipez), *on remand sub nom. Bohn v. Mukasey*, United States District Court for the District of Massachusetts, Civil Action No. 04-10593 (Judge Edward F. Harrington); 2004 – 2008.

My client, a Deputy United States Marshal, sued the United States Attorney General, alleging that the U.S. Marshal for the District of Massachusetts had discriminated against her on the basis of gender and retaliated against her after she filed internal complaints with the U.S. Marshals Service's Equal Employment Opportunity office. I served as lead or sole counsel throughout the litigation, including discovery, pre-trial motions, a bench trial, an appeal, and a subsequent jury trial.

On appeal following the bench trial and defense verdict, the First Circuit reversed the district court, determining as a matter of law that there was no "disloyalty" defense to a claim of retaliation in violation of Title VII, that it did not matter for retaliation whether the employer would have treated a male employee the same way it treated a female plaintiff who has filed a gender discrimination complaint, and that the district court erred in supplying a justification for the employer's action not raised by either plaintiff or defendant. On remand, the jury found for my client on the retaliation claim, awarding her $150,000 in damages. Plaintiff was also awarded her attorneys' fees for the bench trial, the appeal and the jury trial.

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(5) *Wong, et al. v. Power-One, Inc.*, United States District Court for the District of Massachusetts, Civil Action No. 03-10350 RCL; Judge Reginald C. Lindsay (dec.); 2003 – 2005.

I served as lead counsel for plaintiffs and was assisted throughout by co-counsel Cynthia Mark of Greater Boston Legal Services. This class action was filed on behalf of approximately 120 laid-off employees for violation of the Worker Adjustment and Retraining Notification (WARN) Act requirements of sixty days' notice of a planned plant closing. Attorney Mark and I conducted extensive discovery, obtained class certification, were appointed class counsel, defeated defendant's motion for summary judgment, and negotiated a favorable settlement approved by the Court. We obtained a class-wide settlement of approximately $300,000.

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Counsel for Defendant
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(6) *JCI Communications, Inc. v. International Brotherhood of Electrical Workers Union, Local 103*, 2002 WL 2005852 (D. Mass. Aug. 29, 2002) (Judge Rya Zobel), *aff'd* 324 F.3d 42 (1st Cir. 2003) (Judge Norman H. Stahl, Judge Sandra L. Lynch, and Judge Jeffrey R. Howard); 2002 – 2003.

I was lead counsel on the case in the district court and on appeal. This case involved a petition by a telecommunications company to vacate an arbitral award concerning a work jurisdiction dispute, and a cross-petition by my client, a local union, for confirmation of award. The district court granted the union's motion for summary judgment, and on appeal, the Court of Appeals affirmed that decision, holding that: (1) the employer was not entitled to trial on the issue of whether a separate jurisdictional agreement governed the relationship between the parties; (2) the arbitrators did not exceed the scope of their authority when they considered the validity and effect of the jurisdictional agreement; and (3) the employer did not preserve any claim that industry arbitrators were biased because they worked for the employer's competitors.

Counsel for Plaintiff/Appellant
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(7) *Marx v. Globe Newspaper Co.*, 2002 WL 31662569 (Mass. Super. Nov. 26, 2002) (Judge Ralph D. Gants (now Justice, Massachusetts Supreme Judicial Court)); 2002-2004.

I represented plaintiffs in this suit challenging the Boston Globe's actions towards it regular freelance contributors. Pursuant to oral agreements, these freelancers had provided articles and photographs for one-time publication in the print edition of the

Boston Globe and had retained the copyright in their work. The Boston Globe sought to republish the work on-line on its website, Boston.com, and to transfer or sublicense the use of certain articles and photographs to other online media, such as Mead Data Central Corp.'s NEXIS database, where they would be republished under the Globe's name. To obtain the consent of its frequent freelance contributors, the Globe demanded that the contributors give the Globe a license to reuse and modify their past work, and set an ultimatum that if the freelancers rejected this demand for a license to use the past work, it would not accept further content from them. The lawsuit attempted to challenge this practice; the court denied the Globe's motion to dismiss, but following discovery, granted its motion for summary judgment. The court concluded that requiring the freelancers to give up part of their copyright was not akin to giving up earned compensation, and that there was no violation of the implied covenant of good faith and fair dealing by doing so.

Counsel for the Defendant
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(8) *Sims v. Alameda-Contra Costa Transit Dist.*, 2 F. Supp. 2d 1253 (N.D. Cal. 1998); Judge Charles A. Legge (ret.); 1996-1998.

I brought this action on behalf of the plaintiff against his former employer, alleging that it violated the Family and Medical Leave Act (FMLA) by failing to provide him with notice of his rights and obligations under the FMLA, and by terminating him based in part on an absence due to a serious medical condition under the FMLA. I successfully opposed defendant's motion for summary judgment and obtained a partial summary judgment for plaintiff, establishing that: (1) where the employer did not seek a subsequent medical opinion within a reasonable time period after the employee submitted his initial sufficient certification of a serious health condition, the employer could not challenge the validity of the initial medical certification submitted by employee; and (2) the employer could not deny leave based on a minor deficiency in medical certification, where it did not meet its obligation under the statute to notify the employee of the perceived deficiency and provide him a reasonable opportunity to cure it. The case settled thereafter.

Counsel for the defendant
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(509) 351-7686

(9) *Employee Staffing Services, Inc. v. Aubry*, Civil Action C-92-4096, 1993 WL 83310 (N.D. Cal. 1993) (Judge Stanley A. Weigel (dec.)), *aff'd*, 20 F.3d 1038 (9th Cir. 1994)

(Judge Robert R. Beezer (dec.), Judge Andrew Jay Kleinfeld and Judge Cecil F. Poole (dec.)); 1992 – 1994.

Together with colleagues from my firm, I represented intervenor International Ladies Garment Workers' Union in opposing this action brought by a staffing company and its subsidiary against the California Division of Labor Standards Enforcement. The plaintiffs asserted that the Employee Retirement Income Security Act (ERISA) preempted California's mandating of workers' compensation insurance. I argued at the district court hearings and participated with colleagues at my firm in the drafting of briefs in support of motions for leave to intervene and to dismiss the complaint, in opposition to plaintiffs' request for a preliminary injunction, and on appeal. We prevailed in both the district court and on appeal, with the Ninth Circuit finding that ERISA preemption did not bar state workers' compensation requirement even though the employer provided coverage for work-related injuries as part of the multibenefit ERISA plan.

Co-counsel
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Counsel for Defendants-appellees
John M. Rea
(no current business address or phone available)

(10) *Les v. Reilly*, 968 F.2d 985 (9th Cir. 1992) (Judge Richard Harvey Chambers (dec.), Judge Robert R. Beezer (dec.), Judge Mary M. Schroeder)), and *cert. denied sub nom. National Agr. Chemicals Ass'n v. Les*, 507 U.S. 950 (1993); 1991 to 1993.

Together with colleagues in my firm, I represented petitioner-intervenor AFL-CIO. I played a lead role in the joint briefing challenging a decision by the Environmental Protection Agency (EPA) on behalf of the petitioners and petitioner-intervenors Natural Resources Defense Council, Inc., and Public Citizen. The EPA found that four pesticides that had previously been permitted for use as food additives were carcinogens. Despite the finding, the EPA refused to revoke regulations permitting the pesticides' approval as food additives, on the ground that the risk of cancer posed by these chemicals was "de minimus." The petitioners and petitioner-intervenors challenged the EPA's final order permitting the use of the four chemicals on the ground that the use violated the Delany clause, 21 U.S.C. § 348(c)(3), which prohibited the use of any food additive that is found to induce cancer. The Ninth Circuit granted the petition for review, setting aside the EPA's order after finding that the language of the Delaney clause required the EPA to prohibit all additives that are carcinogens, regardless of the degree of risk involved.

Co-counsel:
Albert H. Meyerhoff (dec.)

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Counsel for Respondents:

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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe

the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Much of my practice has involved law and motion and appellate practice in state and federal courts addressing disputed issues of law. I have described my participation in the most significant of these cases in response to the prior question. Generally, for at least the past ten years, I have determined the legal strategy in these cases, have drafted legal briefs (sometimes with the assistance of colleagues at my firm), and have argued many of the cases.

A significant part of my practice has included labor arbitrations. These private trials have involved discipline or discharge of union members, contract interpretation disputes, health and safety issues and similar matters. In these proceedings I typically gather information pre-hearing through information requests, witness interviews and review of documents. At the arbitration hearings, I give opening statements, engage in examination or cross-examination of all witnesses, make and oppose evidentiary objections, and give closing arguments, either orally or through post-hearing briefs. I estimate that I have tried more than 25 arbitration cases as lead or sole counsel.

I have also represented clients in other formal evidentiary hearings. For example, I represented a local union in an extensive hearing before the California Division of Occupational Safety (Cal OSHA) concerning ergonomic issues at an automobile plant. The case settled following the introduction of evidence. I also defended nine tenured faculty members facing threat of prosecution under the False Claims Act relating to the administration of government-funded grants. The matter proceeded first as a grievance before a university committee on privileges and tenure. Following the committee's fact-finding and decision in favor of my clients, I was able to negotiate a global resolution of the matter with no charges brought against my clients by the government or university.

I have also drafted, or assisted in drafting, amicus curiae briefs, including *Coverall N. Am., Inc. v. Com'r of Div. of Unemployment Assistance*, 447 Mass. 852 (2006) (brief filed on behalf of the Service Employees International Union and SEIU Local 615, defending the Massachusetts Division of Unemployment Assistance's determination that alleged "franchisees" were "employees" of janitorial company for purposes of unemployment assistance), *Town of Bedford v. AFSCME Council 93, Local 1703*, 69 Mass. App. Ct. 110, 866 N.E.2d 936, 937 (2007) (brief filed on behalf of Massachusetts AFL–CIO, in support of an appeal by the American Federation of State, County and Municipal Employees Council 93 arguing that the question of whether town timely received grievances from union was an issue for arbitration because the issue was procedural); and *Combined Mgmt., Inc. v. Superintendent of Bureau of Ins. of State of Me.*, 22 F.3d 1, 2 (1st Cir. 1994) (brief filed on behalf of the American Federation of Labor and Congress of Industrial Organizations and the International Ladies' Garment Workers' Union, AFL-CIO, supporting appellee Superintendent of the Bureau of Insurance for the State of Maine on an appeal by a staffing company of the district court's dismissal of its action to

enjoin the Superintendent from enforcing certain provisions of Maine's workers' compensation statute as preempted by ERISA).

I have also represented several public sector unions under state public employee bargaining laws. In San Francisco, I was counsel to the association of lawyers employed by the City and County of San Francisco (assistant city attorneys, assistant district attorneys and assistant public defenders), and engaged in negotiations, mediation and interest arbitration on the association's behalf. In Massachusetts, I have represented independent associations representing librarians and other library employees in contract negotiations and mediation, as well as in proceedings before the Massachusetts Department of Labor Relations.

I have not performed lobbying activities for any client or organization.

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

    I taught at Northeastern Law School during the Winter Quarter, 2011 – 2012. The course, entitled "Employment Law – Compensation, Benefits, & Retirement," is regularly taught by Professor Karl Klare and I used his material in teaching the course. The course covered misclassification of employees, the Family and Medical Leave Act, Unemployment Insurance, Social Security and ERISA. Syllabus supplied.

    I also taught in the Labor Studies Program at City College of San Francisco during the 1997 Fall Semester. I do not remember the name of the course, but it provided an overview of the legal framework governing labor-management relations. 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.

    Under my partnership agreement with Segal Roitman LLP, upon my resignation from the firm, I will receive my share of net income for the year I leave the firm (based on my percentage interest in the firm and the months with the firm during that year) and my share (based on my percentage interest in the firm) of the firm's capital account.

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

I have no plans, commitments or agreements to pursue outside employment, with or without compensation 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 Financial Disclosure Report.

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

    See Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

    My husband's ongoing law practice may present a conflict of interest. So long as he has an interest in that firm that could be affected by the outcome of proceedings, I would recuse myself from cases brought by his firm consistent with applicable rules.

    There would also be a conflict of interest as to cases I handled or that were handled by my firm while I was associated with it. I would recuse myself from all such cases consistent with applicable rules.

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

    I will handle all matters involving actual or potential conflicts of interest through diligent and careful application of Canon 3 of the Code of Conduct for United States Judges, 28 U.S.C. § 455, and any and all other laws, rules and practices governing such circumstances. I will also consult with the Administrative Office of the U.S. Courts for additional guidance.

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

I have viewed addressing "the need for legal services for those unable to pay reasonable fees" described under Canon 2 as an integral part of my practice over the past 24 years.

I have co-counseled two class actions with Greater Boston Legal Services on behalf of disadvantaged, non-English-speaking workers earning poverty-level wages seeking enforcement of statutory wage protections. In each case, the court-approved settlements we ultimately negotiated for the class included payment by the respective defendant of statutory fees to Greater Boston Legal Services and my firm, but in both cases, we sought only a substantially reduced rate in order to maximize the amounts available to the class members.

I have provided pro bono representation to a number of women who work alone at night cleaning office buildings and who have alleged sexual harassment by their supervisors. In one of these cases, my client ultimately sought no monetary resolution but a change in the employer's procedures for addressing sexual harassment. I was able to negotiate changes to the company's procedures and ensure the appropriate training of managers, supervisors and office personnel.

I have also handled several smaller matters on a pro bono basis, including representing claimants in several unemployment hearings and representing a consumer in a state district court suit for default on a car loan.

26. **Selection Process**:

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

In March 2013, Senator Elizabeth Warren announced the appointment of an Advisory Committee on Massachusetts judicial nominations to solicit applications for federal District Court vacancies in Springfield and Boston. On April 15, 2013, I submitted my application to the Advisory Committee for the Boston vacancy. On May 8, 2013, I was interviewed by the Committee in Boston, Massachusetts. I was informed by the Chair of the Committee that the Committee recommended my nomination to Senator Warren. On June 17, 2013, I was interviewed by Senator Warren in Boston, Massachusetts, and she informed me that my name would be forwarded to the President. Since June 19, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 26, 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
Talwani, Indira	U.S. District Court, Massachusetts	09/24/2013
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 9/24/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 08/31/2013
7. Chambers or Office Address		
111 Devonshire Street 5th Floor Boston, MA 02109		

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	Segal Roitman, LLP
2.	Member, Board of Directors	Lawyers Coordinating Committee of the AFL-CIO
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	01/01/2008	Segal Roitman LLP. My partnership agreement provides for payment of a percentage share of net profit for the year I leave the partnership.
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Talwani, Indira	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	Segal Roitman LLP - partnership income	$70,721.00
2.	2012	Segal Roitman LLP- partnership income	$201,150.00
3.	2012	Northeastern Law School - teaching salary	$5,000.00
4.	2011	Segal Roitman LLP - partnership income	$168,111.00
5.	2011	Northeastern Law School- teaching salary	$1,000.00

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	Pyle Rome LLP - Salary
2.	2012	Pyle Rome LLP - 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 7	Name of Person Reporting Talwani, Indira	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.	Tuition Management Systems	Tuition Agreement	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Talwani, Indira	Date of Report 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. American Funds Capital World Growth & Income Fund	A	Dividend	K	T					
2. American Funds EuroPacific Growth Fund	A	Dividend	K	T					
3. American Funds Fundamental Investors Fund	A	Dividend	K	T					
4. American Funds Growth Fund of America	A	Dividend	K	T					
5. American Funds Investment Company of America Fund	A	Dividend	J	T					
6. Mainstay ICAP Select Equity Fund	A	Dividend	K	T					
7. MassMutual RetireSMART Moderate Fund	B	Dividend	K	T					
8. Royce Pennsylvania Fund	B	Dividend	K	T					
9. Vanguard Wellington Fund	B	Dividend	K	T					
10. Yacktman Fund	A	Dividend	L	T					
11. Beeson, Tayer & Bodine 401K Profit Sharing Plan		None	K	T					
12. Pyle Rome Ehrenberg Retirement Plan		None	M	T					
13. Trust #1	D	Int./Div.	P2	W					
14. - rental property #1, South Orleans, Massachusetts									
15. Trust #2	F	Rent	P1	W					
16. - rental property #2, Cotuit, Massachusetts									
17. - Citizens Bank checking account									

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 Taiwani, Indira	Date of Report 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)
18. Citizens Bank cash 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 Talwani, Indira	Date of Report 09/24/2013

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

Part VII. Lines 11 & 12: Neither my husband nor I have ownership in or control of the underlying assets in the funds listed in Lines 11 & 12.

Part VII. Lines 13 & 14. My husband and two of our children are beneficiaries of Trust #1. Trust #1 was not set up by me, my husband or our children, and we have no control over the assets of the trust, and no knowledge of the assets other than the property listed in line 14. The income listed in line 13 includes rental income from the property listed in line 14. Additionally, the trust also contains others investments that generate interest and/or dividends about which I have no information. Income from those unknown assets is also reported in line 13. The value in Column C is based only upon the known asset. My household's beneficiary interest is 5.5% of the value indicated in Column C.

Part VII. Lines 15 - 17. My husband is a beneficiary and trustee of Trust #2. The sole assets of Trust are the property listed in line 16 and the checking account listed in line 17. My husband's beneficiary interest is 20% of the value indicated in Column C.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting	Date of Report
	Talwani, Indira	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/ Indira Talwani**

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		13	103	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		352	211	Notes payable to relatives			
Unlisted securities – see schedule		138	428	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		410	987
Real estate owned – personal residence		625	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		18	500	Tuition		11	800
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		422	787
				Net Worth		724	455
Total Assets	1	147	242	Total liabilities and net worth	1	147	242
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	$ 48,367
American Funds EuroPacific Growth Fund	26,229
American Funds Fundamental Investors Fund	48,855
American Funds Growth Fund of America	56,386
American Funds Investment Company of America Fund	4,491
Mainstay ICAP Select Equity Fund	29,676
MassMutual RetireSMART Moderate Fund	15,768
Royce Pennsylvania Fund	31,823
Vanguard Wellington Fund	28,173
Yacktman Fund	62,443
Total Listed Securities	$352,211

Unlisted Securities	
Beeson, Tayer & Bodine 401K Profit Sharing Plan	$ 27,852
Pyle Rome Ehrenberg Retirement Plan	110,576
Total Unlisted Securities	$ 138,428

AFFIDAVIT

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

9/25/13
(DATE)

(NAME)

(NOTARY)

Indira Talwani
111 Devonshire Street
5th Floor
Boston, MA 02109

January 6, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on September 24, 2013, to be United States District Judge for the District of Massachusetts. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

8. Honors and Awards:

Selected for inclusion in Boston Magazine's Top Women Attorneys in Massachusetts, 2013.

12. Published Writings and Public Statements:

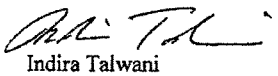
d. December 7, 2013: Speaker, "How to Negotiate a Post-Residency Employment Contract," the Committee of Interns and Residents, Service Employees International Union's Post-Residency Life Workshop, Boston, Massachusetts. The topic was substantially the same as the topic for the February 2, 2013 event for which a PowerPoint has been supplied.

17. Litigation:

(1) *Am. Steel Erectors, Inc. v. Local Union No. 7, Int'l Ass'n of Bridge, Structural, Ornamental & Reinforcing Iron Workers*, 1st Cir. Docket No. 13-1531, 13-1665. I have recently participated in drafting the defendant's reply brief in this appeal and cross-appeal.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Indira Talwani

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

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
Talwani, Indira	U.S. District Court, Massachusetts	1/6/2014
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 1/6/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/23/2013
7. Chambers or Office Address		
111 Devonshire Street 5th Floor Boston, MA 02109		

***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	Segal Roitman, LLP
2.	Member, Board of Directors	Lawyers Coordinating Committee of the AFL-CIO
3.		
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	01/01/2013	Segal Roitman LLP. My partnership agreement provides for payment of a percentage share of net profit for the year I leave the partnership.
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Talwani, Indira	Date of Report 1/6/2014

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	Segal Roitman LLP - partnership income	$108,205.56
2.	2012	Segal Roitman LLP- partnership income	$201,150.00
3.	2012	Northeastern Law School - teaching salary	$5,000.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2013	Pyle Rome LLP - Salary
2.		
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Talwani, Indira	Date of Report 1/6/2014

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.	Tuition Management Systems	Tuition for Spring Semester 2014 for Amherst College	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Talwani, Indira	1/6/2014

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 World Growth & Income Fund	A	Dividend	L	T					
2. American Funds EuroPacific Growth Fund	A	Dividend	K	T					
3. American Funds Fundamental Investors Fund	B	Dividend	L	T					
4. American Funds Growth Fund of America	C	Dividend	L	T					
5. American Funds Investment Company of America Fund	A	Dividend	J	T					
6. Mainstay ICAP Select Equity Fund	A	Dividend	K	T					
7. MassMutual RetireSMART Moderate Fund	B	Dividend	K	T					
8. Royce Pennsylvania Fund	B	Dividend	K	T					
9. Vanguard Wellington Fund	A	Dividend	K	T					
10. Yacktman Fund	A	Dividend	L	T					
11. Beeson, Tayer & Bodine 401K Profit Sharing Plan		None	K	T					
12. Pyle Rome Ehrenberg Retirement Plan		None	M	T					
13. Trust #1	D	Int./Div.	P2	W					
14. - rental property #1, South Orleans, Massachusetts									
15. Trust #2	F	Rent	P1	W					
16. - rental property #2, Cotuit, Massachusetts									
17. - Citizens Bank checking account									

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 7	Name of Person Reporting Talwani, Indira	Date of Report 1/6/2014

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)
18. Citizens Bank cash accounts	A	Interest	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting	Date of Report
	Talwani, Indira	1/6/2014

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

Part VII. Line 11: Neither my husband nor I have ownership in or control of the underlying assets in the fund listed in Line 11. No individual dividends are credited to the account. The value of the fund is adjusted quarterly.

Part VII. Line 12: Neither my husband nor I have ownership in or control of the underlying assets in the fund listed in Lines 12. No individual dividends are credited to the account. The value of the fund is adjusted annually.

Part VII. Lines 13 & 14: My husband and our children are beneficiaries of Trust #1. Trust #1 was not set up by me, my husband or our children, and we have no control over the assets of the trust, and no knowledge of the assets other than the property listed in line 14. The income listed in line 13 includes rental income from the property listed in line 14. Additionally, the trust also contains others investments that generate interest and/or dividends about which I have no information. Income from those unknown assets is also reported in line 13. The value in Column C is based only upon the known asset. My household's beneficiary interest is 5.5% of the value indicated in Column C.

Part VII. Lines 15 - 17: My husband is a beneficiary and trustee of Trust #2. The sole assets of Trust are the property listed in line 16 and the checking account listed in line 17. My husband's beneficiary interest is 20% of the value indicated in Column C.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Talwani, Indira	Date of Report 1/6/2014

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/ Indira Talwani**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		11	590	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		386	872	Notes payable to relatives			
Unlisted securities – see schedule		140	206	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		417	095
Real estate owned – personal residence		625	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		18	500	Tuition payment plan		17	700
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		434	795
				Net Worth		747	373
Total Assets	1	182	168	Total liabilities and net worth	1	182	168
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds Capital World Growth & Income Fund	$ 53,715
American Funds EuroPacific Growth Fund	29,537
American Funds Fundamental Investors Fund	53,999
American Funds Growth Fund of America	59,899
American Funds Investment Company of America Fund	5,047
Mainstay ICAP Select Equity Fund	32,800
MassMutual RetireSMART Moderate Fund	17,133
Royce Pennsylvania Fund	36,530
Vanguard Wellington Fund	31,528
Yacktman Fund	66,684
Total Listed Securities	$ 386,872

Unlisted Securities	
Beeson, Tayer & Bodine 401K Profit Sharing Plan	$ 29,630
Pyle Rome Ehrenberg Retirement Plan	110,576
Total Unlisted Securities	$ 140,206

Statement of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
On Executive and Judicial Nominations
January 8, 2014

Today, the Judiciary Committee welcomes two executive and three judicial nominees to testify before us. Debo Patrick Adegbile is nominated to be the Assistant Attorney General for Civil Rights at the Department of Justice. He currently serves as Senior Counsel on the Judiciary Committee, where he has done exceptional work and provided me with prudent counsel on numerous matters. Like other members of this Committee who have had staff members nominated to positions in the administration or to the judiciary, these nominations come with mixed emotions. As I am sure Senators Hatch, Cornyn, Lee, and Schumer can attest, it is no surprise to us when our staffers are tapped by the administration to serve as federal prosecutors but it is nonetheless difficult to part with their wise counsel.

Anyone who knows Debo appreciates that he is an excellent choice to lead the Civil Rights Division at the Department of Justice. He will bring a wealth of experience and good judgment to the office. Many of us on the Senate Judiciary Committee met Debo in 2006 when he testified before the Committee as an expert on voting rights. Debo has earned a reputation for his calm demeanor and for working to build consensus. He is a careful lawyer and a good listener. These skills have made him one of the country's most prominent appellate advocates. Former Solicitor General Paul Clement under President George W. Bush said the following about Debo: "I have litigated both with and against Debo and have heard him argue in the Supreme Court. I have always found him to be a formidable advocate of the highest intellect, skills and integrity."

Like Justice Thurgood Marshall, Debo served as Acting President and Director Counsel at the NAACP Legal Defense and Educational Fund and also as Associate Director-Counsel and Director of Litigation. During his time at LDF, Debo argued two significant cases on voting rights before the United States Supreme Court. Before joining LDF, Debo also litigated in private practice at the esteemed law firm of Paul, Weiss for seven years.

In addition to his many professional successes, Debo's earlier experiences are also inspiring. Born in the Bronx to an Irish mother and a father from Nigeria, Debo grew up in poverty and experienced periods of homelessness. Through hard work and grit, Debo graduated from Connecticut College and then earned his law degree from the New York University School of Law. And although his two daughters who are here with us today may not appreciate it yet, his journey from the Bronx to this nomination is a remarkable example of the American Dream. I know he has been shaped by these experiences and will fight to uphold the rights of all Americans when he is confirmed to lead the Civil Rights Division at the Justice Department.

Today, the Committee also welcomes John Carlin, who has been nominated to serve as the Assistant Attorney General for the National Security Division at the Department of Justice, along with three judicial nominees: Indira Talwani for the U.S. District Court for the District of Massachusetts; James Peterson for the U.S. District Court for the Western District of Wisconsin; and Nancy Rosenstengel for the U.S. District Court for the Southern District of Illinois. I

welcome the families of the nominees who have joined us today and look forward to the nominees' testimony.

#####

CES extended remarks on Debo Adegbile
nominee for Assistant Attorney General, Civil Rights Division

Good morning Mr. Chairman, Ranking Member Grassley, and other members of this committee.

The Civil Rights Division of DOJ is the crowning jewel of civil rights enforcement in this country. Under the able leadership of now-Secretary of Labor Tom Perez, it recovered from some dark days during the previous Administration.

I am grateful that we are past the days of name-calling and politicization over something as basic and American as equal rights under the law.

Indeed, Mr. Adegbile has committed his entire career not to politics, but to the enforcement of the very laws that this division protects as its core function. His primary goal as a lawyer has been to interpret and apply our country's long-held anti-discrimination principles. His life – including time spent in one of New York's most notorious residences for the underprivileged, the Martinique Hotel—is a testament to hard work and a beacon for equal opportunity.

Mr. Adegbile brings a breadth of experience and deep understanding to this job that, frankly, should be a requirement for anyone who would aspire to assume the responsibility for enforcing our nation's civil rights laws.

Mr. Adegbile has, as I'm sure he'd be the first to acknowledge, been no stranger to discrimination. He is a child of immigrants, born in the Bronx. His father was a student from Nigeria, and his mother was an Irish immigrant who came by boat to the United States, where she found a job as a domestic worker and raised her family by herself from the time Mr. Adegbile was 10.

His family availed themselves of the safety net of public assistance while Mr. Adegbile sought the education that helped to lift them from their circumstances. (And, I might add, did a star turn on *Sesame Street*, which he filmed for nine seasons.)

In middle school, his family was even evicted from their home, and they lived briefly in the Martinique Hotel, a well-chronicled, decrepit "welfare" hotel that came to epitomize the neglect often suffered by the poor in New York City.

After high school, he took three years to work to support his mother and little brother, even working as a courier for a travel agency that served the law firm of Paul Weiss Rifkind Wharton & Garrison, where, years later, he was a law firm associate for 7 years.

Mr. Adegbile then, not surprisingly, excelled at Connecticut College. He was singled out for the Anna Lord Strauss Medal – the award given to one student for outstanding service to the college and community. In 1991, he accepted a Point of Light Honor from President George H.W. Bush on behalf of his college's Office of Volunteers and Community Service.

He went on to New York University of School of Law, and worked at the prestigious law firm he had encountered earlier as a courier – Paul Weiss.

After seven years of training with some of the best litigators in the country, Mr. Adegbile joined the NAACP Legal Defense and Educational Fund, where he came to serve as Director of Litigation and Acting President and Director Counsel.

Mr. Adegbile is now one of the foremost experts in, among many other important areas of civil rights law, the prosecution of voting rights.

The right to vote, while not specifically enumerated in the Constitution, is at the core of our democracy. The Voting Rights Act remains as the fulcrum of the protections that we afford against the tyranny of an intemperate majority – a potential threat that even our very Founders discussed in the Federalist Papers.

The statements that Mr. Adegbile has made in briefs, on behalf of clients, and in various public fora speak not to an ideologue who is on a mission, but to someone who is deeply committed to the right of every single qualified American to vote without undue impediment.

Now, at this time when the attack on the federal protection of voting rights is at a crossroads, and the increasing use of voter identification has overtones of discrimination, we need someone in this job with a thorough understanding of the law and a commitment to its underpinnings.

We need someone in this job with a firm grasp of other areas of civil rights law as well – facilities discrimination, discrimination in public hiring – all manner of "access" issues that Mr. Adegbile himself has not only litigated, but embodies: Without fundamental access to the levers of education and employment, all the hard work in the world would not have amounted to anything for Mr. Adegbile and his family.

Mr. Adegbile, I offer a warm welcome to you and your family (wife Susan, children Sela and Devan), and thank you for being here, and for your service.

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary regarding the Nominations of:

John P.Carlin, to be Assistant Attorney General, National Security Division
Debo P. Adegbile, to be an Assistant Attorney General, Civil Rights Division
James D. Peterson, to be United States District Judge for the Western District of Wisconsin
Nancy J. Rosenstengel, to be United States District Judge for the Southern District of Illinois
Indira Talwani, to be United States District Judge for the District of Massachusetts

January 8, 2013

Mr. Chairman,

First, I'd like to congratulate and welcome today's nominees and their families.

Today we are considering three District Court nominees and two important Department of Justice positions, including the nominee to be the Assistant Attorney General for the Civil Rights Division. This division has not been without its share of controversy.
For instance, the last individual to lead this office orchestrated the Quid Pro Quo between the Department of Justice and the city of St. Paul, where the Department of Justice went to great lengths to get a case withdrawn from the Supreme Court so that the legal theory known as "disparate impact" would evade Supreme Court review.

And of course, there have been very disturbing allegations of politicizing the hiring process at the Civil Rights Division. In fact, a March 2013 Inspector General report criticized the Civil Rights Division for its hiring practices, noting that the primary criterion

used by the hiring committee resulted in a pool of candidates that was "overwhelmingly Democratic/liberal in affiliation."

So I have some concerns with the way the Civil Rights Division has been run. And I also have some concerns with the nominee's record.

I would note that the Fraternal Order of Police, an organization that is very well respected by both sides of the aisle, has submitted a letter strongly opposing the nominee for the Civil Rights Division. Of course, the Fraternal Order of Police represents 330,000 men and women who are on the front lines of law enforcement, putting their lives on the line to protect us every day. So, when they write to inform us of their "extreme disappointment, displeasure and vehement opposition" to the nominee for the Civil Rights Division, I think that we should give their concerns thoughtful consideration. I look forward to hearing from the nominee regarding this – as well as other – issues of concern. And I ask consent that the letter from the Fraternal Order of Police be made part of the record.

I note that today is the first Nominations hearing of 2014. I'd like to briefly review the good work the Committee accomplished with regard to judicial nominations last year. Last month, we held the 18th judicial nominations hearing of 2013, during which we considered a total of 62 judicial nominees.

This is a significant improvement over how this Committee treated judicial nominees during the last President's fifth year of office. In 2005, the Committee held only six nominations hearings, and considered only 15 district and circuit nominees. So in 2013, this committee held three times the number of nominations hearings and considered over four times the number of judicial nominees.

Additionally, last year the Senate confirmed 45 lower court Article 3 judicial nominees. That is more than twice the number confirmed at a similar stage in President Bush's second term, when only 21 district and circuit nominees had been confirmed.

All told, the Senate has confirmed 217 of this President's lower court Article 3 judges. That is a record that any President should be proud of.

So I'll conclude by saying that I applaud the Chairman for his work. He continues to keep us busy as he makes sure that the Committee moves at a brisk pace, and I hope he would recognize the cooperation and accommodation I have shown as Ranking Member of this Committee.

Again, I welcome the nominees and their families today and look forward to their testimony.

Statement for the Record of John P. Carlin
Before the Senate Judiciary Committee
January 8, 2014

Thank you, Chairman Leahy, Ranking Member Grassley, and distinguished Members of this Committee.

It is an honor to appear before you today, and I thank you for considering my nomination. Thank you also for your leadership on the pressing national security issues that we face. I sincerely appreciate the opportunity I have had to meet with several of you to discuss some of those important issues in advance of this hearing.

I want to start by thanking the President for his confidence in nominating me, and the Attorney General for his support. It is a true honor to be considered for this position, and an opportunity for which I am very grateful.

In addition, I would like to recognize my family, for their love and support over the years. My wife, Sarah, who has made countless sacrifices to allow me to pursue a career in public service, and our daughter, Sylvie, for her tolerance for the many evenings I have missed at home. My parents, Patricia and Roy, for teaching my sister and me by lesson and by example, the importance of dedication, discipline, and always doing what's right. I also want to thank my sister Jennifer, my brother-in-law Don, and their children, Daniel and Katie, for their support. Because of all of them, and their selflessness, I have been able to choose the path that has led me here today.

I am grateful to have had the opportunity to spend my entire legal career with the Department of Justice, and privileged to have served in several different roles – first, representing the United States of America as a federal prosecutor, and then, in a series of positions focused directly on protecting the nation's security. For more than a decade, I have learned from, and worked alongside, legendary public servants as the United States undertook fundamental changes in our approach to combating the threat of terrorism and other emerging national security challenges. While serving as FBI Director Bob Mueller's Special Counsel and, later, as his Chief of Staff, I worked with the lawyers, policymakers, and leaders that helped the Bureau evolve from a law enforcement agency into a threat-based, intelligence-driven national security organization. As Principal Deputy and Chief of Staff to Lisa Monaco, now Assistant to the President for Homeland Security and Counterterrorism, when she was Assistant Attorney General, I had the chance to help lead another evolution – one in which the Justice Department's National Security Division continued to adapt to meet the growing and evolving cyber threat, and further developed its all-tools approach to disrupting a growing range of national security challenges.

These experiences have taught me about the transformative power of lawyers in our government—and the sense of duty and mission that comes with it. Serving as the Acting Assistant Attorney General for National Security for approximately the last 10 months, I have been both humbled and driven by the responsibilities and mission entrusted to the position.

First, this position is charged with leading the Department's National Security Division – which Congress created to unite the Department of Justice's national security elements to bring all tools to bear in the fight against terrorism and other threats to national security. Legal decision-making is an integral part of operational planning, with lawyers at the table to ensure adherence to new and changing legal requirements and to facilitate consideration and use of all legally available options to detect and disrupt threats to our nation's security. If confirmed, I will remain committed to this all-tools approach, and to adapting it as the threats to our country continue to evolve.

Second, the Division serves as a bridge between the Intelligence Community and the Department of Justice, to support the approach Congress embraced when it removed legal and structural barriers to information-sharing among intelligence and law enforcement professionals. This bridge has allowed us to maximize our disruption options and offers our best chance to prevent the next attack before it happens. If confirmed, I will build on the relationships that I have made during my time in the national security community, to ensure that the bridge we have worked so hard to build remains strong and grows stronger.

Finally, I am committed to ensuring that as we adapt our intelligence practices to stay ahead of our adversaries, our critical operations are conducted within the bounds of the law and consistent with our nation's values. I recognize that these values include protecting vital civil liberties, privacy, and the rule of law.

Thank you again for the opportunity to appear before you today, and for your consideration. I look forward to answering your questions.

Opening Statement of Debo P. Adegbile
Senate Judiciary Committee Hearing
January 8, 2014

Thank you Chairman Leahy for your leadership of this Committee, Ranking Member Grassley for your years of service to the nation, and thank you to all members of the Committee for your commitment to the important work of the Judiciary Committee. It is a great pleasure to serve as an attorney for the Judiciary Committee, and to do so alongside such talented and committed staff colleagues. I am deeply honored to appear before you today.

I am both grateful for and humbled by the President's nomination. I thank President Obama and Attorney General Holder for the opportunity, if confirmed, to serve the nation as Assistant Attorney General for Civil Rights.

I am joined today by my wife, Susan Haskell, whose love, kindness, strength and patience both sustain me and encourage me to become a better person. I am joined as well by our two wonderful daughters, Sela and Devan. They brighten every single day for us, and Susan and I could not be any prouder of them.

I am also joined today by friends from grade school, high school, college, and law school, as well as by former LDF colleagues, and, of necessity, present colleagues. I thank them all for their attendance whether it was compelled or not. In addition, I thank all of those family and friends who could not be present today but have supported me throughout my life and career.

As the child of immigrants who came to the United States with dreams for themselves and later their family, I have a deep appreciation of the opportunities that America can provide. I know too that the road of opportunity can be long, winding, and challenging. At various points, in my life I have lived on different rungs of the socio-economic ladder. I have learned a great deal along the way and taken something positive with me from all of those experiences, and from the people whom I met along the way. I know from experience that that which binds is stronger than that which threatens to divide us.

In particular, I have benefitted from the transformative power of educational opportunity. I know firsthand that in our country, with the benefit of educational opportunity, steadfastness and a bit of good luck, the circumstances of birth or childhood need not limit your aspirations or achievements. If we keep our promises in America, where you start need not determine where you finish.

Because of my personal experiences, I have an unshakable belief in the value that we assign as a nation to protecting civil rights. At the outset, our Constitution sets as its goal building a "more perfect union", words that are both inspirational and aspirational. These words summon us to work to improve the conditions of liberty and equality within the framework of our system of government. Over time the United States Congress has taken this goal very, very seriously, and it specifically created the United States Department of Justice's Civil Rights Division, and a wide range of laws to advance this cause. Other branches of our government, state and federal, many, many brave individuals, known and unknown, and public interest entities have advanced the cause of equality too.

The Civil Rights Division, through the statutes it enforces, is called upon to protect the liberty and equality of all us. And, over many decades, the commitment and expertise of the public servants in

the Division have dramatically and demonstrably improved our country. With hard work and persistence, we have made tremendous strides together. We are a stronger nation today for these efforts. If we are true to the aspirational goal that the Constitution sets for us, however, our past successes should not limit our future achievements. We can do more to protect civil rights, we must do more to protect civil rights, and the Civil Rights Division stands ready to protect the civil rights of all Americans. It would be a great honor, if confirmed, to contribute to the Justice Department's efforts.

Although I have had the opportunity to work as an attorney in a law firm, not-for-profit, and governmental settings, I have spent the better part of the last twenty years engaged in the work of civil rights. I have seen the impact that enforcing civil rights can have on real peoples' lives. Improved employment options, greater access to educational opportunity, removal of unnecessary barriers for people with disabilities, and ensuring fuller access to the political process, among other important efforts, makes lives more fulfilling. The work has been challenging, engaging and inspiring. Indeed, through the years I have learned that our civil rights laws have a common denominator – regardless of the specific subject matter, these laws guard the dignity of all of us.

If confirmed, I will commit to lead the Division with dedication to its mission, respect for those dedicated public servants who faithfully discharge its work, and with the sensitivity, fairness and integrity that successful civil rights work requires.

It is my great privilege to appear before you this morning and I look forward to your questions.

Thank you.

Senator Chuck Grassley
Questions for the Record

Debo P. Adegbile
Nominee, Assistant Attorney General for Civil Rights

1. Is it appropriate for employees of the Civil Rights Division to consult with groups such as the NAACP, La Raza, MALDEF, and the ACLU when making legal determinations?

2. According to a 2013 Inspector General report, the hiring procedures under former Assistant Attorney General for Civil Rights, Thomas Perez, resulted in a pool of candidates that was "overwhelmingly Democratic/liberal in affiliation." The report made the following recommendations to address the deficiencies in hiring practices. Please answer each subpart individually.

    a. "That the Voting Section use hiring criteria that are based on the specific skills, duties, and experience that are required or preferred for vacant positions and that appear in the Section's vacancy announcement." If confirmed, will you commit to implementing this procedure in your hiring practices?

    b. "That the Voting Section refrain from relying on the 'general civil rights/public interest' criterion in the future." If confirmed, will you commit to implementing this procedure in your hiring practices?

    c. "That the Voting Section adopt hiring criteria that better account for the significant contributions that applicants with limited or no civil rights backgrounds can make to the Section, including those with defensive litigation experience." If confirmed, will you commit to implementing this procedure in your hiring practices?

    d. "That the Civil Rights Division not place primary emphasis on 'demonstrated interest in the enforcement of civil rights laws' as a hiring criterion." If confirmed, will you commit to implementing this procedure in your hiring practices?

3. During your predecessor's tenure as Assistant Attorney General for the Civil Rights Division there were no "hires" made who had ties to a conservative organization. What steps do you plan to take in order to ensure an ideologically diverse applicant pool for future hires in the Civil Rights Division?

4. After the NAACP's LDF had filed two amicus briefs on behalf of Mumia Abu-Jamal, but before LDF became lead counsel for Mr. Abu-Jamal during your tenure as Director of Litigation, Mr. Abu-Jamal's former lead counsel, Robert R. Bryan, circulated a petition addressed to President Obama that demanded a new trial for Mr. Abu-Jamal and

advocated "global abolition of the death penalty." Please answer each subpart individually.

a. Did you sign the petition?

b. To your knowledge, did any of your LDF colleagues sign the petition?

5. If you are confirmed as AAG for Civil Rights and the Department of Justice decides to review any aspect of Mr. Abu-Jamal's post-sentencing appeals or collateral attacks on his conviction, would you consider it proper to participate in any such review?

6. In a 2009 amicus brief you submitted to the United States Supreme Court in support of Mr. Abu-Jamal, the LDF noted its "long-standing concern with the influence of racial discrimination" in the criminal justice system and, specifically, in the jury-selection process. Please answer each subpart individually.

a. Do you believe that racial discrimination remains – as you characterized it in a quotation cited in your brief – a "common and flagrant" practice during jury selection in the United States? If so, what aspects of *Batson* and its progeny, in your view, require revision by the federal courts?

b. What types of litigation do you intend to pursue as AAG to affect change in civil-rights law regarding jury selection?

c. Do you consider that the jury-selection procedure prior to Mr. Abu-Jamal's trial was characterized by "flagrant[ly]" racially discriminatory conduct by the prosecutor?

7. In the same 2009 LDF amicus brief, you argued that the Third Circuit improperly failed to consider "evidence of a culture of discrimination" and testimony from "Philadelphia defense attorneys indicating that the Philadelphia District Attorney's Office used its peremtory strikes to exclude African American prospective jurors." Please answer each subpart individually.

a. In your view, under what circumstances is it proper for a trial court to take into account such extrinsic evidence?

b. In your view, would a bare allegation of "a culture of discrimination" or the anecdotal testimony of a local defense attorney be sufficient to make out a prima facie case under *Batson*'s step one?

8. In 2006, during your tenure as LDF's Associate Director for Litigation, LDF filed an amicus brief on Mr. Abu-Jamal's behalf in which LDF argued that Mr. Abu-Jamal's trial was tainted by a climate of race prejudice and discrimination in "the historical conduct of the Philadelphia County District Attorney's Office." Please answer each subpart individually.

a. What involvement, whether in a supervisory, authorial, editorial, or other role, did you have in the 2006 amicus brief?

b. In a 2009 amicus brief LDF filed on Mr. Abu-Jamal's behalf, which you signed as counsel of record, LDF refers to "evidence of a culture of discrimination, including that the Philadelphia District Attorney's Office trained its young prosecutors on how to exclude prospective jurors of color." Does the "culture of discrimination" you allege in the 2009 amicus brief refer to "the historical conduct of the Philadelphia County District Attorney's Office" that LDF cited in the 2006 amicus brief?

9. On January 28, 2011, your colleague Christina A. Swarns, who appears with you on two LDF Supreme Court briefs on which you are counsel of record, stated at a rally for Mr. Abu-Jamal that "there is no question in the mind of anyone at the Legal Defense Fund that the justice system has completely and utterly failed Mumia Abu-Jamal and in our view, that has everything to do with race and that is why the legal defense fund is in this case."

    a. Does Ms. Swarns's claim that the "justice system…completely and utterly failed Mumia Abu-Jamal in [LDF's] view" refer to LDF's prior allegations of a culture of racial discrimination in the Philadelphia County District Attorney's Office?

10. Explain why, during your tenure as the LDF's Director of Litigation in 2011, you decided to cease advocating on behalf of Mumia Abu-Jamal as amicus curiae and became his lead counsel in Supreme Court litigation, *see, e.g., Wetzel v. Abu-Jamal*, and subsequent litigation.

11. Have you made any public statements – with the exception of statements made in a court or in court filings – regarding Mr. Abu-Jamal? Please provide a transcript or detailed record of any such statement and specify the date on which the statement was made.

12. List all LDF court filings related to Mumia Abu-Jamal with which you had any involvement, whether in a supervisory, authorial, editorial, or other role. Please provide a copy of each filing.

13. Under what circumstances do you consider racial preferences to be unconstitutional?

14. Under what circumstances do racial preferences violate Title VII of the Civil Rights Act?

15. Should the college admissions process consider both racial and economic status when determining whether to give applicants special consideration?

16. Do you believe ethnic profiling in the context of the War on Terrorism is unconstitutional?

17. Will you defend the use of racial preferences in the federal government's contracting and employment policies?

18. In *Rothe Development Corp. v. Department of Defense*, the Federal Circuit struck down the Department of Defense's racially preferential contracting program. Will you urge the federal government to end the use of preferences based on race, ethnicity, and sex in its contracting practices?

19. Is it constitutional for a university to have racially exclusive internships, scholarships, or summer programs?

20. Do you agree with your predecessors' decision to challenge racially exclusive fellowship programs at Southern Illinois University?

21. You have been critical of Supreme Court decisions regarding race issues, saying that the Court has "in recent years drastically undermined efforts to redeem the Fourteenth Amendment's promise of equal citizenship for all." If confirmed, what will be your priorities in regard to righting these, in your view, wrongly decided cases?

22. Will you embrace the theory of disparate impact in litigation initiated by the Civil Rights Division?

23. If a case is appealed to the Supreme Court questioning the use of disparate-impact theory will you allow that case to be heard or will you work to settle the case to avoid Supreme Court review of the theory?

24. The Supreme Court has warned that the use of disparate-impact theory in litigation can have two negative consequences: (1) forcing employers and others to adopt surreptitious quotas to avoid being sued; and (2) forcing employers to abandon other legitimate selection criteria. Do you agree with this warning?

25. In *Northwest Austin Municipal Utility District No. 1 v. Holder*, you argued on behalf of the intervenors-appellees that the District Court's decision that Section 5 of the Voting Rights Act precluded the utility district from receiving a Section 4 bailout because the district was not a "political subdivision." The Supreme Court unanimously reversed the District Court's decision and held that the utility district was a political subdivision and therefore eligible for bailout. Please answer each subpart individually.

    a. Do you still agree with the arguments you made in this case?

    b. What steps will you take, if confirmed, at the Department of Justice to further the arguments you made in this case?

26. In *Shelby County v. Holder*, you argued on behalf of the respondent-intervenors that the Court should uphold Sections 4(b) and 5 of the Voting Rights Act. You argued that Section 5 "remains essential to safeguard our democracy from racial discrimination;" that Section 2 litigation is an "inadequate response to the persistent and adaptive problem of racial discrimination in voting in certain parts of our country;" and that "racial discrimination in voting remains concentrated in the jurisdictions that have historically been covered by Section 5." The Supreme Court struck down Section 4(b). Please answer each subpart individually.

    a. Do you still agree with the arguments you made in this case?

    b. Do you accept the Supreme Court's decision as final?

    c. What steps will you take, if confirmed, to further the arguments you made in this case?

    d. In the brief, you argued that "racial discrimination in voting poses a unique threat to our democracy." What steps will you take, if confirmed, to stem this "unique threat?"

    e. In light of the Supreme Court's decision in *Shelby County v. Holder*, how will you use Section 2 litigation to protect rights of voters?

27. The Pew Center on the States recently found that more than 1.8 million dead people are registered to vote, that 24 million registrations are either invalid or inaccurate, and that approximately 2.75 million people have registrations in more than one state. The report went on to say that "our democratic process requires an effective system for maintaining accurate voter registration information. Voter registration lists are used to assign precincts, send sample ballots, provide polling place information, identify and verify voters at polling places, and determine how resources, such as paper ballots and voting machines, are deployed on Election Day. However, these systems are plagued with errors and inefficiencies that waste taxpayer dollars, undermine voter confidence, and fuel partisan disputes over the integrity of our elections." The Civil Rights Division is responsible for the federal law that requires the states to maintain clean voter rolls. Please answer each subpart individually.

    a. Would you agree with the Pew Foundation on the States that inaccurate state voter lists where dead voters, ineligible voters, and voters who remain on the voting rolls of multiple states is a national problem?

    b. As the Civil Rights Division is responsible for enforcing the federal voting law in this area, what do you intend to do to resolve this national problem if you were to be confirmed by the Senate?

c. Will you fully enforce Section 8 of the NVRA that requires states to conduct list maintenance and properly remove deceased and other ineligible voters from state voter rolls if confirmed by the Senate?

28. In the Federal Voting Assistance Program's 18th Report to the President and Congress a few years ago, the absentee ballot return rate for active duty military overseas was only 67% as compared to a 91% success rate for domestic absentee ballot voters. Studies show that participation rates of overseas military voters is much lower than civilian voters due to difficulties they encounter in voting from remote areas. Military voters are more likely to be disenfranchised that any other group of voters and the Report noted that the majority of voting failure was the *untimely ballot transmission* when state and counties do not send ballots to voters on time, required 45 days before any federal election. The Civil Rights Division is responsible for the enforcement of military voting laws, particularly the MOVE Act which governs this area. Please answer each subpart individually.

    a. Will the enforcement of the MOVE Act be a priority for you, if you are confirmed?

    b. There has been some criticism that in the past the Voting Rights Section has waited too long before bringing suit to protect military members. How do you plan to closely monitor counties and quickly enforce the law to protect voters before the election, not after the election?

29. Do you believe that legally requiring voters to have identification is the equivalent of a poll tax?

30. Do you believe that individuals who have broken this nation's laws by entering the country illegally should be allowed to gain citizenship?

31. Last July, Department of Housing and Urban Development Secretary Shaun Donovan unveiled a new rule to allow the federal government to track so-called "diversity" in American neighborhoods and to create policies to change the makeup of neighborhoods it deems to be discriminatory. The policy is called, "Affirmatively Furthering Fair Housing," and will require HUD to gather data on segregation and discrimination in every single neighborhood and to try to remedy it. What will the Civil Rights Division's role be in enforcing that policy?

32. In your opinion, when is it appropriate to decline to defend the constitutionality of a federal statute?

33. Under what circumstances do you believe the death penalty to be constitutional?

34. In 2012, following issuance of guidelines by the EEOC that instructed employers to consider only relevant details related to a potential employee's criminal history, you

stated that "[n]o one should be penalized for the rest of their life for mistakes that they made in the past." Please answer each subpart individually.

a. Do you oppose an employer's ability to perform criminal background checks on potential employees?

b. Will you, if confirmed, take action to abridge or eliminate an employer's ability to perform criminal background checks on potential employees?

35. You did not provide many notes from the speeches and talks you gave during this past year. Why did you not save these?

36. To your knowledge, were you considered for a position on the D.C. Circuit?

a. If so, why did your nomination not proceed?

37. Do you agree with the following statement, the "minimum coverage provision [of the ACA] enhances the ability of individuals to participate in the economic, social, and civil life of our nation, thereby advancing equal opportunity and personal liberty?"

a. If so, how will you, if confirmed, work as head of the Civil Rights Division to ensure that it advances equal opportunity and personal liberty?

38. While at LDF, you contributed to a brief in the case of the *District of Columbia v. Heller*. Do you still agree with the following statements? Please answer each subpart individually.

a. "Indeed, the text of the Second Amendment itself does not provide for [a right for an individual to possess or use firearms outside the context of a lawfully organized militia], and for the Court to recognized an individual right to "keep and bear Arms" would represent a radical departure from the consistent and long-established understanding of the Second Amendment."

b. "Although these statements do not carry the weight of precedent, they illustrate how radical the position taken by the D.C. Circuit truly is. A robust Second Amendment right to 'keep and bear Arms' for purely private purposes has never been taken seriously by any majority of the members of the Court. Nor has the court ever invalidated a restriction on firearms under the Second Amendment. To do so know would represent a radical and unwarranted departure from the Court's Second Amendment jurisprudence."

c. "A recognition by this Court of an individual right to 'keep and bear Arms' for purely private purposes would represent more than a mere doctrinal shift; as a practical matter, it would appear to require a massive change in the way firearms have been regulated for centuries."

39. Do you believe that defendants under age 18 should ever be subjected to adult punishments in the criminal justice system? If you believe adult treatment for juvenile offenders is appropriate, please specify under what circumstances.

40. In an amicus brief submitted by the LDF in *Miller v. Alabama*, you allege that "racial overtones and stereotyping tainted the widespread enactment of laws that exposed youth to life without parole," and that such laws had a disproportionate impact on African-American and Latino youth. Please answer each subpart individually.

    a. Do you believe that life-without-parole sentencing laws and juvenile-court reforms enacted in the 1980s and 90s were designed with the intent, implicit or otherwise, to incarcerate larger numbers of youth of color?

    b. If yes, how do you account for the advocacy of such laws by prominent African-American political leaders, like former New York City Mayor David Dinkins and Rep. Carol Moseley Braun?

41. You contributed to an amicus brief in *Miller v. Alabama.* In this brief you argued that racism has stymied the proper evaluation with respect to ethnic minorities charged with criminal offenses. Do you still agree with the following statement from the brief: "Because it is clear that race critically and inappropriately informs the assessment of blameworthiness in the context of juvenile life without parole sentencing, such sentences are unconstitutional. ...The perceived negative personality traits of African-American and other youth of color led officials to assess them as more culpable and dangerous than white youth and, therefore, to recommend more severe sentences for youth of color....In light of the preceding arguments, the possibility that race may play any role in the administration of justice is especially disturbing in the context of life without parole sentences for youth....At bottom, the gross racial disparities that pervade life without parole sentencing for children demonstrate that negative perceptions of youth of color have stymied the proper evaluation of their culpability."

    a. Do you believe this is an issue that is pervasive within the justice system in this country?

    b. If so, what role will the Civil Rights Division play in remedying this?

42. In the LDF amicus brief you submitted in *Miller v. Alabama*, your claim that "it is clear that race critically and inappropriately influences the assessment of blameworthiness in the context of juvenile life without parole sentencing" is supported primarily by non-empirical social science – the brief even suggests that life-without-parole sentencing laws "appeal to cultural archetypes in the collective unconscious about the 'alien other' who poses a fearful and menacing threat to society." To what extent will your decisionmaking as Assistant Attorney General be guided by social-science concepts such as "cultural archetypes" and "the collective unconscious"?

43. Given your argument in the LDF's *Miller* amicus brief that "[r]acial disparities in juvenile life without parole sentences are not surprising given that these disparities exist at all levels of children's contact with the criminal justice system," what, if any, steps do you plan to take as Assistant Attorney General to ameliorate racial disparities in federal sentencing?

44. In the context of juvenile defendants, you wrote in an amicus brief the LDF submitted in *Graham v. Florida* that "dynamics of race, class and the nature of indigent defense" may "disadvantage" a defendant's "relationship with counsel and contribute to a significant risk of an unreliable sentencing outcome that fails to reflect actual culpability." Please answer each subpart individually.

    a. Do you believe this assertion to be true in the context of adult defendants?

    b. If so, what if any measures do you intend to undertake as Assistant Attorney General to lessen the disadvantages you previously argued that defendants who belong to disadvantaged groups face?

45. In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, the Supreme Court stated that the First Amendment prohibits governmental "interference with an internal church decision that affects the faith and mission of the church itself," and unanimously rejected the argument advanced in an LDF amicus brief that you signed that application of anti-retaliation provisions of civil rights laws to parochial school teachers comports with the First Amendment. Given the Supreme Court's unanimous rejection of LDF's position in *Hosanna-Tabor*, what provisions of civil-rights laws, in your view, may employees who qualify under the "ministerial exception" exercise without violating the First Amendment rights of their employer?

46. You contributed to an amicus brief in *Hosanna Tabor Evangelical Lutheran Church & School v. EEOC*. In this brief, you argue that "[a]ny burden on parochial schools' First Amendment interests in retaliating against their teachers is more than outweighed by the countervailing needs of law enforcement." The Supreme Court ruled 9-0 against your arguments. Please answer each subpart individually.

    a. Do you still believe this statement, and the rest of the arguments you made in the brief, are good and valid legal arguments?

    b. Do you still believe that "[a]pplying a ministerial exception to parochial school teachers would be devastating to states' undeniably compelling interest in protecting children from abuse?"

    c. Do you still agree with the following statement, "[e]ven if civil rights laws pervasively imposed significant burdens on religious practice that would not justify a categorical exemption for parochial schools?"

47. In your view, does *Hosanna-Tabor*'s holding prevent an individual (1) who is employed by a religious institution; (2) and falls within the "ministerial exception," from suing under the anti-discrimination and anti-retaliation provisions of civil-rights statutes like Title VII or the Rehabilitation Act? Please answer each subpart individually.

    a. Would a suit by such an individual be permitted under the FMLA or the Equal Pay Act?

    b. In your view, does *Hosanna-Tabor*'s holding prevent such an individual from suing his or her employer alleging discrimination based on the individual's sexual orientation or gender identity?

48. Please identify what, if any, civil-rights provisions you consider to be neutral laws of general applicability – *see Employment Division v. Smith* – that may still be lawfully asserted against religious organizations by employees who fall with the ministerial exception, notwithstanding the Court's holding in *Hosanna-Tabor*.

49. Following the Supreme Court's decision in *Ricci v. DeStefano*, do you believe that employers which have engaged in race-conscious employment actions or other conduct covered by Title VII can evade disparate-treatment liability based merely on a good-faith belief that the employment action may otherwise have caused racial disparities in jobs that have historically excluded racial minorities?

50. In a 2010 amicus brief LDF filed in *Wal-Mart v. Dukes*, you wrote that "[c]ivil rights cases are paradigmatic cases for Rule 23(b)(2) certification." Please answer each subpart individually.

    a. Given the Supreme Court's holding in that case that claims for monetary relief sought by putative class members cannot be certified under Rule 23(b)(2) where monetary relief is not incidental to injunctive or declaratory relief, please explain whether you believe that civil-rights lawsuits in which putative class members seek money damages may still be brought pursuant to Rule 23(b)(2).

    b. If so, what circumstances in your view would permit a (b)(2) class in which members seek monetary relief?

    c. Further, do you consider monetary relief in the form of backpay to be declaratory or injunctive relief as those terms are used in Rule 23(b)(2)?

    d. Do you still maintain, as you did in the LDF brief, that "[r]estricting the reach of 23(b)(2) class actions—by, inter alia, limiting their certification to instances where monetary relief is not requested—contravenes the structure and purpose of disparate impact theory, as first conceived by [the Supreme Court]?"

51. Following the Supreme Court's decision in *Berghuis v. Smith*, please explain your view on the circumstances under which various methods of proof of systematic exclusion – absolute disparity, comparative disparity, and standard deviation – are appropriate tools in establishing fair-cross-section claims. Please answer each subpart individually.

    a. In cases involving an allegedly excluded minority group that comprises less than 10 percent of the total population, please explain the circumstances under which you would employ a comparative-disparity theory and the circumstances under which you would employ a standard-deviation theory.

52. In a 2008 amicus brief which you signed, LDF (and others) argued that Section 2 of the Voting Rights Act permits minority voters to satisfy the first *Gingles* precondition – i.e., whether a minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district" – even though the minority group does not comprise a numerical majority of voters in a given district. The Supreme Court rejected this so-called "functional majority test" in its plurality opinion in *Bartlett v. Stickland*. In light of that holding, please explain under what circumstances, in your view, a minority group can satisfy Section 2's majority-minority requirement if that group does not comprise a numerical majority in the voting district.

53. In its plurality opinion in *Crawford v. Marion County Election Board*, the Supreme Court rejected a challenge that you, as LDF counsel of record, raised against the Indiana Voter I.D. law, and held that the Indiana law was "unquestionably relevant to the State's interest in protecting the integrity and reliability of the electoral process." The Court also held that the law – which allowed potential voters to obtain free identification cards by going to their local DMV office with appropriate documents – did not impose a substantial burden on an individual's right to vote, and that whatever additional burden the requirement may put on certain groups, i.e., the elderly, was mitigated by the ability of the voter to case a provisional ballot.

    a. Please specify the circumstances under which you believe that a state law that imposes a voter I.D. requirement and provides a procedure for voters to obtain free, state-issued identification, would impose a substantial burden on voters or infringe the right to vote.

54. What would be the considerations that you would apply if confirmed in deciding whether to challenge under the Voting Rights Act a state's enactment of a particular law requiring that voters display photo identification before casting their vote?

55. Can you give guidance to any state contemplating enactment of such a law with respect to its content so that it could be certain that the Civil Rights Division would not bring a challenge? Or is it the case that the Civil Rights Division would challenge any such law under the Voting Rights Act?

56. In my state of Iowa, state officials have learned that not only are non-citizens on the voter rolls, but that a number of non-citizens have voted. The state has brought a number of successful prosecutions for voter fraud. Do you agree that voter fraud exists, that states have an important interest in preventing such fraud, and that a legitimate voter's fundamental right to vote is diluted equally if an ineligible person is allowed to vote as if an eligible voter is denied the right to vote?

Senator Chuck Grassley
Questions for the Record

John Carlin
Nominee, Assistant Attorney General for National Security

1. A recent article about your nomination in Foreign Policy magazine raised concerns about whether, given your close relationships with some officials in the White House, as a Department of Justice appointee you can be appropriately independent from them. The article also suggested that you had asked your colleagues not to copy you on email about sensitive policy issues in advance of your hearing. Did you ask colleagues not to email you about sensitive policy issues in advance of your hearing? If so, why?

2. The National Security Division made a significant policy change last year with respect to material collected under Section 702 of FISA. Before last summer, defendants were not notified if material collected under FISA Section 702 was used as the basis to obtain a traditional FISA warrant against them. If these defendants were not notified, they could not challenge the use of the 702 provision in any way.

   In February, however, the Solicitor General represented to the Supreme Court in a case challenging the statute that defendants were being notified, which turned out not to be true. A debate within the Department of Justice ensued.

   According to the New York Times, the debate stretched through the summer, with "dueling memorandums by lawyers in the solicitor generals office and in the national security division." Eventually, the Department adopted the Solicitor General's view. According to news reports, the Department has begun providing additional notice to certain defendants.

   a. Do you know how many defendants are going to be affected by this change of policy, and when do you expect all the additional notices to be provided?

   b. Do you believe that under your leadership the National Security Division was complying with its legal and ethical obligations when it didn't provide these notices? If so, why was the policy changed?

3. If confirmed one of the matters you would be supervising is the investigation and possible prosecution of Edward Snowden. There have been calls for leniency or clemency for Snowden, perhaps in exchange for returning documents that he took from

the government. Do you believe it is appropriate for the United States to consider some degree of leniency for Snowden?

4. Are you aware of a 2010 EEOC complaint regarding a DOJ attorney in the National Security Division, Joshua Nesbitt, who alleged that he was the victim of race-based discrimination?

5. This matter, *Nesbitt v. Holder*, is currently being litigated in the U.S. District Court for the District of Columbia. What role, if any, have you played in the litigation of this matter?

6. The plaintiff in *Nesbitt v. Holder* alleged that he was denied promotion to the position of Deputy Chief of Litigation in the National Security Division's Office of Intelligence because of his race. He points to the selectee's "failure to comply with the application requirements contained in the vacancy announcement, and that the application process was corrupted in order to avoid promoting the African-American applicant." What measures have you put in place, or will you put in place, in order to ensure that the application and review processes in hiring decisions will be clear to all involved?

7. Does the Department of Justice and the National Security Division still believe that export licenses and documents are useful to the Department's investigations and enforcement of the export control statutes and to creating incentives on sellers and exporters to conduct due diligence on their buyers and other parties to exports of arms, munitions, and dual use goods?

8. Have recent decontrols over military aircraft, naval vessels, and other military technology once controlled under the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR) of the Department of State and now controlled under the Export Administration Regulations (EAR) of the Department of Commerce weakened the ability of the Department of Justice to obtain international assistance against the unlawful proliferation, diversion, and transfer of military items and military technology?

9. The technical and manufacturing specifications for many parts of the F-4. F-5, F-14 and F-16 are no longer AECA/ITAR controlled according to the recent revisions of the ITAR. Does that adversely affect in any manner the Justice Department's ability to investigate and prosecute AECA violations or sanctions involving Iran and efforts to obtain military aviation parts? In light of public reports of Chinese assistance to the radar and other avionics of Iranian fighter jets including the F-4, will efforts to investigate and disrupt schemes by Chinese actors to obtain such military aviation technology be impeded given

that such aviation parts, components and their associated technical specifications will no longer subject to the Chinese arms embargo under Public Law 101-246, § 902(a)(3)?

10. Is it more difficult to secure international cooperation, email search warrants, extradition of indicted defendants, or other steps in investigating AECA violations resulting from any Iranian efforts to obtain U.S. military parts through initial shipments through a third country as a result of the ongoing transfer or military parts and components from ITAR control to EAR control?

11. If the definition of "specially designed" now adopted for the ITAR and EAR had been in place at the time of the prosecution of United States v. Lachman, 387 F.3d 42 (1st Cir. 2004), could the defendant have been charged with a violation of the EAR as charged in that case?

12. Does the Department of Justice or National Security Division support the narrowing of the scope of firearms and ammunition covered by Categories I, II, and III of the U.S. Muinitions List (USML) and the transfer of firearms, semi-automatic rifles, and associated ammunition to the EAR and regulation by the Commerce Department?

13. If firearms, semi-automatic rifles, and associated ammunition were no longer considered "defense articles" by the Department of State under the AECA, is it your opinion that the AECA would allow the ATF and the Attorney General to continue to treat firearms, semi-automatic weapons, and associated ammunition as "defense articles" to control their import under the AECA?

14. Is there a provision in the EAR which requires the mandatory reporting to the Commerce Department of cyber intrusions involving the unlawful export of military "technical data" or technology to China as required by the mandatory reporting provision of the ITAR, 22 C.F.R. § 126.1(e) to the State Department?

15. Will the Department of States' proposed narrowing of the definition of "defense services" under the ITAR potentially adversely affect the FBI's ability to obtain FISA orders against U.S. persons providing assistance providing technical assistance to the Chinese military, intelligence services, or military-research/industrial companies?

16. Do you support the letter to the U.S. Sentencing Commission of the former Assistant Attorney General, Lisa Monaco, advocating a limited and measured mandatory minimum sentence for some criminal offenses relating to certain Iranian sanctions violations or violations involving transactions with certain Specially Designated Nations or nations

under arms embargo depending upon the nature of the goods or services involved or the foreign parties involved?

Senator Chuck Grassley
Questions for the Record

James D. Peterson
Nominee: U.S. District Court for the Western District of Wisconsin

1. You wrote in the February 2010 newsletter for the Western District of Wisconsin Bar Association that, "For nearly every plaintiff that is drawn to the Western District of Wisconsin, there is a defendant who would prefer to litigate somewhere else." Please explain what you meant by this statement.

2. During your hearing I asked you about your work with the Freedom From Religion Foundation. You said your law firm has worked on both sides of religious liberty issues. Have you personally worked on any cases that defended the religious side of religious liberty? If so, please describe your involvement in them.

3. What is the most important attribute of a judge, and do you possess it?

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

9. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

12. If confirmed, how do you intend to manage your caseload?

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

16. Please describe with particularity the process by which these questions were answered.

17. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Nancy Jo Rosenstengel
Nominee: U.S. District Court for the Southern District of Illinois

1. What characteristics have you seen in federal judges that you will seek to avoid, if confirmed?

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?

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    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.

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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

Indira Talwani
Nominee: U.S. District Court for the District of Massachusetts

1. As a judge, what will your approach to legislative history be? When will you consult it and which types of legislative history will you consider?

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?

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    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
Follow-up Questions for the Record

Debo P. Adegbile
Nominee, Assistant Attorney General for Civil Rights

1. You provided identical, non-responses answers to Questions 2(a)-(d). Instead of stating whether, if confirmed, you will implement the recommendations made in the 2013 Inspector General's Report, you state that you will assess "current hiring practices" in the Civil Rights Division. Please indicate whether you intend, if confirmed, to implement the recommendations made in the 2013 Inspector General's Report. If you will not commit to implementing them, explain why with respect to each recommendation enumerated in Questions 2(a)-(d).

2. In each of your responses to Questions 2(a)-(d) you repeat your intention to "ensure a strong and broad pool of candidates." What does the term "broad" mean in the context in which you used it?

3. Will you commit to ensuring that the Civil Rights Division hires a strong and *ideologically diverse* pool of candidates and work to eliminate hiring practices in the Division that the Inspector General found "resulted in a pool of select candidates that was overwhelmingly Democratic/liberal in affiliation?"

4. In your response to Question 6a, you cite a passage from *Miller-El* in which Justice Breyer describes "Justice Marshall's concerns" that *Batson*'s burden-shifting framework was insufficiently effective at eliminating race discrimination in jury selection. As the passage indicates, Justice Marshall advocated abolition of peremptory strikes altogether. Considering that you cite to the passage that explains Justice Marshall's position in your answer, do you agree that *Batson*'s burden-shifting framework is insufficient at preventing discriminatory strikes against racial minorities?

5. Do you agree with Justice Marshall's position that peremptory strikes should be eliminated?

6. In your response to Question 6c, you state that your former client, Mumia Abu-Jamal, presented "probative" *Batson* evidence that was rejected by the courts. Please indicate whether you still believe that the jury-selection process in Mr. Abu-Jamal's trial was characterized by "flagrant[ly]" racially discriminatory conduct by the prosecutor.

7. You did not answer Question 7(b). Instead, your answer summarizes *Batson*'s burden-shifting framework but fails to address the sufficiency issue. Please state whether you consider a bare allegation of a "culture of discrimination" to be sufficient to support a *prima facie* showing under *Batson*'s first step.

8. Your response to Question 13 cites only the single example of applying strict scrutiny to governmental decisions that confer benefits to individuals based on race. Please specifically state under what circumstances – in addition to government decisions to confer race-based benefits – you believe that governmental use of racial preferences would fall short of the strict-scrutiny standard of review.

9. Your response to Question 14 cites a single example from *Ricci v. DeStefano*. Please identify under what circumstances – in addition to the case you cite – you believe that race preferences violate Title VII of the 1964 Civil Rights Act.

10. Your response to Question 15 summarizes the holding of *Grutter v. Bollinger*, but fails to answer the question. Is it your view that consideration of racial membership and economic status are valid criteria in determining whether to give college applicants special consideration?

11. Do you agree with Justice O'Connor's statement that "25 years from now" – i.e., by 2028 – "the use of racial preferences will no longer be necessary?" *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

12. In your response to Question 16, you state your belief "that stereotyping is unfair and counterproductive," but you fail to answer the question. Under what circumstances do you believe ethnic profiling in the context of the War on Terrorism is *unconstitutional*?

13. You respond to Question 18 by indicating that you "do not read *Rothe* as a blanket prohibition on such programs if there is sufficient, methodologically valid evidence set before Congress," but you do not answer the question. Will you urge the federal government to end the use of preferences based on race, ethnicity, and sex in its contracting practices?

14. Do you share the Federal Circuit's view, enumerated in *Rothe*, that a preferential contracting program is unconstitutional if Congress lacked a strong basis in evidence that previous discrimination justified the program?

15. Do you believe that any remedial program for which Congress lacks a strong basis in evidence for the necessity of remedial action can be constitutional?

16. Your response to Question 19 addresses the *selection* of individuals based on race, but does not address the constitutionality of maintaining race-based scholarships and other benefits. Do you believe that the Constitution permits public universities to maintain racially exclusive internships, scholarships, or summer programs?

17. In your answer to Question 20, you state that you are unaware of the "details of this litigation." The litigation referenced in Question 20 refers to a complaint the Department of Justice filed on February 8, 2006, in the District Court for the Southern District of Illinois, Benton Division, in which the Department alleged that Southern Illinois University maintained paid fellowships that established quotas on the basis of race, national origin, or sex. Will you continue to pursue litigation against public universities that maintain such fellowships, irrespective of the race of the beneficiaries of the fellowships?

18. Your response to Question 23 says that you "would act in the best interests of the United States." Do you regard the continued application of the disparate-impact theory by the federal courts to be "in the best interests of the United States"?

19. Your response to Question 26(a) states that the "congressional record…supports [your] quotes." Given your belief that Congress had a sufficient evidentiary basis to justify the 2006 reauthorization of the Voting Rights Act, do you believe that the Supreme Court wrongly decided *Shelby County v. Holder* when it held that "[t]here is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula. It would have been irrational for Congress to distinguish between States in such a fundamental way based on 40-year-old data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done." Shelby County, Ala. v. Holder, 133 S.Ct. 2612, 2630-31 (2013).

20. Your answer to Question 26(d) is not responsive. You previously stated that racial discrimination in voting poses a "unique threat to our democracy." What steps will you take, if confirmed, to combat the "unique threat" you identify?

21. In your view, does the "unique[ness]" of the "threat to democracy" that you previously identified depend on the race of the victim of racial discrimination?

22. Your answer to Question 29 is not responsive and does not indicate whether you believe that a voter ID requirement is the equivalent of a poll tax. Please indicate whether this is your view.

23. Do you share the opinion of Deputy Assistant Attorney General for Voting Rights, Pamela S. Karlan, that poll-tax cases "parallel voter identification cases in that, as a technical matter, voters were being required to present a government-issued document – namely, a poll tax receipt – in order to vote?"

24. Do you share Attorney General Holder's view, expressed at a 2012 NAACP Convention in Houston, that Texas's voter ID requirement is the modern-day equivalent of a poll tax?

25. Your answer to Question 33 is not responsive. Please enumerate the specific "substantive or procedural protections" that in your view, if violated, would render imposition of the death penalty unconstitutional.

26. Your response to Question 34 states that you "would not oppose the ability for employers to perform reasonable criminal background checks on potential employees." What, in your view, constitutes a "reasonable" criminal background check?

27. Do you believe that the Civil Rights Division has jurisdiction to challenge or abridge the ability of a private employer to conduct a criminal background check on potential employees? If so, please state the basis of such jurisdiction.

28. With respect to your response to Question 36, why did you withdraw your nomination for a seat on the D.C. Circuit?

29. With respect to your response to Question 37, if you are confirmed, what role do you envision for the Civil Rights Division in the enforcement of Affordable Care Act's minimum coverage provision?

30. Given your response to Question 38a that *Heller* is binding law, do you still believe that recognition of an individual right to "keep and bear [a]rms" under the Second Amendment is a "radical departure" from precedent?

31. Your response to Question 39 indicates your belief that juvenile defendants may be subjected to adult punishments "[t]o the extent adult treatment of juveniles falls within the boundaries of the Constitution." Please specify the circumstances under which such "adult treatment" would not fall within the boundaries of the Constitution.

32. With respect to your response to Question 41a, please state the basis for your contention that "race continues to have an impact on sentencing outcomes" and explain how your citation to a joint Department of Justice/Department of Education study on school discipline supports your contention.

33. Your answer to Question 45 is not responsive. Please identify which specific civil-rights provisions, in your view, can be applied post-*Hosanna-Tabor* to religious institutions if the employee of the institution in question falls within the ministerial exception.

34. Your answer to Question 47a is not responsive. Assuming that an employee of a religious institution falls within the ministerial exception, in your view would the First Amendment permit a suit against the institution under either the FMLA or the Equal Pay Act?

35. Your answer to Question 47b is not responsive. Assuming that an employee of a religious institution falls within the ministerial exception, in your view would the First Amendment permit a lawsuit against the institution alleging discrimination based on the employee's sexual orientation or gender identity? If so, please state the basis for such a lawsuit under federal law.

36. With respect to your answer to Question 53a, given Supreme Court's holding in *Marion County*, do you believe that a state-law that requires a voter to display photo identification prior to voting violates Section 2 of the Voting Rights Act if the state promulgating the law provides photo identification to citizens of the state free of charge?

Senator Jeff Sessions
Questions for the Record
Debo Adegbile

1. There is absolutely no doubt that voter fraud occurs in our federal elections through voter registration fraud, absentee ballot fraud, and ineligible voters casting ballots, to name just a few. Do you agree that when people who are ineligible to vote, do so, or when people vote multiple times it dilutes the votes cast by legal voters, thereby denying them their right to vote?

2. According to sworn testimony from Christopher Coates, former Voting Section Chief at the Department of Justice, Kristen Clarke, a lawyer at the NAACP Legal Defense Fund, pressured Justice Department officials to dismiss a lawsuit against the New Black Panther Party for voter intimidation in the November 2008 Presidential election in Philadelphia.

   a. Did you supervise or work with her during your time there?

   b. Were you aware of her efforts or did you instruct her to do so?

3. If you are confirmed, your deputy assistant attorney general in charge of overseeing the Voting Section will be Stanford Law Professor Pam Karlan. In the past, she has made numerous partisan attacks on the Justice Department under President George W. Bush, some of which were demonstrably false. For example, in an article published in the *Duke Journal of Constitutional Law*, she wrote that "for five of the eight years of the Bush Administration, [the Civil Rights Division] brought no Voting Rights Act cases of its own except for one case protecting white voters." However, the record shows that cases were brought under the Voting Rights Act to protect non-white racial minorities in each of the eight years of the Bush administration. If confirmed, will you instruct her to correct her academic record so your enforcement of voting laws is not supervised by someone with the perception of partisanship and will you disavow her false scholarship?

4. There has been some criticism from our military that the Justice Department, and specifically the Voting Section, waits too long before bringing a lawsuit to protect military voters and that when they finally do act, it is on the eve of an election and too late to provide any real remedy for overseas voters.

   a. If confirmed, will you commit to closely monitor counties and quickly enforce the law to protect military voters before an election and not wait until afterward?

   b. If confirmed, how do you intend to monitor each state to ensure full compliance?

   c. State election officials have criticized the Voting Section for inappropriately bringing enforcement actions against States rather than counties. States often have little power or control over local jurisdictions, which are responsible for the procedures that result in the failure to send ballots on time. To fully protect our

military voters, if confirmed, will you take appropriate legal action against counties that fail to comply with the law in this regard?

5. A March 2013 report by the Justice Department Inspector General on the Voting Section revealed that the leadership of the Civil Rights Division, including former Assistant Attorney General Thomas Perez, interpreted the "preclearance" requirement of the Voting Rights Act, embodied in Sections 4 and 5, to be "race-conscious," in that it does not cover white voters even when they are clearly a minority in the jurisdiction.

   a. Do you interpret the preclearance requirement of the Voting Rights Act in that way?

   b. It is my understanding that you have been working on legislation to amend the Voting Rights Act in response to the Supreme Court's holding that states cannot be subject to the preclearance requirement based solely on past discrimination. If Congress chooses to adopt a new trigger for Section 5 coverage, do you believe it should be "race-conscious," or do you believe it should apply equally to citizens of any race who happen to be a minority in a particular jurisdiction?

6. In *League of United Latin American Citizens v. Perry*, a redistricting case, Chief Justice Roberts disagreed with the majority's holding that it was the Court's role "to make judgments about which *mixes* of minority voters should count for purposes of forming a majority in an electoral district, in the face of factual findings that the district is an effective majority-minority district."

   a. Do you agree with Chief Justice Roberts' statement?

   b. If confirmed, how will you ensure that Section 2 cases do not violate the Supreme Court's warnings against, as the Court put it, "racial gerrymandering"?

7. With the Supreme Court's June 2013 ruling in *Shelby County v. Holder,* and the lack of Section 5 submissions to the Voting Section, there are now, according to reports, seven senior attorneys with salaries of over $150,000 each with no Section 5 work. Taken together, those salaries equal over a million dollars a year in personnel costs. The salaries of perhaps a dozen Section 5 analysts together equal at least another million dollars in personnel and overhead costs. If confirmed, will you eliminate these positions or find other productive work for them?

8. A recent report by the Inspector General on the operations of the Voting Section found that members of the Voting Section who were viewed as Republican or conservative were severely harassed on that account. For example, the report detailed how: "at least three career Voting Section employees posted comments on widely read liberal websites concerning Voting Section work and personnel. . . . The three employees who we were able to identify with certainty included three non-attorney employees [and] included a wide array of inappropriate remarks, ranging from petty and juvenile personal attacks to highly offensive and potentially threatening statements. The comments were

directed at fellow career Voting Section employees because of their conservative political views, their willingness to carry out the policies of the [Civil Rights Division] division leadership, or their views on the Voting Rights Act. The highly offensive comments included suggestions that the parents of one former career Section attorney were Nazis, disparaging a career manager's physical appearance and guessing how he/she would look without clothing, speculation that another career manager was watching pornography in her office, and references to 'Yellow Fever,' in connection with allusions to marital infidelity involving two career Voting Section employees, one of whom was described as 'look[ing] Asian.'"

a. One of the individuals responsible for making these demeaning statements initially lied to the Inspector General and later admitted that she perjured herself, but added that she had no regrets other than the fact that she was caught. It is my understanding that this individual is still employed by the Justice Department in the Voting Section of the Civil Rights Division. If confirmed, will you terminate her employment?

b. If confirmed, how will you ensure that such partisan political hostility towards certain employees does not continue under your leadership, as it did under the previous leadership of the Civil Rights Division?

Questions for the record of Senator John Cornyn for Debo Adegbile, nominee to be Assistant Attorney General for Civil Rights
January 15, 2014

1. In an interview with an NYU Law School alumni publication, you stated: "Not every wrong finds a remedy in the law, as it turns out. It takes a good bit of creative lawyering and tenacity on the part of litigators to formulate a winning theory . . ." Please describe, in detail, what you meant by "creative lawyering." As Assistant Attorney General, how would you use "creative lawyering," and will you pledge to pursue only remedies expressly provided for under current law?

2. As Assistant Attorney General, would you commit to only pursue legal theories that find strong support in the statutes passed by Congress and the interpretations given to them by the Supreme Court?

3. Are there differences between the role of Assistant Attorney General and the role of Director-Counsel of the NAACP Legal Defense and Educational Fund? How, specifically, would you approach these positions differently?

4. A recent Inspector General's report found "deep ideological polarization" and "bitter controversy" within the Voting Rights Section of the Civil Rights Division. What specific measures will you take to address the problems cited by the Inspector General?

5. In the Supreme Court's opinion in *Northwest Austin Municipal Utility District No. 1 v. Holder,* 557 U.S. 193 (2009), Chief Justice Roberts' opinion described the "substantial federalism costs" that Section 5 of the Voting Rights Act of 1965 imposes on some states. Do you agree that Section 5 imposes such costs?

6. In *Shelby County v. Holder*, 570 U.S. ___ (2013), the Supreme Court ruled that Section 4 of the Voting Rights Act of 1965 was unconstitutional because it utilized decades-old evidence to require certain states, including Texas, to seek federal approval before changing their voting laws. In congressional testimony in 2006, you stated: "The evidence in the record does not indicate that the existing Section 4 coverage formula, or 'trigger,' needs to be revised or updated."

    a. Do you accept the Supreme Court's decision, and will respect that decision while serving as Assistant Attorney General?

    b. Do you believe that that an imbalanced treatment of states similar to Section 4 is still appropriate post *Shelby County*?

    c. Do you agree with the Court's that: "There is no denying . . . that the conditions that originally justified" the preclearance process under Section

5 of the Voting Rights Act of 1965 "no longer characterize voting in the covered jurisdictions"?

d. Do you agree with the Court's statement that the coverage formula under Section 4 of the Voting Rights Act of 1965 was "based on 40-year-old facts having no logical relation to the present day"?

e. Had the same voter turn-out and registration thresholds set by Section 4 been applied in 2000 as required by statute, rather than 1964, 9 of the 14 counties in Massachusetts would have been subject to preclearance, while only 2 of Texas's 254 counties would have been covered. Yet, under Section 4, all of Texas was subject to preclearance, while none of Massachusetts was. In light of this evidence, do you believe that your congressional testimony in 2006 was accurate?

f. Absent the Supreme Court's ruling in this case, what would you consider to be sufficient evidence that the Section 4 coverage formula should be updated?

g. Do you believe a coverage formula for preclearance, as provided in Section 4 of the Voting Rights Act of 1965, is the only way to properly protect minority voting rights? Why or why not?

h. What, if anything, might be an appropriate alternative to preclearance in protecting minority voting rights?

7. What were your duties and responsibilities while serving as Senior Counsel to Senator Leahy? Were you involved in efforts to draft legislation remedying the constitutional defects of the Voting Rights Act of 1965, or otherwise amending it? Please describe those efforts. What outside organizations, if any, did you work with on these efforts?

8. Do you accept the Supreme Court's decision in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), in which the court upheld the constitutionality of Indiana's voter ID statute?

   a. Do you agree with Justice Stevens' statement that voter ID "is amply justified by the valid interest in protecting the integrity and reliability of the electoral process"?

   b. Do you accept the Supreme Court's distinction in Crawford between Indiana's voter ID law and a poll tax?

   c. In the past, you have been a strong opponent of Voter ID laws. Will you use your position as Assistant Attorney General to continue to oppose

state voter ID laws? If so, how will you select which of the growing number of state voter ID laws you will challenge?

d. Is there any form of state voter ID law that you find acceptable? If so, please describe the characteristics of an acceptable state voter ID law.

9. In November, I introduced S. 1728, a bipartisan bill called the SENTRI Act (Safeguarding Elections for our Nation's Troops through Reforms and Improvements Act), together with Sen. Schumer and four other senators. It is awaiting consideration in the Senate Rules Committee. It is my understanding that the Civil Rights Division supports this bill. Do you support our effort to better protect the voting rights of our troops both at home and overseas?

10. Is it appropriate for the Civil Rights Division to take a position in the national debate over same-sex marriage?

11. In a guidance memo published in May 2012, the Equal Employment Opportunity Commission argued that: "An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1965, as amended." As Acting President and Director Counsel of the NAACP Legal Defense and Educational Fund, you praised this guidance memo—stating that: "No one should be penalized for the rest of their life for mistakes that they made in the past."

a. Do you agree with the May 2012 guidance memo that ". . . an exclusion based on an arrest, in itself, is not job related and consistent with business necessity?"

b. Do you believe that a private employer's decision categorically to exclude all persons convicted of a child pornography offense from the hiring pool may, in some instances, violate Title VII of the Civil Rights Act of 1965?

c. Do you believe that any person who has been convicted of a felony or crime of violence should be categorically excluded from working for the Department of Justice? If not, what classes of felons or violent offenders should be allowed to work for the Department of Justice?

d. If confirmed as Assistant Attorney General for the Civil Rights Division, would you commit to performing a criminal background check on all prospective employees, and to prohibiting the hiring of any person who has been convicted of a felony or crime of violence? If not, please describe a particular situation in which you might, as Assistant Attorney General, recommend the hiring of a felon or violent offender.

Questions for the Record

for Debo Adegbile (DOJ AAG for Civil Rights)

Senator Mike Lee

January 8, 2014

1. In 2011, the NAACP Legal Defense Fund (LDF) took on the case of convicted cop killer Mumia Abu-Jamal. Abu-Jamal was sentenced to death for the 1981 murder of a 25-year-old Philadelphia police officer who had engaged Abu-Jamal's brother in a routine traffic stop. LDF took on Abu-Jamal's appeal while you were the director of litigation and you signed several briefs on his behalf, leading to the commutation of his death sentence to life in prison. Abu-Jamal has been and remains an iconic figure among activists.

    a. What part did you play in LDF's decision to take on the case?
    b. Did you elect to play a role in representing Abu-Jamal? What was your motivation for that decision?
    c. At a New York Free Mumia Coalition event in 2011, Christina Swarms, your colleague at LDF at the time, included you when she stated, "There is no question in the mind of anyone at the Legal Defense Fund that the justice system has completely and utterly failed Mumia Abu-Jamal and, in our view, that has everything to do with race and that is why the legal defense fund is in this case."
        i. Do you believe that the justice system had at that time "completely and utterly failed Mumia Abu-Jamal"? If so, in what ways?
        ii. Do you believe that such a failure had "everything to do with race"? If so, please explain your reasoning.
        iii. If you do not agree with Ms. Swarms statement, why do you believe LDF took on this case?
    d. In a January 2014 letter to the President opposing your nomination for your involvement in the Abu-Jamal case, the Fraternal Order of Police (FOP) expressed the need for law enforcement and minority communities to "build even greater bonds of trust and mutual respect," while decrying the work of the Civil Rights Division and its "aggressive and punitive approach towards local law enforcement agencies."
        i. Under your direction, if confirmed, would the Civil Rights Division continue the methods, patterns, and practices established under the leadership of Thomas Perez and Roy Austin, Jr.?
        ii. If confirmed, in what ways will you work to tear down the "obstacles" to trust and mutual respect that the FOP refers to in its letter?

e. How will your experience advocating for Abu-Jamal inform your work in the DOJ if you are confirmed?

2. You have made a number of statements expressing strong views regarding the Voting Rights Act and voting rights more generally. Late in 2012, some members of this administration made troubling comments suggesting that they believe the executive branch should itself reform voter registration and even move to nationalize voter registration.

    a. Do you believe that the executive branch currently has statutory authority to make significant national changes to state voter registration systems and if so which statutes do you believe provide that authority?

3. You have appeared on a number of amicus briefs on controversial issues before the Supreme Court. These briefs evidence an extreme view of the Constitution that in many cases has not been accepted by even a single member of the court. For example, with respect to religious liberty, in a brief you helped write in the *Hosanna Tabor* case, you argued strenuously against a ministerial exception, a position the Court rejected 9-0. With respect to the Second Amendment, you helped write a brief in the *Heller* case that argued the Second Amendment does not provide for the right of an individual to possess or use firearms outside the context of a lawfully organized militia. This position was rejected by the Court. In *Ricci v. DeStefano*, you likewise helped write an amicus brief arguing for a position the Court rejected.

    a. Do you believe religious organizations are not entitled to a ministerial exception?
    b. Do you believe the Second Amendment does not guarantee an individual's right to bear arms?
    c. It appears that in many instances your views of the Constitution are at odds with those of the Court. What assurances can you give the Committee that you will respect and follow Supreme Court precedent?

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).

The Honorable Jeff Flake
Written Questions for Debo Adegbile
Nominee, Assistant Attorney, General Civil Rights Division
Senate Judiciary Committee
January 15, 2014

1. You signed a brief on behalf of the NAACP in *Hosanna-Tabor v. Equal Employment Opportunity Commission*, 132 S. Ct. 694 (2012), in support of the teacher dismissed by her employer, Hosanna-Tabor. The Court, in a unanimous opinion, upheld the ministerial exception. The unanimous opinion stated, "the Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own."

    a. Do you personally believe the position you took in *Hosanna-Tabor* was correct at the time you filed the brief?

    b. Notwithstanding the Supreme Court's opinion to the contrary, do you still believe your brief is a correct analysis of the Constitution and precedent?

    c. In your brief, you stated: "Even if civil rights laws pervasively imposed significant burdens on religious practice, that would not justify a categorical exemption for parochial schools." How do you square this statement asserting the federal government may impose "significant burdens on religious practice," with the First Amendment protections, stating: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof …"?

2. In *Crawford v. Marion County*, 553 U.S. 181, you were the counsel of record on an amicus brief filed on behalf of the NAACP Legal Defense Fund urging the court to find Indiana's requirement that voters present government-issued photo identification to be unconstitutional. In a 6-3 plurality decision written by Justice Stevens, the Supreme Court upheld Indiana's voter photo identification law. Do you still believe the position you took in the brief was correct?

3. You signed a brief on behalf of the NAACP Legal Defense & Educational Fund in the case of *D.C. v. Heller*, 554 U.S. 570, urging the Supreme Court to overturn the U.S. Court of Appeals for the D.C. Circuit's decision that the District of Columbia's gun laws were unconstitutional. Your brief asserted, "The type of radical departure from this Court's Second Amendment jurisprudence that is reflected in the opinion of the D.C. Circuit is not warranted." Your brief continued, "for the Court to recognize an individual right to 'keep and bear Arms' would represent a radical departure from the consistent and long-established understanding of the Second Amendment." The Supreme Court upheld the D.C. Circuit's opinion in *D.C. v. Heller*.

    a. Do you believe the Supreme Court's decision in *Heller* was a "radical departure" from the Supreme Court's prior jurisprudence?

b. Do you believe *Heller,* decided almost six years ago, has resulted in a "substantial upheaval in the manner in which firearms are regulated nationwide?"

4. As you likely know, the federal government is currently in a budget crisis where it is spending more than it brings in. As a result, all government departments, agencies, and even the legislative branch are being asked to tighten their belts and cut costs. If confirmed as the head of the Civil Rights Division, what actions would you take to cut costs, especially waste and abuse, at the Department?

January 27, 2014

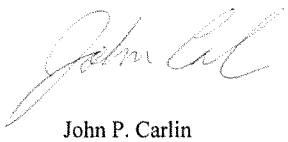
The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you again for giving me the opportunity to appear before the Committee on January 8, 2014. I enclose my responses to the Questions for the Record that I received from Ranking Member Grassley.

Sincerely,



John P. Carlin

Enclosure

Senator Chuck Grassley
Questions for the Record

John Carlin
Nominee, Assistant Attorney General for National Security

1. A recent article about your nomination in Foreign Policy magazine raised concerns about whether, given your close relationships with some officials in the White House, as a Department of Justice appointee you can be appropriately independent from them. The article also suggested that you had asked your colleagues not to copy you on email about sensitive policy issues in advance of your hearing. Did you ask colleagues not to email you about sensitive policy issues in advance of your hearing? If so, why?

Answer

I did not ask my colleagues to withhold from me, in advance of my hearing or at any other time, any information, communicated by email or otherwise, that I would need to fulfill the responsibilities of Acting Assistant Attorney General (AAG) for National Security. As part of those responsibilities, I am an active participant in discussions and decisions about many sensitive national security policy matters. In addition, as a career public servant with the Department of Justice, and in my time spent as Chief of Staff of the Federal Bureau of Investigation under Robert S. Mueller, III, I understand the critical importance of appropriate independence in matters under the supervision of the AAG for National Security.

2. The National Security Division made a significant policy change last year with respect to material collected under Section 702 of FISA. Before last summer, defendants were not notified if material collected under FISA Section 702 was used as the basis to obtain a traditional FISA warrant against them. If these defendants were not notified, they could not challenge the use of the 702 provision in any way.

   In February, however, the Solicitor General represented to the Supreme Court in a case challenging the statute that defendants were being notified, which turned out not to be true. A debate within the Department of Justice ensued.

   According to the New York Times, the debate stretched through the summer, with "dueling memorandums by lawyers in the Solicitor General's office and in the National Security Division." Eventually, the Department adopted the Solicitor General's view. According to news reports, the Department has begun providing additional notice to certain defendants.

a. Do you know how many defendants are going to be affected by this change of policy, and when do you expect all the additional notices to be provided?

Answer

The Department has publicly stated that it is conducting a review of criminal cases in a variety of stages. To date, pursuant to that review, the government has provided notice concerning Section 702-derived information in two criminal cases. The defendants in those cases will thus have the opportunity to challenge the constitutionality of Section 702 and the lawfulness of the acquisitions.

The Department also anticipates that notice will be provided to additional defendants; however, because determinations regarding whether a defendant should be provided notice of Section 702-derived information are fact-dependent, and the cases reviewed are at varying stages of pendency, I am unable to specify the number of cases in which notice may be provided at this time.

b. Do you believe that under your leadership the National Security Division was complying with its legal and ethical obligations when it didn't provide these notices? If so, why was the policy changed?

Answer

The employees of the National Security Division take their legal and ethical obligations seriously and have sought in good faith to comply with them. Under my leadership, and if I am confirmed, the Division will continue to do so. My understanding is that DOJ's practice has always been to provide notice to aggrieved parties when the government intends to use at trial evidence that it understands to be obtained or derived from FISA surveillance.

The focus of our review of existing practice was whether and under what circumstances information obtained through surveillance under Title I of FISA or physical search under Title III of FISA could also be considered derived from other surveillance under Title VII of FISA (the FISA Amendments Act). The Department has determined that, consistent with practice under Title III of the Wiretap Act, information obtained or derived from Title I FISA collection may, in particular cases, also be derived from prior Title VII FISA collection, such that notice concerning both Title I and Title VII should be given in appropriate cases with respect to the same information. The Department will continue to comply with its legal obligations to notify aggrieved persons of the use of information obtained or derived from an acquisition under Section 702 in judicial or administrative proceedings against such person.

3. If confirmed one of the matters you would be supervising is the investigation and possible prosecution of Edward Snowden. There have been calls for leniency or clemency for Snowden, perhaps in exchange for returning documents that he took from the government. Do you believe it is appropriate for the United States to consider some degree of leniency for Snowden?

Answer

Mr. Snowden is charged by criminal complaint with the unauthorized disclosure of national defense information, the unauthorized communication of classified communication intelligence information, and theft of government property. The Department of Justice takes unauthorized disclosures of classified information seriously, and is committed to vigorously prosecuting those disclosures when they occur. Because this is a pending criminal investigation, I cannot comment further on the matter.

4. Are you aware of a 2010 EEOC complaint regarding a DOJ attorney in the National Security Division, Joshua Nesbitt, who alleged that he was the victim of race-based discrimination?

Answer

Yes.

5. This matter, *Nesbitt v. Holder*, is currently being litigated in the U.S. District Court for the District of Columbia. What role, if any, have you played in the litigation of this matter?

Answer

This case is being handled by the U.S. Attorney's Office for the District of Columbia, and is in active litigation. As the acting head of a component of the Department of Justice, however, I have been briefed on the status of the case.

6. The plaintiff in *Nesbitt v. Holder* alleged that he was denied promotion to the position of Deputy Chief of Litigation in the National Security Division's Office of Intelligence because of his race. He points to the selectee's "failure to comply with the application requirements contained in the vacancy announcement, and that the application process was corrupted in order to avoid promoting the African-American applicant." What measures have you put in place, or will you put in place, in order to ensure that the application and review processes in hiring decisions will be clear to all involved?

Answer

Setting aside Mr. Nesbitt's specific case, which the Department is actively litigating, it is critically important to me that the application and review process in NSD's hiring decisions be clear to all involved. To that end, I have directed NSD's newly hired Director of Training and Workforce Development and NSD's Human Resources Chief to develop a management training curriculum that covers, in detail, standards for ensuring fair and transparent hiring. The full curriculum is still under development, but as a start, this past fall, we held NSD's first Division-wide mandatory training for individuals involved in the hiring process, covering fairness in interviewing, diversity, disability outreach, veterans' preference, reference checking, and other fair employment issues. I am also meeting with our Diversity Hiring Committee this month to review hiring practices.

In addition, I have directed our Executive Office to develop other resources for our hiring teams, capturing comprehensive hiring policies and best practices, which will be incorporated into our annual management training upon completion.

7. Does the Department of Justice and the National Security Division still believe that export licenses and documents are useful to the Department's investigations and enforcement of the export control statutes and to creating incentives on sellers and exporters to conduct due diligence on their buyers and other parties to exports of arms, munitions, and dual use goods?

Answer:

Yes. Export control documents, including license applications and attachments, export licenses, Automated Export System records, bills of lading, and other documents are important evidence for prosecutors to prove criminal violations of the export control laws.

In the course of our investigations, we routinely see that the requirements imposed under current licensing processes encourage sellers and manufacturers to conduct due diligence on their buyers and to seek information about the nature of a particular transaction in order to ensure that the transaction is consistent with U.S. export control laws and regulations. In many cases, sellers and manufacturers who identify suspicious buyers or exporters will refuse to sell export controlled items to these individuals, preventing those items from being obtained from illegal procurement networks and other actors.

8. Have recent decontrols over military aircraft, naval vessels, and other military technology once controlled under the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR) of the Department of State and now controlled under the

Export Administration Regulations (EAR) of the Department of Commerce weakened the ability of the Department of Justice to obtain international assistance against the unlawful proliferation, diversion, and transfer of military items and military technology?

Answer:

The Department vigorously investigates and prosecutes unlawful proliferation, diversion and transfer of military items and technology. The transfer of previously ITAR-controlled commodities to the EAR may further complicate the ability to obtain extradition to the United States of defendants located overseas in certain cases. For example, most extradition treaties require the defendant's conduct to be unlawful in both countries in order to extradite individuals to the United States (i.e., dual criminality). While most countries around the world regulate the export and import of munitions, fewer countries also control them as dual use items and technology. By moving certain items to the EAR that were formerly designated as defense articles in the ITAR, we could face challenges in obtaining the extradition of defendants in those countries that do not maintain export controls on such items.

9. The technical and manufacturing specifications for many parts of the F-4. F-5, F-14 and F-16 are no longer AECA/ITAR controlled according to the recent revisions of the ITAR. Does that adversely affect in any manner the Justice Department's ability to investigate and prosecute AECA violations or sanctions involving Iran and efforts to obtain military aviation parts? In light of public reports of Chinese assistance to the radar and other avionics of Iranian fighter jets including the F-4, will efforts to investigate and disrupt schemes by Chinese actors to obtain such military aviation technology be impeded given that such aviation parts, components and their associated technical specifications will no longer subject to the Chinese arms embargo under Public Law 101-246, § 902(a)(3)?

Answer:

The Department will continue aggressively to investigate and prosecute violations of the AECA or sanctions provisions involving Iran and China. Without addressing the specific controls and sanctions referenced, if prohibitions were lifted, the Department would not be in a position to investigate or disrupt conduct that is no longer unlawful. The scope of such controls and sanctions is determined by other agencies.

10. Is it more difficult to secure international cooperation, email search warrants, extradition of indicted defendants, or other steps in investigating AECA violations resulting from any Iranian efforts to obtain U.S. military parts through initial shipments through a third

country as a result of the ongoing transfer or military parts and components from ITAR control to EAR control?

Answer:

See answer to #8 above.

11. If the definition of "specially designed" now adopted for the ITAR and EAR had been in place at the time of the prosecution of *United States v. Lachman*, 387 F.3d 42 (1st Cir. 2004), could the defendant have been charged with a violation of the EAR as charged in that case?

Answer:

The definition of "specially designed" now adopted for the ITAR and EAR contains certain specific exceptions and requirements for meeting those exceptions that were not present in the definition adopted by the court in *Lachman*. Whether the item at issue in *Lachman* falls within the new definition depends on facts not set forth in the opinion.

12. Does the Department of Justice or National Security Division support the narrowing of the scope of firearms and ammunition covered by Categories I, II, and III of the U.S. Munitions List (USML) and the transfer of firearms, semi-automatic rifles, and associated ammunition to the EAR and regulation by the Commerce Department?

Answer:

The Department believes that any transfer of those items from the ITAR to the Commerce Control List (CCL) must be subject to appropriate safeguards, comparable to the safeguards that apply under the ITAR.

13. If firearms, semi-automatic rifles, and associated ammunition were no longer considered "defense articles" by the Department of State under the AECA, is it your opinion that the AECA would allow the ATF and the Attorney General to continue to treat firearms, semi-automatic weapons, and associated ammunition as "defense articles" to control their import under the AECA?

Answer:

Yes. The President confirmed this authority as part of Executive Order 13637 of March 8, 2013, which updates the administration of U.S. export and import controls under the AECA. The Bureau of Alcohol, Tobacco, Firearms, and Explosives of the Department of Justice issued an implementing regulation last year confirming that the Attorney General has the authority to designate defense articles and defense services for purposes of permanent import controls, with the concurrence of the Secretary of State and the Secretary of Defense and with notice to the Secretary of Commerce, regardless of whether the Secretary of State controls such defense articles or defense services for purposes of export and temporary import. *See* Importation of Defense Articles and Defense Services—U.S. Munitions Import List, 78 Fed. Reg. 23675 (Apr. 22, 2013) (codified at 27 C.F.R. pt. 447).

14. Is there a provision in the EAR which requires the mandatory reporting to the Commerce Department of cyber intrusions involving the unlawful export of military "technical data" or technology to China as required by the mandatory reporting provision of the ITAR, 22 C.F.R. § 126.1(e) to the State Department?

Answer:

I am not aware of a reporting requirement in the EAR analogous to 22 C.F.R. § 126.1(e)(1).

15. Will the Department of State's proposed narrowing of the definition of "defense services" under the ITAR potentially adversely affect the FBI's ability to obtain FISA orders against U.S. persons providing technical assistance to the Chinese military, intelligence services, or military-research/industrial companies?

Answer:

In the context of clandestine intelligence activities, the Foreign Intelligence Surveillance Act (FISA) requires a showing of probable cause that the relevant activities "involve," "may involve," or "are about to involve" "a violation of the criminal statutes of the United States." 50 U.S.C. § 1801(b)(2)(A) & (B). My understanding is that the proposed action, with certain limited exceptions, would make it lawful to provide a defense service without a license if the service is based solely on public information. The proposed definition would accordingly limit the types of conduct that would support obtaining a FISA order pursuant to § 1801 in the context of clandestine intelligence activities.

16. Do you support the letter to the U.S. Sentencing Commission of the former Assistant Attorney General, Lisa Monaco, advocating a limited and measured mandatory minimum sentence for some criminal offenses relating to certain Iranian sanctions violations or violations involving transactions with certain Specially Designated Nations or nations under arms embargo depending upon the nature of the goods or services involved or the foreign parties involved?

Answer:

Yes, I support the limited and measured approach set forth in the letter, which appropriately addresses the seriousness of such offenses.

January 27, 2014

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you for the opportunity to appear before the Committee on the Judiciary on January 8, 2014. Enclosed please find my responses to the Questions for the Record that I received from Ranking Member Grassley, Senator Sessions, Senator Cornyn, Senator Lee, and Senator Flake.

Sincerely,

Debo P. Adegbile

Enclosure

Senator Chuck Grassley
Questions for the Record

Debo P. Adegbile
Nominee, Assistant Attorney General for Civil Rights

1. Is it appropriate for employees of the Civil Rights Division to consult with groups such as the NAACP, La Raza, MALDEF, and the ACLU when making legal determinations?

   ANSWER: It is my understanding that the Civil Rights Division (the Division) has long been willing to meet with and hear the views of a range of outside groups. If confirmed, I would expect to continue that practice. This said, legal determinations are the Division's to make, based on the facts and the law.

2. According to a 2013 Inspector General report, the hiring procedures under former Assistant Attorney General for Civil Rights, Thomas Perez, resulted in a pool of candidates that was "overwhelmingly Democratic/liberal in affiliation." The report made the following recommendations to address the deficiencies in hiring practices. Please answer each subpart individually.

   a. "That the Voting Section use hiring criteria that are based on the specific skills, duties, and experience that are required or preferred for vacant positions and that appear in the Section's vacancy announcement." If confirmed, will you commit to implementing this procedure in your hiring practices?

      ANSWER: I understand that the Division took steps to improve the hiring process in response to both the 2008 Inspector General report on the Division and in response to the Inspector General's recent report. If confirmed, I will assess the Division's current hiring policies and practices and, consistent with applicable laws and policies, determine if any additional modifications are appropriate to ensure a broad and strong pool of candidates for any open positions.

   b. "That the Voting Section refrain from relying on the 'general civil rights/public interest' criterion in the future." If confirmed, will you commit to implementing this procedure in your hiring practices?

      ANSWER: I understand that the Division took steps to improve the hiring process in response to both the 2008 Inspector General report on the Division and in response to the Inspector General's recent report. If confirmed, I will assess the Division's current hiring policies and practices and, consistent with applicable laws and policies, determine if any additional modifications are appropriate to ensure a broad and strong pool of candidates for any open positions.

   c. "That the Voting Section adopt hiring criteria that better account for the significant contributions that applicants with limited or no civil rights

backgrounds can make to the Section, including those with defensive litigation experience." If confirmed, will you commit to implementing this procedure in your hiring practices?

ANSWER: I understand that the Division took steps to improve the hiring process in response to both the 2008 Inspector General report on the Division and in response to the Inspector General's recent report. If confirmed, I will assess the Division's current hiring policies and practices, and consistent with applicable laws and policies, determine if any additional modifications are appropriate to ensure a broad and strong pool of candidates for any open positions.

d. "That the Civil Rights Division not place primary emphasis on 'demonstrated interest in the enforcement of civil rights laws' as a hiring criterion." If confirmed, will you commit to implementing this procedure in your hiring practices?

ANSWER: I understand that the Division took steps to improve the hiring process in response to both the 2008 Inspector General report on the Division and in response to the Inspector General's recent report. If confirmed, I will assess the Division's current hiring policies and practices and, consistent with applicable laws and policies, determine if any additional modifications are appropriate to ensure a broad and strong pool of candidates for any open positions.

3. During your predecessor's tenure as Assistant Attorney General for the Civil Rights Division there were no "hires" made who had ties to a conservative organization. What steps do you plan to take in order to ensure an ideologically diverse applicant pool for future hires in the Civil Rights Division?

ANSWER: I am not familiar with the claim that the Division hired no one with ties to a conservative organization during Mr. Perez's tenure, but if confirmed, I will assess the Division's current hiring policies and practices, and, consistent with applicable laws and policies, determine if any additional modifications are appropriate to ensure a broad and strong pool of candidates for any open positions.

4. After the NAACP's LDF had filed two amicus briefs on behalf of Mumia Abu-Jamal, but before LDF became lead counsel for Mr. Abu-Jamal during your tenure as Director of Litigation, Mr. Abu-Jamal's former lead counsel, Robert R. Bryan, circulated a petition addressed to President Obama that demanded a new trial for Mr. Abu-Jamal and advocated "global abolition of the death penalty." Please answer each subpart individually.

a. Did you sign the petition?

ANSWER: No.

b. To your knowledge, did any of your LDF colleagues sign the petition?

ANSWER: Not to my knowledge.

5. If you are confirmed as AAG for Civil Rights and the Department of Justice decides to review any aspect of Mr. Abu-Jamal's post-sentencing appeals or collateral attacks on his conviction, would you consider it proper to participate in any such review?

   ANSWER: No.

6. In a 2009 amicus brief you submitted to the United States Supreme Court in support of Mr. Abu-Jamal, the LDF noted its "long-standing concern with the influence of racial discrimination" in the criminal justice system and, specifically, in the jury-selection process. Please answer each subpart individually.

   a. Do you believe that racial discrimination remains—as you characterized it in a quotation cited in your brief—a "common and flagrant" practice during jury selection in the United States? If so, what aspects of *Batson* and its progeny, in your view, require revision by the federal courts?

      ANSWER: The "common and flagrant" phrase was quoted from a concurring opinion in *Batson v. Kentucky,* 476 U.S. 79 (1986), where it described the nature of the problem in the wake of *Swain v. Alabama,* 380 U.S. 202 (1965). Unfortunately, *Batson* violations persist. *See e.g. Miller-El v. Dretke,* 545 U.S. 2313, 266-273 (2005) (Breyer, J., concurring) (discussing the problem of jury discrimination and collecting sources).

      I have not had the opportunity to adequately examine the complex legal question of what, if anything, a court might do to more effectively police or deter *Batson* violations in an appropriate case.

   b. What types of litigation do you intend to pursue as AAG to affect change in civil-rights law regarding jury selection?

      ANSWER: Cases referred to the Civil Rights Division are evaluated on the merits. I have no current plans to pursue such litigation.

   c. Do you consider that the jury-selection procedure prior to Mr. Abu-Jamal's trial was characterized by "flagrant[ly]" racially discriminatory conduct by the prosecutor?

      ANSWER: I was involved in two LDF amicus briefs supporting Mr. Abu-Jamal's *Batson* claim in habeas proceedings which identified probative *Batson* evidence. The *Batson* claim, however, was rejected by the courts. In contrast, the sentence was held unconstitutional under *Mills v. Maryland,* 486 U.S. 367 (1986).

7. In the same 2009 LDF amicus brief, you argued that the Third Circuit improperly failed to consider "evidence of a culture of discrimination" and testimony from "Philadelphia defense attorneys indicating that the Philadelphia District Attorney's Office used its peremptory strikes to exclude African American prospective jurors." Please answer each subpart individually.

    a. In your view, under what circumstances is it proper for a trial court to take into account such extrinsic evidence?

    ANSWER: Under the Supreme Court's *Batson* precedents "a defendant may rely on all relevant circumstances to raise an inference of purposeful discrimination." *Miller-El v. Dretke,* 545 U.S. 231, 239 (2005) (internal quotations omitted); *see also id. at 263* (where the Court considered the fact that "for decades leading up to the time th[e] case was tried prosecutors in the Dallas County office had followed a specific policy of systematically excluding blacks from juries.").

    b. In your view, would a bare allegation of "a culture of discrimination" or the anecdotal testimony of a local defense attorney be sufficient to make out a prima facie case under *Batson*'s step one?

    ANSWER: Under *Batson v. Kentucky*, 476 U.S. 79 (1986), a court must follow a three-part test to determine whether there is discrimination based on race. In *Batson's* step one, the party raising the *Batson* challenge must first make a prima facie showing that the striking party employed a peremptory challenge on the basis of race. *Id.* The court should consider "all relevant circumstances" supporting the challenging party's assertion of discrimination. *Id.* at 96-97. These circumstances can include a "pattern" of striking venire members of a particular race, or posing questions or making statements during *voir dire* to members of a particular race that support the inference of a discriminatory purpose. *Id.*

8. In 2006, during your tenure as LDF's Associate Director for Litigation, LDF filed an amicus brief on Mr. Abu-Jamal's behalf in which LDF argued that Mr. Abu-Jamal's trial was tainted by a climate of race prejudice and discrimination in "the historical conduct of the Philadelphia County District Attorney's Office." Please answer each subpart individually.

    a. What involvement, whether in a supervisory, authorial, editorial, or other role, did you have in the 2006 amicus brief?

    ANSWER: I did not participate in the drafting, review or filing of the aforementioned LDF amicus brief nor does my name appear on the brief.

    b. In a 2009 amicus brief LDF filed on Mr. Abu-Jamal's behalf, which you signed as counsel of record, LDF refers to "evidence of a culture of discrimination, including that the Philadelphia District Attorney's Office trained its young

prosecutors on how to exclude prospective jurors of color." Does the "culture of discrimination" you allege in the 2009 amicus brief refer to "the historical conduct of the Philadelphia County District Attorney's Office" that LDF cited in the 2006 amicus brief?

ANSWER: I did not sign the 2009 amicus brief as counsel of record, though I was one of the listed counsel on the brief. Moreover, as I mentioned above, I did not participate in the drafting or filing of LDF's 2006 amicus brief. It appears that there is some overlap in the *Batson*-related evidence identified in the two briefs.

9. On January 28, 2011, your colleague Christina A. Swarns, who appears with you on two LDF Supreme Court briefs on which you are counsel of record, stated at a rally for Mr. Abu-Jamal that "there is no question in the mind of anyone at the Legal Defense Fund that the justice system has completely and utterly failed Mumia Abu-Jamal and in our view, that has everything to do with race and that is why the legal defense fund is in this case."

   a. Does Ms. Swarns's claim that the "justice system...completely and utterly failed Mumia Abu-Jamal in [LDF's] view" refer to LDF's prior allegations of a culture of racial discrimination in the Philadelphia County District Attorney's Office?

   ANSWER: Ms. Swarns was counsel of record on the aforementioned briefs; I was not. I am not familiar with Ms. Swarns' comments and am not aware of the context in which they were offered. I do not know what Ms. Swarns had in mind when she made the comment.

10. Explain why, during your tenure as the LDF's Director of Litigation in 2011, you decided to cease advocating on behalf of Mumia Abu-Jamal as amicus curiae and became his lead counsel in Supreme Court litigation, *see, e.g., Wetzel v. Abu-Jamal*, and subsequent litigation.

    ANSWER: Mr. John Payton, LDF's late President and Director-Counsel, made the decision that LDF would represent Mr. Abu-Jamal. My understanding is that he made the decision based upon an assessment of the constitutional claim.

11. Have you made any public statements—with the exception of statements made in a court or in court filings—regarding Mr. Abu-Jamal? Please provide a transcript or detailed record of any such statement and specify the date on which the statement was made.

    ANSWER: I do not believe I have made any such statements.

12. List all LDF court filings related to Mumia Abu-Jamal with which you had any involvement, whether in a supervisory, authorial, editorial, or other role. Please provide a copy of each filing.

ANSWER: Listed below are the only briefs I have identified in which I had any involvement.

U.S. Supreme Court

Wetzel v. Mumia Abu-Jamal, Brief in Opposition On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit: September 9, 2011

Mumia Abu-Jamal v. Beard, Brief of Amicus Curiae NAACP Legal Defense and Educational Fund, Inc. In Support of Petitioner: March 5, 2009

U.S. Court of Appeals for the Third Circuit

Mumia Abu-Jamal v. Horn, Brief of Amicus Curiae NAACP Legal Defense and Educational Fund, Inc. In Support of Appellee/Cross-Appellant's Petition for Rehearing and Suggestion of Rehearing En Banc: June 27, 2008

13. Under what circumstances do you consider racial preferences to be unconstitutional?

ANSWER: As a general matter, the Supreme Court has applied strict scrutiny to governmental decisions that provide a benefit to individuals based on race. Under this standard, decision-making that does not serve a compelling governmental interest and/or is not narrowly tailored is unconstitutional.

14. Under what circumstances do racial preferences violate Title VII of the Civil Rights Act?

ANSWER: One recent instance in which the Supreme Court found that the actions of an employer violated Title VII was in *Ricci v. DeStefano* where the Court explained: "Nor do we question an employer's affirmative efforts to ensure that all groups have a fair opportunity to apply for promotions and to participate in the process by which promotions will be made. But once that process has been established and employers have made clear their selection criteria, they may not then invalidate the test results, thus upsetting an employee's legitimate expectation not to be judged on the basis of race. Doing so, absent a strong basis in evidence of an impermissible disparate impact, amounts to the sort of racial preference that Congress has disclaimed, [under Title VII], and is antithetical to the notion of a workplace where individuals are guaranteed equal opportunity regardless of race." 557 U.S. 557, 585 (2009).

15. Should the college admissions process consider both racial and economic status when determining whether to give applicants special consideration?

ANSWER: Within the limits established by the Supreme Court and any applicable state and federal laws, it is for colleges to determine the best approach to admissions. In *Grutter v. Bollinger,* 539 U.S. 306 (2003), the Supreme Court determined that the educational benefits of diversity constitute a compelling governmental interest sufficient to justify a narrowly tailored race conscious college admissions policy. The Court left this principle intact in *Fisher v. University of Texas,* 133 S.Ct. 2311 (2013). Accordingly,

within established limits, colleges may consider race but are not required to do so under the Supreme Court's 14th Amendment jurisprudence. Colleges are free to consider economic status in admissions decisions when that is rationally related to a legitimate government purpose.

16. Do you believe ethnic profiling in the context of the War on Terrorism is unconstitutional?

ANSWER: We must do everything possible to ensure our nation's security consistent with the Constitution and our values. I believe that stereotyping is unfair and counterproductive, fostering distrust between law enforcement and the communities with whom we need to build strong relationships in the fight against terrorism. I understand that the Department is reviewing its racial profiling guidance and if confirmed, I look forward to being a part of that process.

17. Will you defend the use of racial preferences in the federal government's contracting and employment policies?

ANSWER: In defending the government's policies, I will apply the Constitution and applicable precedent, including but not limited to *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).

18. In *Rothe Development Corp. v. Department of Defense*, the Federal Circuit struck down the Department of Defense's racially preferential contracting program. Will you urge the federal government to end the use of preferences based on race, ethnicity, and sex in its contracting practices?

ANSWER: *Rothe Dev. Corp. v. Dep't of Def.*, 545 F.3d 1023 (Fed. Cir. 2008), concerned a provision of 10 U.S.C. § 2323 (known as Section 1207), which permitted the Department of Defense, in certain circumstances, give an award preference of up to 10% to small businesses owned and controlled by "socially and economically disadvantaged individuals." At the time of the decision, the price preference program had already been suspended. The Federal Circuit held Section 1207 unconstitutional on its face, finding that "Congress did not have before it, at the time of the 2006 reenactment of Section 1207, a 'strong basis in evidence' for the proposition that DOD was a passive participant in racial discrimination in relevant markets across the country and that therefore race-conscious remedial measures were necessary." *Id.* at 1049 (internal citation omitted). But the Federal Circuit "stress[ed] that [its] holding is grounded in the particular items of evidence offered by DOD and relied on by the district court in this case." *Id.* And it never reached the question whether the program, which had been "amended over time, [with] amendments [that] have tended to limit, rather than broaden, the application of preferences based on racial classifications," *id.*, was narrowly tailored. Accordingly, I do not read *Rothe* as a blanket prohibition on such programs if there is sufficient, methodologically valid evidence set before Congress. Of course, if confirmed, I would follow all binding court precedent.

19. Is it constitutional for a university to have racially exclusive internships, scholarships, or summer programs?

ANSWER: The Supreme Court has made clear that strict scrutiny applies to governmental decisions that select applicants based on race. If confirmed, I will apply the applicable law to the facts of any such case.

20. Do you agree with your predecessors' decision to challenge racially exclusive fellowship programs at Southern Illinois University?

ANSWER: I am not familiar with the details of this litigation. The Supreme Court has made clear, however, that strict scrutiny applies to governmental decisions that select applicants based on race. If confirmed, I will apply the applicable law to the facts of any such case.

21. You have been critical of Supreme Court decisions regarding race issues, saying that the Court has "in recent years drastically undermined efforts to redeem the Fourteenth Amendment's promise of equal citizenship for all." If confirmed, what will be your priorities in regard to righting these, in your view, wrongly decided cases?

ANSWER: The Assistant Attorney General for Civil Rights enforces the Constitution and the law in a manner that is consistent with Supreme Court holdings. The Supreme Court's rulings on matters of constitutional interpretation are binding. Accordingly, if confirmed, I will enforce the law as interpreted by the Court and give effect to its holdings.

22. Will you embrace the theory of disparate impact in litigation initiated by the Civil Rights Division?

ANSWER: Certain federal laws enforced by the Civil Rights Division, as passed by Congress and/or as interpreted by courts, employ a disparate impact framework. If confirmed, I would enforce applicable law.

23. If a case is appealed to the Supreme Court questioning the use of disparate-impact theory will you allow that case to be heard or will you work to settle the case to avoid Supreme Court review of the theory?

ANSWER: In my experience, settlements are explored and achieved on a case-by-case basis following a careful evaluation of the facts, law, claims and an overall assessment of litigation risk. If confirmed as Assistant Attorney General, I would act in the best interests of the United States.

24. The Supreme Court has warned that the use of disparate-impact theory in litigation can have two negative consequences: (1) forcing employers and others to adopt surreptitious quotas to avoid being sued; and (2) forcing employers to abandon other legitimate selection criteria. Do you agree with this warning?

ANSWER: The law, founded in the Supreme Court's decision in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), provides that the disparate impact framework protects those policies and practices that are job-related and consistent with business necessity, to achieve non-discriminatory objectives, unless the challenger shows that other policies with a lesser adverse effect would also serve the employer's legitimate interests. If confirmed, I will follow applicable law.

25. In *Northwest Austin Municipal Utility District No. 1 v. Holder*, you argued on behalf of the intervenors-appellees that the District Court's decision that Section 5 of the Voting Rights Act precluded the utility district from receiving a Section 4 bailout because the district was not a "political subdivision." The Supreme Court unanimously reversed the District Court's decision and held that the utility district was a political subdivision and therefore eligible for bailout. Please answer each subpart individually.

    a. Do you still agree with the arguments you made in this case?

    ANSWER: The Supreme Court did not adopt my client's argument with respect to the bailout eligibility issue in that case and I accept the Court's interpretation as binding.

    b. What steps will you take, if confirmed, at the Department of Justice to further the arguments you made in this case?

    ANSWER: In *Shelby County v. Holder*, the Supreme Court struck down the Section 4(b) geographic coverage provision of the Voting Rights Act as unconstitutional as a basis for Section 5 preclearance. I will follow the Supreme Court's holding in *Shelby County*.

26. In *Shelby County v. Holder*, you argued on behalf of the respondent-intervenors that the Court should uphold Sections 4(b) and 5 of the Voting Rights Act. You argued that Section 5 "remains essential to safeguard our democracy from racial discrimination;" that Section 2 litigation is an "inadequate response to the persistent and adaptive problem of racial discrimination in voting in certain parts of our country;" and that "racial discrimination in voting remains concentrated in the jurisdictions that have historically been covered by Section 5." The Supreme Court struck down Section 4(b). Please answer each subpart individually.

    a. Do you still agree with the arguments you made in this case?

    ANSWER: The congressional record in support of the 2006 reauthorization of Section 5 of the Voting Rights Act supports the above quotes; in *Shelby County v. Holder*, the Supreme Court struck down the Section 4(b) geographic coverage provision of the Voting Rights Act as unconstitutional as a basis for Section 5 preclearance. I will follow the Supreme Court's holding in *Shelby County*.

b. Do you accept the Supreme Court's decision as final?

ANSWER: Yes.

c. What steps will you take, if confirmed, to further the arguments you made in this case?

ANSWER: If confirmed, I will follow the Supreme Court's holding in *Shelby County.*

d. In the brief, you argued that "racial discrimination in voting poses a unique threat to our democracy." What steps will you take, if confirmed, to stem this "unique threat?"

ANSWER: If confirmed, I will enforce the laws within the Civil Rights Division's authority that protect voters against discrimination.

e. In light of the Supreme Court's decision in *Shelby County v. Holder,* how will you use Section 2 litigation to protect rights of voters?

ANSWER: If confirmed, I will evaluate the facts, apply the law, and file Section 2 cases where appropriate.

27. The Pew Center on the States recently found that more than 1.8 million dead people are registered to vote, that 24 million registrations are either invalid or inaccurate, and that approximately 2.75 million people have registrations in more than one state. The report went on to say that "our democratic process requires an effective system for maintaining accurate voter registration information. Voter registration lists are used to assign precincts, send sample ballots, provide polling place information, identify and verify voters at polling places, and determine how resources, such as paper ballots and voting machines, are deployed on Election Day. However, these systems are plagued with errors and inefficiencies that waste taxpayer dollars, undermine voter confidence, and fuel partisan disputes over the integrity of our elections." The Civil Rights Division is responsible for the federal law that requires the states to maintain clean voter rolls. Please answer each subpart individually.

a. Would you agree with the Pew Foundation on the States that inaccurate state voter lists where dead voters, ineligible voters, and voters who remain on the voting rolls of multiple states is a national problem?

ANSWER: I am not familiar with the referenced Pew study. I agree that accurate voter registration lists are important for the proper functioning of elections. Registrations can be invalid for many different reasons, including death of a voter, residence relocation, marital name change, among others, as well as for some reasons that are technical or attributed to government error. Modernization of election systems could improve the accuracy of registration lists.

b. As the Civil Rights Division is responsible for enforcing the federal voting law in this area, what do you intend to do to resolve this national problem if you were to be confirmed by the Senate?

ANSWER: My understanding is that many different reasons contribute to voter registration list inaccuracy and, while the Civil Rights Division can take steps to address aspects of the problem, including federal list maintenance law enforcement, as I described above, the issue is multidimensional and manifests itself differently in different states. If confirmed, I will enforce applicable laws in the jurisdiction of the Civil Rights Division.

c. Will you fully enforce Section 8 of the NVRA that requires states to conduct list maintenance and properly remove deceased and other ineligible voters from state voter rolls if confirmed by the Senate?

ANSWER: If confirmed, I would enforce applicable provisions of the NVRA, including its list maintenance provisions, consistent with a careful assessment of the facts and the law.

28. In the Federal Voting Assistance Program's 18th Report to the President and Congress a few years ago, the absentee ballot return rate for active duty military overseas was only 67% as compared to a 91% success rate for domestic absentee ballot voters. Studies show that participation rates of overseas military voters is much lower than civilian voters due to difficulties they encounter in voting from remote areas. Military voters are more likely to be disenfranchised that any other group of voters and the Report noted that the majority of voting failure was the *untimely ballot transmission* when state and counties do not send ballots to voters on time, required 45 days before any federal election. The Civil Rights Division is responsible for the enforcement of military voting laws, particularly the MOVE Act which governs this area. Please answer each subpart individually.

a. Will the enforcement of the MOVE Act be a priority for you, if you are confirmed?

ANSWER: I respect the primacy of the right to vote in the United States and support efforts to expand voter access, including for our servicemembers who make substantial sacrifices for the nation. I understand that MOVE Act enforcement has been a priority of the Civil Rights Division and, if confirmed, I would continue those efforts.

b. There has been some criticism that in the past the Voting Rights Section has waited too long before bringing suit to protect military members. How do you plan to closely monitor counties and quickly enforce the law to protect voters before the election, not after the election?

ANSWER: I understand that enforcing the Military and Overseas Voter Empowerment Act has been a priority of the Division, and if confirmed, I would continue those efforts to protect before the election servicemembers' ability to vote. I also understand that Senators Cornyn and Schumer have introduced a bill—the Safeguarding Elections for our Nation's Troops through Reforms and Improvements Act—that includes some provisions proposed by the Administration to strengthen MOVE Act enforcement, including a requirement that states report in advance of the election on the status of ballot transmission to military and overseas voters. Such a requirement would enhance the Division's ability to protect servicemembers' ability to vote, and I commend them for their work on this important issue.

29. Do you believe that legally requiring voters to have identification is the equivalent of a poll tax?

ANSWER: The legality of voting requirements must be evaluated on a case-by-case basis, looking at particular features of the state law in question, the particular allegations presented, and the case law that has developed on the question.

30. Do you believe that individuals who have broken this nation's laws by entering the country illegally should be allowed to gain citizenship?

ANSWER: If confirmed, I would enforce the laws delegated to the Division. I understand that the Senate has passed a bipartisan measure that provides what is known as a pathway to earned citizenship, and that the Administration supports the bill.

31. Last July, Department of Housing and Urban Development Secretary Shaun Donovan unveiled a new rule to allow the federal government to track so-called "diversity" in American neighborhoods and to create policies to change the makeup of neighborhoods it deems to be discriminatory. The policy is called, "Affirmatively Furthering Fair Housing," and will require HUD to gather data on segregation and discrimination in every single neighborhood and to try to remedy it. What will the Civil Rights Division's role be in enforcing that policy?

ANSWER: It is my understanding that HUD is still working on a final rule. The proposed rule does not alter DOJ's current authority to enforce the Fair Housing Act, the Housing and Community Development Act, or Title VI.

32. In your opinion, when is it appropriate to decline to defend the constitutionality of a federal statute?

ANSWER: The Department of Justice has a longstanding practice of defending federal statutes so long as reasonable arguments can be made in support of their constitutionality, If confirmed, I will discharge my responsibility to defend federal statutes in a manner that is consistent with the law and the Department's established practice.

33. Under what circumstances do you believe the death penalty to be constitutional?

ANSWER: Various state and federal statutes establish capital crimes. The Supreme Court has determined that capital punishment is constitutional. The Supreme Court also has determined in various rulings that a death sentence cannot be enforced if it was imposed in violation of certain substantive or procedural protections afforded by the Constitution.

34. In 2012, following issuance of guidelines by the EEOC that instructed employers to consider only relevant details related to a potential employee's criminal history, you stated that "[n]o one should be penalized for the rest of their life for mistakes that they made in the past." Please answer each subpart individually.

    a. Do you oppose an employer's ability to perform criminal background checks on potential employees?

    ANSWER: I would not oppose the ability for employers to perform reasonable criminal background checks on potential employees. If employers do perform background checks, the EEOC has released guidance on the subject. As I understand it, the guidance does not embrace a categorical bar on using information gleaned from such employment screens but rather requires some reasonable inquiry into the nexus between the conviction and the job responsibilities involved in the particular position.

    b. Will you, if confirmed, take action to abridge or eliminate an employer's ability to perform criminal background checks on potential employees?

    ANSWER: The EEOC has released guidance on the subject of employer background checks. As I read it, the guidance does not embrace a categorical bar on using information gleaned from such employment screens but rather requires some reasonable inquiry into the nexus between the conviction and the job responsibilities involved in the particular position.

35. You did not provide many notes from the speeches and talks you gave during this past year. Why did you not save these?

ANSWER: I did not provide notes for all of my speeches and talks because I often do not speak from notes or make any formal notations prior to my speaking engagements.

36. To your knowledge, were you considered for a position on the D.C. Circuit?

    a. If so, why did your nomination not proceed?

ANSWER: Yes, I was considered for a nomination to the D.C. Circuit, but I withdrew myself from consideration.

37. Do you agree with the following statement, the "minimum coverage provision [of the ACA] enhances the ability of individuals to participate in the economic, social, and civil life of our nation, thereby advancing equal opportunity and personal liberty?"

    a. If so, how will you, if confirmed, work as head of the Civil Rights Division to ensure that it advances equal opportunity and personal liberty?

       ANSWER: Yes, I agree with that statement. The Supreme Court upheld the ACA's minimum coverage provision in *Dept. of Health and Human Services v. Fla.* If the Civil Rights Division has a role with respect to that provision, if confirmed, I will enforce it.

38. While at LDF, you contributed to a brief in the case of the *District of Columbia v. Heller*. Do you still agree with the following statements? Please answer each subpart individually.

    a. "Indeed, the text of the Second Amendment itself does not provide for [a right for an individual to possess or use firearms outside the context of a lawfully organized militia], and for the Court to recognized an individual right to "keep and bear Arms" would represent a radical departure from the consistent and long-established understanding of the Second Amendment."

       ANSWER: Prior to its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court had previously interpreted the Second Amendment in *United States v. Miller*, 307 U.S. 174, (1939), in which the Court observed that the Second Amendment's "purpose [was] to assure the continuation and render possible the effectiveness of [organized militias]," and that the "guarantee of the Second Amendment . . . must be interpreted and applied with that end in view." 307 U.S. at 178. In *Heller*, however, the Court stated that the Second Amendment protects "an individual right to possess and carry weapons in case of confrontation." *Id.* at 592. The Court's holding in *Heller* is binding.

    b. "Although these statements do not carry the weight of precedent, they illustrate how radical the position taken by the D.C. Circuit truly is. A robust Second Amendment right to 'keep and bear Arms' for purely private purposes has never been taken seriously by any majority of the members of the Court. Nor has the court ever invalidated a restriction on firearms under the Second Amendment. To do so know would represent a radical and unwarranted departure from the Court's Second Amendment jurisprudence."

       ANSWER: After the Supreme Court's opinion in *District of Columbia v. Heller*, 554 U.S. 570 (2008), this statement is no longer accurate.

    c. "A recognition by this Court of an individual right to 'keep and bear Arms' for purely private purposes would represent more than a mere doctrinal shift; as a

practical matter, it would appear to require a massive change in the way firearms have been regulated for centuries."

ANSWER: Any time the Supreme Court strikes down a law as an unconstitutional infringement upon individual rights, it invariably affects what governments can and cannot do. The *Heller* opinion, however, expressly acknowledges that some degree of regulation is permissible. 554 U.S. at 626. Thus, the full implications of *Heller* and *McDonald* have yet to be determined, as courts throughout the country continue to grapple with these complex constitutional questions, and I have not had the opportunity to carefully study the question.

39. Do you believe that defendants under age 18 should ever be subjected to adult punishments in the criminal justice system? If you believe adult treatment for juvenile offenders is appropriate, please specify under what circumstances.

ANSWER: Many criminal justice statutes set forth considerations including, but not limited to, the nature of the offense at issue and a juvenile's prior record in order to determine whether adult treatment of a particular juvenile offender is proper. To the extent adult treatment of juveniles falls within the boundaries of the Constitution, as interpreted by the United States Supreme Court, such treatment is an available penalogical policy decision for legislators who grapple with the most effective approaches to sentencing and deterrence.

40. In an amicus brief submitted by the LDF in *Miller v. Alabama*, you allege that "racial overtones and stereotyping tainted the widespread enactment of laws that exposed youth to life without parole," and that such laws had a disproportionate impact on African-American and Latino youth. Please answer each subpart individually.

    a. Do you believe that life-without-parole sentencing laws and juvenile-court reforms enacted in the 1980s and 90s were designed with the intent, implicit or otherwise, to incarcerate larger numbers of youth of color?

    ANSWER: LDF's amicus brief in *Miller v. Alabama* explained the way in which exaggerations shaped perceptions that young people of color are criminals and affected the broader policy debate. The ensuing debates often culminated in more punitive measures for all youthful offenders, including life without parole.

    b. If yes, how do you account for the advocacy of such laws by prominent African-American political leaders, like former New York City Mayor David Dinkins and Rep. Carol Moseley Braun?

    ANSWER: Many leading voices in that period made public comments that embraced what had become a dominant narrative in the context of juvenile justice with respect to the scope of the problem associated with youthful offenders.

41. You contributed to an amicus brief in *Miller v. Alabama*. In this brief you argued that racism has stymied the proper evaluation with respect to ethnic minorities charged with criminal offenses. Do you still agree with the following statement from the brief: "Because it is clear that race critically and inappropriately informs the assessment of blameworthiness in the context of juvenile life without parole sentencing, such sentences are unconstitutional. ...The perceived negative personality traits of African-American and other youth of color led officials to assess them as more culpable and dangerous than white youth and, therefore, to recommend more severe sentences for youth of color....In light of the preceding arguments, the possibility that race may play any role in the administration of justice is especially disturbing in the context of life without parole sentences for youth....At bottom, the gross racial disparities that pervade life without parole sentencing for children demonstrate that negative perceptions of youth of color have stymied the proper evaluation of their culpability."

    a. Do you believe this is an issue that is pervasive within the justice system in this country?

       ANSWER: Unfortunately, race continues to have an impact on sentencing outcomes and the treatment of youth in the criminal justice system. Recent data detailing disparities in student discipline for example, released by the U.S. Department of Justice and U.S. Department of Education on the topic of nondiscriminatory administration of school discipline, is instructive guidance. These data show that youth of color—particularly African-American and Latino youth—are more often referred to law enforcement and disciplined at higher rates than their white counterparts. Moreover, these disparities are not explained by the frequency or seriousness of misbehavior by youth of color.

    b. If so, what role will the Civil Rights Division play in remedying this?

       ANSWER: If confirmed, I will enforce the law, within its jurisdiction, to ensure that the justice system is administered in a fair and appropriate manner.

42. In the LDF amicus brief you submitted in *Miller v. Alabama*, your claim that "it is clear that race critically and inappropriately influences the assessment of blameworthiness in the context of juvenile life without parole sentencing" is supported primarily by non-empirical social science – the brief even suggests that life-without-parole sentencing laws "appeal to cultural archetypes in the collective unconscious about the 'alien other' who poses a fearful and menacing threat to society." To what extent will your decisionmaking as Assistant Attorney General be guided by social-science concepts such as "cultural archetypes" and "the collective unconscious"?

    ANSWER: If confirmed, my decision-making would be guided by the law and the facts.

43. Given your argument in the LDF's *Miller* amicus brief that "[r]acial disparities in juvenile life without parole sentences are not surprising given that these disparities exist at all levels of children's contact with the criminal justice system," what, if any, steps do

you plan to take as Assistant Attorney General to ameliorate racial disparities in federal sentencing?

ANSWER: Although I am not currently at the Department of Justice, I understand that the Department is reviewing sentencing as a Department-wide issue. To the extent that the Assistant Attorney General for Civil Rights plays a role in such a process, if confirmed, I look forward to contributing to the extent appropriate.

44. In the context of juvenile defendants, you wrote in an amicus brief the LDF submitted in *Graham v. Florida* that "dynamics of race, class and the nature of indigent defense" may "disadvantage" a defendant's "relationship with counsel and contribute to a significant risk of an unreliable sentencing outcome that fails to reflect actual culpability." Please answer each subpart individually.

    a. Do you believe this assertion to be true in the context of adult defendants?

    ANSWER: I believe that the Supreme Court cited LDF's amicus brief favorably for the proposition that the characteristics of youth can hamper the attorney-client relationship. Those dynamics can undermine the nature of a defendant's relationship with defense counsel.

    b. If so, what if any measures do you intend to undertake as Assistant Attorney General to lessen the disadvantages you previously argued that defendants who belong to disadvantaged groups face?

    ANSWER: Although I am not currently at the Department of Justice, I understand that the Department is reviewing sentencing as a Department-wide issue. I also understand that the Office of Justice Programs recently provided significant grant-based funding to improve the delivery of indigent defense services across the country. To the extent that the Assistant Attorney General for Civil Rights plays a role in these efforts, if confirmed, I look forward to contributing to the extent appropriate.

45. In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, the Supreme Court stated that the First Amendment prohibits governmental "interference with an internal church decision that affects the faith and mission of the church itself," and unanimously rejected the argument advanced in an LDF amicus brief that you signed that application of anti-retaliation provisions of civil rights laws to parochial school teachers comports with the First Amendment. Given the Supreme Court's unanimous rejection of LDF's position in *Hosanna-Tabor*, what provisions of civil-rights laws, in your view, may employees who qualify under the "ministerial exception" exercise without violating the First Amendment rights of their employer?

ANSWER: In its amicus brief, LDF argued against a categorical exception to federal anti-discrimination laws based on the central importance of these laws to protecting

opportunities for all Americans. As I understand the decision, the Court in *Hosanna-Tabor* did not categorically preclude the application of employment discrimination laws to religious institutions—and, in this respect, the decision is consistent with LDF's position. Rather, it said that federal discrimination laws cannot be applied to regulate a religious institution's employment of a minister. Under the Court's ruling, once such an institution has shown that a claimant is a "minister," a lawsuit for employment discrimination would be barred. In this way, the Court safeguards the important constitutional rights implicated in the case.

46. You contributed to an amicus brief in *Hosanna Tabor Evangelical Lutheran Church & School v. EEOC*. In this brief, you argue that "[a]ny burden on parochial schools' First Amendment interests in retaliating against their teachers is more than outweighed by the countervailing needs of law enforcement." The Supreme Court ruled 9-0 against your arguments. Please answer each subpart individually.

    a. Do you still believe this statement, and the rest of the arguments you made in the brief, are good and valid legal arguments?

        ANSWER: In its amicus brief, LDF argued against a categorical exception to federal anti-discrimination law based on the central importance of these laws to protecting opportunities for all Americans. As I understand the decision, the Court in *Hosanna-Tabor* did not categorically preclude the application of employment discrimination laws to religious institutions, and, in this respect, the decision is consistent with LDF's position. Rather, it said that discrimination laws cannot be applied to regulate a religious institutions employment of a minister. Under the Court's ruling, once such an institution has shown that a claimant is a "minister," a lawsuit for employment discrimination would be barred. In this way, the Court safeguards the important constitutional rights implicated in the case.

    b. Do you still believe that "[a]pplying a ministerial exception to parochial school teachers would be devastating to states' undeniably compelling interest in protecting children from abuse?"

        ANSWER: I recognize the balance that the Supreme Court struck in *Hosanna-Tabor* to guard constitutionally protected rights in the context of civil rights related claims. If confirmed to lead the Civil Rights Division, I would enforce the laws enacted by Congress as interpreted by the U.S. Supreme Court.

    c. Do you still agree with the following statement, "[e]ven if civil rights laws pervasively imposed significant burdens on religious practice that would not justify a categorical exemption for parochial schools?"

        ANSWER: I recognize the balance that the Supreme Court struck in *Hosanna-Tabor* to guard constitutionally protected rights in the context of civil rights

related claims. If confirmed to lead the Civil Rights Division, I would enforce the law as set forth by the U.S. Supreme Court.

47. In your view, does *Hosanna-Tabor*'s holding prevent an individual (1) who is employed by a religious institution; (2) and falls within the "ministerial exception," from suing under the anti-discrimination and anti-retaliation provisions of civil-rights statutes like Title VII or the Rehabilitation Act? Please answer each subpart individually.

    a. Would a suit by such an individual be permitted under the FMLA or the Equal Pay Act?

    ANSWER: I recognize the balance that the Supreme Court struck in Hosanna-Tabor to guard constitutionally protected rights in the context of civil rights claims. If confirmed, I would apply the First Amendment principles articulated by the Court in evaluating claims under the FMLA and the Equal Pay Act.

    b. In your view, does *Hosanna-Tabor*'s holding prevent such an individual from suing his or her employer alleging discrimination based on the individual's sexual orientation or gender identity?

    ANSWER: I recognize the balance that the Supreme Court struck in Hosanna-Tabor to guard constitutionally protected rights in the context of civil rights claims. If confirmed, I would apply the First Amendment principles articulated by the Court in evaluating claims alleging discrimination based on an individual's sexual orientation or gender identity.

48. Please identify what, if any, civil-rights provisions you consider to be neutral laws of general applicability—*see Employment Division v. Smith*—that may still be lawfully asserted against religious organizations by employees who fall with the ministerial exception, notwithstanding the Court's holding in *Hosanna-Tabor*.

    ANSWER: I am not currently at the Department of Justice nor have I had the opportunity to specifically study the full scope of each law that the Civil Rights Division enforces.

49. Following the Supreme Court's decision in *Ricci v. DeStefano*, do you believe that employers which have engaged in race-conscious employment actions or other conduct covered by Title VII can evade disparate-treatment liability based merely on a good-faith belief that the employment action may otherwise have caused racial disparities in jobs that have historically excluded racial minorities?

    ANSWER: On the facts presented in *Ricci v. DeStefano*, the Supreme Court held that there must be a strong basis in evidence of disparate impact liability before an employer could disregard the results of a civil service exam based on the racial makeup of the relevant pool of employees.

50. In a 2010 amicus brief LDF filed in *Wal-Mart v. Dukes*, you wrote that "[c]ivil rights cases are paradigmatic cases for Rule 23(b)(2) certification." Please answer each subpart individually.

    a. Given the Supreme Court's holding in that case that claims for monetary relief sought by putative class members cannot be certified under Rule 23(b)(2) where monetary relief is not incidental to injunctive or declaratory relief, please explain whether you believe that civil-rights lawsuits in which putative class members seek money damages may still be brought pursuant to Rule 23(b)(2).

       ANSWER: In *Dukes v. Walmart*, the Court stated that claims that would require "individualized assessments" for specific plaintiffs are not appropriate for (b)(2) certification, but instead must be litigated under (b)(3).

    b. If so, what circumstances in your view would permit a (b)(2) class in which members seek monetary relief?

       ANSWER: The Court in *Dukes v. Walmart* did not expressly decide this issue and I have not studied this issue.

    c. Further, do you consider monetary relief in the form of backpay to be declaratory or injunctive relief as those terms are used in Rule 23(b)(2)?

       ANSWER: Back pay is neither declaratory nor injunctive relief.

    d. Do you still maintain, as you did in the LDF brief, that "[r]estricting the reach of 23(b)(2) class actions—by, inter alia, limiting their certification to instances where monetary relief is not requested—contravenes the structure and purpose of disparate impact theory, as first conceived by [the Supreme Court]?"

       ANSWER: As argued in the amicus brief on behalf of LDF and other parties, use of Rule 23(b)(2) class actions to bring disparate impact claims has been essential to efforts at combatting institutional discrimination. If confirmed, I will ensure that the Division's enforcement focuses on those tools to combat actionable discrimination that are within the Civil Rights Division's jurisdiction.

51. Following the Supreme Court's decision in *Berghuis v. Smith*, please explain your view on the circumstances under which various methods of proof of systematic exclusion—absolute disparity, comparative disparity, and standard deviation—are appropriate tools in establishing fair-cross-section claims. Please answer each subpart individually.

    ANSWER: The Supreme Court, in *Berghuis v. Smith*, declined to adopt a particular method of proof of systematic exclusion, but instead noted that all three methods suffered from shortcomings. 559 U.S. 314, 329 (2010). Given the Supreme Court's decision not to adopt a specific statistical test, it may be appropriate to consider the results of all three

methods in each case to determine whether a group is fairly and reasonably represented in jury venires.

a. In cases involving an allegedly excluded minority group that comprises less than 10 percent of the total population, please explain the circumstances under which you would employ a comparative-disparity theory and the circumstances under which you would employ a standard-deviation theory.

ANSWER: The current state of the law, as explained by the Supreme Court in *Berghuis v. Smith*, is such that "'no court has accepted a standard deviation analysis alone as determinative in Sixth Amendment'" fair cross section challenges. 559 U.S. at 330 (quoting *United States v. Rioux*, 97 F.3d 648, 655 (2d. Cir. 1996). Thus, given the Supreme Court's declaration, it would seem advisable to mount multiple theories to resolve such cases.

52. In a 2008 amicus brief which you signed, LDF (and others) argued that Section 2 of the Voting Rights Act permits minority voters to satisfy the first *Gingles* precondition—i.e., whether a minority group "is sufficiently large and geographically compact to constitute a majority in a single-member district"—even though the minority group does not comprise a numerical majority of voters in a given district. The Supreme Court rejected this so-called "functional majority test" in its plurality opinion in *Bartlett v. Stickland.* In light of that holding, please explain under what circumstances, in your view, a minority group can satisfy Section 2's majority-minority requirement if that group does not comprise a numerical majority in the voting district.

ANSWER: Under *Bartlett v. Stickland,* my understanding is that a single minority group below 50% cannot satisfy the first *Gingles* prerequisite.

53. In its plurality opinion in *Crawford v. Marion County Election Board*, the Supreme Court rejected a challenge that you, as LDF counsel of record, raised against the Indiana Voter I.D. law, and held that the Indiana law was "unquestionably relevant to the State's interest in protecting the integrity and reliability of the electoral process." The Court also held that the law—which allowed potential voters to obtain free identification cards by going to their local DMV office with appropriate documents—did not impose a substantial burden on an individual's right to vote, and that whatever additional burden the requirement may put on certain groups, i.e., the elderly, was mitigated by the ability of the voter to case a provisional ballot.

a. Please specify the circumstances under which you believe that a state law that imposes a voter I.D. requirement and provides a procedure for voters to obtain free, state-issued identification, would impose a substantial burden on voters or infringe the right to vote.

ANSWER: LDF did not raise the challenge in *Crawford v. Marion County Election Board*, but rather participated as amicus curiae. Under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, courts ask whether "based on the totality of

circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by [the Act] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Thus, it is difficult to provide categorical guidance regarding the content of a particular law without examining how the law would operate in a particular jurisdiction. Accordingly, I am not in a position to offer specific guidance on this point.

54. What would be the considerations that you would apply if confirmed in deciding whether to challenge under the Voting Rights Act a state's enactment of a particular law requiring that voters display photo identification before casting their vote?

ANSWER: Any such decision would require an assessment of the facts and context of the state's particular law and its expected impact on voters.

55. Can you give guidance to any state contemplating enactment of such a law with respect to its content so that it could be certain that the Civil Rights Division would not bring a challenge? Or is it the case that the Civil Rights Division would challenge any such law under the Voting Rights Act?

ANSWER: I believe that the Civil Rights Division has precleared voter identification laws in the past. Under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, courts ask whether "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by [the Act] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Thus, it is difficult to provide categorical guidance regarding the content of a particular law without examining how the law would operate in a particular jurisdiction.

56. In my state of Iowa, state officials have learned that not only are non-citizens on the voter rolls, but that a number of non-citizens have voted. The state has brought a number of successful prosecutions for voter fraud. Do you agree that voter fraud exists, that states have an important interest in preventing such fraud, and that a legitimate voter's fundamental right to vote is diluted equally if an ineligible person is allowed to vote as if an eligible voter is denied the right to vote?

ANSWER: Voting fraud occurs in some circumstances and there is no foolproof approach to combatting voting fraud. It is important to protect the legitimacy of the voting process so that eligible voters have their votes counted and do not have their votes diluted. Voter fraud protections are most effective when appropriately calibrated to the nature and scale of the problem.

The Honorable Jeff Flake
Written Questions for Debo Adegbile
Nominee, Assistant Attorney General Civil Rights Division
Senate Judiciary Committee
January 15, 2014

1. You signed a brief on behalf of the NAACP in *Hosanna-Tabor v. Equal Employment Opportunity Commission*, 132 S. Ct. 694 (2012), in support of the teacher dismissed by her employer, Hosanna-Tabor. The Court, in a unanimous opinion, upheld the ministerial exception. The unanimous opinion stated, "the Establishment Clause prevents the Government from appointing ministers, and the Free Exercise Clause prevents it from interfering with the freedom of religious groups to select their own."

   a. Do you personally believe the position you took in *Hosanna-Tabor* was correct at the time you filed the brief?

      ANSWER: In its amicus brief, LDF argued against a categorical exception to federal anti-discrimination law based on the central importance of these laws to protecting opportunities for all Americans. As I understand the decision, the Court in *Hosanna-Tabor* did not categorically preclude the application of employment discrimination laws to houses of worship, and, in this respect, the decision is consistent with LDF's position. Rather, it said that federal discrimination laws cannot be applied to regulate a religious institution's employment of a minister. Under the Court's ruling, once such an institution has shown that a claimant is a "minister," a lawsuit for employment discrimination would be barred. In this way, the opinion in this case safeguards the important constitutional rights implicated in the case.

   b. Notwithstanding the Supreme Court's opinion to the contrary, do you still believe your brief is a correct analysis of the Constitution and precedent?

      ANSWER: I recognize the balance that the Supreme Court struck in *Hosanna-Tabor* to guard constitutionally protected rights in the context of civil rights related claims. If confirmed to lead the Civil Rights Division, I would enforce the law as set forth by the Supreme Court.

   c. In your brief, you stated: "Even if civil rights laws pervasively imposed significant burdens on religious practice, that would not justify a categorical exemption for parochial schools." How do you square this statement asserting the federal government may impose "significant burdens on religious practice," with the First Amendment protections, stating: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ..."?

      ANSWER: I recognize the balance that the Supreme Court struck in *Hosanna-Tabor* to guard constitutionally protected rights in the context of civil rights

related claims. If confirmed to lead the Civil Rights Division, I would enforce the law as set forth by the Supreme Court.

2. In *Crawford v. Marion County*, 553 U.S. 181, you were the counsel of record on an amicus brief filed on behalf of the NAACP Legal Defense Fund urging the court to find Indiana's requirement that voters present government-issued photo identification to be unconstitutional. In a 6-3 plurality decision written by Justice Stevens, the Supreme Court upheld Indiana's voter photo identification law. Do you still believe the position you took in the brief was correct?

   ANSWER: The Assistant Attorney General for Civil Rights is entrusted with enforcing the Constitution and the law in a manner that is consistent with Supreme Court holdings. The Supreme Court's rulings on matters of constitutional interpretation are binding. Accordingly, if confirmed, I will enforce the law as interpreted by the Supreme Court and give effect to its holdings.

3. You signed a brief on behalf of the NAACP Legal Defense & Educational Fund in the case of *D.C. v. Heller*, 554 U.S. 570, urging the Supreme Court to overturn the U.S. Court of Appeals for the D.C. Circuit's decision that the District of Columbia's gun laws were unconstitutional. Your brief asserted, "The type of radical departure from this Court's Second Amendment jurisprudence that is reflected in the opinion of the D.C. Circuit is not warranted." Your brief continued, "for the Court to recognize an individual right to 'keep and bear Arms' would represent a radical departure from the consistent and long-established understanding of the Second Amendment." The Supreme Court upheld the D.C. Circuit's opinion in *D.C. v. Heller*.

4.

   a. Do you believe the Supreme Court's decision in *Heller* was a "radical departure" from the Supreme Court's prior jurisprudence?

      ANSWER: Prior to its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court had previously interpreted the Second Amendment in *United States v. Miller*, 307 U.S. 174, (1939), in which the Court observed that the Second Amendment's "purpose [was] to assure the continuation and render possible the effectiveness of [organized militias]," and that the "guarantee of the Second Amendment . . . must be interpreted and applied with that end in view." 307 U.S. at 178. In *Heller*, however, the Court stated that the Second Amendment protects "an individual right to possess and carry weapons in case of confrontation." *Id.* at 592. The Court's holding in *Heller* is binding.

   b. Do you believe *Heller,* decided almost six years ago, has resulted in a "substantial upheaval in the manner in which firearms are regulated nationwide?"

      ANSWER: Any time the Supreme Court strikes down a law as an unconstitutional infringement upon individual rights, it invariably affects what governments can and cannot do. The *Heller* opinion, however, expressly acknowledges that some degree

of regulation is permissible. 554 U.S. at 626. Thus, the full implications of *Heller* and *McDonald* have yet to be determined, and I have not studied the issue.

5. As you likely know, the federal government is currently in a budget crisis where it is spending more than it brings in. As a result, all government departments, agencies, and even the legislative branch are being asked to tighten their belts and cut costs. If confirmed as the head of the Civil Rights Division, what actions would you take to cut costs, especially waste and abuse, at the Department?

ANSWER: If confirmed, I would be a responsible steward of the resources that fund the Civil Rights Division and would seek to make effective use of those resources while avoiding waste.

Senator Jeff Sessions
Questions for the Record
Debo Adegbile

1. There is absolutely no doubt that voter fraud occurs in our federal elections through voter registration fraud, absentee ballot fraud, and ineligible voters casting ballots, to name just a few. Do you agree that when people who are ineligible to vote, do so, or when people vote multiple times it dilutes the votes cast by legal voters, thereby denying them their right to vote?

ANSWER: Voting fraud occurs in some circumstances and there is no foolproof approach to combating voting fraud. It is important to protect the legitimacy of the voting process so that eligible voters have their votes counted and do not have their votes diluted. Voter fraud protections are most effective when appropriately calibrated to the nature and scale of the problem.

2. According to sworn testimony from Christopher Coates, former Voting Section Chief at the Department of Justice, Kristen Clarke, a lawyer at the NAACP Legal Defense Fund, pressured Justice Department officials to dismiss a lawsuit against the New Black Panther Party for voter intimidation in the November 2008 Presidential election in Philadelphia.

   a. Did you supervise or work with her during your time there?

   ANSWER: Yes. In my role as Director of Litigation, I supervised Ms. Clarke and the entire legal staff at the NAACP Legal Defense Fund.

   b. Were you aware of her efforts or did you instruct her to do so?

   ANSWER: No.

3. If you are confirmed, your deputy assistant attorney general in charge of overseeing the Voting Section will be Stanford Law Professor Pam Karlan. In the past, she has made

numerous partisan attacks on the Justice Department under President George W. Bush, some of which were demonstrably false. For example, in an article published in the *Duke Journal of Constitutional Law*, she wrote that "for five of the eight years of the Bush Administration, [the Civil Rights Division] brought no Voting Rights Act cases of its own except for one case protecting white voters." However, the record shows that cases were brought under the Voting Rights Act to protect non-white racial minorities in each of the eight years of the Bush administration. If confirmed, will you instruct her to correct her academic record so your enforcement of voting laws is not supervised by someone with the perception of partisanship and will you disavow her false scholarship?

ANSWER: I am not familiar with the details of the article or excerpt in the question above. If confirmed, I look forward to working with Deputy Assistant Attorney General Karlan to enforce the laws entrusted to the Civil Rights Division.

4. There has been some criticism from our military that the Justice Department, and specifically the Voting Section, waits too long before bringing a lawsuit to protect military voters and that when they finally do act, it is on the eve of an election and too late to provide any real remedy for overseas voters.

   a. If confirmed, will you commit to closely monitor counties and quickly enforce the law to protect military voters before an election and not wait until afterward?

      ANSWER: It is my understanding that Military and Overseas Voter Empowerment Act enforcement has been a priority of the Civil Rights Division, and if confirmed, I would continue those efforts.

   b. If confirmed, how do you intend to monitor each state to ensure full compliance?

      ANSWER: I understand that enforcing the Military and Overseas Voter Empowerment Act has been a priority of the Division, and if confirmed, I would continue those efforts to protect before the election servicemembers' ability to vote. I also understand that Senators Cornyn and Schumer have introduced a bill—the Safeguarding Elections for our Nation's Troops through Reforms and Improvements Act—that includes some provisions proposed by the Administration to strengthen MOVE Act enforcement, including a requirement that states report in advance of the election on the status of ballot transmission to military and overseas voters. Such a requirement would enhance the Division's ability to protect servicemembers' ability to vote, and I commend them for their work on this important issue.

   c. State election officials have criticized the Voting Section for inappropriately bringing enforcement actions against States rather than counties. States often have little power or control over local jurisdictions, which are responsible for the procedures that result in the failure to send ballots on time. To fully protect our military voters, if confirmed, will you take appropriate legal action against counties that fail to comply with the law in this regard?

ANSWER: My understanding is that courts have found repeatedly that states are responsible for ensuring UOCAVA compliance.

5. A March 2013 report by the Justice Department Inspector General on the Voting Section revealed that the leadership of the Civil Rights Division, including former Assistant Attorney General Thomas Perez, interpreted the "preclearance" requirement of the Voting Rights Act, embodied in Sections 4 and 5, to be "race-conscious," in that it does not cover white voters even when they are clearly a minority in the jurisdiction.

   a. Do you interpret the preclearance requirement of the Voting Rights Act in that way?

      ANSWER: Although as a result of *Shelby County v. Holder*, Section 4 no longer justifies the preclearance requirements of Section 5 of the Voting Rights Act, it is not my understanding that Section 5 protected only racial minorities.

   b. It is my understanding that you have been working on legislation to amend the Voting Rights Act in response to the Supreme Court's holding that states cannot be subject to the preclearance requirement based solely on past discrimination. If Congress chooses to adopt a new trigger for Section 5 coverage, do you believe it should be "race-conscious," or do you believe it should apply equally to citizens of any race who happen to be a minority in a particular jurisdiction?

      ANSWER: I advised Chairman Leahy on potential legislative responses to the *Shelby County v. Holder* decision prior to my nomination. Since then, I have worked on other issues. I understand that a bicameral, bipartisan Voting Rights Act bill has been introduced.

6. In *League of United Latin American Citizens v. Perry*, a redistricting case, Chief Justice Roberts disagreed with the majority's holding that it was the Court's role "to make judgments about which *mixes* of minority voters should count for purposes of forming a majority in an electoral district, in the face of factual findings that the district is an effective majority-minority district."

   a. Do you agree with Chief Justice Roberts' statement?

      ANSWER: If confirmed, I will enforce the law as articulated by the Supreme Court. Through cases like *League of United Latin American Citizens v. Perry*, the Court has held that cohesive voting blocs that constitute a majority and are adversely affected by racially polarized voting patterns can state a claim under Section 2.

   b. If confirmed, how will you ensure that Section 2 cases do not violate the Supreme Court's warnings against, as the Court put it, "racial gerrymandering"?

ANSWER: If confirmed, I will enforce the law consistent with Supreme Court precedents.

7. With the Supreme Court's June 2013 ruling in *Shelby County v. Holder*, and the lack of Section 5 submissions to the Voting Section, there are now, according to reports, seven senior attorneys with salaries of over $150,000 each with no Section 5 work. Taken together, those salaries equal over a million dollars a year in personnel costs. The salaries of perhaps a dozen Section 5 analysts together equal at least another million dollars in personnel and overhead costs. If confirmed, will you eliminate these positions or find other productive work for them?

ANSWER: If confirmed, I will ensure that resources within the Division are effectively allocated, and, with respect to the Voting Section, will endeavor to ensure that resources are deployed in a manner that strengthens access to the ballot and otherwise supports compliance with the law.

8. A recent report by the Inspector General on the operations of the Voting Section found that members of the Voting Section who were viewed as Republican or conservative were severely harassed on that account. For example, the report detailed how: "at least three career Voting Section employees posted comments on widely read liberal websites concerning Voting Section work and personnel. . . . The three employees who we were able to identify with certainty included three non-attorney employees [and] included a wide array of inappropriate remarks, ranging from petty and juvenile personal attacks to highly offensive and potentially threatening statements. The comments were directed at fellow career Voting Section employees because of their conservative political views, their willingness to carry out the policies of the [Civil Rights Division] division leadership, or their views on the Voting Rights Act. The highly offensive comments included suggestions that the parents of one former career Section attorney were Nazis, disparaging a career manager's physical appearance and guessing how he/she would look without clothing, speculation that another career manager was watching pornography in her office, and references to 'Yellow Fever,' in connection with allusions to marital infidelity involving two career Voting Section employees, one of whom was described as 'look[ing] Asian.'"

   a. One of the individuals responsible for making these demeaning statements initially lied to the Inspector General and later admitted that she perjured herself, but added that she had no regrets other than the fact that she was caught. It is my understanding that this individual is still employed by the Justice Department in the Voting Section of the Civil Rights Division. If confirmed, will you terminate her employment?

      ANSWER: Because I am not currently at DOJ, I do not know the details of the matter described above and am not in a position to make a commitment about personnel actions I would take if confirmed. I will handle personnel matters in accordance with all applicable legal and ethical standards and rules, however.

b. If confirmed, how will you ensure that such partisan political hostility towards certain employees does not continue under your leadership, as it did under the previous leadership of the Civil Rights Division?

ANSWER: I understand that the Division took steps to improve professionalism within the Division both before and in response to the Inspector General's recent report. If confirmed, I will assess the Division's policies and practices and, consistent with applicable laws and policies, determine if any additional modifications are appropriate

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Questions for the Record
for Debo Adegbile (DOJ AAG for Civil Rights)
Senator Mike Lee
January 8, 2014

1. In 2011, the NAACP Legal Defense Fund (LDF) took on the case of convicted cop killer Mumia Abu-Jamal. Abu-Jamal was sentenced to death for the 1981 murder of a 25-year-old Philadelphia police officer who had engaged Abu-Jamal's brother in a routine traffic stop. LDF took on Abu-Jamal's appeal while you were the director of litigation and you signed several briefs on his behalf, leading to the commutation of his death sentence to life in prison. Abu-Jamal has been and remains an iconic figure among activists.

    a. What part did you play in LDF's decision to take on the case?

    ANSWER: As the Litigation Director, I was aware of the request to represent Mr. Abu-Jamal, however, the late John Payton, NAACP LDF's former President and Director-Counsel, made the decision to take the case.

    b. Did you elect to play a role in representing Abu-Jamal? What was your motivation for that decision?

    ANSWER: I reviewed certain briefs filed in the matter by virtue of my role as the Litigation Director and my associated supervisory responsibilities at LDF

    c. At a New York Free Mumia Coalition event in 2011, Christina Swarms, your colleague at LDF at the time, included you when she stated, "There is no question in the mind of anyone at the Legal Defense Fund that the justice system has completely and utterly failed Mumia Abu-Jamal and, in our view, that has everything to do with race and that is why the legal defense fund is in this case."

        i. Do you believe that the justice system had at that time "completely and utterly failed Mumia Abu-Jamal"? If so, in what ways?

ANSWER: I do not know what Ms. Swarns had in mind when she made this comment. I know that the court found that there was a constitutional infirmity in the sentencing phase of Mr. Abu Jamal's case and accordingly vacated his death sentence and he was resentenced to life without the possibility of parole.

ii. Do you believe that such a failure had "everything to do with race"? If so, please explain your reasoning.

ANSWER: I do not know what Ms. Swarns meant by this comment.

iii. If you do not agree with Ms. Swarms statement, why do you believe LDF took on this case?

ANSWER: John Payton, LDF's late President and Director-Counsel, made the decision that LDF would represent Mr. Abu Jamal based upon an assessment of the constitutional claim.

d. In a January 2014 letter to the President opposing your nomination for your involvement in the Abu-Jamal case, the Fraternal Order of Police (FOP) expressed the need for law enforcement and minority communities to "build even greater bonds of trust and mutual respect," while decrying the work of the Civil Rights Division and its "aggressive and punitive approach towards local law enforcement agencies."

i. Under your direction, if confirmed, would the Civil Rights Division continue the methods, patterns, and practices established under the leadership of Thomas Perez and Roy Austin, Jr.?

ANSWER: Our communities rightly place a great deal of trust in law enforcement officers, the overwhelming majority of whom deserve our highest praise as dedicated public servants who keep our neighborhoods safe, our families secure, and dangerous criminals behind bars. If confirmed, I will enforce the applicable laws in a fair and even-handed manner.

ii. If confirmed, in what ways will you work to tear down the "obstacles" to trust and mutual respect that the FOP refers to in its letter?

ANSWER: If confirmed, I will work to further build a relationship of trust and mutual respect with the law enforcement community.

e. How will your experience advocating for Abu-Jamal inform your work in the DOJ if you are confirmed?

ANSWER: As I stated in my confirmation hearing, the LDF's representation of Mr. Abu Jamal is an example of our commitment, as a nation and through the Constitution, to follow our procedural rules even in the hardest of cases. If confirmed, I will uphold the Constitution and enforce the law in a fair and even-handed manner.

2. You have made a number of statements expressing strong views regarding the Voting Rights Act and voting rights more generally. Late in 2012, some members of this administration made troubling comments suggesting that they believe the executive branch should itself reform voter registration and even move to nationalize voter registration.

    a. Do you believe that the executive branch currently has statutory authority to make significant national changes to state voter registration systems and if so which statutes do you believe provide that authority?

    ANSWER: I am unaware of the comments to which the question refers. State voter registration systems are under the direct control of states, but are subject to a range of federal requirements, including both statutory and constitutional requirements, particularly with respect to elections for federal office. Those requirements have in the past required states to make significant changes, but the executive branch itself did not "make" those changes.

3. You have appeared on a number of amicus briefs on controversial issues before the Supreme Court. These briefs evidence an extreme view of the Constitution that in many cases has not been accepted by even a single member of the court. For example, with respect to religious liberty, in a brief you helped write in the *Hosanna Tabor* case, you argued strenuously against a ministerial exception, a position the Court rejected 9-0. With respect to the Second Amendment, you helped write a brief in the *Heller* case that argued the Second Amendment does not provide for the right of an individual to possess or use firearms outside the context of a lawfully organized militia. This position was rejected by the Court. In *Ricci v. DeStefano*, you likewise helped write an amicus brief arguing for a position the Court rejected.

    a. Do you believe religious organizations are not entitled to a ministerial exception?

    ANSWER: In its amicus brief, LDF argued against a categorical exception to federal anti-discrimination law based on the central importance of these laws to protecting opportunities for all Americans. As I understand the decision, the Court in *Hosanna-Tabor* did not categorically preclude the application of employment discrimination laws to religious institutions – and, in this respect, the decision is consistent with LDF's position. Rather, it said that discrimination laws cannot be applied to regulate a religious institution's employment of a "minister". Under the Court's ruling, once such an institution has shown that a claimant is a "minister," a lawsuit for employment discrimination would be

barred. In this way, the Court safeguards the important constitutional rights implicated in the case.

b. Do you believe the Second Amendment does not guarantee an individual's right to bear arms?

ANSWER: Prior to its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court had previously interpreted the Second Amendment in *United States v. Miller*, 307 U.S. 174, (1939), in which the Court observed that the Second Amendment's "purpose [was] to assure the continuation and render possible the effectiveness of [organized militias]," and that the "guarantee of the Second Amendment . . . must be interpreted and applied with that end in view." 307 U.S. at 178. In *Heller*, however, the Court stated that the Second Amendment protects "an individual right to possess and carry weapons in case of confrontation." *Id.* at 592. The Court's holding in *Heller* is binding.

c. It appears that in many instances your views of the Constitution are at odds with those of the Court. What assurances can you give the Committee that you will respect and follow Supreme Court precedent?

ANSWER: I filed a number of briefs as an attorney at NAACP LDF on behalf of various clients or on behalf of my former employer. In some of those cases my client or employer's side prevailed; in some the opposing party prevailed. However, the positions articulated in each of these briefs should not be reflexively equated with statements of the personal views of the filing counsel. Moreover, the Assistant Attorney General for Civil Rights enforces the Constitution and the law in a manner that is consistent with Supreme Court holdings. The Supreme Court's rulings on matters of constitutional interpretation are binding. Accordingly, if confirmed, I will enforce the law as interpreted by the Court and give effect to its holdings.

Questions for the record of Senator John Cornyn for Debo Adegbile, nominee to be Assistant Attorney General for Civil Rights
January 15, 2014

1. In an interview with an NYU Law School alumni publication, you stated: "Not every wrong finds a remedy in the law, as it turns out. It takes a good bit of creative lawyering and tenacity on the part of litigators to formulate a winning theory . . ." Please describe, in detail, what you meant by "creative lawyering." As Assistant Attorney General, how would you use "creative lawyering," and will you pledge to pursue only remedies expressly provided for under current law?

ANSWER: If confirmed, I will ensure that the Civil Rights Division enforces the law as enacted by Congress and as interpreted by the Supreme Court or other federal courts as

applicable, based on an assessment of the facts presented and in consideration of the best interests of the United States.

2. As Assistant Attorney General, would you commit to only pursue legal theories that find strong support in the statutes passed by Congress and the interpretations given to them by the Supreme Court?

   ANSWER: If confirmed, I will ensure that the Civil Rights Division enforces the law as enacted by Congress and as interpreted by the Supreme Court or other federal courts as applicable, based on an assessment of the facts presented and in consideration of the best interests of the United States.

3. Are there differences between the role of Assistant Attorney General and the role of Director-Counsel of the NAACP Legal Defense and Educational Fund? How, specifically, would you approach these positions differently?

   ANSWER: The Civil Rights Division is a federal law enforcement agency created by Congress. If confirmed, I would be cognizant of my obligation to enforce the law in a fair and evenhanded manner and to lead the Civil Rights Division with a commitment to its duties, traditions and practices in collaboration with the able public servants who dedicate themselves to the work of the Division.

4. A recent Inspector General's report found "deep ideological polarization" and "bitter controversy" within the Voting Rights Section of the Civil Rights Division. What specific measures will you take to address the problems cited by the Inspector General?

   ANSWER: I understand that the Division took steps in response to both the 2008 Inspector General report on the Division and in response to the Inspector General's recent report. If confirmed, I will assess the Division's current policies and practices and, consistent with applicable laws and policies, determine if any additional modifications are appropriate.

5. In the Supreme Court's opinion in *Northwest Austin Municipal Utility District No. 1 v. Holder*, 557 U.S. 193 (2009), Chief Justice Roberts' opinion described the "substantial federalism costs" that Section 5 of the Voting Rights Act of 1965 imposes on some states. Do you agree that Section 5 imposes such costs?

   ANSWER: Yes. In light of the anti-discrimination principle expressly embraced in the text of the Fourteenth and Fifteenth Amendments to the U.S. Constitution, however, as well as the history and purposes of their enactment, the federalism costs, while relevant to the analysis, do not end the inquiry.

6. In *Shelby County v. Holder*, 570 U.S. ___ (2013), the Supreme Court ruled that Section 4 of the Voting Rights Act of 1965 was unconstitutional because it utilized decades-old evidence to require certain states, including Texas, to seek federal approval before changing their voting laws. In congressional testimony in 2006, you stated: "The evidence in the record does

not indicate that the existing Section 4 coverage formula, or 'trigger,' needs to be revised or updated."

a. Do you accept the Supreme Court's decision, and will respect that decision while serving as Assistant Attorney General?

ANSWER: Yes. The Assistant Attorney General for Civil Rights is entrusted with enforcing the Constitution and the law in a manner that is consistent with Supreme Court holdings. The Supreme Court's rulings on matters of constitutional interpretation are binding. Accordingly, if confirmed, I will enforce the law as interpreted by the Supreme Court and give effect to its holdings.

b. Do you believe that that an imbalanced treatment of states similar to Section 4 is still appropriate post *Shelby County*?

ANSWER: Congress must determine whether targeted remedial protections are necessary in particular jurisdictions.

c. Do you agree with the Court's that: "There is no denying . . . that the conditions that originally justified" the preclearance process under Section 5 of the Voting Rights Act of 1965 "no longer characterize voting in the covered jurisdictions"?

ANSWER: As a general matter, there has been very substantial progress in voting in the formerly Section 5 covered jurisdictions—progress that both Congress acknowledged during the 2006 Reauthorization, and the Supreme Court acknowledged in *Northwest Austin Municipal Utility District No. 1 v. Holder*. I understand that a bipartisan, bicameral Voting Rights Act bill has been introduced that would provide for a new form of coverage formula.

d. Do you agree with the Court's statement that the coverage formula under Section 4 of the Voting Rights Act of 1965 was "based on 40-year-old facts having no logical relation to the present day"?

ANSWER: While the coverage provision retained its references to earlier elections, the substantial focus of the Congressional legislative record supporting the 2006 Reauthorization was based upon voting discrimination primarily within the covered jurisdictions between 1982 and 2006.

e. Had the same voter turn-out and registration thresholds set by Section 4 been applied in 2000 as required by statute, rather than 1964, 9 of the 14 counties in Massachusetts would have been subject to preclearance, while only 2 of Texas's 254 counties would have been covered. Yet, under Section 4, all of Texas was subject to preclearance, while none of Massachusetts was. In light of this evidence, do you believe that your congressional testimony in 2006 was accurate?

ANSWER: I believe my testimony was accurate. The goal and purpose of Section 5 was never limited to voter turnout and registration. The coverage provision also included jurisdictions that employed a "test or device" which were understood to have a discriminatory purpose and effect. Congress looked to continued discrimination to justify the 2006 reauthorization.

f. Absent the Supreme Court's ruling in this case, what would you consider to be sufficient evidence that the Section 4 coverage formula should be updated?

ANSWER: I am not able to answer this question in the abstract, but I understand that Congress is exploring ways to update the Section 4 coverage formula, and that a bipartisan, bicameral bill has been introduced to accomplish this goal.

g. Do you believe a coverage formula for preclearance, as provided in Section 4 of the Voting Rights Act of 1965, is the only way to properly protect minority voting rights? Why or why not?

ANSWER: No. While preclearance—and the use of the coverage formula to determine which jurisdictions are subject to preclearance—is a particularly effective way to protect minority voting rights, there are other mechanisms as well, including among other things both private and public enforcement of existing prohibitions on discrimination related to voting. And with respect to preclearance itself, there may be other ways to establish the reach of preclearance if Congress determines that preclearance remains essential. As stated above, I understand that a bipartisan, bicameral bill has been introduced that proposes a new form of coverage formula.

h. What, if anything, might be an appropriate alternative to preclearance in protecting minority voting rights?

ANSWER: In the decades since the passage of the Voting Rights Act, preclearance has been a demonstrably effective tool in rooting out voting discrimination. I understand that a bipartisan, bicameral Voting Rights Act bill has been introduced that would provide a new coverage formula.

7. What were your duties and responsibilities while serving as Senior Counsel to Senator Leahy? Were you involved in efforts to draft legislation remedying the constitutional defects of the Voting Rights Act of 1965, or otherwise amending it? Please describe those efforts. What outside organizations, if any, did you work with on these efforts?

ANSWER: Prior to the time of my nomination, I advised Senator Leahy on possible legislative responses to *Shelby County*. Since the time of my nomination, I have advised Senator Leahy on various other legislative and constitutional matters.

8. Do you accept the Supreme Court's decision in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), in which the court upheld the constitutionality of Indiana's voter ID statute?

   ANSWER: Yes, the Assistant Attorney General for Civil Rights is entrusted with enforcing the Constitution and the law in a manner that is consistent with Supreme Court holdings. The Supreme Court's rulings on matters of constitutional interpretation are binding. Accordingly, if confirmed, I will enforce the law as interpreted by the Supreme Court and give effect to its holdings.

   a. Do you agree with Justice Stevens' statement that voter ID "is amply justified by the valid interest in protecting the integrity and reliability of the electoral process"?

      ANSWER: I accept as binding the decision of the Supreme Court in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), in which the Court rejected a facial challenge to Indiana's photo identification law.

   b. Do you accept the Supreme Court's distinction in Crawford between Indiana's voter ID law and a poll tax?

      ANSWER: I do not read Justice Stevens' opinion to draw a categorical distinction between voter ID laws and poll taxes. A poll tax claim was not at issue in *Crawford*.

   c. In the past, you have been a strong opponent of Voter ID laws. Will you use your position as Assistant Attorney General to continue to oppose state voter ID laws? If so, how will you select which of the growing number of state voter ID laws you will challenge?

      ANSWER: I understand that the Division has precleared such laws in the past. Congress has directed courts addressing claims under section 2 of the Voting Rights Act, 42 U.S.C. 1973, to ask whether "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by [the Act] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

   d. Is there any form of state voter ID law that you find acceptable? If so, please describe the characteristics of an acceptable state voter ID law.

      ANSWER: I believe that the Civil Rights Division has precleared voter identification laws in the past. Under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, courts ask whether "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or

political subdivision are not equally open to participation by members of a class of citizens protected by [the Act] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Thus, it is difficult to provide categorical guidance regarding the content of a particular law without examining how the law would operate in a particular jurisdiction.

9. In November, I introduced S. 1728, a bipartisan bill called the SENTRI Act (Safeguarding Elections for our Nation's Troops through Reforms and Improvements Act), together with Sen. Schumer and four other senators. It is awaiting consideration in the Senate Rules Committee. It is my understanding that the Civil Rights Division supports this bill. Do you support our effort to better protect the voting rights of our troops both at home and overseas?

   ANSWER: I commend you on your efforts to ensure the voting rights of servicemembers who sacrifice for our country. Expanding the reach of voter access, including affirmative efforts to facilitate the access of our service members and overseas voters is an essential part of our national commitment to democracy. I understand that the SENTRI Act includes provisions adopting Administration proposals to enhance the Civil Rights Division's ability to protect these voters' access to this fundamental right, and if confirmed, I look forward to working with you on this important issue.

10. Is it appropriate for the Civil Rights Division to take a position in the national debate over same-sex marriage?

    ANSWER: The Division takes positions in litigation that falls within its jurisdiction.

11. In a guidance memo published in May 2012, the Equal Employment Opportunity Commission argued that: "An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1965, as amended." As Acting President and Director Counsel of the NAACP Legal Defense and Educational Fund, you praised this guidance memo—stating that: "No one should be penalized for the rest of their life for mistakes that they made in the past."

    a. Do you agree with the May 2012 guidance memo that ". . . an exclusion based on an arrest, in itself, is not job related and consistent with business necessity?"

       ANSWER: The EEOC has released guidance on the subject of employer background checks. As I read it, the guidance does not embrace a categorical bar on using information gleaned from such employment screens but rather requires some reasonable inquiry into the nexus between the conviction and the job responsibilities involved in the particular position.

    b. Do you believe that a private employer's decision categorically to exclude all persons convicted of a child pornography offense from the hiring pool may, in some instances, violate Title VII of the Civil Rights Act of 1965?

ANSWER: It is my understanding that the Civil Rights Division has jurisdiction to enforce Title VII with respect to state and local government employers, while the EEOC has jurisdiction to enforce that statute with respect to employers in the private sector, among others.

c. Do you believe that any person who has been convicted of a felony or crime of violence should be categorically excluded from working for the Department of Justice? If not, what classes of felons or violent offenders should be allowed to work for the Department of Justice?

ANSWER: If confirmed, I commit to following the Department's applicable personnel laws and guidance.

d. If confirmed as Assistant Attorney General for the Civil Rights Division, would you commit to performing a criminal background check on all prospective employees, and to prohibiting the hiring of any person who has been convicted of a felony or crime of violence? If not, please describe a particular situation in which you might, as Assistant Attorney General, recommend the hiring of a felon or violent offender.

ANSWER: If confirmed, I commit to following the applicable personnel laws and guidance.

2011 WL 4048834 (U.S.) (Appellate Petition, Motion and Filing)
Supreme Court of the United States.

John E. WETZEL, Secretary, Pennsylvania Department of Corrections, et al., Petitioners,
v.
Mumia ABU-JAMAL, Respondent.

No. 11-49.
September 9, 2011.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

Brief in Opposition

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*1 SUMMARY OF ARGUMENT

In *Mills v. Maryland*, 486 U.S. 367 (1988), this Court declared that instructions indicating that a juror cannot "find a particular circumstance to be mitigating unless all 12 jurors agree[] that the mitigating circumstance ha [s] been prove[n] to exist," are unconstitutional. *Smith v. Spisak*, 130 S. Ct. 676, 682 (2010) (citing *Mills*, 486 U.S. at 380-381). In this case, the United States Court of Appeals for the Third Circuit, on remand from this Court, properly found that the verdict form and oral instructions given to Respondent's sentencing jury violated *Mills*. Specifically, after appropriately applying the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254(d), the appellate court found that the form and instructions, taken together, required unanimity in the finding of mitigation, that the instructions at issue are materially different from those found to be acceptable in *Spisak*, and that the state court's decision was objectively unreasonable. Because the Circuit Court's decision is appropriately deferential and amply supported by the record, certiorari review is inappropriate.

ARGUMENT

This Court should deny certiorari because the Third Circuit's decision on remand is correct; the Circuit applied properly stated rules of law to the facts of this case; and the Circuit Court's grant of *Mills* relief is unlikely to affect future cases.

*2 I. The Third Circuit's Decision on Remand Is Correct.

The Third Circuit's conclusion that the *Abu-Jamal* jury instructions and verdict form were significantly different from - and worse than - those in *Spisak* and that the state court's rejection of Respondent's *Mills* claim was objectively unreasonable, is well supported by the record. Petitioners mischaracterize the Circuit's reasoning, fail to acknowledge substantial differences between this case and *Spisak* and incorrectly describe the state of the law at the time of the state court's decision. [1]

A. Procedural History

The procedural history of Respondent's *Mills* claim demonstrates that the Circuit Court has consistently and appropriately conducted the deferential review required by § 2254(d).

1. *State Court.*

Respondent Mumia Abu-Jamal was sentenced to death in Philadelphia, Pennsylvania. The Pennsylvania Supreme Court affirmed on direct appeal, *Commonwealth v. Abu-Jamal*, 555 A.2d 846 (Pa. 1989) (*"Abu-Jamal"*), and denied post-conviction relief, *Commonwealth v. Abu-Jamal*, 720 A.2d 79 (Pa. 1998) (*"Abu-Jamal-2"*). In the state post-conviction proceedings, Mr. Abu-Jamal *3 exhausted a claim that the capital sentencing verdict form and jury instructions violated *Mills*.

2. *District Court.*

On federal habeas review, the U.S. District Court for the Eastern District of Pennsylvania (the "District Court") addressed the *Mills* claim at length. *Abu-Jamal v. Horn*, No. CIV. A. 99-5089, 2001 WL 1609690, *1, *114-*127 (E.D. Pa. Dec. 18, 2001) (*"Abu-Jamal-3"*).

The District Court emphasized that it was applying the deferential standards set forth by the AEDPA, 28 U.S.C. § 2254(d), as required by this Court's ruling in *Williams v. Taylor*, 529 U.S. 362 (2000). *Abu-Jamal-3*, 2001 WL 1609690, at *10-*11 (*Williams* "cautioned federal habeas courts against insufficiently deferential review of state court decisions") (citing *Williams*, 529 U.S. at 409); *id.* at *107 (same) (citing *Williams*, 529 U.S. at 409); *id.* at *116 n.82 ("important to reiterate" in addressing a *Mills* claim that "a significant degree of deference is due the state supreme court's application of federal law").

Applying AEDPA, the District Court found that the jury instructions and verdict sheet violated *Mills* and that the state court's decision on the *Mills* claim was objectively unreasonable under § 2254(d)(1), *Abu-Jamal-3*, 2001 WL 1609690, at 130. Accordingly, the District Court vacated the death sentence. *Id.*

4 3. *Court of Appeals.

The Third Circuit unanimously affirmed the District Court's finding of *Mills* error. *Abu-Jamal v. Horn*, 520 F.3d 272 (3d Cir. 2008) (*"Abu-Jamal-4"*).

It explained that it was applying the deferential standards of § 2254(d). *Id.* at 292 & n.21 (describing AEDPA's "deferential standard" of review); *id.* at 278-79 (collateral review requires deference unless "unreasonable application" threshold under § 2254(d)(1) is met); *id.* at 279, 287-88 (Mr. Abu-Jamal's habeas petition was "subject to AEDPA"); *id.* at 300 ("Our review is limited to whether the Pennsylvania Supreme Court unreasonably applied *Mills*.") (citing § 2254(d)(1) and *Williams*, 529 U.S. at 405).

After applying *Mills* and § 2254(d), and considering the verdict form, the oral instructions, and the state court's ruling, the Circuit affirmed the grant of habeas relief. *Id.* at 301-304.

4. *This Court.*

In 2008, Petitioners filed a certiorari petition, seeking this Court's review of the Third Circuit's ruling. Petition for Writ of Certiorari, *Beard v. Abu-Jamal*, No. 08-652, 2008 WL 4933629 (U.S. Nov. 14, 1008).

On February 23, 2009, while Petitioners' certiorari petition was pending, this Court granted certiorari in *Smith v. Spisak*, 129 S. Ct. 1319 (2009), to review, *inter alia*, the Sixth Circuit's grant of relief under *Mills*. On January 12, 2010, this Court reversed the Sixth Circuit. *Spisak*, 130 S. Ct. 676.

***5** On January 19, 2010, this Court issued a "GVR" order in the instant case: "Petition for writ of certiorari granted. Judgment vacated, and case remanded to the United States Court of Appeals for the Third Circuit for further consideration in light of *Smith v. Spisak*." *Beard v. Abu-Jamal*, 130 S. Ct. 1134 (2010) (*"Abu-Jamal-5"*).[2]

5. *Court of Appeals on Remand.*

After new briefing and oral argument, the Third Circuit again unanimously found that the jury instructions and verdict form violated *Mills*, that the state court unreasonably applied clearly established federal law, and that habeas relief was required under § 2254(d)(1). *Abu-Jamal v. Secretary*, 643 F.3d 370, 372 (3d Cir. 2011) (*"Abu-Jamal-6"*).

The Third Circuit again emphasized that it was applying the deferential standards of AEDPA's § 2254(d):

Our review on remand is limited to whether the Pennsylvania Supreme Court unreasonably applied United States Supreme Court precedent in finding no constitutional defect in the jury instructions and verdict form employed in the sentencing phase of Abu-Jamal's trial. See ***6** 28 U.S.C. § 2254(d)(1); *Williams I*, 529 U.S. [at] 405-06 .... Pursuant to the Supreme Court's order, we consider this question in light of *Spisak* ....

Under [§ 2254(d)], a state prisoner's application for a writ of habeas corpus will be denied unless the adjudication of a claim in state court proceedings "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1)-(2).

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Abu-Jamal-6, 643 F.3d at 373. The Circuit explained that because the state court properly identified and applied *Mills* to Respondent's claim, its decision was not "contrary to" clearly established law. *Id.* at 374 (citing *Williams*, 529 U.S. at 405). The Circuit therefore considered whether the state court's decision involved an "unreasonable application" of federal law under § 2254(d)(1), and noted that:

"a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that ***7** application must also be unreasonable." *Williams*, 529 U.S. at 411; *see Schriro v. Landrigan*, 550 U.S. 465, 473 [] (2007).

Abu-Jamal-6, 643 F.3d at 374. Thus:

in making this inquiry, we "should ask whether the state court's application of clearly established federal law was objectively unreasonable." *Williams*, 529 U.S. at 409.

Abu-Jamal-6, 643 F.3d at 374.

The Circuit then observed that its specific task on remand was to reconsider its earlier ruling in light of *Spisak*. Because this Court found no *Mills* violation in *Spisak*, the Circuit first "evaluate[d] whether a *Mills* violation has occurred, and then proceed[ed] to examine whether the Pennsylvania Supreme Court's application of *Mills* was objectively unreasonable under the second clause of § 2254(d)(1)." *Id.* at 374.

After carefully comparing the *Mills* and *Abu-Jamal* verdict sheets and jury instructions, *id.* at 374-77, the Circuit concluded that "the [*Abu-Jamal*] verdict form together with the jury instructions" indicated that the jury could only consider the mitigating circumstances that it found unanimously. *Id.* at 377.

It then compared the *Abu-Jamal* and *Spisak* instructions and verdict forms, *id.* at 377-81, and found that the "verdict form and judge's instructions used in the sentencing phase of Abu-Jamal's trial are materially different and easily distinguished from those at issue in *Spisak*." *id.* at 379. Thus, the ***8** Circuit concluded that its finding of a *Mills* violation was "consistent with *Spisak*." *Id.* at 380-81.

Finally, the Third Circuit applied AEDPA's deferential standards to the state court's decision on the *Mills* claim and concluded that it was objectively unreasonable. *Id.* at 374, 381. Thus, the Third Circuit again affirmed the District Court's grant of habeas relief as to Mr. Abu-Jamal's death sentence. *Id.* at 383.

B. The Third Circuit's *Mills* Analysis Was Correct and Supported By the Record.

The Circuit unanimously found that the "verdict form together with the jury instructions read that unanimity was required in the consideration of mitigating circumstances and that there is a substantial probability [3] the jurors believed they were precluded from independent consideration of mitigating circumstances in violation of *Mills*." *Id.* at 377.

***9** Petitioners assert that requiring unanimity for the weighing result does not violate *Mills*. Petition at 12. Respondent agrees. Read in isolation from the rest of the instructions and verdict form, the weighing instruction correctly stated the law.

Petitioners erroneously contend, however, that the Third Circuit found a *Mills* violation based solely on this weighing language. *Id.* at 11; *see id.* at 10, 12, 24. Contrary to Petitioners' claims, the opinion makes clear that it was the rest of the verdict form along with the oral instructions that created a substantial probability that the jury would believe it could only consider and weigh unanimously found mitigating circumstances against the aggravating circumstances. *Abu-Jamal-6*, 643 F.3d at 375-76. The

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Circuit's finding that the state court was objectively unreasonable in "conduct [ing] an incomplete analysis of only a portion of the verdict form, rather than the entire form," *id.* at 381, offers further proof that it did not rely solely on the weighing instruction as the basis for granting *Mills* relief. As in *Mills*, Mr. Abu-Jamal's jury was misled regarding the task that *preceded* the ultimate weighing - the process of identifying and considering mitigation.

Accordingly, the appellate court's finding of a *Mills* violation was correct.

1. *The verdict form's opening statement required unanimous findings by the jury of mitigating circumstance(s).*

The opening language on Page One of the verdict form reads as follows:

> ***10** We, the jury, having heretofore determined that the above-named defendant is guilty of murder of the first degree, do hereby further find that:

App. 131. That language is followed by:
(1) We, the jury, unanimously sentence the defendant to

death

_ life imprisonment.

(2) (To be used only if the aforesaid sentence is death)

We, the jury, have found unanimously

_ at least one aggravating circumstance and no mitigating circumstance. The aggravating circumstance(s) is/are

one or more aggravating circumstances which outweigh any mitigating circumstances. The aggravating circumstance(s) is/are *A*.

The mitigating circumstance(s) is/are *A*.

Id. at 131-32.

***11** By opening with "*[w]e, the jury*, having heretofore determined that the defendant is guilty of murder of the first degree, *do hereby further find that*:", *id.* at 131 (emphasis added), the verdict form required that *everything* marked on it be *found* by the *same jury* that found Mr. Abu-Jamal guilty - i.e., the unanimous jury. The form did not allow an individual juror to find anything on his own, including a mitigating circumstance.

Page One of the verdict form required the jury to specify the sentence; what "[t]he aggravating circumstance (s) is/are ___"; and what "[t]he *mitigating circumstance(s)* is/are ___." *Id.* at 131-32. (emphasis added). Because the opening statement required all verdict form findings to be unanimous, the form mandated that the sentence, the aggravating circumstances and the *mitigating* circumstances be unanimously found. While the first two requirements are proper, the third violates *Mills*.

2. *The verdict form provided space for only one check next to each mitigating circumstance.*

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Pages Two and Three of the verdict form read as follows:
AGGRAVATING AND MITIGATING CIRCUMSTANCES

AGGRAVATING CIRCUMSTANCE(S):

(a) The victim was a fireman, peace officer or public servant concerned in official detention ***12** who was killed in the performance of his duties. (#)

[nine more statutory aggravating circumstances, labeled (b)-(j) and followed by a (), not checked by the jury]

MITIGATING CIRCUMSTANCE(S):

(a) The defendant has no significant history of prior criminal convictions (#)

[seven more statutory mitigating circumstances, labeled (b)-(h) and followed by a (), not checked by the jury]

[twelve lines with signatures of all jurors]

App. 132-35.

Thus, the jury was presented with a list of ten possible aggravating circumstances, and a list of eight possible mitigating circumstances, with a "()" next to each aggravating and mitigating circumstance to be checked, if found. The space provided next to each mitigating circumstance is too small for any marking beyond a single checkmark. Also, the form did not provide a mechanism for any individual juror to find, or indicate that s/he has found, independent of other jurors, a mitigating circumstance. These factors reinforce the notion that only unanimously found mitigating ***13** circumstances were to be considered. Read together with the opening statement that directed the jury to record only those items that are were unanimously found, the verdict form led the jury to believe that it could only consider an aggravating or *mitigating* circumstance that was *unanimously* found.

3. *Additional language in the verdict form required unanimous finding of mitigating circumstances.*

Just below the lines calling for the jury's sentence, the following express unanimity requirement appears on Page One of the verdict form:
We, the jury, have found *unanimously*

__ at least one aggravating circumstance and no mitigating circumstance. The aggravating circumstance(s) is/are _____.

one or more aggravating circumstances which outweigh any mitigating circumstances. The aggravating circumstance(s) is/are *A*.

The mitigating circumstance(s) is/are A.

App. 131-32 (emphasis added).

This portion of the form also requires the jury to find and consider only the aggravating and ***14** *mitigating* circumstances that it has "found *unanimously*." *Id.* at 131 (emphasis added). Because this language was read in conjunction with the verdict form's opening statement requiring the jury to note only those findings that "we, the jury, have found unanimously," and the list of

choices, each with one corresponding box that could be checked, directly underneath the opening statement, the only plausible interpretation is that the specifications of aggravators and mitigators on the lines provided required unanimous findings.

4. *The verdict form required the signatures of all twelve jurors below the list of mitigating circumstances.*

The end of the verdict form, just below the list of mitigating circumstances on Page Three, requires the signatures of all twelve jurors. *Id.* at 135. This also ensured that only unanimously found mitigating circumstances are considered. If fewer than twelve jurors found a mitigating circumstance, checked it on the checklist on Page Three (although the form opens with a requirement that only findings of the unanimous jury be recorded), and wrote it on Page One (although Page One states "We the jury have found unanimously ... [t]he mitigating circumstance(s) is/are _____", *id.* at 131-32), then the jurors who disagreed could not sign the verdict form without violating their oaths. The presence of all twelve signatures confirms the form's direction to unanimously consider and find mitigating circumstances.

15 5. *Aggravating and mitigating circumstances are treated identically on the verdict form.

The unanimous finding of mitigating circumstances was also required by the verdict form's consistently identical treatment of aggravating and mitigating circumstances. To comply with *Mills*, the jury would have had to ignore this and believe, contrary to the form's plain language and without any rational basis, that aggravation and mitigation should be treated differently. The court must "presume that, unless instructed to the contrary, the jury would read similar language throughout the form consistently." *Mills*, 486 U.S. at 378.

6. *Mr. Abu-Jamal's verdict form was more problematic than the Mills verdict form.*

In finding constitutional error, the Third Circuit relied upon the similarities between the *Mills* and *Abu-Jamal* verdict forms. *Abu-Jamal-6*, 643 F.3d at 375-77. However, for several reasons, the *Abu-Jamal* form was more likely than the *Mills* form to be understood to require a unanimous mitigation finding.

The *Mills* form allowed the jury to mark "yes" or "no" for each listed mitigating circumstance, and the list was prefaced with: "[W]e unanimously find that each of the following mitigating circumstances which is marked 'yes' has been proven to exist ... and each mitigating circumstance marked 'no' has not been proven ...." *Id.* at 375. Maryland's high court interpreted the jury's "no" entries as showing that ***16** the jury unanimously rejected the "no"-marked mitigating circumstance. *See id.* at 372. So-interpreted, the death sentence was constitutional - if the jury unanimously rejected each mitigating circumstance, no individual juror found a mitigating circumstance and no juror was prevented from giving effect to mitigation that s/he believed to exist.

This Court found the Maryland court's interpretation of the form "plausible" in light of the form's language. It was nevertheless declared unconstitutional because it was unclear that the jury interpreted the form the same way as the Maryland court. *See id.* at 375-76.

The *Abu-Jamal* form is not even susceptible to the "plausible" interpretation that the Maryland court gave the *Mills* form. Unlike in *Mills*, Mr. Abu-Jamal's jury's only options were to check a mitigating circumstance if it was found, or leave it blank. The failure to check plainly signifies the jury's failure to unanimously find a mitigating circumstance. Thus, the *Mills* violation is clearer in *Abu-Jamal* than it was in *Mills* itself.

7. *The trial court's oral instructions compounded the Mills error.*

As the Third Circuit recognized, "the instructions throughout and repeatedly emphasized unanimity." *Abu-Jamal-6*, 643 F.3d at 377. The judge told the jury: "You will be given a verdict slip upon which to record your verdict and findings." App. 127. Here,

and throughout, the judge made no distinction between "findings" of aggravating circumstances and "findings" of mitigating circumstances, except for ***17** different burdens of proof. *See infra.* Section I. B. 7. Thus, the jury had no reason to believe that there were any differences (other than burdens of proof) between the processes for finding aggravating and mitigating circumstances - the instructions required both to be found unanimously.

The judge also instructed the jury on how to use the checklist of aggravating circumstances on Page Two and how to identify aggravating circumstances on Page One:

> [W]hat you do, you go to Page 2. Page 2 lists all the aggravating circumstances. They go from small letter (a) to small letter (j). Whichever one of these that you find, you put an "X" or check mark there and then, put it in the front. Don't spell it out, the whole thing, just what letter you might have found.

App. 128.

The judge then used materially identical language to explain how to use Page Three's checklist of mitigating circumstances and how to complete Page One's identification of the mitigating circumstances:

> [T]hose mitigating circumstances appear on the third page here, they run from a little (a) to a little letter (h). And whichever ones you find there, you will put an "X" mark or check mark and then, put it on the front here at the bottom, which says mitigating circumstances. And you will notice that ***18** on the third or last page, it has a spot for each and every one of you to sign his or her name on here as jurors ....

App. 129.

These instructions, like the verdict form itself, treat aggravating and mitigating circumstances identically - both were to be "found" and recorded by a unanimous jury. As the Third Circuit found, "in light of the language and parallel structure of the form and instructions in relation to aggravating and mitigating circumstances, it is notable that neither the verdict form nor the judge's charge said or in any way suggested that the jury should apply the unanimity requirement to its findings of aggravating but not mitigating circumstances." *Abu-Jamal-6,* 643 F.3d at 377. The instructions do not even hint that the jury must unanimously find an aggravating circumstance, but not a mitigating one. Instead, the last instruction on finding mitigating circumstances and signing the form "places in the closest temporal proximity the task of finding the existence of mitigating circumstances and the requirement that each juror indicate his or her agreement with the findings of the jury" by signing the form. *Abu-Jamal-3,* 2001 WL 1609690, at *125. The judge's instructions on how to use the verdict form thus exacerbated the form's *Mills* error.

Other oral instructions also led the jury to treat aggravating and mitigating circumstances in the same manner:
Members of the jury, you must now decide whether the defendant is to be ***19** sentenced to death or life imprisonment. The sentence will depend upon your findings concerning aggravating and mitigating circumstances. The Crimes Code provides that the verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance and no mitigating circumstance, or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances.

The verdict must be a sentence of life imprisonment in all other cases.

....

Remember, that your verdict must be a sentence of death if you unanimously find at least one aggravating circumstance and no mitigating circumstance. Or, if you unanimously find one or more aggravating circumstances which outweigh any mitigating circumstances. In all other cases, your verdict must be a sentence of life imprisonment.

App. 124-25; 126-27. In these instructions, like all of the instructions, aggravating and mitigating circumstances are treated identically as matters to be "found" by the unanimous jury or not considered at all. Nothing in the instructions would allow the jury to reasonably conclude that mitigating and ***20** aggravating circumstances should be treated differently.

The Third Circuit also found that the failure to distinguish between the process of finding aggravators and mitigators was "notable because the trial court distinguished between the two with respect to the proper burden of proof the jury should apply." *Abu-Jamal-6*, 643 F.3d at 377. In this regard, the court instructed the jury that:

> Whether you sentence the defendant to death or to life imprisonment will depend upon what, if any, aggravating or mitigating circumstances you find are present in this case. ... [A]ggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt, while mitigating circumstances must be proved by the defendant by a preponderance of the evidence.

Addendum at 2a.
The Commonwealth has the burden of proving aggravating circumstances beyond a reasonable doubt. The defendant has the burden of proving mitigating circumstances, but only by a preponderance of the evidence. This is a lesser burden of proof than beyond a reasonable doubt.

App. 126.

***21** Since the instructions stressed the different *burdens* for proving aggravating and mitigating circumstances, but were silent as to any differences in the manner of proof, jurors would naturally conclude that *both* "aggravating *and* mitigating circumstances must be discussed and unanimously agreed to, as is typically the case when considering whether a burden of proof has been met." *See Frey v. Fulcomer*, 132 F.3d 916, 924 (3d Cir. 1997) (emphasis in original). Thus, the burden of proof instructions "likely cemented the jury's mistaken impression that it was obligated *not* to consider a mitigating circumstance that was found to exist by anything other than the entire panel." *Abu-Jamal-3*, 2001 WL 1609690, at *119 (emphasis in original).

The jury instructions were also problematic because the judge repeatedly used the pronoun "you" to refer without distinction to the entity that "finds" the defendant guilty, "finds" a sentence, "finds" aggravating circumstances, and "finds" mitigating circumstances.[4] To satisfy *Mills*, the jury would have to have know that "you" meant the "*unanimous jury*" for the first three matters, but meant "*each individual juror*" for the last. However, the "natural interpretation," *Mills*, 486 U.S. at 381, of the instructions was that the same "you" - the unanimous jury - must make all of these findings.

22 8. *Changes to Pennsylvania's capital jury instructions and verdict form after Mills underscore the constitutional error.

Just as this Court did in *Mills*, the Third Circuit noted that Pennsylvania adopted a new uniform sentencing verdict form for capital cases after *Mills* was decided. *Abu-Jamal-6*, 643 F.3d at 382 (citing Pa. R. Crim. P. 358 A). "[T]he new form ... makes explicit that unanimity is not required in determining the existence of mitigating circumstances." *Id.*

The Pennsylvania Suggested Standard Criminal Jury Instructions were likewise amended in response to *Mills* and now make clear that the jury needs to be unanimous before finding an aggravating circumstance, but need not be unanimous to consider or find a mitigating circumstance. *See id.* "[T]hese clarifications highlight the ambiguity at issue in this case." *Id.* at 383.

C. The Third Circuit Correctly Found That This Case Is Very Different Than *Spisak*.

This Court found that the *Spisak* jury instructions and verdict form did not violate *Mills*. Mr. Spisak's trial was in Ohio where capital juries find the presence or absence of aggravating factors at the guilt phase. *Spisak*, 130 S. Ct. at 680, 683.[5] Thus, after the penalty phase evidence was presented, the legal instructions and form given to ***23** the jury were brief. They can be summarized as follows:

1. Oral Instructions:
a. Explanation and examples of mitigating factors;

b. *Weighing* instruction - aggravating circumstances against mitigating circumstances.

2. Verdict Form:

a. Two forms for each murder count - both solely addressed weighing;

b. One form read, in its entirety: "We the jury in this case ... do find beyond a reasonable doubt that the aggravating circumstances which the defendant ... was found guilty of committing were sufficient to outweigh the mitigating factors present in this case. We the jury recommend that the sentence of death be imposed."

c. The other form read, in its entirety: "We the jury in this case ... do find beyond a reasonable doubt that the aggravating circumstance which the defendant ... was found guilty of committing are not sufficient to outweigh the mitigating factors present in this case. We the jury ***24** recommend that the defendant ... be sentenced to life imprisonment."

Id. at 683-84.

Petitioners argue that the weighing instructions in *Spisak* (2b and 2c above) are virtually identical to the weighing instruction given here[6] therefore there was no *Mills* violation in Mr. Abu-Jamal's trial. *See* Petition at 9. However, this argument completely ignores the additional instructions and language in Mr. Abu-Jamal's verdict form, none of which were present in *Spisak*. As the Third Circuit recognized, "[b]y contrast with *Spisak*, the identified language of unanimity here indisputably addresses more than the final balancing of aggravating and mitigating factors." *Abu-Jamal-6*, 643 F.3d at 379.

The most significant difference between *Abu-Jamal* and *Spisak* is that the *Abu-Jamal* verdict form contains express unanimity requirements for finding mitigating circumstances, and demands that the jury specify which mitigating circumstances it has unanimously found. *See* App. 131-32, 134-35. The *Spisak* form, on the other hand, did not require the jury to make *any* findings about mitigating circumstances, and certainly did not require the jury to specify what mitigating circumstances were found. See 130 S. Ct. at 684. Instead, the only finding the *Spisak* form required the jury to make was the ultimate sentence. *Id.*[7]

***25** Petitioners argue that there "is no distinction" between the fact that Mr. Abu-Jamal's jury had to find and report on found mitigating circumstances and the *Spisak* jury did not because the *Spisak* jury still had to decide on mitigation. *See* Petition at 15. This entirely misses the point. The *Mills* and *Abu-Jamal* juries (but not the *Spisak* jury) were required to specify the mitigating circumstances that were found. The *Abu-Jamal* jury instructions and verdict form that purported to explain how to find, and specify in writing, the proven mitigating circumstances ultimately produced the *Mills* violation. *See supra* Section I, B. Indeed, the format of the *Abu-Jamal* verdict form made it virtually impossible for the jury to record or communicate mitigation not found unanimously. The *Spisak* verdict form had no such problem even though the jury in that case considered the question of mitigation.

Abu-Jamal's requirement that the jury specify the found aggravators and mitigators created additional *Mills* problems. A pervasive feature of the *Abu-Jamal* verdict form and jury instructions, which contributed to the Third Circuit's conclusion that they violate *Mills*, is their identical treatment (aside from burden of proof) of aggravating and mitigating circumstances to be

found by the jury. The natural conclusion is that, apart from burdens of proof, aggravating and mitigating circumstances should be found *in the same way - unanimously*. *See Abu-Jamal-6*, 643 F.3d at 377.

***26** The *Spisak* verdict form and jury instructions lacked this similar treatment of aggravating and mitigating factors, mainly because the structure of the Ohio capital sentencing scheme in *Spisak* rendered *any* similarities between proof of aggravating and mitigating factors highly unlikely. As explained above, in *Spisak* - as in every Ohio capital case - the aggravating factors were introduced to and found by the jury at the guilt phase; at capital sentencing, the judge then "instructed the jury that the aggravating factors they would consider were the specifications that the jury had found proved beyond a reasonable doubt at the guilt phase." *Spisak*, 130 S. Ct. at 683. Because the aggravating factors were found at the guilt phase, the jury had no reason to believe that consideration of mitigating circumstances, which were first introduced at the *sentencing phase*, had anything in common with the manner in which aggravating factors were proved. The contrast with *Abu-Jamal* - where aggravating and mitigating circumstances were *introduced together at sentencing and treated identically*, apart from burden of proof - is profound.

Another important distinction between *Spisak* and *Abu-Jamal* is that Mr. Abu-Jamal's verdict form required the signatures of all twelve jurors just below the checklist on which the jury must record its findings of mitigating circumstances. The natural reading of this is that all twelve jurors must agree that a mitigating factor exists, just as all twelve must agree as to the existence of each aggravating factor and the ultimate sentence. *See supra* Section I. B. 4. This natural reading of the signatures ***27** requirement was reinforced by the judge's oral instructions on how to use the form, which expressly connected the signatures requirement with finding mitigating circumstances. *See supra* Section I. B. 7. Although the *Spisak* form required the signatures of all twelve jurors, this fact was wholly insignificant because the verdict form *did not require the jury to specify what mitigating circumstances were found* and the oral instructions did not connect the signatures requirement to finding mitigating circumstances. 130 S. Ct. at 684. As a consequence, signing the *Spisak* form signified nothing about an individual juror's finding or consideration of mitigation.

Thus, upon remand for consideration of *Spisak*'s impact on its earlier ruling, the Third Circuit correctly noted the many differences between *Abu-Jamal* and *Spisak* and properly determined that these differences were crucial to Mr. Abu-Jamal's right to have his sentencing jury consider mitigation.

D. The Third Circuit Correctly Found That the State Court's Ruling Unreasonably Applied *Mills*.

On remand from this Court, the Third Circuit again found that the Pennsylvania Supreme Court unreasonably applied *Mills*.[8] ***28** *Abu-Jamal-6*, 643 F.3d at 372. This conclusion rested upon two primary factors: (1) the state court failed to evaluate the combined effect of the verdict form *and* the oral instructions and (2) the state court "conducted an incomplete analysis of only a portion of the verdict form, rather than the entire form." *Id.* at 381.[9]

1. The state court's exclusive focus on the verdict form was objectively unreasonable.

The Third Circuit recognized that by the time Mr. Abu-Jamal's jury reached the final weighing and verdict stages of its deliberations, the court's oral instructions combined with the verdict form to create a substantial probability that the jury would only weigh mitigating circumstances that were found ***29** unanimously. *Abu-Jamal-6*, 643 F.3d at 381-82. Even if the verdict form's language on weighing, taken in isolation, was proper, by ignoring the impact of the misleading oral instructions and other parts of the form, the state court failed to account for the "effect on the jury of being instructed identically and contemporaneously with respect to the making of individual determinations regarding mitigating and aggravating circumstances." *Id.* at 381. *See supra* Section I. B. 7.

Petitioners contend that the Circuit's criticism of the state court's failure to consider the oral jury instructions is unfair because Mr. Abu-Jamal's state post-conviction appeal relied only on the verdict form. Petition at 20. This is untrue. Indeed, the Third

Circuit rejected this exact argument and found that Mr. Abu-Jamal's state court pleadings "raised a *Mills* claim based on both the verdict form and the jury instructions." *Abu-Jamal-4*, 520 F.3d at 299-300.

2. *The state court's Mills analysis was limited to one portion of the verdict form.*

The Circuit found the state court's conclusions about the verdict form to be objectively unreasonable because the state court only considered one portion of that form. *Abu-Jamal-6*, 643 F.3d at 381-82. In Section I. B above, Mr. Abu-Jamal has presented in significant detail the *Mills*-related problems presented by the verdict form in his trial. Almost none of these problems were addressed by the state court because it did not address the entire the form. For example, the Third Circuit found it objectively ***30** unreasonable that the state court failed to "address the likely effect on the jury of having to choose aggravating and mitigating circumstances from visually identical lists and represent its findings as to each in an identical manner." *Id.* at 382.

Instead, the Pennsylvania Supreme Court's decision merely noted that the verdict form "consisted of three pages" and reached a series of conclusions that unreasonably focused on language viewed in isolation from the complete form and the oral instructions. *Abu-Jamal-2*, 720 A.2d at 119. By ignoring the ways in which the verdict form imposed a "requirement of unanimity," the state court unreasonably applied *Mills*. *See Williams*, 529 U.S. at 397-98 (state court decision "unreasonable insofar as it failed to evaluate the totality of" relevant facts).

(a) The state court inaccurately found that the "requirement of unanimity is found only at Page One in the section wherein the jury is to indicate its sentence." *Id.* In addition to stating "We, the jury unanimously *sentence* the defendant to death," Page One also states, "We, the jury, have found *unanimously* … The aggravating circumstance(s) is/are *A*. The *mitigating circumstance(s) is are A*." App. 131-32. Thus, Page One's "requirement of unanimity" *expressly applied* to the finding of both aggravating and *mitigating* circumstances.

In addition to the express use of the word "unanimously," the verdict form opens with the requirement that *everything on the form* be the "find[ings]" of "the jury" that found Mr. Abu-Jamal guilty - *i.e.*, the *unanimous* jury. This applies to ***31** Page One's findings of "*mitigating* circumstance(s)" and to Page Three's checklist of *mitigating* circumstances, *just as clearly* as it applies to Page One's findings of "aggravating circumstance(s)" and Page Two's checklist of aggravating circumstances. Moreover, the verdict form closes with the required signatures of *all twelve jurors*, reinforcing the opening statement that all findings - including mitigation - must be made unanimously. The state court, however, "never addressed the effect of the lead-in language." *Abu-Jamal-3*, 2001 WL 1609690, at *126 n.91.

(b) The state court described the second page of the verdict form as containing "all the statutorily enumerated aggravating circumstances and … a designated space for the jury to mark those circumstances found." *Abu-Jamal-2*, 720 A.2d at 119. It unreasonably failed to recognize that the list of *mitigating* circumstances on Page Three is *identical* in format to this list of aggravating circumstances and, therefore, "the natural interpretation of the form," *Mills*, 486 U.S. at 381, was that both mitigating and aggravating circumstances must be *unanimously* found.

(c) The state court unreasonably relied on the fact that Page Three, which contains the mitigating circumstances checklist, "includes no reference to a finding of unanimity." *Abu-Jamal-2*, 720 A.2d at 119. As stated above, the verdict form opens with a requirement that *everything* therein be found by the *unanimous* jury; and the form ends - on Page Three, just below the checklist of mitigating circumstances - with a requirement that all twelve jurors sign, indicating their unanimous agreement with ***32** everything on the form. Furthermore, although Page Two's list of aggravating circumstances also contains no "reference to a finding of unanimity," it is undisputed that the jury knew it had to find aggravators unanimously. This identical treatment of aggravating and mitigating circumstances creates a "reasonable likelihood," *Boyde*, 494 U.S. at 378, that the jury believed it had to find mitigating circumstances unanimously.

Furthermore, the state court itself observed that Page Three is the "section where *the jury* is to checkmark those mitigating circumstances *found*." *Abu-Jamal-2*, 720 A.2d at 119 (emphasis added). There is a "reasonable likelihood" that the jury

understood Page Three in exactly that way - that only mitigating circumstances *"found" by "the jury"* - not *individual jurors* - should be checked and considered. In order to read Page Three consistent with *Mills*, the jury would have to know that each individual juror should check those mitigating circumstances s/he found, even if the other jurors disagreed. To say the least, that is an odd reading of the verdict form. Moreover, since the jury was to turn in one verdict form, not twelve, it would have no way of knowing how to communicate the lack of unanimity for any mitigating factor. In addition, the jury would have had to give this treatment to mitigating circumstances but not aggravating circumstances, despite the fact that aggravating and mitigating circumstances are treated identically on the form.

(d) The state court noted that Pages Two and Three, containing the lists of aggravating and mitigating circumstances, include no printed ***33** instructions, *Abu-Jamal-2*, 720 A.2d at 119, but unreasonably failed to recognize that this contributes to the *Mills* error. Without instructions accompanying the lists of aggravating and mitigating circumstances, the jury had to look to other parts of the verdict form, the overall structure of the form, and the judge's instructions to understand how to use those lists. As set forth herein, those factors indicated that aggravating and mitigating factors must be unanimously found.

(e) The state court unreasonably concluded that Page Three's signatures-of-all-jurors requirement was irrelevant "since those signature lines naturally appear at the conclusion of the form and have no explicit correlation to the checklist of mitigating circumstances." *Abu-Jamal-2*, 720 A.2d at 119. The reason it is "natural[]" for the twelve signatures to "appear at the conclusion of the form" is that it signifies the agreement of all twelve jurors to the findings recorded on the form. This is especially obvious here, where the form opens with a requirement that everything noted thereon be the findings of the jury, not individual jurors.

To the extent the signatures "have no explicit correlation to the checklist of mitigating circumstances," exactly the same is true for the checklist of aggravating circumstances and the sentence. To satisfy *Mills*, the jurors would have to know that signing the form signaled agreement to the sentence entered on Page One and agreement to the findings of aggravating circumstances entered on Page Two, but was meaningless with respect to mitigating circumstances on Page Three - the very page upon which they were to enter their signatures. ***34** Nothing in the verdict form or instructions conveyed that illogical concept.

Even if the state court's "reasoning" about the signatures made any sense in isolation, it unreasonably failed to consider the trial judge's oral "explanation of th[e] form". *Abu-Jamal-3*, 2001 WL 1609690, at *125. As stated above, the oral instructions on how to use Page Three made an "explicit correlation" between the signatures and the mitigating circumstances and, thereby, cemented the *Mills*-violation that is apparent on the face of the verdict form. The state court unreasonably failed to consider the effect of the oral instructions on the jury's understanding of the form.

(f) The state court's previous approval, in *Commonwealth v. Murphy*, 657 A.2d 927 (Pa. 1995), of a "verdict slip[] similar to" Mr. Abu-Jamal's does not make its decision reasonable. *Abu-Jamal-2*, 720 A.2d at 119. The entire discussion of the verdict slip in *Murphy* is that "the portion of the verdict slip where the jury is to list mitigating circumstances is set apart from sections A and B of the verdict slip which do require a finding of unanimity." 657 A.2d at 936. There is no description of what the *Murphy* verdict slip actually said.

Petitioners argue that the Circuit's conclusion that the state court unreasonably applied *Mills* is erroneous because the state court correctly applied *Zettlemoyer*, the Circuit's then-governing *Mills* precedent. *See* Petition at 20-26. This is false. *Abu-Jamal* is as different from *Zettlemoyer* as it is from *Spisak*.

***35** Petitioners incorrectly claim that the *Zettlemoyer* instructions were "virtually identical to those here" and, in support, quote *one sentence* of the *oral* instructions given in *Zettlemoyer*. Petition at 20-21. While this *single sentence* is similar to *one part* of the *Abu-Jamal* oral instructions, there are "important distinctions" between the two instructions as a whole. *Abu-Jamal-3*, 2001 WL 1609690, at 120; *see id.* at *123.

More significantly, there are vast differences between the verdict forms in *Zettlemoyer* and *Abu-Jamal*. *See Abu-Jamal-3*, 2001 WL 1609690, at *126 n.92. Although Petitioners declare that "the *most cursory*' " comparison of the forms show they were

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"saying exactly the same thing," Petition at 23 (emphasis added), there are substantial differences between the verdict forms in *Abu-Jamal* and *Zettlemoyer*.

In finding the *Zettlemoyer* verdict form constitutional, the Third Circuit stressed two factors which materially distinguish it from *Abu-Jamal*.

First, the *Zettlemoyer* form said "We the jury have found unanimously ... The aggravating circumstance is ___," but there was *no such language* for *mitigating* circumstances. 923 F.2d at 308. "The absence of a similar instruction for mitigating circumstances indicates that unanimity is not required." *Id.* In sharp contrast, the *Abu-Jamal* form contains identical language for aggravating *and* mitigating circumstances. App. 131-32. Thus, the presence on the *Abu-Jamal* form of "a similar instruction for mitigating circumstances indicates that unanimity" is required.

***36** Second, on the *Zettlemoyer* verdict form, "the jury was obliged to specify the aggravating circumstance it found," but "it had no such duty with respect to mitigating circumstances, thus suggesting that consideration of mitigating circumstances was broad and unrestricted." 923 F.2d at 308. Again, the *Abu-Jamal* form is very different - it required the jury to specify both the aggravating and mitigating circumstances it found, with no distinction made between the two. Thus, the *Abu-Jamal* verdict form required both aggravating and mitigating circumstances be unanimously found.

In short, the *Abu-Jamal* form suffers from the exact *Mills*-violating features that the Third Circuit found absent from the *Zettlemoyer* form. Moreover, the *Abu-Jamal* form requires a unanimous mitigation finding for the additional reasons, *see supra* Section I. B that also were absent from the *Zettlemoyer* form.

The state court's *Mills* decision was objectively unreasonable. [10]

***37 II. This Court Should Deny Certiorari Because Petitioners' Quarrel Is with the Third Circuit's Application of Properly Stated Rules of Law to the Facts of this Case.**

Certiorari "is rarely granted when the asserted error consists of ... the misapplication of a properly stated rule of law." Supreme Court Rule 10. Here, the Third Circuit applied "properly stated rule[s] of law" to the facts of this case for both the constitutional merits of the *Mills* claim and the deference due state court decisions under AEDPA.

It is undisputed that the applicable rule of federal constitutional law is derived from *Mills v. Maryland*, "in light of *Smith v. Spisak*." *Abu-Jamal-5*, 130 S. Ct. at 1134. The Third Circuit expressly recognized that *Mills* and *Spisak* set forth the applicable constitutional rule; applied *Mills* and *Spisak* to the facts of Mr. Abu-Jamal's case; and applied no other substantive law or lower court interpretations of *Mills* or *Spisak*. *See supra* Section I. A.

It is also undisputed that the applicable rule of deference under AEDPA is 28 U.S.C. § 2254(d)(1), as interpreted by this Court. The Third Circuit expressly recognized that § 2254(d)(1) sets forth the applicable rule of deference; acknowledged this Court's interpretations of § 2254(d)(1) in cases such as *Williams*, 529 U.S. 362 and *Landrigan*, 550 U.S. 465; and applied these deferential standards to this case. *See supra* Section I. A.

Because the Circuit clearly identified and applied the correct rules of constitutional law and § 2254(d) deference, Petitioners' request for certiorari review should be denied.

***38 III. This Court Should Deny Certiorari Because the Circuit Court's Grant of *Mills* Relief is Unlikely to Affect Future Cases.**

This Court grants certiorari in order to review "question[s] of national importance." *Grutter v. Bollinger*, 539 U.S. 306, 322 (2003). This is not such a case because the error is unlikely to affect future cases.

For several reasons, very few Pennsylvania capital cases are eligible for *Mills* relief under Respondent's circumstances:

First, over 22 years ago - in February 1989 - Pennsylvania's courts *stopped using the verdict forms and jury instructions now at issue.* And, in response to *Mills*, the Pennsylvania Supreme Court promulgated a new standard verdict form and jury instructions that are *Mills*-compliant. *See Abu-Jamal-6*, 643 F.3d at 382-83.

Second, the applicability of *Mills* is limited by the anti-retroactivity rule of *Teague v. Lane*, 489 U.S. 288 (1989). Because *Mills* announced a "new rule," it is only available to habeas petitioners whose convictions became final after this Court decided *Mills* on June 6, 1988. *Beard v. Banks*, 542 U.S. 406 (2004).

Thus, in order for another prisoner to benefit from the Circuit's decision, the case cannot be "too new" - it had to be tried *before Mills*, or at least before the official change in the verdict form on February 1, 1989. This eliminates every case tried in the last 22 years. At the same time, the case cannot be "too old" - it had to be final *after Mills*. This also eliminates a significant body of cases.

***39** Third, to benefit from the Circuit's decision a *Mills* claim must survive all other habeas-related barriers, such as the exhaustion requirement and procedural default rules. Very few cases could survive this filtering and properly present the issues on which Petitioners seek review. Few if any are likely to present themselves to the Third Circuit in the future.

Finally, the limited relevance of *Mills* error in Pennsylvania is reflected by the decisions of the Third Circuit. Apart from Respondent's case, the Third Circuit has addressed *Mills* claims in only eight other Pennsylvania capital cases: *Zettlemoyer*, 923 F.2d at 306-08; *Frey*, 132 F.3d at 920-25; *Szuchon v. Lehman*, 273 F.3d 299, 320-24 (3d Cir. 2001); *Hackett*, 381 F.3d 281 (3d Cir. 2004); *Albrecht v. Horn*, 485 F.3d 103, 116-20 (3d Cir. 2007); *Fahy v. Horn*, 516 F.3d 169, 175-76 (3d Cir. 2008); *Banks v. Horn*, No. 99-9005 (3d Cir. Aug. 25, 2004); and *Kindler v. Horn*, 542 F.3d 70, 80-83 (3d Cir. 2008), *vacated and remanded on other grounds*, 130 S. Ct. 612 (2009).

In *six* of these cases - *Zettlemoyer, Szuchon, Hackett, Albrecht, Fahy*, and *Banks* - the Third Circuit *denied relief* on the *Mills* claim. In three of these cases - *Banks, Albrecht*, and *Fahy* - the Circuit found that the *Mills* claim was barred by *Teague*. In one - *Szuchon* - the Circuit held that the *Mills* claim was procedurally defaulted. In two, the Circuit denied the *Mills* claim on the merits - under pre-AEDPA *de novo* review in *Zettlemoyer* and under AEDPA's § 2254(d) in *Hackett*.

***40** In just *two* of the eight cases, *Frey* and *Kindler*, did the Third Circuit grant relief under *Mills*. In both cases, habeas review was *de novo*, not under AEDPA's § 2254(d). In *Frey*, the claim *would have been denied* under *Teague* had Petitioners not waived their *Teague* defense. 132 F.3d at 920 n.4.

Thus, the Third Circuit's *Mills* decisions highlight the limited availability of *Mills* relief in Pennsylvania due to the above-described combination of non-retroactivity under *Teague*, post-Mills changes to Pennsylvania's verdict forms and jury instructions, and other procedural issues. The rulings also show that even when the rare *Mills* claim survives those obstacles, the Third Circuit takes a nuanced approach that has led to habeas relief in some cases and denial of relief in others. Mr. Abu-Jamal's meritorious *Mills* claim is, therefore, a rarity even in Pennsylvania, and *Mills* claims will scarcely ever be presented in future cases. Accordingly, this Court should not waste its rarely granted certiorari jurisdiction on this case.

***41 CONCLUSION**

For the reasons stated herein, certiorari should be denied.

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Footnotes

* Counsel of Record

1 As detailed in the Procedural History, *supra* at pp. 2-8, both the District Court and the Third Circuit properly recognized and applied the deferential standard of review set forth by § 2254(d).

2 This Court's "GVR" order was what Justice Scalia has suggested "might be called [a] 'no-fault V & R': vacation of a judgment and remand *without* any determination of error in the judgment below." *Stutson v. United States*, 516 U.S. 163, 178 (1996) (Scalia, J., dissenting) (emphasis in original); *see Gonzalez v. Justices of Mun. Ct. of Boston*, 420 F.3d 5, 7 (1st Cir. 2005).

3 The Third Circuit noted that in *Spisak*, this Court described the relevant standard to be a "substantial possibility" but concluded that since *Mills* termed the standard to be "substantial probability," this Court's use of the word, "possibility" was likely inadvertent. *Abu-Jamal-6*, 643 F.3d at 374 n.3. In *Boyde v. California*, 494 U.S. 370 (1990), this Court clarified that the relevant legal standard was "whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents consideration of constitutionally relevant evidence." *Id.* at 378. The Third Circuit found that a "'substantial probability', is neither more nor less than [the *Boyde* standard of] a 'reasonable likelihood' " and that it would utilize the "substantial probability" standard to be consistent with *Spisak*. *Abu-Jamal-6*, 643 F.3d at 375 n.4.

4 See *also* App. 1224-29.

5 *See State v. Gumm*, 653 N.E.2d 253, 260 (Ohio 1995); *State v. Jenkins*, 473 N.E.2d 264, 277 (Ohio 1984).

6 This is not entirely true. The word, "unanimous" does not appear on the verdict forms in *Spisak*.

7 While the *Spisak* form is radically different from the *Abu-Jamal* form, it is similar to the form in *Zettlemoyer v. Fulcomer*, 923 F.2d 284 (3d Cir. 1991), which the Third Circuit held did not violate *Mills*. *Id.* at 308. *See also infra* Section I. D. 2.

8 Petitioners contend that the Third Circuit's review of the state court's decision should have been "doubly deferential." Petition at 13 (citing *Cullen v. Pinholster*, 131 S. Ct. 1388, 1403 (2011); *Harrington v. Richter*, 131 S. Ct. at 770, 788 (2011)). Petitioners are mistaken - the "double deference" requirement governs only claims of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). *See Harrington*, 131 S. Ct. at 788; *Pinholster* at 1410-11. Furthermore, as detailed in the Procedural History and elsewhere above, the Third Circuit, in finding the state court's decision objectively unreasonable, properly identified and applied the deferential standard of review required by § 2254. Thus, Petitioners' assertion that the Circuit failed to accord appropriate deference to the state court decision, Petition at 13-14, 18, 19, 25, 29, is false. In order to accept Petitioners' arguments this Court would have to believe that the deference language repeatedly cited by the Circuit was a smokescreen to hide its bad faith decisionmaking.

9 It was also objectively unreasonable and contrary to this Court's precedent for the Pennsylvania Supreme Court to fault Mr. Abu-Jamal for offering "absolutely no evidence in support of this claim at the PCRA hearing." *Abu-Jamal-2*, 720 A.2d at 119. *See Mills*, 486 U.S. at 381 ("There is, of course, no extrinsic evidence of what the jury in this case actually thought. We have before us only the verdict form and the judge's instructions."); *Kelly v. South Carolina*, 534 U.S. 246, 256 (2002). Here, as in *Mills* and most cases challenging jury instructions, the claim is based upon "the verdict form and the judge's instructions." *Mills*, 486 U.S. at 381.

10 Petitioners contend that *Noland v. French*, 134 F.3d 208, 213-214 (4th Cir.), *cert. denied*, 525 U.S. 851 (1998), supports the state court's decision because it finds that a general unanimity instruction did not cause the jury to believe it had to be unanimous in finding mitigation. Petition at 26. Petitioners are wrong. In *Noland*, the instructions included an express unanimity requirement for aggravating circumstances (and the sentence), but the word "unanimously" was not used on the verdict form question regarding mitigating circumstances. Thus, *Noland* does not undermine the Third Circuit's finding here because in *Abu-Jamal*, no distinction was made between findings of aggravating and mitigating circumstances, and the verdict form required that both be unanimously found.

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IN THE
Supreme Court of the United States

MUMIA ABU-JAMAL,

Petitioner,

v.

JEFFREY A. BEARD, SECRETARY
PENNSYLVANIA DIRECTOR OF CORRECTIONS, ET AL.,
Institutional Division,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF *AMICUS CURIAE* NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC. IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is a non-profit corporation chartered by the Appellate Division of the New York Supreme Court as a legal aid society, formed to assist African Americans in securing their rights through the prosecution of lawsuits. The Legal Defense Fund's first Director-Counsel was Thurgood Marshall. LDF has a long-standing concern with the influence of racial discrimination on the criminal justice system in general, and on jury selection in particular. LDF has represented defendants in numerous jury selection cases before this Court including, *inter alia, Swain v. Alabama*, 380 U.S. 202 (1965), *Alexander v. Louisiana* 405 U.S. 625 (1972) and *Ham v. South Carolina*, 409 U.S. 524 (1973); pioneered the affirmative use of civil actions to end jury discrimination in, *Carter v. Jury Comm'n of Greene County*, 396 U.S. 320 (1970), and *Turner v. Fouche*, 396 U.S. 346 (1970); and appeared as *amicus curiae* in *Miller-El v. Dretke*, 545 U.S. 231 (2005), *Johnson v. California*, 545 U.S. 162 (2005), *Miller-El v. Cockrell*, 537 U.S.322 (2003), *Batson v. Kentucky*, 476 U.S. 79 (1986), *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991), and *Georgia v. McCollum*, 505 U.S. 42 (1992). In addition to its jury discrimination work in this Court, LDF submitted an *amicus* brief and presented oral argument in the court below in the instant matter.

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[1] Letters of consent by the parties to the filing of this brief have been lodged with the Clerk of this Court. No counsel for any party authored this brief in whole or in part, and no person or entity, other than *amicus*, made any monetary contribution to its preparation or submission.

Because of its long-standing commitment to the elimination of racial discrimination in the criminal justice system and its experience litigating claims of discrimination in the jury selection process, LDF has an interest in Mr. Abu-Jamal's petition, which presents important issues regarding the application of *Batson* and its progeny, and believes its perspective would be helpful to this Court in evaluating the claim presented in this case.

SUMMARY OF ARGUMENT

Since 1986, this Court has consistently recognized and reinforced the principle that courts must promptly examine and eradicate all founded allegations of discrimination in the exercise of peremptory challenges in order to ensure a fair trial for the accused, to protect prospective jurors from discrimination, and to protect the integrity of the criminal justice system. Specifically, in *Batson v. Kentucky*, 476 U.S. 79 (1986) and its progeny, this Court has declared that a petitioner claiming discrimination in the exercise of peremptory challenges should only be subject to a modest initial burden of proof, and that courts evaluating such a claim should consider "all relevant circumstances" suggestive of discrimination. *Id.* at 96-97. By rigorously enforcing these two core dictates, this Court seeks to ensure that no relevant evidence of discrimination is ignored and that public confidence in the integrity of the criminal justice system is assured. *See id.* at 86-87; 103.

Amicus respectfully requests that this Court grant review of the decision below affirming the denial of Mumia Abu-Jamal's *Batson* claim. The Court of

Appeals declared that Mr. Abu-Jamal failed to establish a *prima facie* case of discrimination under *Batson* because he did not offer evidence "comparing the percentage of exercised challenges used against black potential jurors with the percentage of black potential jurors known to be in the venire." *Abu-Jamal v. Horn*, 520 F.3d 272, 290 (3d Cir. 2008). In reaching this conclusion, the panel majority rendered irrelevant substantial evidence strongly indicative of discriminatory jury selection presented by Mr. Abu-Jamal.

Consequently, the lower court ruling – which conflicts with decisions of the Courts of Appeals of the Second, Ninth and Eleventh circuits – undermines *Batson* by elevating the burden of proof to be met by litigants advancing *Batson* claims, and ignores numerous indicators of discrimination, thereby insulating credible allegations of racial discrimination in jury selection from constitutional scrutiny.

This Court should grant review and reaffirm *Batson*'s authority as a powerful tool for the eradication of racial discrimination in jury selection.

I. Experience Teaches, and this Court has Held, that a Light Initial Burden of Proof is Necessary to Assure that Jury Selection is not Infected by Racial Discrimination in the Exercise of Peremptory Challenges.

This Court's rulings appropriately recognize that American juries operate to "safeguard[] a person accused of crime against the arbitrary exercise of power by [a] prosecutor or judge." *Batson*, 476 U.S. at

86 (citing *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968)). Racial discrimination in jury selection diminishes the jury's power to perform this critical function by subjecting a criminal defendant to trial before a biased tribunal and "undermin[ing] public confidence in the fairness of our system of justice." *Batson*, 476 U.S. at 86-87 (citations omitted); *see also Miller-El*, 545 U.S. at 238("When the government's choice of jurors is tainted with racial bias, that 'overt wrong . . . casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial,' . . .'invites cynicism respecting the jury's neutrality,' and undermines public confidence in adjudication.")(quoting *Powers v. Ohio*, 499 U.S. 400, 412 (1991)). Discriminatory jury selection also unfairly exposes qualified citizens of color to public exclusion and a "brand" of inferiority. *Strauder v. West Virginia*, 100 U.S. 303, 308 (1880) (explaining that exclusion from jury service "is practically a brand upon [the potential juror], affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others."). For each of these reasons, a prosecutor's exercise of race-based peremptory challenges is pernicious, shameful and repugnant to the very underpinnings of the Constitution in general and the Equal Protection Clause in particular. *See Batson*, 476 U.S. at 102 (Marshall, J., concurring).

In order to ensure that the criminal justice system is not corrupted by such discrimination, this Court in *Batson* declared that the use of peremptory challenges to exclude prospective jurors from an

individual case because of race is unconstitutional. Specifically, *Batson* lowered the "crippling,"*Batson*, 476 U.S. at 92, and "unworkable," *Miller-El*, 545 U.S. at 239, threshold burden of proof that had been imposed by this Court's earlier decision in *Swain*, *supra*.[2] *See also Georgia v. McCollum*, 505 U.S. 42, 47 (1992) (noting that *Batson* "discarded *Swain*'s evidentiary formulation."). This Court was compelled to act because petitioners claiming discrimination under *Swain* were overwhelmingly unable to meet its extremely high initial burden and, as a result, the "misuse of the peremptory challenge to exclude black jurors" became "common and flagrant." *Batson*, 476 U.S. at 103 (Marshall, J., concurring).

In response, *Batson* declared "inadequa[te]" "any burden of proof for racially discriminatory use of peremptories that requires that 'justice . . . sit supinely by' and be flouted in case after case before a remedy is available." *Id.* at 102 (Marshall, J. concurring) (quoting *Commonwealth v. Martin*, 461 Pa. 289, 299, 336 A.2d 290, 295 (1975) (Nix, J., dissenting)). It rejected the *Swain* formulation and directed courts confronted with claims of discrimination in the exercise of peremptory challenges to "undertake 'a sensitive inquiry into such circumstantial and direct

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[2]Under *Swain*, a petitioner alleging the discriminatory exercise of peremptory challenges had to demonstrate that "the prosecutor in a county, in case after case, whatever the circumstances, whatever the crime and whoever the defendant or the victim may be, is responsible for the removal of Negroes who have been selected as qualified jurors by the jury commissioners and who have survived challenges for cause, with the result that no Negroes ever serve on petit juries." *Swain*, 380 U.S. at 223.

evidence of intent as may be available,'" *Id.* at 93 (quoting *Arlington Heights v. Metropolitan Housing Development Corp.* 429 U.S. 252, 266 (1977)) and established the now familiar three-part test:

> [f]irst, a defendant must make a *prima facie* showing that a peremptory challenge has been exercised on the basis of race. Second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question. Third, in light of the parties' submissions, the...court must determine whether the defendant has shown purposeful discrimination.

Miller-El, 537 U.S. at 328-29 (citations omitted).

In recognition of the fact that *Swain*'s insurmountable first step burden had the effect of insulating unlawful discrimination from constitutional scrutiny, the *Batson* court declared that a petitioner seeking to establish a *prima facie* case of discrimination need only

> show that he is a member of a cognizable racial group, [ ] and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race. [T]he defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits "those to discriminate who are of a mind to discriminate." [T]he defendant must

> show that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race.

Batson, 476 U.S. at 96 (quoting *Avery v. Georgia*, 345 U.S. 559, 562 (1953) (internal citations omitted).

This Court also made clear that there was no specific formula for establishing a *prima facie* case:

> [i]n deciding whether the defendant has made the requisite showing, *the trial court should consider all relevant circumstances. For example*, a 'pattern' of strikes against black jurors included in the particular venire *might* give rise to an inference of discrimination. Similarly, the prosecutor's questions and statements during *voir dire* examination and in exercising his challenges *may* support or refute an inference of discriminatory purpose. *These examples are merely illustrative.*

Batson, at 96-97 (emphasis added).

To make absolutely certain that evidence of discrimination was no longer ignored, the *Batson* Court repeatedly directed judges evaluating claims of intentional discrimination in the exercise of peremptory challenges to consider all "circumstantial and direct evidence of intent as may be available,'" *Id.* at 93 (quoting *Arlington Heights*, 429 U.S. at 266), and explained that "any ... relevant circumstances [can] raise an inference that the prosecutor used that

practice to exclude the veniremen from the petit jury on account of their race." *Batson*, 476 U.S. at 96. *See also Johnson*, 545 U.S. at 172 ("The *Batson* framework is designed to produce actual answers to suspicions and inferences that discrimination may have infected the jury selection process."); *Abu-Jamal*, 520 F.3d at 314 n.44 (Ambro, J., dissenting) ("were we to summarize *Batson* in layperson's terms, a defendant needs to raise, based on whatever evidence exists, a reasonable possibility that the prosecutor intended to exclude from the jury but one person because of race.").

Thus, in order to ensure that unlawful discrimination in the exercise of peremptory challenges is exposed and eliminated, "all of the circumstances that bear upon the issue of racial animosity must be consulted." *Snyder v. Louisiana*, 552 U.S. ___, 128 S.Ct. 1203, 1208 (2008).

II. The Decision Below Inexplicably Departs from This Court's Teachings and Conflicts with Rulings of Other Courts of Appeal Respecting the Elements of a *Prima Facie* Case under *Batson*.

This Court has repeatedly addressed this subject and provided detailed guidance to lower courts about how *Batson* claims should be analyzed and decided. *See, e.g., Snyder, supra; Johnson, supra; Miller-El v. Dretke, supra; Miller-El v. Cockrell, supra.* It is ironic, then, that in the ruling below, the panel majority's opinion retreats from this Court's directive to undertake a broad review of all circumstances when assessing claims of discrimination in the exercise of peremptory challenges and instead improperly heightens the evidentiary burden on defendants

raising such claims. This departure from controlling precedent warrants plenary review by this Court, in order to assure that *Batson* remains an effective vehicle for uncovering and eradicating racial discrimination in the exercise of peremptory challenges.

In affirming the District Court's conclusion that Mr. Abu-Jamal failed to establish a *prima facie* case of discrimination under *Batson*, the panel majority failed to conduct the constitutionally required broad review of all relevant evidence of discrimination. Instead, the Court concluded that Mr. Abu-Jamal's purported failure to proffer "evidence from which to determine the racial composition or total number of the entire venire – facts that would permit the computation of the exclusion rate[3] and would provide important contextual markers to evaluate the strike rate"[4] was, in and of itself, fatal to his effort to set forth a *prima facie* case of discrimination under *Batson*. *Abu-Jamal*, 520 F.3d at 291-292. The panel majority conceded that "[t]here may be instances where a prima facie case can be made without evidence of the strike rate and exclusion rate," but offered no insight into how a petitioner might do so

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[3]The Third Circuit explained that the "exclusion rate" is "calculated by comparing the percentage of exercised challenges used against black potential jurors with the percentage of black potential jurors known to be in the venire." *Abu-Jamal*, 520 F.3d at 290.

[4]The "strike rate is computed by comparing the number of peremptory strikes the prosecutor used to remove black potential jurors with the prosecutor's total number of peremptory strikes exercised." *Abu-Jamal*, 520 F.3d at 290.

and summarily declared that Mr. Abu-Jamal did not meet this heightened and ambiguous standard. *Id.* at 292. Indeed, the majority acknowledged only in passing the non-statistical evidence of discriminatory intent that was presented by Mr. Abu-Jamal. *Id.* at 291 n.17.[5] By focusing solely on the exclusion rate and by giving Mr. Abu-Jamal's abundant evidence of discriminatory intent only "cursory consideration," the Court "misapplie[d] *Batson*, ... [by] fail[ing] to 'consider all relevant circumstances' of [the] case" and elevating *Batson*'s Step One burden. *Abu-Jamal*, 520 F.3d at 319 (Ambro, J., dissenting).

The Third Circuit's declaration that exclusion rate evidence is a necessary component of *Batson*'s *prima facie* case requirement reveals a fatal

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[5]Mr. Abu-Jamal relied on the following evidence in support of his claim of discrimination in the exercise of peremptory challenges: the fact that he is an African American man charged with killing a white police officer; the fact that Mr. Abu-Jamal was a prominent African American community activist; the trial prosecutor's pattern of peremptory strikes against prospective jurors of color; the trial prosecutor's statement of discriminatory intent; and evidence of a culture of discrimination, including that the Philadelphia District Attorney's Office trained its young prosecutors on how to exclude prospective jurors of color, testimony by Mr. Abu-Jamal's trial lawyer and other Philadelphia defense attorneys indicating that the Philadelphia District Attorney's Office routinely used its peremptory strikes to exclude African American prospective jurors, a study documenting significant exclusion of prospective jurors of color in Philadelphia capital trials, and the fact that at the time of his trial, state law authorized the use of race-based peremptory challenges. *See* Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit at 24-30, *Abu-Jamal v. Horn*, No. 08-8483 (Dec. 19, 2008) (filed on behalf of Petitioner, Mumia Abu-Jamal).

misunderstanding of the history and purpose of the *Batson* Step One burden. *Batson* recognized that *Swain*'s flawed and singular focus on systemic statistical evidence impeded the identification and eradication of discrimination in the exercise of peremptory challenges and contributed to public mistrust in the administration of justice. It therefore required courts to conduct a complete assessment of evidence of discrimination in the exercise of peremptory challenges and acknowledged that a single strike, accompanied by such evidence, can sustain the *prima facie* case threshold. *Batson*, 476 U.S. at 99 n.22.

The decision below directly contradicts *Batson* and threatens to dramatically *reduce* the pool of cases eligible for judicial review from those that raise an inference of discrimination based on any and all relevant circumstances to those that do so based on "exclusion rate" evidence. By leaving those cases that present credible and compelling non-statistical evidence of discrimination beyond the reach of the courts, the Third Circuit leaves serious questions about the fairness of the criminal justice system unanswered. In so doing, that court "'invites cynicism respecting the jury's neutrality,' and undermines public confidence in adjudication." *Miller-El*, 545 U.S. at 238 (quoting *Powers*, 499 U.S. at 412).

This elevation of statistical analysis above any other evidence of discrimination not only conflicts with *Batson*'s goals, it also contradicts its express terms. *Batson* clearly indicates that a pattern of strikes and the prosecutor's questions and statements may establish a *prima facie* case of discrimination. *Batson*,

476 U.S. at 96-97. The ruling below that "exclusion rate" evidence is an indispensable component of a *prima facie* case fails to give effect to this guidance. Additionally, *Batson* expressly suggested that a finding of intentional discrimination would be proper even if based on the exclusion of a single prospective juror. *Batson*, 476 U.S. at 99 n.22. It is entirely unclear how one discriminatory peremptory challenge could be exposed and corrected under the logic of the panel majority in this case.

It is for these reasons that several other Courts of Appeals have rejected the suggestion that statistical evidence such as "exclusion rate" is a necessary component of a *Batson prima facie* case. *See Tankleff v. Senkowski*, 135 F.3d 235, 249 (2d Cir. 1998); *Turner v. Marshall*, 63 F.3d 807, 812 (9th Cir. 1995); *United States v. Horsley*, 864 F.2d 1543, 1546 (11th Cir. 1989) (per curiam).

This Court should grant review to resolve this conflict among the Circuits and to insure the integrity of its consistent jurisprudence applying the bedrock ruling in *Batson*.

CONCLUSION

Amicus respectfully urges this Court to affirm *Batson*'s dictate that petitioners seeking to prove racial discrimination in the exercise of peremptory challenges must face a modest threshold burden of proof, and that courts considering such challenges must consider "all relevant evidence" of discrimination.

Respectfully submitted,

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March 5, 2009

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Nos 01-9014 and 02-9001

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

E-Transmission Signature to follow

MUMIA ABU-JAMAL,
APPELLEE IN No. 01-9014 and *APPELLANT IN No. 02-9001*
v.
MARTIN HORN, PENNSYLVANIA DIRECTOR OF CORRECTIONS, *et. al.*
APPELLANT IN No. 01-9014 and *APPELLEE IN No. 02-9001*

BRIEF OF *AMICUS CURIAE*
THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
IN SUPPORT OF APPELLEE/CROSS-APPELLANT'S PETITION FOR
PANEL REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

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Dated: June 27, 2008

STATEMENT OF COUNSEL UNDER FRAP 35(b)(1) AND LAR 35.1

I express my belief, based upon reasoned and studied professional judgment, that the Panel Majority's ruling conflicts with *Batson v. Kentucky*, 476 U.S. 79 (1986) and its progeny, by contradicting *Batson*'s dictate that courts reviewing claims of discrimination in the exercise of peremptory challenges consider "all relevant circumstances," by undermining *Batson*'s conclusion that one discriminatory strike violates the Constitution, by failing to offer any recourse for compelling evidence of discrimination, and by improperly elevating *Batson*'s *prima facie* case burden. I also express my belief, based upon reasoned and studied professional judgment, that this case involves questions of exceptional importance, and that consideration by the full Court is necessary to secure uniformity of this Circuit's decisions.

Respectfully submitted,

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STATEMENT OF CORPORATE DISCLOSURE

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* files the following statement of disclosure: The NAACP Legal Defense & Educational Fund, Inc., is a nonprofit 501(c)(3) corporation and is not a publicly held company that issues stock.

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Brief of Amicus Curiae The NAACP Legal Defense and Educational Fund, Inc., In Support of Appellant Seeking Reversal, In Part, of the District Court's Order 4

A divided panel of this Circuit has affirmed the District Court's partial denial of habeas relief in this capital case. *Abu-Jamal v. Horn*, 520 F.3d 272 (3d Cir. 2008). *Amicus Curiae* respectfully submits this brief in support of Mr. Abu-Jamal's *Petition for Panel Rehearing and Suggestion for Rehearing En Banc*. For the reasons stated in Mr. Abu-Jamal's submission and herein, rehearing should be allowed.[1]

INTEREST OF AMICUS CURIAE

The NAACP Legal Defense and Educational Fund, Inc. (LDF) is a non-profit corporation formed to assist African Americans in securing their rights through in-court litigation. LDF has a long-standing concern with the influence of racial discrimination on the criminal justice system in general, and on jury selection in particular. We therefore represented the defendants in, *inter alia*, *Swain v. Alabama*, 380 U.S. 202 (1965), *Alexander v. Louisiana*, 405 U.S. 625 (1972) and *Ham v. South Carolina*, 409 U.S. 524 (1973); pioneered the affirmative use of civil actions to end jury discrimination, *Carter v. Jury Comm'n of Greene County*, 396 U.S. 320 (1970), *Turner v. Fouche*, 396 U.S. 346 (1970); and appeared as *amicus curiae* in *Miller-El*

[1]The Panel Majority's opinion is cited as "Panel Majority Op." followed by the Federal Reporter page number. Judge Ambro's dissenting opinion is cited as "Panel Dissent Op." followed by the Federal Reporter page number. Appellant/Cross-Appellee are referred to as "the Commonwealth." Appellee/Cross-Appellant is referred to by name. Transcripts of state court proceedings in Pennsylvania are known as "Notes of Testimony" and cited as "NT" followed by the date and page number. All emphasis is supplied unless otherwise indicated.

v. Dretke, 545 U.S. 231 (2005), *Johnson v. California*, 545 U.S. 162 (2005), *Miller-El v. Cockrell*, 537 U.S. 322 (2003), *Batson v. Kentucky*, 476 U.S. 79 (1986), *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991), and *Georgia v. McCollum*, 505 U.S. 42 (1992). In addition to our jury discrimination work in the United States Supreme Court, LDF was counsel of record in *Wilson v. Beard*, 426 F.3d 653 (3d Cir. 2005) and submitted an *amicus* brief and presented oral argument before the three-judge Panel in the instant matter. Given its expertise, LDF believes its perspective would be helpful to this Circuit in resolving the issues presented in this case.

STATEMENT OF THE CASE

In 1982, Mumia Abu-Jamal was convicted of first degree murder and sentenced to death by a jury for the shooting death of a police officer in Philadelphia, Pennsylvania. Mr. Abu-Jamal is entitled to an evidentiary hearing on his claim of discriminatory jury selection because he has "produc[ed] evidence sufficient to permit the [court] to draw an inference" that the trial prosecutor intentionally used his peremptory challenges to exclude prospective jurors of color. *Johnson*, 545 U.S. at 170. *See* Panel Dissent Op. at 318. In rejecting Mr. Abu-Jamal's claim, the Panel Majority undermined the purpose and intent of *Batson v. Kentucky* by marginalizing relevant and credible evidence of discrimination and thereby allowing apparent discrimination to go unchecked.

Mr. Abu-Jamal has presented substantial evidence indicating that his trial prosecutor intentionally used his peremptory challenges to exclude prospective jurors of color. Specifically, Mr. Abu-Jamal has asserted that he "is black, and therefore 'a member of a cognizable racial group;'" "that the prosecutor exercised peremptory challenges against black prospective jurors;" and that "'peremptory challenges constitute a jury selection practice that permits those to discriminate who are of a mind to discriminate.'" Panel Dissent Op. at 315-316 (quoting *Batson*, 476 U.S. at 96).

Mr. Abu-Jamal has also established that "the prosecutor exercised 15 peremptory strikes, 10 of which were used to remove black venirepersons. That means that the 'strike rate' for blacks was 66.67%. As the Supreme Court has noted, '[h]appenstance is unlikely to produce this disparity.'" Panel Dissent at 316 (citing *Commonwealth v. Abu-Jamal*, No. 1357, 1995 WL 1315980, at *103 (C.P.Ct.Phila.Cty. Sept. 15, 1995); quoting *Miller-El*, 537 U.S. at 342)).

Mr. Abu-Jamal has additionally demonstrated that "this was a racially charged case,[2] involving a black defendant and a white victim;" that "[Mr.] Abu-Jamal was

[2]As detailed in LDF's *amicus* brief before the Panel in this matter, in the months between the incident and the trial, local media continually highlighted the following racial aspects of the case: Mr. Abu-Jamal was an African-American community activist and a member of and/or advocate for African-American organizations; as a reporter, Mr. Abu-Jamal worked for African-American media

a member of the Black Panther Party;" that "he was charged with killing a police officer;" and that "this is a capital case." Panel Dissent Op. at 318-319.

Finally, Mr. Abu-Jamal has shown that the trial prosecutor's pattern of striking prospective jurors of color was consistent with that of prosecutors around the country before *Batson*,[3] was reflective of the common practices of the Philadelphia County

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outlets and/or focused on African-American issues; Mr. Abu-Jamal wore his hair in dreadlocks; Mr. Abu-Jamal demonstrated interest in and/or involvement with the Rastafarian religious-cultural movement; Mr. Abu-Jamal was born Wesley Cook but changed his name; prior to his arrest, Mr. Abu-Jamal made public statements regarding the rights and experiences of African Americans; African-American organizations established and/or supported a defense fund for Mr. Abu-Jamal; and members of the Philadelphia-based, African-American organization, MOVE, attended the court proceedings and supported Mr. Abu-Jamal's defense. *See Brief of Amicus Curiae The NAACP Legal Defense and Educational Fund, Inc., In Support of Appellant Seeking Reversal, In Part, of the District Court's Order* at 12-16 (citations omitted).

[3]*See Batson*, 476 U.S. at 103 (Marshall, J. concurring) ("Misuse of the peremptory challenge to exclude black jurors has become both common and flagrant.").

District Attorney's Office,[4] and was expressly authorized by the Pennsylvania Supreme Court. *See Commonwealth v. Henderson*, 438 A.2d 951, 953 (Pa. 1981).

Although this combination of evidence amply "clear[s] the low *prima facie* hurdle of the *Batson* analysis," Panel Dissent Op. at 317, the Panel Majority concluded that Mr. Abu-Jamal could not set forth a *prima facie* case of discrimination absent documentation of the "'exclusion rate'" – a "compari[son of] the percentage of exercised challenges used against black potential jurors with the percentage of black potential jurors known to be in the venire." Panel Majority Op. at 290. The Panel Majority reached this conclusion despite the fact that that *Batson*'s *prima facie* case burden is low, that *Batson* directs courts confronted with claims of discriminatory exercise of peremptory challenges to consider "all relevant

[4] *See, e.g.*, NT 3/18/82 at 12 (counsel for Mr. Abu-Jamal noting that in his experience, the Philadelphia County District Attorney's Office consistently used its peremptory challenges to exclude African American prospective jurors); NT 7/28/95 at 208-09 (same); *Commonwealth v. Brown*, 417 A.2d 181, 186 (Pa. 1980) (defense attorney noting Philadelphia County District Attorney's Office's persistent use of peremptory challenges against African Americans); *Diggs v. Vaughn*, 1991 WL 46319, *1 (E.D. Pa. March 27, 1991) (crediting testimony by Philadelphia lawyers regarding Philadelphia prosecutors routinely using peremptory challenges to exclude African-Americans); *Miller-El*, 545 U.S. at 268 (Breyer, J., concurring) (noting that an extensive study of peremptory strikes in Philadelphia found that "in 317 capital trials in Philadelphia between 1981 and 1997, prosecutors struck 51% of black jurors and 26% of nonblack jurors" with the racial disparities being higher before *Batson* than after); *Wilson*, 426 F.3d at 655 (finding *prima facie* case and error based, in part, on videotaped training tape wherein a Philadelphia prosecutor "repeatedly advises [the] audience to use peremptory challenges ... in apparent violation of *Batson*.")

circumstances," *Batson*, 476 U.S. at 96, that this Circuit has previously declared that "*Batson* does not place the burden on the petitioner to develop a full statistical accounting" at the *prima facie* case stage, and that this Circuit "ha[s] relied on the strike rate alone despite the absence of other contextual markers" in finding *Batson* error. Panel Dissent Op. at 317, 318.

The Panel Majority summarily dismissed Mr. Abu-Jamal's substantial evidence of intentional discrimination with a conclusory footnote declaring that "Abu-Jamal has not demonstrated that these allegations make the Pennsylvania Supreme Court's decision objectively unreasonable." Panel Majority at 291 n.17. By focusing solely on exclusion rate and by giving Mr. Abu-Jamal's abundant evidence of discriminatory intent only "cursory consideration," the Panel Majority "misapplie[d] *Batson*, ... [by] fail[ing] to 'consider all relevant circumstances' of [the] case." Panel Dissent Op. at 319.

Amicus believes that rehearing is warranted because the Panel Majority's decision undermines and contradicts *Batson*.

ARGUMENT

Batson's Low *Prima Facie* Case Burden Can Be Met By Relying on "All Relevant Circumstances"

As detailed in LDF's prior *amicus* brief in this matter, the Supreme Court developed the *Batson* test to lower the "crippling,"*Batson*, 476 U.S. at 92, and "unworkable," *Miller-El*, 545 U.S. at 239, burden of proof that was imposed by *Swain v. Alabama*.[5] Because defendants alleging discrimination in jury selection were overwhelmingly unable to meet *Swain*'s extremely high threshold burden of proof, the "misuse of the peremptory challenge to exclude black jurors" became "common and flagrant." *Batson*, 476 U.S. at 103 (Marshall, J. concurring).

In order to curb these abuses, the *Batson* Court declared "inadequa[te]" "any burden of proof for racially discriminatory use of peremptories that requires that 'justice ... sit supinely by' and be flouted in case after case before a remedy is available." *Id.*, 476 U.S. at 102 (Marshall, J. concurring) (quoting *Commonwealth v. Martin*, 461 Pa. 289, 299 (1975) (Nix, J., dissenting)). Instead, *Batson* declared

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[5]Pursuant to *Swain*, a petitioner alleging the discriminatory exercise of peremptory challenges had to demonstrate that "the prosecutor in a county, in case after case, whatever the circumstances, whatever the crime and whoever the defendant or the victim may be, is responsible for the removal of Negroes who have been selected as qualified jurors by the jury commissioners and who have survived challenges for cause, with the result that no Negroes ever serve on petit juries." *Swain*, 380 U.S. at 223.

that courts confronted with claims of discrimination in the exercise of peremptory challenges, "must undertake 'a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'" *Id.*, 476 U.S. at 93 (quoting *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977)). It therefore announced the now familiar three-part test: first a defendant must set forth a *prima facie* case of discrimination; second, if the defendant meets his burden, the prosecutor must offer race-neutral reason(s) for the challenged strike(s); third, the court must determine whether the defendant has proven intentional discrimination. *See Miller-El*, 537 U.S. at 328-29 (citations omitted).

In order to ensure that its test did not suffer from the infirmities of *Swain*, the *Batson* Court made clear that petitioners claiming discrimination could not be saddled with a heavy evidentiary burden. *See, e.g., Johnson*, 545 U.S. at 170. Thus, the Court declared that to set forth a *prima facie* case of discrimination, a petitioner need only

> show that he is a member of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race. Second, the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits "those to discriminate who are of a mind to discriminate." Finally, the defendant must show that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race.

Batson, 476 U.S. at 96 (quoting *Avery v. Georgia*, 345 U.S. 559, 562 (1953) (internal citations omitted)). The Court also made clear that there is no specific formula required for establishing a *prima facie* case:

> [i]n deciding whether the defendant has made the requisite showing, *the trial court should consider all relevant circumstances. For example*, a 'pattern' of strikes against black jurors included in the particular venire *might* give rise to an inference of discrimination. Similarly, the prosecutor's questions and statements during *voir dire* examination and in exercising his challenges *may* support or refute an inference of discriminatory purpose. *These examples are merely illustrative.*

Batson, 476 U.S at 96-97. *See also* Panel Dissent at 314 n.44. Thus, "in considering a *Batson* objection, or in reviewing a ruling claimed to be *Batson* error, all of the circumstances that bear upon the issue of racial animosity must be consulted." *Snyder v. Louisiana*, 128 S.Ct. 1203, 1208 (2008) (citing *Miller-El*, 545 U.S. at 239).

Consistent with this clear dictate, this Circuit has repeatedly rejected interpretations of *Batson* that place an undue burden on petitioners claiming discrimination in the exercise of peremptory challenges and has found that a variety of factors can satisfy *Batson*'s *prima facie* case burden. This Circuit has stated that "the question whether a *prima facie* case has been established must be judged based on all relevant circumstances; no rigid test need be satisfied; and in some cases, a *prima facie* case may be made out based on a single factor." *Brinson v. Vaughn*, 398 F.3d 225, 235 (3d Cir. 2005) (granting *Batson* relief and finding that a "stark pattern"

of peremptory challenges against black potential jurors was, in and of itself, "more than sufficient" to satisfy the *prima facie* case burden).[6]

This Circuit has also recognized that "there is no 'magic number or percentage [necessary] to trigger a *Batson* inquiry,' and that '*Batson* does not require that the government adhere to a specific mathematical formula in the exercise of peremptory challenges.'" Panel Dissent at 314-315 (quoting *Clemons*, 843 F.2d at 746). More specifically, this Circuit has declared that "[n]otably absent from the... *prima facie* case is any call for trial judges to seek ... [a] statistical accounting [of the race of the jury venire]" and that "requiring the presentation of such a record simply to move past the first stage in the *Batson* analysis places an undue burden upon the defendant." *Holloway v. Horn*, 355 F.3d 707, 728 (3d Cir. 2004) (finding a *prima facie* case based

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[6]*See also Wilson*, *supra* (finding a *prima facie* case – and *Batson* error – based on the trial prosecutor's disproportionate use of peremptory challenges to exclude prospective jurors of color and a videotape of the trial prosecutor making "a number of highly inflammatory comments implying that he regularly seeks to keep qualified African-Americans from serving on juries."); *Simmons v. Beyer*, 44 F.3d 1160 (3d Cir. 1995) (finding a *prima facie* case and error after declaring that five factors relevant to a *prima facie* case are the number of racial group members in a panel, the nature of the crime, the race of the defendant and victim, a pattern of strikes against racial group members, and the prosecution's questions and statements during voir dire); *U.S. v. Clemons*, 843 F.2d 741, 748 (3d Cir. 1988) (noting that among the "relevant factors" to be considered in assessing the existence of a *Batson prima facie* case are "how many members of the 'cognizable racial group' ... are in the panel; the nature of the crime; and the race of the defendant and the victim").

solely on a pattern of strikes and noting that "a defendant's *Batson* objection ... can be based, for example, on a single strike accompanied by a showing that the prosecutor's statements . . . support an inference of discrimination.").

Thus, both the Supreme Court and this Circuit have made clear that *Batson*'s *prima facie* case burden is (and must be) low and can be satisfied through the presentation of "all relevant circumstances." *Batson*, 476 U.S. at 96.

The Panel Majority's Determination that a *Prima Facie* Case Requires "Exclusion Rate" Evidence Conflicts with *Batson* and Improperly Elevates the Step One Burden

The Panel Majority's pronouncement that "exclusion rate" evidence is a necessary component of a *prima facie* case contradicts *Batson*'s dictate to consider "all relevant circumstances" and its conclusion that one discriminatory strike violates the Constitution. It also undermines the intent of *Batson* by offering no recourse for cases presenting compelling evidence of discrimination. Because the Panel Majority has established a "burden of proof for racially discriminatory use of peremptories that requires that 'justice ... sit supinely by' and be flouted ... before a remedy is available," *Batson*, 476 U.S. at 102 (Marshall, J. concurring), this Court should grant rehearing and reverse.

First, the Panel Majority's declaration that Mr. Abu-Jamal cannot set forth a *prima facie* case of discrimination absent "exclusion rate" evidence flies in the face

of *Batson*'s express direction that courts should consider "any ... relevant circumstances" that raise an inference of discrimination, *Batson*, 476 U.S. at 96, and that "a 'pattern' of strikes against black jurors" as well as "the prosecutors questions and statements during *voir dire* examination and in exercising his challenges" can support a *prima facie* case of discrimination. *Batson*, 476 U.S. at 97. *See also Snyder*, 128 S.Ct. at 1208.

It also ignores the fact that both the Supreme Court and this Circuit have relied on a variety of factors – including the tracking of race by the trial prosecutor, a history of discrimination by the individual prosecutor and/or the prosecutor's office, jury shuffling, and comparative juror analysis – in evaluating *Batson* claims (and finding *Batson* violations) and the fact that neither court has suggested that any one particular category of evidence is required to successfully establish a *prima facie* case of discrimination. *See, e.g., Snyder*, 128 S.Ct. at 1211; *Miller-El*, 545 U.S. at 253-254, 263-264; *Wilson* 426 F.3d at 653; *Brinson* 398 F.3d at 225.

Thus, the Panel Majority's declaration that "exclusion rate" evidence is a necessary component of a *prima facie* case simply lacks constitutional support or circuit authority. With this decision, the Panel Majority subverts *Batson* by marginalizing evidence that the Supreme Court and this Circuit have expressly deemed to be relevant to the *prima facie* case assessment.

Second, by singling-out "exclusion rate" evidence and devaluing all other evidence of discrimination, the Panel Majority allows powerful indicators of racial discrimination to go unchecked and improperly raises *Batson*'s *prima facie* case burden. *See, e.g., Johnson*, 545 U.S. at 172 ("The *Batson* framework is designed to produce actual answers to suspicions and inferences that discrimination may have infected the jury selection process. The inherent uncertainty present in inquiries of discriminatory purpose counsels against engaging in needless and imperfect speculation when a direct answer can be obtained by asking a simple question.").

As noted above, *Batson*'s initial burden of proof was intentionally set low because the imposition of a high standard allowed racial discrimination in jury selection to proliferate. *Batson*, 476 U.S. at 92-93. The Panel Majority's finding that without the "exclusion rate," the evidence upon which Mr. Abu-Jamal relied in order to establish an inference of discrimination – his own race (African-American), the race of the victim (white), the pattern of strikes against prospective jurors of color (10/15), Mr. Abu-Jamal's membership in the Black Panther Party, the fact that the decedent was a police officer, the fact that Mr. Abu-Jamal faced the death penalty, the fact that the trial prosecutor's pattern of striking prospective jurors of color was consistent with that of prosecutors around the country before *Batson*, the fact that the trial prosecutor's pattern of striking prospective jurors of color was reflective of the

common practices of the Philadelphia County District Attorney's Office, and the fact that the Pennsylvania Supreme Court expressly authorized the use of race-based peremptory challenges – was insufficient to meet the *prima facie* case threshhold unquestionably elevates *Batson*'s Step One burden because this Circuit has previously found error in cases presenting substantially less evidence of discrimination. *See, e.g., Simmons, supra.* By raising the bar in this way, the Panel Majority improperly insulates suspicious peremptory challenges from constitutional scrutiny.

Although the Panel Majority suggests that "there may be instances where a *prima facie* case can be made without evidence of the strike rate and exclusion rate," Panel Majority at 292, it's failure to articulate a method for determining which cases or combinations of facts overcome this vague hurdle renders the existence of this supposed gateway meaningless. The fact that Mr. Abu-Jamal's case – which, as previously noted, is *replete* with serious indicators of discriminatory intent – apparently fails to meet this unknown standard makes clear the extent to which the Panel Majority has raised the *prima facie* case bar and demonstrates that few cases will meet it.

Finally, the Panel Majority's single-minded focus on "exclusion rate" ignores the fact that *Batson* can be violated with a single strike. *Batson*, 476 U.S. at 99 n.22.

See also Snyder, 128 S.Ct. at 1208 (citing, *inter alia*, *United States v. Vasquez-Lopez*, 22 F.3d 900, 902 (9th Cir. 1994); *Clemons*, 843 F.2d at 747). Under the Panel Majority's interpretation, there can be no meaningful recourse for a single discriminatory peremptory challenge.

CONCLUSION

En banc and panel rehearing are appropriate for the reasons stated herein and in Mr. Abu-Jamal's submission to this Circuit.

Respectfully submitted,

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CERTIFICATIONS

1. Certification of Bar Membership

I hereby certify that I, Christina A. Swarns, am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

2. Certification of Word Count

This brief complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because it contains 5673 words, excluding the parts of the brief exempted by Fed. R.App.P. 32(a)(7)(B)(iii).

This brief also complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type style requirements of Fed.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect 9.0 in 14 point, Times New Roman font.

3. Certification of Service

I hereby certify that I e-mailed an electronic copy of the foregoing *Brief of Amicus Curiae the NAACP Legal Defense and Educational Fund, Inc. in Support of Appellee/Cross-Appellant's Petition for Panel Rehearing and Suggestion for Rehearing En Banc*, in a single .PDF file, to the Office of the Clerk, United States Court of Appeals for the Third Circuit at the following e-mail address: <electronic_briefs@ca3.uscourts.gov>.

I hereby certify that ten copies of the foregoing Brief have been deposited in the United States mail, postage prepaid and properly addressed to the Office of the Clerk, United States Court of Appeals for the Third Circuit, 21400 United States Courthouse, 601 Market Street, Philadelphia, PA 19106.

I hereby certify that two copies of the foregoing brief have been deposited in the United States mail, postage prepaid and properly addressed, to counsel for all other parties in this suit, as follows:

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4. Certification of Identical Compliance of Briefs

I hereby certify that the electronic and hard copies of foregoing Brief in the instant matter contain identical text.

5. Certification of Virus Check

I hereby certify that a virus check of the electronic .PDF version of the foregoing Brief was performed using Symantic AntiVirus, and the .PDF file was found to be virus free.

Dated: June 27, 2008

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February 5, 2014

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you once again for giving me the opportunity to appear before the Committee on January 8, 2014. I enclose my responses to additional Questions for the Record that I received from Ranking Member Grassley.

Sincerely,

Debo P. Adegbile

Enclosure

Senator Chuck Grassley
Follow-up Questions for the Record
Debo P. Adegbile
Nominee, Assistant Attorney General for Civil Rights

1. You provided identical, non-responses answers to Questions 2(a)-(d). Instead of stating whether, if confirmed, you will implement the recommendations made in the 2013 Inspector General's Report, you state that you will assess "current hiring practices" in the Civil Rights Division. Please indicate whether you intend, if confirmed, to implement the recommendations made in the 2013 Inspector General's Report. If you will not commit to implementing them, explain why with respect to each recommendation enumerated in Questions 2(a)-(d).

   ANSWER: In further response, if confirmed, I would expect position announcements to focus on skills, experience and duties, consistent with federal civil service laws, and I would commit to undertake a review of the Division's hiring practices, and to carefully consider the 2013 Inspector General's Report together with all other relevant internal DOJ considerations. I note that because I am not currently at the Department, I do not have a comprehensive understanding of the Division's current hiring practices and the extent to which the recommendations made in the 2013 Inspector General's Report already may have been implemented or considered. I believe it would be appropriate, if confirmed, for me to first make a careful assessment of existing hiring practices and procedures before making decisions or commitments about how job announcements will be drafted in the future.

2. In each of your responses to Questions 2(a)-(d) you repeat your intention to "ensure a strong and broad pool of candidates." What does the term "broad" mean in the context in which you used it?

   ANSWER: I understand "broad" in this context to embrace efforts to cast the net widely so as to reach and encourage applications from qualified potential candidates with a range of backgrounds, skills, and prior work experience relevant to a particular position.

3. Will you commit to ensuring that the Civil Rights Division hires a strong and *ideologically diverse* pool of candidates and work to eliminate hiring practices in the Division that the Inspector General found "resulted in a pool of select candidates that was overwhelmingly Democratic/liberal in affiliation?"

   ANSWER: As I have stated previously, if confirmed, I will assess the Division's current hiring policies and practices, and, consistent with applicable laws and policies, determine if any additional modifications are appropriate to ensure a broad and strong pool of candidates for any open positions. It is my understanding, however, that federal civil service laws require that hiring be based on merit and prohibit the consideration of political affiliation in making hiring decisions for career positions.

4. In your response to Question 6a, you cite a passage from *Miller-El* in which Justice Breyer describes "Justice Marshall's concerns" that *Batson*'s burden-shifting framework was insufficiently effective at eliminating race discrimination in jury selection. As the passage indicates, Justice Marshall advocated abolition of peremptory strikes altogether. Considering that you cite to the passage that explains Justice Marshall's position in your answer, do you agree that *Batson*'s burden-shifting framework is insufficient at preventing discriminatory strikes against racial minorities?

   ANSWER: The *Batson* burden-shifting standard is binding precedent. I have not had the opportunity to make a detailed study of the complex criminal procedure question about whether the *Batson* burden-shifting framework is sufficient beyond the applicable precedents.

5. Do you agree with Justice Marshall's position that peremptory strikes should be eliminated?

   ANSWER: Justice Marshall's view in *Batson* did not prevail. Peremptory strikes remain permissible provided that they are exercised within constitutional limits. I have not had the opportunity to make a detailed study of this complex criminal procedure question beyond the applicable precedents.

6. In your response to Question 6c, you state that your former client, Mumia Abu-Jamal, presented "probative" *Batson* evidence that was rejected by the courts. Please indicate whether you still believe that the jury-selection process in Mr. Abu-Jamal's trial was characterized by "flagrant[ly]" racially discriminatory conduct by the prosecutor.

   ANSWER: I filed a number of briefs as an attorney at NAACP LDF on behalf of various clients or on behalf of my former employer. In some of those cases my client or employer's side prevailed; in some the opposing party prevailed. However, the positions articulated in each of these briefs should not be reflexively equated with statements of the personal views of the filing counsel. That said, the probative evidence of *Batson* violations offered in LDF's filings speaks for itself. As I have noted, however, the courts rejected the *Batson* claim in the case.

7. You did not answer Question 7(b). Instead, your answer summarizes *Batson*'s burden-shifting framework but fails to address the sufficiency issue. Please state whether you consider a bare allegation of a "culture of discrimination" to be sufficient to support a *prima facie* showing under *Batson*'s first step.

   ANSWER: In further response to this question as posed: No, a bare allegation would be insufficient under Supreme Court precedent.

8. Your response to Question 13 cites only the single example of applying strict scrutiny to governmental decisions that confer benefits to individuals based on race. Please specifically state under what circumstances – in addition to government decisions to

confer race-based benefits – you believe that governmental use of racial preferences would fall short of the strict-scrutiny standard of review.

ANSWER: Although this does not purport to be an exhaustive list, the Supreme Court has held that race conscious decision-making or racial classifications failed strict scrutiny in the following circumstances: *Loving v. Virginia*, 388 U.S. 1 (1967) (interracial marriage); *Regents of University of California v. Bakke*, 482 U.S. 265 (1978) (medical school admissions); *Batson v. Kentucky*, 476 U.S. 79 (1986) (juror strikes); *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989) (municipal contracting); *Miller v. Johnson*, 515 U.S. 900 (1995) (redistricting); *Gratz v. Bollinger*, 539 U.S. 244 (2003) (college admissions); *Parents Involved in Seattle School District v. Seattle School District No. 1*, 551 U.S. 701 (2007) (K-12 school assignments).

9. Your response to Question 14 cites a single example from *Ricci v. DeStefano*. Please identify under what circumstances – in addition to the case you cite – you believe that race preferences violate Title VII of the 1964 Civil Rights Act.

ANSWER: Employers' affirmative action programs that consider race or sex for the purposes of remedying the underrepresentation of minorities or women in traditionally segregated job categories violate Title VII if they do not meet the standard set forth in *Johnson v. Transportation Agency, Santa Clara, County*, 480 U.S. 616 (1987).

10. Your response to Question 15 summarizes the holding of *Grutter v. Bollinger*, but fails to answer the question. Is it your view that consideration of racial membership and economic status are valid criteria in determining whether to give college applicants special consideration?

ANSWER: In further response to this question, the Supreme Court has determined that the educational benefits of diversity constitute a compelling governmental interest sufficient to justify a narrowly tailored race conscious college admissions policy, and many higher educational institutions and scholars have determined that efforts to encourage diversity are pedagogically valid. I am not aware of a Supreme Court case on the issue of economic status in context of higher education but believe that many higher education institutions and scholars recognize the value of socio-economic diversity and access to colleges and universities as a positive contributor to employability and upward mobility.

11. Do you agree with Justice O'Connor's statement that "25 years from now" – i.e., by 2028 – "the use of racial preferences will no longer be necessary?" *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

ANSWER: Time and the real world circumstances within higher educational institutions will be the best determinants of Justice O'Connor's prediction. I do not believe that the answer is knowable at present, which is perhaps why Justice O'Connor reflected upon her statement from *Grutter* in this way in a subsequent essay: "That 25-year expectation is, of course, far from binding on any justices who may be responsible for entertaining a

challenge to an affirmative-action program in 2028." The Justice further recognized that a future Court will be called upon to "apply[] abstract constitutional principles to concrete educational endeavors."

12. In your response to Question 16, you state your belief "that stereotyping is unfair and counterproductive," but you fail to answer the question. Under what circumstances do you believe ethnic profiling in the context of the War on Terrorism is *unconstitutional*?

ANSWER: As I have explained, it is vital that we ensure our nation's security consistent with the Constitution. Because I am not at the Department, however, and have not worked in the area of national security, I am not familiar with the details of applicable federal policies or the various circumstances in which those polices are applied. As a general matter, stereotypes used in place of indicia of reasonable suspicion do not aid law enforcement efforts, but instead tend to erode trust between the law enforcement officials and the communities they work tirelessly to protect.

13. You respond to Question 18 by indicating that you "do not read *Rothe* as a blanket prohibition on such programs if there is sufficient, methodologically valid evidence set before Congress," but you do not answer the question. Will you urge the federal government to end the use of preferences based on race, ethnicity, and sex in its contracting practices?

ANSWER: These programs are contemplated by federal statutes, duly passed by Congress. Accordingly, I will follow the applicable precedents, including *Adarand,* with respect to such programs.

14. Do you share the Federal Circuit's view, enumerated in *Rothe*, that a preferential contracting program is unconstitutional if Congress lacked a strong basis in evidence that previous discrimination justified the program?

ANSWER: I accept the Federal Circuit's ruling in *Rothe* where it concluded that a contracting program that assists minority-owned small businesses requires Congress to have a strong basis in evidence "to conclude that remedial action is necessary." 545 F.3d 1023 at 1036 (quoting *Croson).* One of the ways this may be shown is through evidence that the entity was a passive participant in racial discrimination. I accept the Federal Circuit's ruling in *Rothe* where it concluded that a contracting program that assists minority-owned small businesses requires Congress to have a strong basis in evidence "to conclude that remedial action is necessary." *Rothe* at 1036 (quoting *Croson*). Under the decision, one must have a strong basis either in previous discrimination or passive participation in discrimination. In *Rothe*, the Federal Circuit held that neither of these criteria had been met.

15. Do you believe that any remedial program for which Congress lacks a strong basis in evidence for the necessity of remedial action can be constitutional?

ANSWER: To the extent that this question relates, like the prior two questions, to the contracting context, "the strong basis" in evidence standard controls.

16. Your response to Question 19 addresses the *selection* of individuals based on race, but does not address the constitutionality of maintaining race-based scholarships and other benefits. Do you believe that the Constitution permits public universities to maintain racially exclusive internships, scholarships, or summer programs?

ANSWER: The Supreme Court has made clear that strict scrutiny applies to governmental decisions that select applicants based on race. This standard would apply to admissions as well as to the maintenance of internships, scholarships, or summer programs that are race conscious as well.

17. In your answer to Question 20, you state that you are unaware of the "details of this litigation." The litigation referenced in Question 20 refers to a complaint the Department of Justice filed on February 8, 2006, in the District Court for the Southern District of Illinois, Benton Division, in which the Department alleged that Southern Illinois University maintained paid fellowships that established quotas on the basis of race, national origin, or sex. Will you continue to pursue litigation against public universities that maintain such fellowships, irrespective of the race of the beneficiaries of the fellowships?

ANSWER: Determinations about future litigation by the Department would be made based upon an assessment of the facts and the law in specific circumstances. If confirmed, I will apply the facts to the applicable law in evaluating such fellowship programs without regard to the race of the beneficiaries.

18. Your response to Question 23 says that you "would act in the best interests of the United States." Do you regard the continued application of the disparate-impact theory by the federal courts to be "in the best interests of the United States"?

ANSWER: Congress has determined that the disparate impact framework was in the best interests of the United States in enacting Title VII, as amended, for example.

19. Your response to Question 26(a) states that the "congressional record...supports [your] quotes." Given your belief that Congress had a sufficient evidentiary basis to justify the 2006 reauthorization of the Voting Rights Act, do you believe that the Supreme Court wrongly decided *Shelby County v. Holder* when it held that "[t]here is no valid reason to insulate the coverage formula from review merely because it was previously enacted 40 years ago. If Congress had started from scratch in 2006, it plainly could not have enacted the present coverage formula. It would have been irrational for Congress to distinguish between States in such a fundamental way based on 40-year-old data, when today's statistics tell an entirely different story. And it would have been irrational to base coverage on the use of voting tests 40 years ago, when such tests have been illegal since that time. But that is exactly what Congress has done." *Shelby County, Ala. v. Holder*, 133 S.Ct. 2612, 2630-31 (2013).

ANSWER: The Supreme Court held that Section 4(b) of the Voting Rights Act was invalid as a coverage formula for the preclearance regime, and that ruling is binding. I will accord the ruling the respect due to every constitutional ruling of the Supreme Court.

20. Your answer to Question 26(d) is not responsive. You previously stated that racial discrimination in voting poses a "unique threat to our democracy." What steps will you take, if confirmed, to combat the "unique threat" you identify?

ANSWER: In further response, I note that more than one hundred years ago the Supreme Court recognized that voting is a "fundamental political right, because preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Similarly, in *Wesberry v. Sanders*, 376 U.S. 1, 14 (1964), the Court explained: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." In *Reynolds v. Sims*, the Court stated: "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." 377 U.S. 533 (1964). And in *South Carolina v. Katzenbach*, 383 U.S. 301 (1966), the Court declared that "[t]he Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century." The Court noted further that "[a]fter enduring nearly a century of systematic resistance to the 15th Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims." Separately and together, these words from Supreme Court opinions illustrate that abridgements or denials of the right to vote pose a unique threat. In the face of this threat where it exists, the Division must use its enforcement authority. Accordingly, if confirmed, I will enforce the laws within the Civil Rights Division's authority that protect voters against discrimination.

21. In your view, does the "unique[ness]" of the "threat to democracy" that you previously identified depend on the race of the victim of racial discrimination?

ANSWER: Although voting discrimination historically has been targeted largely against particular groups, the unique injury associated with voting-related violations is not limited to racial discrimination claims or to claims by members of any particular race or ethnicity.

22. Your answer to Question 29 is not responsive and does not indicate whether you believe that a voter ID requirement is the equivalent of a poll tax. Please indicate whether this is your view.

ANSWER: I note that it is certainly true that not all voter ID requirements could properly be characterized as the equivalent of a poll tax. As I previously explained, under Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, courts ask whether "based

on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by [the Act] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Thus, it is difficult to provide categorical guidance regarding the content of a particular law without examining how the law would operate in a particular jurisdiction.

23. Do you share the opinion of Deputy Assistant Attorney General for Voting Rights, Pamela S. Karlan, that poll-tax cases "parallel voter identification cases in that, as a technical matter, voters were being required to present a government-issued document – namely, a poll tax receipt – in order to vote?"

ANSWER: I am not familiar with the context of Ms. Karlan's quote excerpted above. My understanding is that the thrust of poll tax claims is that a fee has been required in order to vote.

24. Do you share Attorney General Holder's view, expressed at a 2012 NAACP Convention in Houston, that Texas's voter ID requirement is the modern-day equivalent of a poll tax?

ANSWER: It would not be appropriate for me to comment on ongoing litigation in Texas. More generally, some have drawn a parallel because various voter ID requirements impose direct or indirect costs associated with compliance that exceed, in today's dollars, the amount of the poll tax invalidated in *Harper v. Virginia State Board of Elections,* 383 U.S. 663 (1966) (invalidating $1.50 poll tax and concluding: "Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process... To introduce wealth or payment of a fee as a measure of one's voter qualifications is to introduce a capricious or irrelevant factor. In this context—that is, as a condition of obtaining a ballot—the requirement of fee paying causes an 'invidious' discrimination that runs afoul of the Equal Protection Clause.")

25. Your answer to Question 33 is not responsive. Please enumerate the specific "substantive or procedural protections" that in your view, if violated, would render imposition of the death penalty unconstitutional.

ANSWER: In further response I note that the Supreme Court has invalidated death sentences in the following, non-exhaustive list of cases based upon certain substantive or procedural protections: *Woodson v. North Carolina*, 428 U.S. 280 (1976); *Coker v. Georgia*, 433 U.S. 585 (1977); *Lockett v. Ohio*, 438 U.S. 586 (1978); *Enmund v. Florida*, 458 U.S. 782 (1982); *Ford v. Wainwright*, 477 U.S. 399 (1986); *Mills v. Maryland,* 486 U.S. 367 (1988); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Kennedy v. Louisiana.* 554 U.S. 307 (2008); *Roper v Simmons,* 543 U.S. 551 (2005); *Miller-El v. Dretke*, 545 U.S. 231 (2005); *Snyder v. Louisiana*, 552 U.S. 472 (2008).

26. Your response to Question 34 states that you "would not oppose the ability for employers to perform reasonable criminal background checks on potential employees." What, in your view, constitutes a "reasonable" criminal background check?

ANSWER: As I understand the EEOC's guidance on this subject, it requires some reasonable inquiry into the nexus between the conviction and the job responsibilities involved in the particular position.

27. Do you believe that the Civil Rights Division has jurisdiction to challenge or abridge the ability of a private employer to conduct a criminal background check on potential employees? If so, please state the basis of such jurisdiction.

ANSWER: No, it is my understanding that the EEOC, rather than the Civil Rights Division, has jurisdiction to enforce federal anti-discrimination statutes with respect to potential employees in the private sector.

28. With respect to your response to Question 36, why did you withdraw your nomination for a seat on the D.C. Circuit?

ANSWER: I was never nominated for a seat on the U.S. Court of Appeals for the D.C. Circuit. I withdrew myself from consideration for a nomination to the U.S. Court of Appeals for the D.C. Circuit based upon my personal, professional and practical assessment that my family's best interests were served by my decision to remain in my position at the NAACP LDF in New York at that time.

29. With respect to your response to Question 37, if you are confirmed, what role do you envision for the Civil Rights Division in the enforcement of Affordable Care Act's minimum coverage provision?

ANSWER: I do not envision a role. Cases referred to the Civil Rights Division are evaluated on the merits.

30. Given your response to Question 38a that *Heller* is binding law, do you still believe that recognition of an individual right to "keep and bear [a]rms" under the Second Amendment is a "radical departure" from precedent?

ANSWER: Prior to its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court had previously interpreted the Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939), in which the Court observed that the Second Amendment's "purpose [was] to assure the continuation and render possible the effectiveness of [organized militias]," and that the "guarantee of the Second Amendment . . . must be interpreted and applied with that end in view." 307 U.S. at 178. In *Heller*, however, the Court stated that the Second Amendment protects "an individual right to possess and carry weapons in case of confrontation." *Id.* at 592. The Court's holding in *Heller* is binding and extended its previous Second Amendment ruling.

31. Your response to Question 39 indicates your belief that juvenile defendants may be subjected to adult punishments "[t]o the extent adult treatment of juveniles falls within the boundaries of the Constitution." Please specify the circumstances under which such "adult treatment" would not fall within the boundaries of the Constitution.

ANSWER: To the extent adult treatment of juveniles falls within the boundaries of the Constitution, as interpreted by the United States Supreme Court, such treatment is an available penalogical policy decision for legislators who grapple with the most effective approaches to sentencing and deterrence. Among other protections, the boundaries of the Constitution require that the right to counsel, the right against self-incrimination, the right to confront witnesses, the right to a jury empaneled in a way that comports with the Constitution, the right to constitutionally acceptable jury instructions, the right to a voluntary, intelligent and knowing waiver of rights, the right against coerced confession, the right against cruel and unusual punishment, among others, must be observed. Additionally, those under 18 may not be executed, sentenced to life without parole for non-homicide offenses, or sentenced to mandatory life without parole, consistent with the Constitution. *See Roper v Simmons,* 543 U.S. 551 (2005); *Graham v. Florida,* 560 U.S. 48 (2010); *Miller v. Alabama,* 132 S.Ct. 2455 (2012).

32. With respect to your response to Question 41a, please state the basis for your contention that "race continues to have an impact on sentencing outcomes" and explain how your citation to a joint Department of Justice/Department of Education study on school discipline supports your contention.

ANSWER: As Senator Rand Paul recently testified before the Senate Judiciary Committee, the war on drugs has had a dramatic impact on minority incarceration rates: "The majority of illegal drug users and dealers nationwide are white, but three-fourths of all people in prison for drug offenses are African American or Latino... at virtually every stage of pretrial negotiation, whites are more successful than non-whites." Similarly, the above-referenced Department of Justice/Department of Education document states that "[t]he Civil Rights Data Collection (CRDC), conducted by OCR, has demonstrated that students of certain racial and ethnic groups tend to be disciplined more than their peers. For example, African-American students without disabilities are more than three times as likely as their white peers without disabilities to be expelled or suspended." The document notes that "research suggests that the substantial racial disparities of the kind reflected in the CRDC data are not explained by more frequent or more serious misbehavior by students of color." *See Dear Colleague Letter: Nondiscriminatory Administration of School Discipline*, January 8, 2014, 3-4, fn 7 (listing studies).

33. Your answer to Question 45 is not responsive. Please identify which specific civil-rights provisions, in your view, can be applied post-*Hosanna-Tabor* to religious institutions if the employee of the institution in question falls within the ministerial exception.

ANSWER: The Court in *Hosanna-Tabor* held that anti-discrimination laws cannot be applied to regulate a religious institution's employment of a minister. Under this ruling,

once such an institution has shown that a claimant is a "minister," a lawsuit for employment discrimination would be barred. If I am confirmed, I will ensure that the Civil Rights Division assesses cases on the facts and the applicable law, including the Court's holding in *Hosanna-Tabor*, but I am not in a position to predict every circumstance in which the ministerial exception may be at issue.

34. Your answer to Question 47a is not responsive. Assuming that an employee of a religious institution falls within the ministerial exception, in your view would the First Amendment permit a suit against the institution under either the FMLA or the Equal Pay Act?

ANSWER: The Court in *Hosanna-Tabor* held that anti-discrimination laws cannot be applied to regulate a religious institution's employment of a minister. Under this ruling, once such an institution has shown that a claimant is a "minister," a lawsuit for employment discrimination would be barred. If I am confirmed, I will ensure that the Civil Rights Division assesses cases on the facts and the applicable law, including the Court's holding in *Hosanna-Tabor*, but it is my understanding that the Department of Justice does not enforce the FMLA or the Equal Pay Act.

35. Your answer to Question 47b is not responsive. Assuming that an employee of a religious institution falls within the ministerial exception, in your view would the First Amendment permit a lawsuit against the institution alleging discrimination based on the employee's sexual orientation or gender identity? If so, please state the basis for such a lawsuit under federal law.

ANSWER: The Court in *Hosanna-Tabor* held that anti-discrimination laws cannot be applied to regulate a religious institution's employment of a minister. Under this ruling, once such an institution has shown that a claimant is a "minister," a lawsuit for employment discrimination would be barred. *Hosanna-Tabor's* analysis applies regardless of the protected category of discrimination alleged by the individual.

36. With respect to your answer to Question 53a, given Supreme Court's holding in *Marion County*, do you believe that a state-law that requires a voter to display photo identification prior to voting violates Section 2 of the Voting Rights Act if the state promulgating the law provides photo identification to citizens of the state free of charge?

ANSWER: It is my understanding that the Division is currently litigating related issues. Accordingly, I am not in a position to offer legal conclusions on this topic.

Senator Chuck Grassley
Questions for the Record

James D. Peterson
Nominee, U.S. District Judge for the Western District of Wisconsin

1. **You wrote in the February 2010 newsletter for the Western District of Wisconsin Bar Association that, "For nearly every plaintiff that is drawn to the Western District of Wisconsin, there is a defendant who would prefer to litigate somewhere else." Please explain what you meant by this statement.**

   Response: I wrote that statement in an article to provide guidance to litigants on motions to transfer venue filed in the Western District of Wisconsin. The statement reflects that the plaintiff's choice of venue is often perceived as providing a tactical advantage. Thus, many defendants, when possible, try to challenge the plaintiff's choice by filing a motion to transfer the case to a venue of the defendant's choosing. I was not suggesting that the Western District of Wisconsin had any pro-plaintiff bias, and I have observed no such bias in my experience with the court.

2. **During your hearing I asked you about your work with the Freedom From Religion Foundation. You said your law firm has worked on both sides of religious liberty issues. Have you personally worked on any cases that defended the religious side of religious liberty? If so, please describe your involvement in them.**

   Response: At the hearing, I testified that my firm has a long history of advocating the First Amendment interests of clients across the political spectrum. To cite one recent and notable example of my firm's defense of the free exercise of religious liberty, my colleagues represent Archbishop Jerome E. Listecki, as Trustee of the Archdiocese of Milwaukee Catholic Cemetery Perpetual Care Trust, in an appeal of a bankruptcy court decision. Our firm successfully argued that the bankruptcy decision infringed the Trust's rights under the Religious Freedom Restoration Act and the Free Exercise Clause of the First Amendment. Although I have not been counsel of record in Free Exercise Clause cases, I have advised my colleagues on litigation strategy in such cases.

   Religious liberty is a fundamental right of every citizen. If confirmed, I will treat the religious convictions of anyone who appears before me with respect, and faithfully follow Supreme Court and Seventh Circuit precedent in deciding First Amendment cases.

3. **What is the most important attribute of a judge, and do you possess it?**

   Response: A good judge must have many qualities. But the single most important attribute of a judge is to be fair, setting aside any personal interest or bias, to decide cases strictly on the admissible evidence and the governing law. I have 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: A judge should be even-tempered, patient, thoughtful, and decisive. The temperament of the judge should be one that leaves even the losing party with the conviction that he or she has been fully and fairly heard. I have demonstrated this temperament both in my personal life and in my career.

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: If confirmed, I will be absolutely committed to following binding precedent regardless of any personal opinion.

6. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If faced with a matter of first impression, I would apply established principles of legal analysis. If the matter involved statutory interpretation, I would begin with the text of the law, which in most cases is decisive as the best expression of legislative intent. I would turn next to judicial constructions of related laws, then to other recognized sources of authority, aiming at all times to effectuate the legislative purpose.

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 always follow Supreme Court and Court of Appeals precedent regardless of any personal opinion.

8. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: All validly enacted statutes carry a presumption of constitutionality. A federal court should declare a statute unconstitutional only when that decision is necessary to decide the case and it is clear that the statute exceeds Congress' constitutional authority or that it violates a constitutional right.

9. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.**

Response: No. In matters of constitutional interpretation, a district judge should consider only those sources authorized by Supreme Court or Circuit Court precedent.

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: In my practice, I have represented clients with diverse interests and political perspectives and I have never declined to undertake a representation because of the client's political ideology or motivation. If confirmed, I will decide cases based on precedent and the law, and never to serve some 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?

Response: If confirmed, I pledge to put aside my personal views, treat every party as equal under the law, and decide cases impartially on the law and the evidence, as reflected in the oath of office, which I will take without reservation.

12. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I expect to follow many of the case-management practices of my predecessor, the late Honorable John C. Shabaz. I will set early and firm trial dates, see that discovery disputes are decided expeditiously, and I will give full consideration to dispositive motions and decide them promptly.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. In consultation with counsel for the litigants, I would set the quickest reasonable litigation schedule and a firm trial date. This approach requires diligence from both counsel and the court, but I believe that it is the best way to secure the just, speedy, and inexpensive determination of matters.

14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: I began my law career as a judicial clerk to a judge that I admire, an experience that prepared me well for a career as a litigator. If confirmed, I will draw on that experience again as I make the transition to the bench. In deciding cases, I will begin with a careful review of the submissions of counsel, and a careful evaluation of the evidence submitted. I will test the arguments of counsel by verifying the authorities they cite, and I will conduct my own review of the primary law and legal research. The role of judge will present many new challenges, but I expect that developing expertise in criminal law and procedure to be the most challenging aspect of the transition. I am confident that I can handle this challenge through hard work, careful study, and with the mentoring and assistance of my future colleagues at the court.

15. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

    Response: No.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

    Response: No.

16. **Please describe with particularity the process by which these questions were answered.**

    Response: I received a copy of the questions from an attorney in the Office of Legal Policy of the Department of Justice. I drafted responses, submitted them to the same attorney for review, and submitted them in final form.

17. **Do these answers reflect your true and personal views?**

    Response: Yes.

Questions for the Record
Senator Ted Cruz

James D. Peterson
Nominee, U.S. District Judge for the Western District of Wisconsin

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 am not sufficiently familiar with the philosophies of the individual justices to identify any one of them as similar to my own. Moreover, I do not have any philosophy that would predict my approach to deciding a particular case, except that I would decide each case impartially on the basis of the admissible evidence and the law. As a district court judge, my judicial philosophy would focus on efficient case management. If confirmed, I would set reasonably fast case schedules with firm dates, give full consideration to dispositive motions, and decide all motions promptly.

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: Pursuant to *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), the contemporaneous public understanding of a legal text is a critical tool of constitutional interpretation. If confirmed, I will follow this and all other Supreme Court precedent concerning constitutional interpretation.

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: None. As a district judge, it would not be within my authority to overrule precedent, and I would not attempt to do so.

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 statement from *Garcia* reflects the Supreme Court's determination that state interests are protected in Congress through the political process, whereas its own interpretation of the Commerce Clause in *National League of Cities v. Usery*, 426 U.S. 833 (1976), had proved unworkable and produced inconsistent results. If confirmed, I would follow *Garcia* and subsequent decisions in which the Supreme Court identified constitutional limitations on congressional power. *See, e.g., United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000).

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 non-economic activity that has a substantial relation to interstate commerce, or when a "regulation is a necessary part of a more general regulation of interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding issues concerning the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: When executive action is challenged in a judicial proceeding, the reviewing court must determine first whether jurisdictional and standing requirements are satisfied. If so, and if necessary to resolve the question presented, the court may be called upon determine whether the President's order or action is authorized by the Constitution or an act of Congress. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding any challenge to executive action.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is fundamental when it is expressly stated in the Constitution or 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.'" *See Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding issues concerning fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court requires strict scrutiny of governmental classifications that burden a fundamental right, or those based on race, religion, or national origin. Intermediate scrutiny is required of governmental classifications based on gender or illegitimacy. *See, e.g., Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-41 (1985). If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding Equal Protection Clause issues.

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 personal expectations about the status of educational diversity in 15 years, and my personal expectations would play no role in judicial decisions. The statement from *Grutter* reflects Supreme Court precedent that racial preferences should be truly rare and used only in cases of compelling need. If confirmed, I would faithfully follow Supreme Court and Seventh Circuit precedent in deciding any case involving racial preferences.

Senator Chuck Grassley
Questions for the Record

Nancy Jo Rosenstengel
Nominee: U.S. District Court for the Southern District of Illinois

1. **What characteristics have you seen in federal judges that you will seek to avoid, if confirmed?**

   Response: If confirmed, I would avoid being a federal judge who displays impatience, makes hasty decisions, speaks improvidently, or is unavailable to the lawyers and litigants when needed.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is integrity. A judge must have the ability to apply the law without bias, sympathy, or prejudice. Integrity requires keeping an open mind, listening to all sides, and fairly deciding the legal issues. I possess this attribute.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge must be patient and humble. The judge also must be an attentive listener and set the standard for courtroom decorum. I meet this 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?**

   Response: If confirmed, I would follow the precedent of higher courts without regard to my personal opinions. Our legal system depends on this approach to resolving disputes.

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: When analyzing an issue, I would start first with the text of the legal provision. If the text was clear, my analysis would end there. If the text was ambiguous and there was no binding legal authority, I would research analogous cases from the Supreme Court, the Seventh Circuit, and other federal appellate courts for 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: If confirmed, I would faithfully apply the precedent of the Seventh Circuit Court of Appeals and the United States Supreme Court without regard to my personal opinion.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It is presumed that statutes enacted by Congress are constitutional, and a court must start its analysis of a challenge to a statute with that premise. A statute should be declared unconstitutional only when it is established that Congress exceeded its authority when it enacted the statute. Additionally, analysis of the constitutionality of a statute should be guided by the "principle that 'where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [the court's] duty is to adopt the latter.'" *Jones v. United States*, 529 U.S. 848, 857 (2000) (*quoting United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408 (1909), and *citing Jones v. United States*, 526 U.S. 227, 239 (1999)). *See also Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. and Constr. Trades Council*, 485 U.S. 568, 575 (1988) (reiterating cardinal rule of statutory construction that a court should construe a statute to avoid serious constitutional problems unless such construction is plainly contrary to the intent of Congress).

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. I cannot envision a case in which I, if confirmed as a district court judge, properly could or would rely on foreign law to decide the meaning of a provision of the United States 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: I give my utmost assurance. The stability of our legal system depends on the predictability that results from adherence to precedent. My legal career has trained me to approach issues from a neutral perspective and to research the law and apply it to the facts. If confirmed, I would approach legal issues in cases before me in this way. I would have no other 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: A judge must put aside personal views and decide motions and cases based on the record before her and the applicable law. Litigants are entitled to an impartial tribunal to resolve disputes. If confirmed, I would be wholly committed to fairly deciding the matters before me.

11. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would be proactive in managing my docket. I would personally review daily reports from the court's Case Management/Electronic Case Filing ("CM/ECF") system to monitor the progress of cases and the status of pending motions. I would hold hearings on dispositive matters, be available for the lawyers as needed, and always be well-prepared. In civil cases, I would work with the magistrate judges to ensure discovery is completed in a timely fashion, and I would endeavor to narrow the issues and promptly resolve every case before me. In criminal cases, I would schedule and conduct trials to honor defendants' statutory and constitutional rights to a speedy trial.

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. Federal Rule of Civil Procedure 1 directs that the rules should be "construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." FED. R. CIV. P. 1. If confirmed, I would set firm but reasonable deadlines and expect the lawyers to meet them. I would likewise promptly rule on motions and regularly monitor the status of cases before me, with the help of reports generated by the CM/ECF system.

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 these questions on January 15, 2014. I drafted my answers on January 15-16, 2014. A draft was submitted to the Department of Justice Office of Legal Policy, and then I finalized my answers on January 23, 2014.

15. Do these answers reflect your true and personal views?

Response: Yes.

Nancy J. Rosenstengel
Nominee, United States District Court for the Southern 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 follow the rule of law and decide the case before me by applying binding precedent. I would decide matters promptly without bias, sympathy, or prejudice and treat all parties fairly. I have not carefully studied the judicial philosophies of specific Supreme Court Justices, but I suspect that many 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 words as understood at the time of the ratification of a constitutional provision must be considered when interpreting the Constitution, as the Supreme Court noted in *District of Columbia v. Heller*, 554 U.S. 570, 576-77 (2008). Specifically, the Supreme Court explained in *Heller*, "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning" *Id.* (*quoting United States v. Sprague*, 282 U.S. 716, 731 (1931)). "Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation." *Heller*, 554 U.S. at 576-77. If confirmed, I will follow Supreme Court and Seventh Circuit precedent regarding interpreting 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 confirmed as a district court judge, I would be bound by the precedent of the Seventh Circuit Court of Appeals and the United States Supreme Court. I would not be empowered or authorized to overrule precedent from superior courts. I would follow binding precedent at all times.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: In *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), the Supreme Court overruled *National League of Cities v. Usery*, 426 U.S. 833 (1976), holding that the

Court's judicially created limitation on the Commerce Clause power was unworkable. In this particular case, the Court held that the Commerce Clause empowers Congress to enforce provisions of the federal Fair Labor Standards Act against states. *See Alexander v. City of Evansville, Indiana*, 120 F.3d 723, 725 (7th Cir. 1997); *Rhinebarger v. Orr*, 839 F.2d 387 (7th Cir.), *cert. denied*, 488 U.S. 824 (1988). If confirmed as a district court judge, I would be bound by the Court's decision in *Garcia*, and I would apply it without regard to any personal thoughts or beliefs I may have.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: If presented with a question under the Commerce Clause and the Necessary and Proper Clause, I would research the issue and rely on authoritative precedent. The United States Supreme Court has held that Congress may regulate (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities," and (3) "those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *United States v. Morrison*, 529 U.S. 598, 608-09 (2000). Moreover, in *Gonzales v. Raich*, 545 U.S. 1 (2005), the Supreme Court held that this power extends to the regulation of intrastate, non-commercial activity (*i.e.*, possession and manufacture of medical marijuana). As Justice Scalia stated in *Gonzales*, "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). *But see United States v. Comstock*, 560 U.S. 126, 164 (2010) ("Under the court's precedents, Congress may not regulate noneconomic activity . . . based solely on the effect such activity may have . . . on interstate commerce.") If confirmed, I would follow these cases and all binding precedent.

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, 525 (2008) (*quoting Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). These limitations on Presidential authority are judicially enforceable when presented in a justiciable case or controversy by a litigant with proper standing. A court would analyze whether the President acted (1) pursuant to an express or implied authorization of Congress; (2) in absence of either a congressional grant or denial of authority but with support from congressional inertia, indifference or quiescence; (3) in a manner incompatible with the expressed or implied will of Congress. *Id.* at 524-25. The judiciary is most likely to sustain executive action under the first scenario and less likely to defer to the President 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. Under the Court's precedent, fundamental rights are those that objectively are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted). If confirmed, I would follow Supreme Court and Seventh Circuit precedent with respect to determining whether a right is "fundamental" for purposes of substantive due process.

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 Ret. v. Murgia*, 427 U.S. 307, 312 (1976). Strict scrutiny applies when a statute classifies by "race, alienage, or national origin." *City of Cleburne, Texas v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). As the Supreme Court has explained, "[t]hese factors are so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy – a view that those in the burdened class are not as worthy or deserving as others." *Id.* Moreover, legislative classifications based on gender also call for heightened scrutiny. "Rather than resting on meaningful considerations, statutes distributing benefits and burdens between the sexes in different ways very likely reflect outmoded notions of the relative capabilities of men and women." *Id.* at 441.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I would apply the holding of *Grutter v. Bollinger*, 539 U.S. 306 (2003) and any other legal precedent on this issue, regardless of any personal belief or expectation concerning the specific termination point appropriate for any admissions policy.

Senator Chuck Grassley
Questions for the Record

Indira Talwani
Nominee: U.S. District Judge for the District of Massachusetts

1. **As a judge, what will your approach to legislative history be? When will you consult it and which types of legislative history will you consider?**

   Response: If confirmed as a district judge, I would apply binding Supreme Court and First Circuit precedent in interpreting statutes. Under these precedents, if the meaning of a statutory text is unambiguous, I would apply the statute according to its terms. *See e.g. Carcieri v. Salazar*, 555 U.S. 379, 129 S. Ct. 1058, 1063-64 (2009). In examining the statutory text, I would look to the plain meaning of the words in the broader context of the statute as a whole, and I would consider the surrounding language and statute's structure. *United States v. Godin*, 534 F.3d 51, 56, 58 (1st Cir. 2008). After such inquiries, a statute may still be ambiguous in that it admits of more than one reasonable interpretation. In that limited circumstance, First Circuit case law supports analyzing legislative history in order to determine congressional intent. *See, e.g. Recovery Group, Inc. v. Commissioner of Internal Revenue*, 652 F.3d 122, 127-28, 131 (1st Cir. 2011). Even in that limited circumstance, if the legislative history does not clearly evince congressional intent, the First Circuit will not rely on legislative history to resolve the ambiguity. *See, e.g., United States v. Godin*, 534 F.3d 51, 60 (1st Cir. 2008).

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe the most important attribute of a judge is a deep and sincere commitment to ensuring the fairness of the court's proceedings and the integrity of the court's decisions and actions. I believe I possess this attribute.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: I believe that a judge should be respectful to all parties, open-minded, and diligent. I believe that each of these elements is essential to ensuring that proceedings are fair and unbiased, and I believe I 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?**

Response: I am committed to following the binding precedents of the United States Supreme Court and the First Circuit faithfully and to giving them full force and effect if confirmed as a district judge whether or not I personally agree 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: In a matter of first impression, I would begin with the plain language of a statute in question. If the language was unclear, I would use other tools of statutory construction to determine its meaning, and review for persuasive authority the case law from the Supreme Court and First Circuit addressing analogous issues, and case law from other circuits addressing the same issue. If these sources did not resolve the issue, I would also consider legislative history.

6. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed as a district judge, I would apply binding precedent of the Supreme Court and the First Circuit whether or not I agreed with their decision.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: "[R]espect for the decisions of a coordinate branch of Government demands [that federal courts] invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). Moreover, if there are two plausible constructions of a statute, and one would raise constitutional problems, the other should prevail. *Clark v. Martinez*, 543 U.S. 371, 380-81 (2005). If confirmed as a district judge, I would apply these and other applicable precedents of the Supreme Court and First Circuit in considering whether a statute enacted by Congress is 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.**

Response: No. If confirmed as a district judge, in determining the meaning of the Constitution, I would not rely on foreign law or the views of the "world community."

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: I am fully committed to ensuring that, if confirmed as a district judge, my 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?

Response: I truly understand the different roles of an advocate and a judge, and if confirmed as a district judge, I 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.

11. If confirmed, how do you intend to manage your caseload?

Response: If confirmed as a district judge, I would take an active role in managing my caseload through the case management system as described in response to question 12. I would also endeavor to resolve all motions promptly, and would monitor cases closely to ensure that they are not unnecessarily delayed.

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: I believe that district judges have an important role in controlling the pace and conduct of litigation. If confirmed, I would use the court's case management system and case management conferences to ensure that each case assigned to me had an efficient schedule in place, including identification of the principal issues in contention, a reasonable discovery plan including phased discovery where appropriate, time lines for pre-trial motions, a determination of whether phased resolution or bifurcation of issues for trial is appropriate, and consideration of alternative dispute resolution.

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 these questions on January 15, 2014. I drafted responses to the questions and provided them to the U.S. Department of Justice on January 21, 2014. After discussing my responses with a representative of the Department of Justice, I finalized my responses on January 23, 2014 and authorized the Department to transmit them to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Indira Talwani
Nominee, U.S. District Judge for the District of Massachusetts

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 have not studied the writings of the Supreme Court Justices to allow me to identify the judicial philosophies of the individual Justices. If confirmed as a district judge, my approach would be to decide each case before me based on the facts of that case and the applicable 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: If confirmed, I would follow binding Supreme Court and First Circuit precedents interpreting the United States Constitution, including precedent considering the public understanding of text in the time of enactment. *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 circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district judge, I would be bound by precedent of the Supreme Court and the First 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: The Supreme Court's decision in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), is binding precedent. If confirmed as a district judge, I would follow and apply the holdings in *Garcia* as I would all 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 identified three categories of activity that Congress may regulate under its commerce power. First, Congress "may regulate the use of channels of interstate commerce." Second, Congress "may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." Finally, Congress may "regulate those activities that substantially affect 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). If confirmed as a district judge, I

would follow and apply the holdings in *Morrison* and *Lopez* as I would all other binding precedent.

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 act "must stem either from an act of Congress or from the Constitution itself." *Medellin v. Texas*, 552 U.S. 491, 524 (2008), citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) and *Dames & Moore v. Regan*, 453 U.S. 654, 668 (1981). The Supreme Court has identified the "accepted framework for evaluating executive action" as set forth in Justice Jackson's concurrence in *Youngstown*. 552 U.S. at 524-25, citing *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 a right is fundamental for purposes of the substantive due process doctrine only if it "is fundamental to our scheme of ordered liberty and system of justice." *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3034 (2010). 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 such protections. *Chavez v. Martinez*, 538 U.S. 760, 775 (2003), quoting *Washington v. Gluckberg*, 521 U.S. 702, 720-21 (1997). If confirmed as a district judge, I would follow this and all other binding precedent from the Supreme Court and the First 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 operates to the peculiar disadvantage of a suspect class. *See, e.g., City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). Legislative classifications based on race, alienage and national origin are subject to strict scrutiny. *Id.* Legislative classifications based on gender and illegitimacy are subject to intermediate scrutiny under the Equal Protection Clause. *United States v. Virginia*, 518 U.S. 515, 531-33 (1996); *City of Cleburne*, 473 U.S. at 441. If confirmed as a district judge, I would follow this and all other binding precedent from the Supreme Court and the First Circuit 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: If confirmed as a district judge, I would apply the holdings in *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013) and other binding precedent of the Supreme Court and the First Circuit regardless of any personal expectations I might have.

Statement of Support for the Nomination of John Carlin as Assistant Attorney General for National Security, Department of Justice

I am writing in support of the nomination of John Carlin as the Assistant Attorney General for National Security. I first met Mr. Carlin in 2011, when he became the Principal Deputy Assistant Attorney General for National Security and while I was serving in my first year as Deputy Director of the Central Intelligence Agency.

Over the next two-and-a-half years, until I retired from CIA in September 2013, I had numerous interactions with Mr. Carlin. The vast majority of those interactions were at Deputies Meetings of the National Security Council. I was a sitting member of the group, with Mr. Carlin either attending as a backbencher to then Assistant Attorney General for National Security, Lisa Monaco, or attending as the DOJ principal when Ms. Monaco could not make a meeting.

Throughout our time together in Deputies, I found Mr. Carlin to the consummate professional. He was always prepared, he was articulate and persuasive when he spoke, and he asked excellent questions of the other participants. I also found Mr. Carlin to be respectful of the views of others as well as open-minded, ready to change his position when faced with new data.

In addition to his performance, Mr. Carlin certainly has the experience required to do the job. He was a successful federal prosecutor, he served as a senior aide to FBI Director Mueller, and he served, of course, as Ms. Monaco's principal deputy. An undergraduate degree from Williams and a law degree from Harvard are also of significance.

Despite his pedigree, I never found Mr. Carlin to be arrogant. Quite the contrary, I found him to be personable and approachable. I think he will do well leading the men and women of the National Security Division.

It is for all these reasons that I am pleased to add my name to those government officials and former government officials who believe Mr. Carlin would make an outstanding Assistant Attorney General.

Sincerely

Michael Morell
Deputy Director, CIA, Retired
October 27, 2013

December 13, 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

Dear Chairman Leahy and Ranking Member Grassley:

We write this letter in strong support of John Carlin's nomination to be the next Assistant Attorney General of the National Security Division of the U.S. Department of Justice. We are former colleagues of Mr. Carlin who worked with him when he served as a career prosecutor and as Deputy Chief of Staff and Chief of Staff to FBI Director Robert Mueller.

Mr. Carlin has the necessary experience, both substantively and in management, that the role of Assistant Attorney General of the National Security Division demands. He began his career with the U.S Department of Justice fourteen years ago as a career prosecutor and has since served in a number of distinguished positions, including most recently as the Acting Assistant Attorney General of the National Security Division and as Principal Deputy Assistant Attorney General and Chief of Staff. In his leadership positions both at the FBI and the National Security Division, he has supervised prosecutors and agents on some of the most sensitive national security issues and cases. In every capacity, Mr. Carlin has worked with great distinction, integrity, intelligence, and professionalism.

Since 2007, Mr. Carlin has been focused on national security. He understands national security writ large. Of critical importance to this position is the ability to collaborate with others - both in the U.S. and abroad - on intelligence matters. Mr. Carlin has worked with and is a well-respected leader within the national security and intelligence communities. He understands the importance of building consensus, while at the same time pursuing the objectives that he believes are right and in our national interest. In doing so, he exercises tremendous judgment.

In sum, Mr. Carlin is highly qualified and intelligent. He will lead and inspire as the Assistant Attorney General and will greatly contribute to the security of our nation. We are pleased to provide our highest recommendation and support for his nomination.

Yours sincerely,

Michael Chertoff
Former Secretary of the Department
of Homeland Security
Former Assistant Attorney General
Criminal Division

Alice Fisher
Former Assistant Attorney General
Criminal Division

Stewart Baker
Former Assistant Secretary for Policy
U.S. Department of Homeland Security

Brian A. Benczkowski
Former Chief of Staff
Office of the Attorney General
Office of the Deputy Attorney General

Brett C. Gerry
Former Chief of Staff
Office of the Attorney General
Former Deputy Assistant Attorney General
National Security Division

Sigal P. Mandelker
Former Deputy Assistant Attorney General
Criminal Division

Michael B. Mukasey
Former Attorney General
U.S. District Judge – 1988-2006

Kenneth L. Wainstein
Former Assistant Attorney General
National Security Division

Benton Campbell
Former Interim United States Attorney
Eastern District of New York

John Demers
Former Deputy Assistant Attorney General
National Security Division

Jessie K. Liu
Former Deputy Chief of Staff
National Security Division
Former Deputy Assistant Attorney General
Civil Rights Division

18 December 2013

Members of the Judiciary Committee

Dear members,

I am writing to strongly urge your support for John Carlin as Assistant Attorney General for National Security at the Department of Justice. I have known John since he was a first year student at Harvard Law School and have worked with him through his period at the FBI and in DOJ. I have asked him to teach classes for me at the Law School. In all these capacities, he shows a maturity of judgment and ability to carefully consider the application of the law to challenging new situations. I think he will be a first-rate head of the National Security Division. He will certainly inspire my confidence at a time when confidence in the intelligence agencies needs to be built.

I recommend him to you with great enthusiasm.

Sincerely,

Philip B. Heymann

*****

Professor Philip B. Heymann
James Barr Ames Professor of Law
Harvard Law School
1575 Massachusetts Avenue
Cambridge, MA 02138
Tel: 617-495-3137

December 18, 2013

The Honorable Patrick J. Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E Grassley
Ranking Member
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write to unconditionally support the nomination of John Carlin for the position of Assistant Attorney General for the National Security Division of the Department of Justice.

I have had the pleasure of working with Mr. Carlin for a number of years when he was assigned to the FBI as Special Counsel to former FBI Director Mueller, when he was Chief of staff for Director Mueller and during his current assignment in the National Security Division of the Department of Justice. During my tenure in the FBI as Special Assistant to Director Mueller, the Associate Deputy Director and finally as the Deputy Director of the FBI, I worked with Mr. Carlin on a day-to-day basis for a number of years. Mr. Carlin clearly demonstrated the complex skills and leadership required to not only succeed in this position but also to thrive. Mr. Carlin has been involved in nearly every major National Security decision over the last few years during his tenure at the FBI and DOJ. His years of experience of participating in the daily morning intelligence briefs for the Director of the FBI and the Attorney General of the United States has prepared him for any National Security issue that may arise. He has shown the competence, character, collaboration and communication skills required for this position. Mr. Carlin was very effective at not allowing "politics" to play a role in National Security operations. He skillfully interacted with other agencies in the U.S. Intelligence Community as well as with our international partners to resolve terrorism threats facing our country. I found him to be an intelligent and dedicated professional working daily to protect our national security interests.

Mr. Carlin's Department of Justice experience as a prosecutor and his understanding of the National Security Division of the Department of Justice, the FBI National Security Branch mission and operations, and the Intelligence community, make him exceptionally well qualified to lead the National Security Division. I don't believe there is anyone with a better background or more relevant experience for this position and I highly recommend him.

Sincerely,

Timothy Murphy



AMERICAN UNIVERSITY
WASHINGTON, DC

STEPHEN I. VLADECK
Professor of Law and
Associate Dean for Scholarship

December 20, 2013

VIA E-MAIL

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of John P. Carlin to be Assistant Attorney General for the National Security Division

Dear Chairman Leahy and Ranking Member Grassley:

I write to express my unstinting support of John P. Carlin to serve as the Assistant Attorney General for the National Security Division of the Department of Justice, and to recommend his confirmation at the earliest possible opportunity.

By way of background, I am a professor of law and the Associate Dean for Scholarship at American University Washington College of Law, with special expertise in national security and counterterrorism law—expertise upon which your Committee, along with a host of other congressional bodies, has often called. In that capacity, I am both deeply familiar with, and often critical of, the work of the National Security Division, especially in my writings for the *Lawfare* blog (to which I am a contributing editor) and for *Just Security* (of which I am a co-editor-in-chief).

My views on specific NSD policies and activities notwithstanding, there is little question that NSD serves a critical institutional role in providing strategic legal advice to senior DOJ leaders and in coordinating national security initiatives across the government. If anything, NSD's significance has only *increased* in recent years, as this Administration has increasingly resorted to and relied upon law enforcement tools as the principal means through which the United States responds to threats posed to our national security by foreign and domestic terrorist organizations and others. To that end, it is crucial not only that NSD have a Senate-confirmed AAG to lead it, but that

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the confirmed AAG have both (1) the range of law enforcement-oriented experiences and expertise that John has to offer; and (2) the deep and abiding commitment to protecting the rights of U.S. persons that comes across from even a cursory perusal of John's record.

For instance, John is a career public servant who has been trained by the likes of FBI Director Mueller (for whom he was Chief of Staff), and Lisa Monaco, his predecessor as AAG. This training and understanding is manifested in his objective and data-driven approach to the challenging issues currently facing us in the national security arena, and in his speeches, in which, among other things, he has emphasized his deep commitment to the "transformative power of lawyers in our government—and the sense of duty and mission that comes with it." With that basic principle as his guidepost, John has repeatedly highlighted the serious and important responsibility that government lawyers bear in ensuring that the government safeguards privacy and civil liberties even as it collects essential intelligence information. Especially after and in light of the NSA reform debate prompted by the Edward Snowden disclosures, such a mentality should be a prerequisite for any individual seeking confirmation as a senior government national security lawyer.

But while there are certainly others with comparable commitments, John also brings special expertise to bear on the emerging and evolving threats posed to our national security in the *cyber* realm, as publicly evidenced by, among other things, a July 2012 *Washington Post* article. In that regard, John is perhaps uniquely situated to lead the National Security Division in the coming years, and to help ensure that the government pursue a holistic and integrated approach to all national security threats—one that prioritizes a coordinated look at all of the tools available to disrupt the threat, and picks the combination that most effectively safeguards both our national security and our individual rights.

Simply put, John and I don't—and won't—always see eye-to-eye. But I have come to develop a deep and abiding respect for him and his work, and have no doubt that his expertise and values make him a natural choice to be the next Senate-confirmed Assistant Attorney General for the National Security Division.

Sincerely yours,

Stephen I. Vladeck

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January 3, 2014

The Honorable Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
244 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley, Ranking Minority Member
United States Senate
Committee on the Judiciary
244 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Senator Grassley:

I am writing to express my strong support for John Carlin's nomination to become Assistant Attorney General (AAG) for National Security.

I held the same position during 2008-2009, and know well the challenges that it entails. I am confident that John will meet those challenges and provide excellent leadership to the National Security Division (NSD).

John's talents and experience are an ideal combination for the position for which he is nominated. I worked with John when I served in the NSD and he was the Chief of Staff for FBI Director Robert Mueller. At NSD we routinely called upon John for assistance in resolving difficult national security issues involving the FBI. John always came through. He was smart, nimble, low-key and, as a result of those traits, very effective. He solved problems quickly and in a manner that was respectful of our legal and ethical obligations as attorneys for the government.

As the Director's Chief of Staff, John had the opportunity to work closely with Director Mueller. During this time, John received an invaluable daily lesson in leadership and public service from the Director, and I am confident that John will continue to draw upon Director Mueller's example at NSD. Moreover, given the close working relationship between NSD and the FBI on national security matters, John's deep understanding of the FBI, including its strengths and weaknesses, will be of great advantage in working through issues.

As you know, one element of the AAG's job is reviewing and approving (or declining) proposed national security prosecutions. John's distinguished career at the Department of Justice (DOJ) includes years of investigating and trying cases in the U.S. Attorney's Office for D.C. Through his work there, John learned important practical lessons that will serve him well as he assesses investigative strategies and the viability of cases involving terrorism, espionage and export controls.

In the course of his time at DOJ, John has also acquired invaluable knowledge and experience in electronic surveillance. Both at the FBI and at DOJ, he has been heavily involved in the use of electronic surveillance as a criminal investigative tool and as an intelligence-gathering tool. His understanding of the legal and privacy issues will be important as the three branches of government wrestle with the questions recently raised about the Foreign Intelligence Surveillance Act and the activities of the National Security Agency.

Finally, John has a longstanding interest in cybersecurity, an area in which the government continues to struggle over the most effective set of responses. He has worked on cybersecurity matters for many years, as a DOJ prosecutor, an FBI official and during his time at NSD. Indeed, he recently directed the launch and implementation of a national review to determine how DOJ can most effectively support U.S. efforts to combat cyber threats to national security. John will be a valuable voice in the ongoing discussion over the proper mix of offensive and defensive weapons and the role of our law enforcement and intelligence agencies.

From my discussions with him, I know that John has great affection for the men and women of the National Security Division, and deep respect for the work they do. He has all the tools and experience to lead them with distinction. I urge his confirmation.

Sincerely,

J. Patrick Rowan



GEORGETOWN LAW

Mary B. DeRosa
Distinguished Visitor from Practice

May 5, 2017

The Honorable Patrick J. Leahy, Chairman
The Honorable Charles E. Grassley, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of John P. Carlin

Dear Chairman Leahy and Ranking Member Grassley:

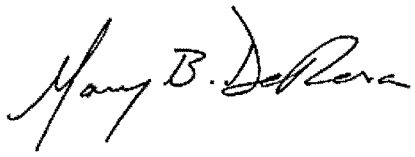
I write in strong support of the nomination of John Carlin to serve as Assistant Attorney General for National Security.

I got to know John in early 2009, when I began serving as National Security Council Legal Adviser and Deputy White House Counsel. At that time John was Chief of Staff and Senior Counsel for Director Mueller at the FBI. We worked together regularly on significant national security matters and I always found John to be very skillful, knowledgeable, and insightful about national security law and policy.

As you know well, the Justice Department's National Security Division serves vital law enforcement and intelligence functions. I developed a deep appreciation for the Division's role when I had the pleasure of working for Chairman Leahy on the Judiciary Committee staff in NSD's early days. John's background – as a prosecutor, at the FBI, and as a senior leader at NSD for the past two years – prepare him exceptionally well for the challenges of that office. In addition to his broad experience in law enforcement and intelligence, John has shown a particular interest in the cyber threat to national security, which is a key challenge for the National Security Division. Through his work on cyber issues at NSD, John has demonstrated that he has the expertise and creativity that is needed to address this difficult issue.

For all of these reasons, I urge the Senate to confirm John Carlin as Assistant Attorney General for National Security.

Sincerely,



Mary B. DeRosa
Distinguished Visitor from Practice
Georgetown Law



Yale Law School

DREW S. DAYS III · *Alfred M. Rankin Professor of Law*

November 15, 2013

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

As a former Assistant Attorney General for the Civil Rights Division of the Department of Justice and Solicitor General, I write to express my strong support for the nomination of Debo P. Adegbile to become the Assistant Attorney General of the Civil Rights Division of the Department of Justice.

Mr. Adegbile's legal experience has been wide and varied. He began his career as an associate at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, where he litigated complex commercial and other cases. After moving to LDF, he rose through the organization, serving in several leadership roles including as Acting President and Director-Counsel, and now, with a legislative focus, he serves as Senior Counsel to your Judiciary Committee.

I came to know Mr. Adegbile through his work at LDF and consistently have been impressed by his advocacy, commitment, judgment and ability to speak effectively about civil rights issues in different contexts. Throughout, his balance and fundamental fairness in all he does are most impressive qualities. Indeed, I, myself, served as an LDF staff attorney before joining the Carter Administration Justice Department. Over the intervening years, I have followed closely its activities, including the outstanding work of talented lawyers like Mr. Adegbile. I have participated in meetings on legal issues with Mr. Adegbile, served as a judge in a moot court as he prepared himself for a recent Supreme Court argument, known him to give remarks at Yale Law School attended by me or my students, and to mentor several of my students during their work as LDF interns and beyond. Mr. Adegbile's abilities and integrity shine through in each context.

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Through my experiences with and observations of Mr. Adegbile, I know that he blends superb judgment and pragmatism with effective litigation skills, and that he has garnered a reputation as a leading civil rights attorney and advocate in his nearly twenty years of legal practice. At LDF Mr. Adegbile acquired substantial legal management experience as well as experience in United States Supreme Court litigation. He defended the constitutionality of the Voting Rights Act's preclearance provisions before the Supreme Court in *Shelby County v. Holder*, and in *Northwest Austin Municipal Utility District No. 1 v. Holder*, two of the most important civil rights cases of his generation.

Mr. Adegbile's strong leadership, intelligence, dedication, and broad legal experience involving legal matters of government, private, and not-for-profit sectors prove that he has the skills to lead the Civil Rights Division effectively. Therefore, I hope that the Senate will promptly confirm Mr. Adegbile to serve as the Assistant Attorney General for the Civil Rights Division of the Department of Justice, an office of such importance to our country and in which I was privileged to have served.

Sincerely,

Drew S. Days, III

New York University
A private university in the public service

School of Law
Faculty of Law

245 Sullivan Street, office 626
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Randy Hertz
Professor of Clinical Law

RECEIVED JAN 06 2014

December 19, 2013

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

RE: Nomination of Debo P. Adegbile

Dear Senators Leahy and Grassley:

I understand that Debo P. Adegbile has been nominated for the position of Assistant Attorney General for Civil Rights. I am writing to express my strong support for the nomination.

During the years that Mr. Adegbile was at the NAACP Legal Defense Fund, I had periodic contact with him. I recall in particular that I participated together with him in a "moot court" presentation of a lawyer for an argument in the U.S. Supreme Court. I was very impressed by Mr. Adegbile's command of the law in the area, the piercing questions he asked during the moot court, and the sophistication of his analysis in the post-argument debriefing with the lawyer.

Based on what I know of Mr. Adegbile's credentials and what I have seen of his outstanding lawyering abilities, I believe that he is an excellent choice for the position.

Sincerely,

Randy Hertz
Professor of Clinical Law

WILMERHALE

RECEIVED JAN 0 6 2014

Seth P. Waxman

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January 3, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC, 20510

Re: Nomination of Debo Adegbile to Be Assistant Attorney General for Civil Rights

Dear Chairman Leahy and Ranking Member Grassley:

I have known, and admired the work of, Debo Adegbile for many years, and we have worked together on a number of important cases. In my view, he is exceptionally well qualified to lead the Department of Justice's Civil Rights Division.

Mr. Adegbile is of course a skilled litigator, with a long commitment to civil rights enforcement. He is also a creative thinker and compassionate human being who is inclined to find win-win solutions in circumstances that may appear to present only zero-sum options. That skill will be of paramount benefit to the Civil Rights Division, which is charged with enforcing some of the most precious rights in our society, but which also must operate within a system of government, and of laws, that often have competing imperatives.

During my tenure in government, and in private practice, I have worked with a number of Assistant Attorneys General for Civil Rights. In my judgment, if confirmed, Debo would bring great credit not only to that distinguished cohort and to the dedicated career attorneys in the Division, but also to our national government as a whole. I recommend him without reservation.

Yours sincerely,

Seth P. Waxman

January 3, 2014

RECEIVED JAN 0 6 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC, 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am a retired Senior Managing Director of the Blackstone Group LP., and the President of the Connecticut College Board of Trustees. I write to support the nomination of my fellow Connecticut College Trustee, Debo P. Adegbile, as the Assistant Attorney General of the Civil Rights Division of the Department of Justice. As someone with first-hand knowledge of his deep commitment to service, compelling leadership voice, and his personal leadership qualities that inspire our students, faculty and colleagues, I offer my endorsement without reservation.

I have known Mr. Adegbile since he joined the Connecticut College Board in 2011. Since that time, I have had the opportunity to work with Debo on a range of Board business.

My high regard for Debo, a regard that is widely shared by the different constituencies at the college, and his ability to communicate with clarity the importance of higher education and power of his own experience at Connecticut College, led me to recruit him to serve alongside me on the Presidential Search Committee that I Chaired last summer. As a measure of his dedication, he agreed to serve on this crucial college committee even as he prepared for his most recent Supreme Court argument. Debo was a valuable contributor to the search committee, and his leadership voice, sound judgment, focus on the path to consensus, and knowledge of the trends, challenges and opportunities that colleges face enriched our successful search process. In light of his demonstrated abilities as a Board member, I asked Debo to Chair the Faculty-Trustee Liaison committee during a pivotal period of the college's curriculum reform, and he also serves on the Board's Executive Committee.

Finally, as a former Wall Street executive and current college Board of Trustees Chair who has recruited, hired, trained and assessed scores of exceptionally bright colleagues over many years, I must note that Debo's effectiveness derives not simply from his keen intellect and analytical abilities, but also from his respect for peers, personal integrity, and engaging personality. Although I am not a lawyer nor a person who has served in government, I am

certain that Debo's track record of accomplishment, commitment to civil rights, and his strong, natural leadership characteristics would serve him and the Nation very well in his role as Assistant Attorney General for Civil Rights.

Sincerely,

Pamela D. Zilly

Pamela D. Zilly



January 6, 2014

Via First Class Mail

Senator Patrick Leahy
Chairman
Senate Judiciary Committee
437 Russell Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
Ranking Member
Senate Judiciary Committee
135 Heart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley,

As the largest Arab American grassroots organization committed to protecting civil rights, promoting manual understanding, and preserving Arab American cultural heritage, the American-Arab Anti-Discrimination Committee (ADC) would like to express its strong support for the nomination of Debo P. Adegbile to be Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. The Department of Justice plays an important role in protecting the civil rights of all minorities, including Arab-Americans. Mr. Adegbile is a tireless advocate, a skilled litigator, and a well-respected member of the legal community, and one of the preeminent civil rights lawyers of his generation.

The son of Irish and Nigerian immigrants who worked his way from poverty to the top of the legal profession, Debo Adegbile is a tireless voice for equality and opportunity for all Americans. He represented Hurricane Katrina evacuees in the first post-storm municipal election in New Orleans, public housing residents in action involving illegal police stops in New York, as well as pro bono clients in private practice in disability and domestic violence actions. Mr. Adegbile is also a bipartisan consensus builder. He worked on bipartisan reauthorization of the Voting Rights Act in 2006 which passed by a unanimous 98-0 vote in the U.S. Senate. Throughout his career, Mr. Adegbile has distinguished himself as a highly effective and respected advocate who has achieved successes both inside and outside the courtroom.

Mr. Adegbile has served as a leading attorney at the NAACP Legal Defense and Educational Fund, Inc for more than ten years, where he oversaw cases in both the trial and appellate courts, while managing the legal staff. In 2010, Mr. Adegbile supervised the LDF team that litigated *Lewis v. City of Chicago*, an employment discrimination action brought on behalf of a class of African- American firefighter applicants. Along with co-counsel, the LDF team successfully litigated the case and achieved a rare unanimous ruling in a civil rights case before the United States Supreme Court. As a result of that victory, more than 100 of LDF's clients were hired as Chicago firefighters.

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Mr. Adegbile is exceptionally qualified to lead the Civil Rights Division at this time in history. As the nation's chief law enforcement officer on civil rights issues, he would bring a depth and breadth of understanding of federal civil rights laws, and their enforcement and application. He has litigated cases across civil rights subject areas, from voting rights to fair housing to employment discrimination to equal educational opportunity. He has practiced law at all levels, from the trial court to the Supreme Court, and has appeared in courts throughout the country.

Mr. Adegbile is highly regarded for his leadership, judgment, and integrity. And Mr. Adegbile is involved with his community -- he presently serves on the Boards of Trustees of his college and middle school, and frequently speaks to students ranging in age from elementary school to law school about the importance of the Constitution, civil rights and educational and professional opportunity. With his stellar career of more than a decade at the nation's leading civil rights law firm, and his work in the private and public sectors, it is clear that Mr. Adegbile's skill set, talents, and experience make him the perfect choice to head the Civil Rights Division.

Mr. Adegbile would lead the Department of Justice's Civil Rights Division with professionalism and a deep commitment to its important and historic mission of ensuring that our nation lives up to its promise of equality and justice for all. Please support his swift confirmation.

Sincerely,

Abed A. Ayoub, Esq.
Director of Policy & Legal Affairs

CC: Members of the Judiciary Committee

CONNECTICUT COLLEGE

OFFICE OF THE PRESIDENT
270 MOHEGAN AVENUE
NEW LONDON, CONNECTICUT
06320-4196

January 6, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC, 20510

Dear Chairman Leahy and Ranking Member Grassley,

As the current and former presidents of Connecticut College, we write together today in full support of President Barack Obama's nomination of Debo P. Adegbile as Assistant Attorney for Civil Rights at the Department of Justice. Mr. Adegbile is an alumnus of Connecticut College who currently serves with distinction as a member of the College's Board of Trustees. As a trustee, Mr. Adegbile chairs the Trustee-Faculty Liaison Committee and is a member of both the Committee on Student Life & Enrollment Design and the Executive Committee. In these committee settings, Mr. Adegbile is relied upon for his long-time knowledge of the College culture, his legal expertise, and his dedication to promoting and upholding the long-term value of a Connecticut College education.

Mr. Adegbile's leadership at Connecticut College stems from his undergraduate years when he was a member of the men's soccer team, volunteered in the local community through the Office of Volunteers for Community Service, and was involved in student government and athletics advisory boards. As a student, he also worked as an intern at New London High School and the New London Public Defender's office. At his Commencement ceremony in 1991, Mr. Adegbile was awarded the Anna Lord Strauss Medal in recognition of his outstanding work for the College and for the local community.

Since his graduation from Connecticut College in 1991, and his subsequent graduation from the New York University School of Law in 1994, Mr. Adegbile has served Connecticut College as a distinguished speaker and panelist, as a member of the pre-law advisory committee and young alumni committee and as a class agent. He has generously provided advice and mentoring to students who are interested in law careers, and has encouraged students to ardently pursue their goals. Most recently, he served as a member

of the College's Presidential Search Committee that selected Katherine Bergeron to succeed Leo I. Higdon as president of Connecticut College.

In every interaction he has with the greater Connecticut College community—trustees, alumni, parents, students, faculty, staff—Debo Adegbile has proven to be a man of honor, of principle and of great personal integrity. With his brilliant legal mind and his broad experience with the NAACP Legal Defense and Educational Fund, Inc., the nation's leading civil rights legal organization, he will be an outstanding leader in the Department of Justice who will uphold the nation's commitment to the civil and constitutional rights for all Americans. We support without hesitancy the nomination of Debo P. Adegbile as Assistant Attorney for Civil Rights at the Department of Justice.

Sincerely,

Katherine Bergeron
President (Jan. 1, 2014-present)
Connecticut College

Leo I. Higdon, Jr.
President (July 1, 2006-Dec. 31, 2013)
Connecticut College



January 6, 2014

The Honorable Patrick J. Leahy, Chairman
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Nomination of Debo Adegbile to be Assistant Attorney General for the Civil Rights Division*

Dear Senators Leahy and Grassley:

On behalf of the National Women's Law Center (the "Center"), an organization that has worked since 1972 to advance and protect women's legal rights, we write in strong support of the nomination of Debo Adegbile to be Assistant Attorney General for the Civil Rights Division.

The Civil Rights Division enforces legal protections of critical importance to women, including Title VII, Title IX, the Freedom of Access to Clinic Entrances (FACE) Act, the Fair Housing Act, the Voting Rights Act (VRA), and protections against hate crimes and crimes of human trafficking. The Division also enforces protections against discrimination on the grounds of disability and immigration status.

Recently, for example, the Civil Rights Division reinvigorated enforcement of federal laws against discrimination. Among other things, it litigated groundbreaking Title IX sexual harassment complaints against public schools, colleges, and universities; challenged discriminatory barriers for women working in nontraditional fields in state and local government, investigated gender discrimination by law enforcement agencies; brought numerous cases to enforce the Fair Housing Act's prohibition of gender discrimination; and protected women's ability to obtain reproductive health care without harassment or intimidation under the Freedom of Access to Clinic Entrances Act. The next head of the Civil Rights Division will have the opportunity to continue the important progress toward robust enforcement of these important antidiscrimination laws.

Mr. Adegbile's stellar background makes him well prepared to continue the important work of the Civil Rights Division. Mr. Adegbile earned his J.D. from New York University School of Law. For seven years following law school, Mr. Adegbile was a litigation associate at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison.

While at the firm, Mr. Adegbile represented clients in the corporate, governmental, and nonprofit sectors in a variety of complex commercial, criminal and civil rights cases.

Following his time at Paul, Weiss, Mr. Adegbile litigated for more than a decade at the NAACP Legal Defense and Educational Fund, Inc. (LDF). He served in various leadership positions at LDF, including Director of Litigation, and most recently as LDF's Acting President and Director-Counsel. In his time at LDF, he led the work on groundbreaking cases dealing with core civil rights protections, including cases that go to the heart of discriminatory barriers that limit opportunities for women and girls in education and at work. For example, in 2010, Mr. Adegbile supervised the LDF team that litigated *Lewis v. City of Chicago*, an employment discrimination action brought on behalf of a class of African-American firefighter applicants, in which the Center filed an amicus brief. Other critical cases of particular import to women on which Mr. Adegbile worked during his tenure at LDF included *Fisher v. University of Texas,* 570 U.S. ____ (2013), *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007), *Ricci v. DeStefano*, 557 U.S. 557 (2009), and *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. ___ (2011). Mr. Adegbile also defended the constitutionality of the Voting Rights Act's (VRA) preclearance provisions before the Supreme Court in *Shelby County v. Holder*, 570 U.S. __ (2013), and in *Northwest Austin Municipal Utility District No. 1 v. Holder*, 55 U.S. 193 (2009.

Mr. Adegbile is the consummate civil rights lawyer. He is highly regarded for his leadership, judgment, integrity, and knowledge of and commitment to civil rights. What is more, he would bring compelling life experience, ranging from homelessness in his youth to community service to arguing before the United States Supreme Court, to the leadership of this important office. Accordingly, the Center offers its strong support of Debo Adegbile to be Assistant Attorney General for the Civil Rights Division of the Department of Justice, and urges the Committee to approve his nomination quickly. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

Sincerely,

Nancy Duff Campbell
Co-President

Marcia D. Greenberger
Co-President

Cc.: Judiciary Committee



RECEIVED JAN 0 6 2014

January 6, 2014

Senator Patrick Leahy
Chairman
Senate Judiciary Committee
437 Russell Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
Ranking Member
Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley,

As the nonprofit membership organization for the federally mandated Protection and Advocacy System and Client Assistance Programs for people with disabilities, the National Disability Rights Network (NDRN) would like to express its strong support for the confirmation of Debo Adegbile as the next Assistant Attorney General for Civil Rights. The Department of Justice Civil Rights Division plays a critical role in protecting the rights of people with disabilities and effectuating the promise of integration and access in the Americans with Disabilities Act and the Rehabilitation Act of 1973. Mr. Adegbile's history of skillful representation and bipartisan consensus-building makes him an ideal leader to enforce and advance the rights of people with disabilities in the Civil Rights Division.

Mr. Adegbile is an exceptional candidate to carry on the recent ground-breaking work of the Civil Rights Division in advancing the employment and community integration of people with disabilities. As the lead agency responsible for enforcing the mandate in *Olmstead v. L.C.*, 527 U.S. 581 (1999) that people with disabilities receive services in the least restrictive setting to the person's liberty. The *Olmstead* decision has improved the lives of thousands of people with disabilities by providing them the opportunity for full community integration in their homes, their jobs, and their daily lives.

Recent work by the Civil Rights Division has demonstrated the ways in which effective leadership can help people with disabilities. In the past few years, the Division reached landmark settlement agreements with the states of Virginia, Delaware, and Georgia allowing

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WEBSITE: WWW.NDRN.ORG • E-MAIL: INFO@NDRN.ORG

these states to transition from a heavy reliance on institutional settings to a system focused on individualized and cost-effective community-based services promoting full participation by people with disabilities in community life. Last year, the Division also filed a Motion to Intervene in *Lane v. Kitzhaber* supporting the right for people with disabilities to pursue employment in integrated settings. When applied in the employment setting, the *Olmstead* decision will advance economic opportunities and independence for people with disabilities.

Debo Adegbile is the leader that the Civil Rights Division needs to carry on this work. He has respect and support across the political spectrum, including from former Solicitors General Paul Clement and Drew Days, because of his principled and measured approach to issues. He has demonstrated skill inside and outside of the courtroom in a variety of settings, including as a litigator for a large corporate law firm and for the NAACP Legal Defense and Education Fund, and twice arguing cases before the United States Supreme Court. Mr. Adegbile has the experience and understanding of civil rights laws that would enable him to effectively enforce the rights of all Americans, including people with disabilities.

Debo Adegbile has the qualifications and experience to make an outstanding Assistant Attorney General for Civil Rights. Please support his swift confirmation.

Sincerely,

Curt Decker
Executive Director

cc: Members of Judiciary Committee



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY
NEW YORK, NY 10271

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

(212) 416-8050

January 6, 2014

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write this letter to express support for the nomination of Debo Adegbile to become the Assistant Attorney General of the Civil Rights Division of the U.S. Department of Justice. As the Attorney General for the State of New York, I am confident that Debo will provide the leadership necessary to defend the civil rights of Americans living in my state and across the nation.

Born in New York, Mr. Adegbile's life embodies the American Dream. He has shown incredible perseverance in overcoming adversity, and ultimately embarked on a career in public service that has been characterized by distinction. His professional record demonstrates that he has the expertise necessary to effectively and successfully lead the Civil Rights Division. In his previous roles at Paul, Weiss, Rifkind, Wharton & Garrison LLP and the NAACP Legal Defense and Educational Fund, he maintained a reputation of providing strong leadership and exercising sound judgment.

Strong civil rights enforcement remains necessary in New York and across our nation. We need a capable and effective advocate like Debo Adegbile to head the Division tasked with addressing those challenges. For these reasons, I urge the Senate to confirm Mr. Adegbile to serve as the Assistant Attorney General of the Civil Rights Division for the United States.

Sincerely,

Eric T. Schneiderman

NFHA
National Fair Housing Alliance

1101 Vermont Avenue, NW, Suite 710, Washington, DC 20005 • (202) 898-1661 • Fax: (202) 371-9744 • www.nationalfairhousing.org

January 6, 2014

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

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley,

On behalf of the National Fair Housing Alliance (NFHA), its Board of Directors, and its member organizations around the country, I write in strong support of the nomination of Debo P. Adegbile to the position of Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. Mr. Adegbile is a nationally renowned civil rights litigator and bipartisan consensus builder whose talents and commitment to justice make him an extraordinarily qualified candidate for the nation's top civil rights post.

Founded in 1988, NFHA is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, D.C., the National Fair Housing Alliance, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents in the nation.

Mr. Adegbile embodies the American Dream. From humble beginnings as the son of European and African immigrants, even living through periods of homelessness as a child, Adegbile worked his way through law school and eventually reached the highest court of the land to defend a key tenet of democracy at the Supreme Court.

Mr. Adegbile's legal career has been both impressive and varied, including positions of leadership at every stop along the way. Following law school, Mr. Adegbile was a litigation associate at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, where he was elected to serve as Chairperson of the firm's Associates Committee. As an associate, Mr. Adegbile represented clients including corporations in cases involving real estate developer interests, international transactions, antitrust claims, and patent violations, and a New York State Comptroller in a case involving employment-related First Amendment claims. During his decade-long tenure at the NAACP Legal Defense and Educational Fund (LDF), Mr. Adegbile served as Director of Litigation, Associate Director-Counsel/Director of Litigation, and Acting President and Director-Counsel. At LDF, Mr. Adegbile was responsible for supervising legal

staff and maintained principal responsibility for oversight of the Fund's litigation before trial and appellate courts in many civil rights cases. Today, Mr. Adegbile is Senior Counsel to the Senate Committee on the Judiciary.

While at LDF, Mr. Adegbile was involved in a wide range of complex civil and criminal litigation in voting rights, education, economic justice, criminal justice, and housing matters. Most notably, Mr. Adegbile has argued two of the most important civil rights cases in a generation before the Supreme Court, defending the constitutionality of the Voting Rights Act's pre-clearance provisions in *Shelby County v. Holder*, 570 U.S. ___ (2013), and in *Northwest Austin Municipal Utility District No. 1 v. Holder*, 55 U.S. 193 (2009). As one of the nation's pre-eminent civil rights litigators, Mr. Adegbile brings with him unparalleled and broad-ranging expertise in civil rights law, making him an exceptional choice to be the nation's top civil rights law enforcement officer. Few candidates have such qualifying experience as Mr. Adegbile's to effectively uphold the civil and constitutional rights of all Americans.

It is with great enthusiasm that I urge you to support the confirmation of Debo Adegbile as the next Assistant Attorney General for Civil Rights at the Department of Justice. Please contact Deidre Swesnik, Director of Public Policy and Communications, at dswesnik@nationalfairhousing.org or 202-898-1661 should you have any questions.

Sincerely,

Shanna L. Smith
President and CEO

cc: Senate Judiciary Committee

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

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LLOYD K. GARRISON (1946-1991)
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WILMINGTON, DE 19899-0032
TELEPHONE (302) 655-4410

WRITER'S DIRECT DIAL NUMBER
212-373-3089

WRITER'S DIRECT FACSIMILE
212-373-2217

WRITER'S DIRECT E-MAIL ADDRESS
twells@paulweiss.com

January 6, 2014

MATTHEW W. ARBOTT
ALLAN J. ARFFA
ROBERT A. ATKINS
DAVID J. BALL
JOHN F. BAUGHMAN
LYNN B. BAYARD
DANIEL J. BELLER
CRAIG A. BENSON
MITCHELL L. BERG
MARK S. BERGMAN
BRUCE BIRENBOIM
H. CHRISTOPHER BOEHNING
ANGELO BONVINO
JAMES L. BROCHIN
RICHARD J. BRONSTEIN
DAVID W. BROWN
SUSANNA M. BUERGEL
PATRICK S. CAMPBELL*
JESSICA S. CAREY
JEANETTE K. CHAN
JONNETTE Y. P. CHAN
LEWIS R. CLAYTON
JAY COHEN
KELLEY A. CORNISH
CHRISTOPHER J. CUMMINGS
CHARLES E. DAVIDOW
DOUGLAS R. DAVIS
THOMAS V. DE LA BASTIDE III
ARIEL J. DECHELBAUM
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ANDREW J. EHRLICH
GREGORY A. EZRING
LESLIE GORDON FAGEN
MARC FALCONE
ANDREW C. FINCH
BRAD J. FINKELSTEIN
ROBERTO FINZI
PETER E. FISCH
ROBERT P. FLEDER
MARTIN FLUMENBAUM
ANDREW J. FOLEY
HARRIS B. FREIDUS
MANUEL S. FREY
ANDREW L. GAINES
KENNETH A. GALLO
MICHAEL E. GERTZMAN
PAUL D. GINSBERG
ADAM M. GIVERTZ
SALVATORE GOGLIORMELLA
ROBERT D. GOLDBAUM
NEIL GOLDMAN
ERIC S. GOLDSTEIN
ERIC GOODISON
CHARLES H. GOOGE, JR.
ANDREW G. GORDON
UDI GROFMAN
NICHOLAS GROOMBRIDGE
BRUCE A. GUTENPLAN
GAINES GWATHMEY III
ALAN S. HALPERIN
JUSTIN G. HAMILL
CLAUDIA HAMMERMAN
GERARDO HARPER
BRIAN S. HERMANN
ROBIN L. HOROWITZ
MICHELE HIRSHMAN
MICHAEL S. HONG
JOYCE S. HUANG
DAVID S. HUNTINGTON
LORETTA A. IPPOLITO
JEH C. JOHNSON
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BRAD S. KARP
JOHN C. KENNEDY
ALAN W. KORNBERG
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DAVID K. LAKHDHIR
STEPHEN P. LAMB*
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JOHN M. O'NEIL
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JULIA MASON WOOD
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KAYE N. YOSHINO
TONG YU
TRACEY A. ZACCONE
T. ROBERT ZOCHOWSKI, JR.

*NOT ADMITTED TO THE NEW YORK BAR

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

I am the Co-Chair of the Litigation Department at Paul, Weiss, Rifkind, Wharton & Garrison LLP. From 2000-2011, I served on the board of the NAACP Legal Defense and Education Fund ("LDF"), including a five-year period as Co-Chair of the LDF board. I write to express my strong support for the nomination of Debo P. Adegible to become the Assistant Attorney General of the Civil Rights Division of the Department of Justice.

I have known Debo for over 14 years. He began his legal career as an associate at Paul, Weiss, and he worked under my supervision on many matters. While at Paul, Weiss, Debo represented various corporate clients, including Revlon, the Continental Grain Company, and Helena Chemical Company, in a variety of cases

involving real estate developer interests, complex international transactions, and antitrust and patent claims. He also represented clients in the governmental and not-for-profit sectors, including various *pro bono* projects involving civil rights issues. Debo went on to join the NAACP Legal Defense Fund, where he litigated and supervised cases in both the trial and appellate courts, directed legal staff, and later undertook the role of Acting President and Director-Counsel during 2012-2013.

Debo is highly intelligent and an excellent writer. He also has excellent judgment, outstanding management skills, and an impeccable work ethic. His legal skills are stellar, and he is best described as a "lawyer's lawyer."

Debo takes a measured, pragmatic approach to every case and has an unwavering respect for the rule of law. Paul Clement, Solicitor General under President George W. Bush, has declared, "I have always found him [Debo] to be a formidable advocate of the highest intellect, skills and integrity." I too am continually impressed by Debo's legal and leadership skills, intelligence, and dedication. He has twice defended the Voting Rights Act—an Act that President Ronald Reagan once called "the crown jewel of American liberties"—before the U.S. Supreme Court, in *Shelby County v. Holder* and in *Northwest Austin Municipal Utility District No. 1 v. Holder*. He has earned my respect and admiration.

A son of immigrants from Ireland and Nigeria, Debo worked his way up from humble beginnings—and even a period of homelessness—to a prominent legal career defending American democracy. Debo understands the complexities of civil rights litigation. He also has the legal and leadership skills, judgment, and integrity required to lead the Civil Rights Division, an agency tasked with upholding the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society.

For these reasons, I support the nomination of Debo P. Adegbile for the position of Assistant Attorney General of the Civil Rights Division of the Department of Justice, and I urge the Senate to confirm him promptly.

Respectfully,

Theodore V. Wells, Jr.

Theodore V. Wells, Jr.

January 7, 2014

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of People For the American Way's hundreds of thousands of members, we write to strongly support the nomination of Debo Adegbile to be the Assistant Attorney General for the Civil Rights Division of the Department of Justice.

Because of its importance in enforcing laws eliminating barriers to equality and opportunity, the Civil Rights Division is a critical means by which Americans protect the promises and values of the United States Constitution. Among many other things, the Civil Rights Division is charged with helping to eliminate discrimination in employment, housing, and education. The Division also has the responsibility to protect the right to vote, which Thomas Paine rightly observed over 200 years ago is "the primary right by which other rights are protected."

It is fitting, therefore, given the enormity of the Civil Rights Division's responsibilities, that President Obama has nominated one of this generation's preeminent civil rights litigators, the supremely qualified Debo Adegbile, to lead the Division. Adegbile's career exemplifies a dedication to advancing the civil rights of all Americans. Before becoming senior counsel to the Senate Judiciary Committee, he spent more than a decade in various leadership positions at the NAACP Legal Defense and Educational Fund, overseeing civil rights litigation at both the trial and appellate level. As director of litigation, then as acting president, Adegbile not only developed expertise in the areas of education, economic justice, criminal justice, and nonpartisan political participation, he also exercised the type of significant administrative and leadership responsibilities that will serve the Civil Rights Division well. Firefighters, school custodians, public parks employees, and Katrina evacuees are just some of the ordinary people all across the nation whom Adegbile has helped.

Adegbile has special expertise in voting rights, and he has twice defended the constitutionality of the Voting Rights Act before the United States Supreme Court. He also worked extensively on the 2005-2006 legislative effort to reauthorize the Voting Rights Act, which led to overwhelming bipartisan majorities voting to renew the law in 2006.

Before his work with LDF, Adegbile spent seven years at the New York firm of Paul, Weiss, Rifkind, Wharton & Garrison, where he represented major corporations, not-for-profit entities, and individuals. While there, he found time to offer pro bono service, coach public high school moot court teams, and make presentations to high school students regarding higher education, law school, and the importance of the United States Constitution.

Adegbile would bring to the Civil Rights Division his formidable litigation skills, his unquestioned integrity, a commitment to equality, his dedication to helping ordinary Americans, and a demonstrated ability to bridge partisan differences. It is no surprise that he has earned the admiration of leading attorneys spanning the ideological spectrum. Paul Clement, Solicitor

General under President George W. Bush, has said, "I have litigated both with and against Debo and have heard him argue in the Supreme Court. I have always found him to be a formidable advocate of the highest intellect, skills and integrity." Drew Days, Solicitor General and head of the Civil Rights Division under President Clinton, has cited "Adegbile's strong leadership, intelligence, dedication, and broad legal experience involving legal matters of government, private, and not-for-profit sectors [as proof] that he has the skills to lead the Civil Rights Division effectively."

Debo Adegbile is an excellent choice for the critically important position of leading the Justice Department's Civil Rights Division. We urge you to support the nomination.

Sincerely,

Marge Baker
Executive Vice President for Policy and Program

Paul Gordon
Senior Legislative Counsel

National Gay and Lesbian
Task Force Action Fund

Build Power Take Action Create Change

January 7, 2014

Senator Patrick Leahy
Chairman
Senate Judiciary Committee
437 Russell Senate Office Building
Washington, DC 20510

Senator Chuck Grassley
Ranking Member
Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Ranking Member Grassley,

As the oldest national organization advocating for the rights of lesbian, gay, bisexual, and transgender (LGBT) people and their families, the National Gay and Lesbian Task Force would like to express our strong support for the nomination of Debo P. Adegbile to be the Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. The Civil Rights Division plays a critical role in protecting the rights of LGBT people, and Mr. Adegbile's skills as an advocate, litigator, and consensus-builder make him an ideal candidate to lead a division committed to the advancement of justice.

The Civil Rights Division protects the LGBT community in schools and at work, in public housing and public accommodations, in jails and on the streets. Strong leadership in the division has translated directly into strong protections for our community. Debo Adegbile is the leader the Civil Rights Division needs to carry on this work.

Mr. Adegbile's work at the nation's first civil rights firm, a large corporate law firm, and at the NAACP Legal Defense and Educational Fund, Inc. firmly established his reputation as one of the preeminent civil rights litigators of his generation. At the same time, his principled and measured approach to his work has earned him bipartisan support from colleagues, lawyers, and leaders, including former Solicitors General Paul Clement and Drew Days.

Alongside his professional career, Mr. Adegbile has maintained his commitment to the success of his community. He presently sits on the boards of his college and middle school, and frequently takes time to speak to students about the importance of the law, civil rights, and educational and professional opportunity.

Mr. Adegbile has the experience and understanding of civil rights laws that would enable him to effectively enforce the rights of all Americans, including members of the LGBT community, as the Assistant Attorney General for Civil Rights. We urge the Senate to swiftly vote to confirm his nomination.

Sincerely,

Rea Carey
Executive Director

1325 Massachusetts Ave., NW, Suite 600, Washington, DC 20005
Tel 202.393.5177 • Fax 202.393.2241 • www.theTaskForceActionFund.org

Cc: Members of Judiciary Committee
Senator Dianne Feinstein
Senator Chuck Schumer
Senator Orrin Hatch
Senator Dick Durbin
Senator Jeff Sessions
Senator Sheldon Whitehouse
Senator Lindsey Graham
Senator Amy Klobuchar
Senator John Cornyn
Senator Al Franken
Senator Michael S. Lee
Senator Christopher Coons
Senator Ted Cruz
Senator Richard Blumenthal
Senator Jeff Flake
Senator Mazie Hirono



Kenneth I. Chenault
Chairman and Chief Executive Officer

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January 7, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC, 20510

Dear Chairman Leahy and Ranking Member Grassley,

I write to express my strong support for the nomination of Debo P. Adegbile to become the Assistant Attorney General of the Civil Rights Division of the Department of Justice.

I have watched Adegbile build an outstanding legal career in the private, not-for-profit and public sectors. At the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, he participated in a variety of cases and represented major corporations in patent, antitrust and contract matters including clients such as Revlon, the Continental Grain Company, and Helena Chemical Company. He then joined the NAACP Legal Defense Fund where he oversaw cases in both the trial and appellate courts, managed legal staff and later served as Acting President and Director-Counsel during 2012-2013. Adegbile is uniquely hard working and dedicated, and he possesses the extensive litigation experience and strong leadership skills necessary to effectively lead the Civil Rights Division.

Adegbile demonstrates an ability to apply a measured approach to all of the cases and issues on which he works. For example, he was instrumental in the 2013 Supreme Court case *Fisher v. Texas*, addressing diversity and educational opportunity in the University of Texas system. In that case, Adegbile coordinated Fortune-100 and other leading American businesses, including American Express Co., in the filing of an amicus brief in support of the respondents. I am continually impressed by Adegbile's skills and professionalism – along with his steadfast commitment to upholding civil rights.

Debo Adegbile's leadership skills, coupled with his deep understanding of the application and enforcement of complex civil rights issues, make him an ideal candidate to lead the Civil Rights Division into the future. For these reasons, I urge the Senate to promptly confirm Debo P. Adegbile for the position of Assistant Attorney General of the Civil Rights Division of the Department of Justice.

Sincerely,



Kenneth Chenault

GODOSKY & GENTILE, P.C.
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NEW YORK, NEW YORK 10006

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January 7, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC, 20510

Dear Senators Leahy and Grassley,

I am writing this letter in support of the nomination of Debo P. Adegbile for Assistant Attorney General for Civil Rights at the Department of Justice.

I have known Debo for well-over 30 years. We attended high school together at The Fieldston School in Bronx, New York. I can state unequivocally that I know of no finer individual and no one more qualified for the position to which he has been nominated.

I am a graduate of Cornell Law School (1992) and then served as a prosecutor in the Bronx District Attorney's Office. Assigned to both the Narcotics Bureau as well as the Felony Trial Bureau, I personally handled prosecutions against the most violent criminals in New York City in the mid-1990's. I interacted and worked with police officers from the Street Crime Unit and Narcotics Divisions, including undercover officers, on a daily basis.

After the District Attorney's Office, I worked in a civil practice for 12 years before I was appointed by Mayor Michael Bloomberg to serve as a Judge in the Criminal Court of Kings County (Brooklyn, New York). I was twice appointed by the Mayor (2009, 2010) before returning to a law practice with my family.

My experience as both a prosecutor and a judge makes me keenly aware of the necessary qualities in an individual to whom the power and responsibility over a division of the Department of Justice may be given. There is no question Debo possesses such qualities. He is scrupulously honest, has the highest integrity and is a fierce defender of the rule of law. Debo's life is not about seeking out the positions that are popular but, rather, seeking out and defending the positions that are just - under our laws and our Constitution.

The position Debo held at the Legal Defense Fund undoubtedly required him to pursue cases that would, by their very nature, antagonize persons and parties opposed to his clients. Such is the nature of advocacy. But defending the core principles of the United States Constitution sometimes requires a strong stomach as well as a thick skin. It requires someone who understands that these principles that we so cherish exist for the adulated as well as the despised. Debo has always understood that if these so-called "core values" are available only for some, then, in reality, they exist for none.

Quite simply, Debo is the person I would want as the prosecutor of a case if I was the victim or if I was the perpetrator. He will secure the rights of the victimized and defend the rights of the accused. He is the person I would most readily trust to make the right decisions in matters of life and death.

We, as a People, can certainly trust him to be an outstanding, honest and effective Assistant Attorney General for Civil Rights at the Department of Justice. We would be fortunate to have him in that position.

Respectfully submitted,

David Godosky, Esq.

HAKEEM S. JEFFRIES
8TH DISTRICT, NEW YORK

)MMITTEE ON THE JUDICIARY
OMMITTEE ON THE BUDGET

Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE:
1339 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5936

DISTRICT OFFICES:
CENTRAL BROOKLYN OFFICE:
55 HANSON PLACE, SUITE 603
BROOKLYN, NY 11217
(718) 237-2211

SOUTH BROOKLYN OFFICE:
445 NEPTUNE AVENUE, FIRST FLOOR
BROOKLYN, NY 11224
(718) 373-0033

JEFFRIES.HOUSE.GOV

January 7, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, DC, 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write to express my strong support of the nomination of Debo P. Adegbile to become the Assistant Attorney General of the Civil Rights Division of the Department of Justice.

The Civil Rights Division has a long and distinguished history of combating discrimination in all shapes and forms. It works to uphold and defend the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. Debo P. Adegbile is uniquely qualified to lead the Division.

Throughout his career, Mr. Adegbile has worked diligently to protect the civil rights of people across the country. He has distinguished himself as a highly effective and respected advocate with success both inside and outside the courtroom. During his decade at the NAACP Legal Defense and Education Fund, Inc., Mr. Adegbile served in various leadership positions, including Acting President and Director-Counsel in 2012 and 2013. He twice defended the constitutionality of the Voting Rights Act in oral argument before the U.S. Supreme Court – a law that preserves the fundamental integrity of our democracy.

I have known Mr. Adegbile for more than fifteen years. During our time together in the

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litigation department at Paul, Weiss, Rifkind, Wharton & Garrison, Mr. Adegbile demonstrated skill, legal acumen and a strong work ethic in his corporate law practice. While there, he represented major corporations in patent, antitrust and contract matters including clients such as Revlon and the Continental Grain Company. He also defended state and federal government officials in employment-related cases, and worked on several high profile pro bono matters.

The son of immigrants from Ireland and Nigeria who came to the U.S. as a domestic worker and a student respectively, Mr. Adegbile exemplifies the American Dream. He financed his entire college and law school education with scholarships, loans and work-study employment.

Mr. Adegbile possesses the intellect, skill, integrity and deep commitment to the Constitution necessary to lead the Civil Rights Division. He will serve our country well. For the aforementioned reasons, I strongly urge the Senate to promptly confirm him.

Sincerely,



HAKEEM S. JEFFRIES
Member of Congress

The Leadership Conference
on Civil and Human Rights

1629 K Street, NW
10th Floor
Washington, DC
20006

202.466.3311 voice
202.466.3435 fax
www.civilrights.org

Officers
Chair
Judith L. Lichtman
National Partnership for
Women & Families
Vice Chairs
Jacqueline Pata
National Congress of American Indians
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hilary Shelton
NAACP
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Barry Rand
AARP
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Board of Directors
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Lawyers' Committee for
Civil Rights Under Law
Wade Henderson
American Civil Liberties
Union Washington Legislative Office
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Chad Griffin
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American Association of
University Women
Mary Kay Henry
Service Employees International Union
Sherrilyn Ifill
NAACP Legal Defense and
Educational Fund, Inc.
Michael B. Keegan
People for the American Way
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International Union, UAW
Elizabeth MacNamara
League of Women Voters of the
United States
Marc Morial
National Urban League
Mee Moua
Asian American Advancing Justice |
AAJC
Janet Murguía
National Council of La Raza
Debra Ness
National Partnership for
Women & Families
Terry O'Neill
National Organization for Women
Priscilla Ouchida
Japanese American Citizens League
Mark Pernell
American Association of
People with Disabilities
Lawrence Roberts
American Civil Liberties Union of
Deon Sanders
Religious Action Center
of Reform Judaism
Shanna Smith
National Fair Housing Alliance
Richard L. Trumka
AFL-CIO
Dennis Van Roekel
National Education Association
Randi Weingarten
American Federation of Teachers

Policy and Enforcement
Committee Chair
Michael Lieberman
Anti-Defamation League
President & CEO
Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

January 7, 2014

The Leadership Conference

Support the Nomination of Debo P. Adegbile to be Assistant Attorney General for the Civil Rights Division of the Department of Justice

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights and the 75 undersigned organizations, we are writing to indicate our strongest possible support for the nomination of Debo P. Adegbile to be Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. Mr. Adegbile is a tireless advocate, a skilled litigator, and a well-respected member of the legal community who is extraordinarily qualified for and suited to this position.

Mr. Adegbile is one of the preeminent civil rights litigators of his generation. He is also a consensus builder. Mr. Adegbile has earned respect and admiration from a bipartisan set of colleagues, lawyers, and leaders, including former Solicitors General Paul Clement and Drew Days, because of his principled and measured approach to issues.

Throughout his career, Mr. Adegbile has distinguished himself as a highly effective and respected advocate who achieved successes both inside and outside the courtroom. The son of immigrants who worked his way from poverty to the top of the legal profession, Mr. Adegbile is a steadfast voice for equality and opportunity for all Americans.

Mr. Adegbile's professional experiences are varied and his accomplishments are myriad. He has worked as a litigator for a large corporate law firm, where he handled a variety of cases for corporate, governmental, individual, and not-for-profit clients; has argued before the Supreme Court twice; and has served for a decade in various leadership positions at the nation's first civil rights law firm, the NAACP Legal Defense and Educational Fund, Inc., where he oversaw cases in both the trial and appellate courts, while managing the legal staff. He currently serves as Senior Counsel to the Senate Judiciary Committee.

Mr. Adegbile is exceptionally qualified to lead the Civil Rights Division at this time in history. As the nation's chief law enforcement officer on civil rights issues, he would bring a depth and breadth of understanding of federal civil rights laws, and their enforcement and application. He has litigated cases across civil rights subject areas, from voting rights to fair housing to employment discrimination to equal educational opportunity. He has practiced law at all levels, from the trial court to the Supreme Court, and has appeared in courts throughout the country. He twice defended the Voting Rights Act before the U.S. Supreme Court. The Act, which President Ronald Reagan called "the crown jewel of American liberties," was unanimously reauthorized by the U.S. Senate in 2006.

Mr. Adegbile is highly regarded for his leadership, judgment, and integrity. And Mr. Adegbile is involved with his community -- he presently serves on the Boards of Trustees of his college and middle school, and frequently speaks to students ranging in age from elementary school to law school about the importance of the Constitution, civil rights, and educational and professional opportunity. With his stellar career of more than a decade at one of the nation's leading civil rights law firms, and his work in the private and public



sectors, it is clear that Mr. Adegbile's skill set, talents, and experience make him the perfect choice to head the Civil Rights Division.

Mr. Adegbile would lead the Department of Justice's Civil Rights Division with professionalism and a deep commitment to its important and historic mission of ensuring that our nation lives up to its promise of equality and justice for all. We urge the Senate to swiftly vote to confirm this extraordinary nominee. If you have any questions, please contact The Leadership Conference's Executive Vice President Nancy Zirkin or Senior Counsel Lisa Bornstein at (202) 466-3311.

Sincerely,
A. Philip Randolph Institute
Advancement Project
AFL-CIO
African American Ministers In Action
Alliance for Justice
American Association for Affirmative Action
American Association of People with Disabilities (AAPD)
American Federation of Government Employees
American-Arab Anti-Discrimination Committee
Americans for Financial Reform
Anti-Defamation League
Asian American Legal Defense and Education Fund
Asian Americans Advancing Justice-AAJC
Asian and Pacific Islander American Vote (APIAVote)
Asian Pacific American Labor Alliance
Bazelon Center for Mental Health Law
Campaign Legal Center
Center for Community Change
Children's Defense Fund
Communications Workers of America
Demos
Disability Rights Education & Defense Fund
Earthjustice
Fair Elections Legal Network
FairVote
Freedom to Work
Gay, Lesbian & Straight Education Network (GLSEN)
Hindu American Foundation
Hmong National Development, Inc.
Human Rights Campaign
International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW
Iota Phi Lambda Sorority, Inc.
Japanese American Citizens League
LatinoJustice PRLDEF
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens
Legal Momentum



MALDEF
NAACP
NAACP Legal Defense & Educational Fund, Inc. (LDF)
NALEO Educational Fund
National Action Network
National Association of Human Rights Workers (NAHRW)
National Association of Social Workers
National Bar Association
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Council of La Raza
National Council on Independent Living
National Disability Rights Network
National Education Association
National Employment Law Project
National Employment Lawyers Association
National Fair Housing Alliance
National Gay and Lesbian Task Force Action Fund
National Immigration Law Center
National Latina Institute for Reproductive Health
National Legal Aid & Defender Association
National Organization for Women
National Partnership for Women & Families
National Senior Citizens Law Center
National Urban League
National Women's Law Center
Native American Rights Fund
People For the American Way
PFLAG National
Poverty & Race Research Action Council
Prison Policy Initiative
Project Vote
Sikh American Legal Defense and Education Fund (SALDEF)
South Asian Americans Leading Together (SAALT)
Southern Coalition for Social Justice
Southern Poverty Law Center
Wider Opportunities for Women

NICHOLAS J. PANARELLA
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CHRISTOPHER C. PANARELLA
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January 7, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC, 20510

Re: Nomination of Debo P. Adegbile

Dear Chairman Leahy and Ranking Member Grassley:

We write in strong support of the nomination of Debo P. Adegbile to be the next Assistant Attorney General for the Civil Rights Division of the United States Department of Justice, and in response to the letter from Chuck Canterbury of the National Fraternal Order of Police dated January 6, 2014.

We graduated from the New York University School of Law with Mr. Adegbile in 1994, and were law school roommates with him from approximately 1992-1994. During law school, we quickly developed a mutual admiration and friendship for one another. Born and raised in New York City and as children of immigrant parents, we all shared mutual experiences and aspirations. We have remained in close personal contact with Mr. Adegbile since our graduation from law school and have been friends with him for over 20 years. Debo attended and spoke at both of our weddings. We have celebrated the birth of our respective children, attended the funeral services of his mother and our father, and celebrated professional accomplishments with one another. We cannot think of a finer person than Mr. Adegbile to fulfill the position of Assistant Attorney General for the Civil Rights Division. He is an attorney of the highest character, and a man with the utmost integrity. As his career demonstrates, he is skilled litigator and a tireless advocate. Mr. Adegible has a deep respect for the rule of law, has always been

respectful of multiple points of view (even those different from his own), and is above all else, fair.

We also are the sons of Nicholas J. Panarella, Sr., a retired first-grade detective from the New York City Police Department, whom Debo knew very well prior to our father's death in 2008. Indeed, Debo attended our father's burial services, and his friendship and words of support were a source of strength during that very difficult time.

Throughout our relationship with Mr. Adegbile he has never expressed any animosity whatsoever towards the law enforcement community. To the contrary, he has always expressed strong admiration for police officers, for our father's career as a detective, and of the vital role that the many men and women who carry the shield play in protecting our communities. We remember with fondness the many discussions between our father, Debo and us about important issues facing police officers and the law enforcement community. In all of these discussions, Mr. Adegbile demonstrated a deep respect and appreciation for police officers and the challenges that they face every day.

Thus, we were very disappointed to read Mr. Canterbury's letter and in particular his unfounded accusation that Mr. Adegbile lacks "ethics" and applies a "race-baiting" approach to our legal system. Those statements are patently untrue, and unfairly attempt to sully Mr. Adegbile's fine reputation. Based on our 20 year relationship with him, we know Mr. Adegbile to have the highest ethical compass, and a deep respect for the rule of law. We are confident that he will bring professionalism and honor to the Department of Justice.

We hope that our views will assist the Senate Judiciary Committee in supporting Mr. Adegbile's nomination to become Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

Respectfully submitted,

Nicholas J. Panarella

Christopher C. Panarella

C L I F F O R D
C H A N C E

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January 07, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC, 20510

Dear Chairman Leahy and Ranking Member Grassley,

I write respectfully to express my unqualified endorsement of Debo Adegbile to serve as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. Mr. Adegbile, whom I have known since childhood, is an ideal choice to lead the Department's civil rights mission and I see no reason for the Committee on the Judiciary to hesitate in reporting his nomination to the full Senate for consideration and confirmation.

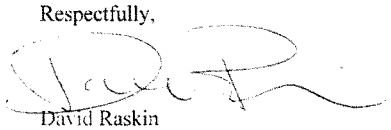
I was for more than 12 years an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York. I served as a chief of that office's terrorism unit and prosecuted Zacarias Moussaoui, who remains the only member of al Qaeda held criminally responsible for the terrorist attacks of September 11, 2001. I regularly worked with Department leadership, often at its highest levels.

I have had the pleasure of knowing Mr. Adegbile for more than 30 years, since we were high school classmates. He is a person of flawless character whose commitment to excellence has always featured clear judgment, sharp intellect and even temperament. His professional accomplishments, of which there are many, rightly place him among the preeminent civil rights litigators of his generation. I can say without equivocation that Mr. Adegbile has the right moral bearing, experience and skill to be one of the Department's finest leaders and I am confident he

would make an excellent Assistant Attorney General. You would be hard pressed to find a more suitable and deserving candidate.

For these reasons, and without reservation, I encourage the Committee to report Mr. Adegbile's nomination to the full Senate.

Respectfully,



David Raskin

WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
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January 7, 2014

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: NAACP STRONG SUPPORT FOR DEBO P. ADEGBILE TO SERVE AS ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization, I strongly urge you to support the nomination of Debo P. Adegbile to serve as Assistant Attorney General for Civil Rights, and to do everything possible to move his confirmation as quickly as possible through the U.S. Senate. Mr. Adegbile is not only intimately familiar with the civil rights problems and challenges of racial and ethnic minorities throughout the United States, but he also has a proven track record in taking a proactive approach to implementing long term, permanent solutions to these problems. Mr. Adegbile is an inspired choice to lead the Department of Justice's Civil Rights Division, and will add a much-needed energy and expertise to the vital work of the Division.

Debo Adegbile is no stranger to the legal and civil and human rights communities, or to the NAACP specifically. For more than a decade, Mr. Adegbile has been a leading voice in the civil rights community on issued as varied as voting rights, equal opportunity programs, disability rights, civil rights, the rights of victims of domestic violence, human rights, and housing rights. Mr. Adegbile has also argued numerous civil rights cases before the U.S. Supreme Court, including twice defending the constitutionality of the Voting Rights Act. Mr. Adegbile's intelligence, his judicial temperament, as well as his willingness to work with all involved parties and his broad legal experience focusing on civil rights is well known to and respected by many in the U.S. Senate, given his current position as Senior Counsel to the Senate Judiciary Committee.

Thank you in advance for your attention to the NAACP position. I strongly urge you once again to support Debo Adegbile's swift and non-contentious confirmation to serve as Assistant Attorney General for Civil Rights. Should you have any questions or comments, please do not hesitate to contact me at my office at (202) 463-2940.

Sincerely,



Hilary O. Shelton
Director, NAACP Washington Bureau &
Senior Vice President for Advocacy and Policy

CC: Members, Senate Judiciary Committee

January 8, 2013

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Senate Dirksen
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
151 Senate Dirksen Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We write as members of an ad hoc group of African American AmLaw partners and Fortune 500 general counsel to strongly support the nomination of Debo P. Adegbile to become the Assistant Attorney General for Civil Rights at the United States Department of Justice.

Mr. Adegbile's public advocacy on behalf of ethnic and racial minorities in the areas of voting rights, education, and access to courts, exemplifies a strong commitment to participatory democracy by all United States citizens. Through his many speaking engagements—to audiences at every stage of the educational spectrum, from law, college, high, middle, and primary school students—we can readily discern his commitment to educating the next generation about the need for civil rights advocacy and protecting voting rights in particular. He is a thought leader among civil rights lawyers and someone who has demonstrated through both words and deeds a true commitment to equality in America. In short, he is highly qualified to lead the Department of Justice's esteemed Civil Rights Division.

Although we do not all personally know Mr. Adegbile, a review of his responses to the Committee's questionnaire for non-judicial nominees evidences a breathtaking array of unparalleled civil rights litigation experience for a contemporary attorney who has practiced less than twenty years. While we have not encountered Mr. Adegbile in our representative matters, as members of the Judiciary Committee you have. By all accounts, he has admirably served on Chairman Leahy's staff since last year. The weekly Committee markups and hearings provide all members of this Committee ample opportunity to observe Mr. Adegbile in action and we have no doubt that he has demonstrated the dignity and professionalism that are his hallmarks.

Finally, we understand that the Fraternal Order of Police recently announced its opposition to Mr. Adegbile's nomination. We deeply admire the men and women first-responders who populate the FOP but contend that the opposition is misguided. Prior to joining the Committee staff, Mr. Adegbile was principally a civil litigator dedicating some eighty percent (80%) of his practice to civil proceedings. Mr. Adegbile's advocacy on behalf of a single individual on death row while serving at the NAACP Legal Defense Fund should not serve to disqualify him from the

position to which he has been nominated. Indeed, as he noted in his questionnaire, LDF's "founding charter places special emphasis on the mission of representing poor African Americans." In our view, lawyers serve as detached professionals and should not be cloaked with the misdeeds of their clients.

For all of the foregoing reasons, we urge the Committee to advance Mr. Adegbile's nomination to the full Senate so that he may be promptly confirmed.

Sincerely,

Benjamin F. Wilson
Managing Partner[i]
Beveridge & Diamond, P.C.

Kwamina Williford
Partner
Holland & Knight

Anthony T. Pierce
D.C. Managing Partner
Akin Gump Strauss Hauer & Feld

LaFonte Nesbitt
Partner
Holland & Knight

Paul Lancaster Adams
Philadelphia Managing Shareholder
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

John E. Page
Vice President, General Counsel & Secretary
Golden State Foods Corporation

Donna B. Coaxum
Vice President, General Counsel & Secretary
OSI Group, LLC

Frederick R. Nance
Regional Managing Partner
Squire Sanders

Alan Dial
Partner
King & Spalding

[i] Please note that all titles and organizational affiliations are listed for identification purposes only.

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VERA
INSTITUTE OF JUSTICE

January 8, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC, 20510

Dear Chairman Leahy and Ranking Member Grassley,

As the President and Director of the Vera Institute of Justice, I write to express my strong support for the nomination of Debo P. Adegbile to become the Assistant Attorney General of the Civil Rights Division of the Department of Justice. The Vera Institute, a 52 year old non-profit that works with federal, state and local law enforcement and public safety agencies to improve administration of justice, views the Civil Rights Division of the Department of Justice as paramount to achieving that goal.

I first met Debo years ago when he and I began our careers together at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison. As a colleague, he exemplified the type of professionalism that is integral to any successful organization. He was open and honest, fair-minded, and most importantly, committed to careful and thorough execution of the tasks at hand. Paul Weiss provided us both the opportunity to gain first class experience in complex civil and commercial litigation. Debo has always exhibited a willingness to work hard and has strived to achieve the best possible outcome in all cases. Because of these qualities, he not only gained widespread respect by principals both in- and outside of the firm but was seen as a mentor by many lawyers junior to him.

After our time at Paul Weiss, Debo continued to build on his litigation experience at the NAACP Legal Defense and Educational Fund (LDF). While there, he served for a decade in various leadership positions oversaw cases in both the trial and appellate courts, and during 2012-2013 he served as its Acting President and Director-Counsel. Debo is an experienced and accomplished litigator and a proven leader on a broad array of civil rights issues, and it is my belief that he is a stellar candidate to serve as AAG of the Civil Rights Division. I can say this with the confidence of Vera having observed and worked with many of his predecessors through Democratic and Republican administrations.

It was an honor to have worked with Debo, and I am positive that his extensive experience, both at Paul Weiss and beyond, makes him overwhelmingly qualified to serve as leader of the Civil Rights Division. He has always shown a willingness to represent any and all of his clients with zeal and a passion that matches his intellectual abilities. He has the temperament to manage the office, staff and its docket fairly and responsibly. For all of the above reasons, I urge the Senate to promptly confirm Debo P. Adegbile for the position of Assistant Attorney General of the Civil Rights Division of the Department of Justice.

Sincerely,

Nicholas Turner

WILMERHALE

Boyd M. Johnson III

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boyd.johnson@wilmerhale.com

January 8, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC, 20510

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC, 20510

Dear Chairman Leahy and Ranking Member Grassley,

I am currently a partner in the Litigation Department of Wilmer Cutler Pickering Hale and Dorr in New York. Before joining the firm, I worked for 13 years as a federal prosecutor in the United States Attorney's Office for the Southern District of New York. During my tenure as a federal prosecutor, I worked with law enforcement officers on a daily basis to investigate and prosecute narcotics trafficking, public corruption, terrorism, and other crimes. During 2009-2011, I served as the Deputy United States Attorney for the Southern District of New York, supervising more than 180 federal prosecutors and all criminal and civil matters filed by the United States in the District. I write to provide my enthusiastic support of the nomination of Debo P. Adegbile for Assistant Attorney General for the Civil Rights Division of the Department of Justice.

I have known Debo for more than 20 years. Over this time, I have come to know him not only as a brilliant, hard-working lawyer, but also as a honest and caring person with the utmost integrity. While Debo is a fierce defender of the United States Constitution, he also is fair-minded and has tremendous judgment, two qualities that would serve him well as the Assistant Attorney General for Civil Rights. I am confident that Debo will bring a principled and measured approach to this important position.

In sum, I can think of no better person to head the Civil Rights Division than Debo. Please do not hesitate to contact me if I can provide any further information in support of his nomination.

Very truly yours,

Boyd M. Johnson III

Kenneth P. Thompson
District Attorney

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January 10, 2014

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
United States Senate
226 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I write to express my strong and unreserved support for Debo Patrick Adegbile, Esq., to be confirmed as the Assistant Attorney General of the Civil Rights Division of the Department of Justice. I have known and admired Debo, a fellow graduate of New York University School of Law, for well over 10 years, and I cannot think of a more effective, respected, accomplished, and passionate advocate to lead the Division.

The Department of Justice, and the Civil Rights Division more particularly, plays an important and unique role in combating unlawful discrimination and upholding and defending the civil and constitutional rights of all Americans, with a special charge to protect the most vulnerable among us. I know this well, having had the privilege, earlier in my professional career as a federal prosecutor, to investigate and prosecute important cases to vindicate the rights of individuals whose civil rights had been violated. In addition, some years ago in private practice, I worked collaboratively with Senator Charles Schumer and Brooklyn's Congressional delegation to get the Department of Justice to reopen the investigation of the

Kenneth P. Thompson
District Attorney

horrific 1955 murder of 14-year-old Emmitt Till, the young African American boy from Chicago, whose body was thrown into Mississippi's Tallahatchie River by a group of white men, after they had beaten him brutally and gouged out one of his eyes -- all because the young boy had purportedly whistled at a white woman. Emmitt Till's murder was one of the most pivotal events in our nation's struggle to create a more perfect union during the era of the Civil Rights movement.

In this connection, the Division would be well-served by a leader whose resolute belief in the rule of law and the enduring principles that make our nation great drives its mission to do critically important work. Without doubt, as one of the preeminent civil rights attorneys and advocates of *his* generation, Debo has the integrity, perspective, and capacity to be an exceptional leader of the Division.

During his decade at the NAACP Legal Defense and Education Fund, the nation's first civil rights law firm, Debo worked on significant and complex impact litigation in trial and appellate courts. Over time, through his hard work and penchant for strong results, he steadily rose in the organization's ranks to serve in various leadership positions, including director of litigation and Acting President and Director-Counsel. Notably, he twice defended the constitutionality of the Voting Rights Act in oral argument before the U.S. Supreme Court -- a victory that, undoubtedly, has helped to preserve a law President Reagan once called "the crown jewel of American liberties." In 2006, the U.S. Senate unanimously reauthorized this important law.

Kenneth P. Thompson
District Attorney

Additionally, Debo's impressive legal acumen and success as an advocate are not too surprising, given that he follows in the large footsteps of his two mentors at Paul, Weiss, Rifkind, Wharton & Garrison, namely the late A. Leon Higginbotham, Jr., a civil rights giant who was one of our nation's most passionate and unyielding voices for equality, and Ted Wells, who is one of the best trial lawyers in the country. At Paul Weiss, a prominent corporate law firm, Debo gained his footing as an excellent litigator and trial attorney. He capably represented the interests of major corporations and government officials in complex patent, antitrust, employment, and contract matters. As important, he demonstrated equally remarkable skill working on several high profile pro bono matters.

Debo's best-in-class professional skill, integrity, considered judgment and perspective, and tremendous work ethic stand as the hallmarks that have helped to distinguish him throughout an impressive career. What is equally as important to consider is how Debo embodies the very essence of the American Dream. He is the son of immigrants from Ireland and Nigeria, whose family once suffered through a period of homelessness and, at one time, lived in one of New York City's most notorious welfare hotels. Poverty served as a mere impediment for Debo, as he has made the most of his opportunities and talents, ultimately carving out a professional career as an advocate par excellence, including his current role as Senior Counsel to this very Committee.

Debo Patrick Adegbile exemplifies the greatest aspiration of our nation: that when you give a talented child an opportunity to develop intellectual firepower, he or she can develop the courage and capacity to promote the greater good for everyone. He has the experience, intellect, leadership ability, integrity, and deep commitment to civil rights, to serve our country well as the Division's chief architect and leader. Additionally, his rise from humble beginnings and



Kenneth P. Thompson
District Attorney

demonstrated commitment to public service, no doubt, will serve as an inspiration to his colleagues and to the children of our nation.

For all of the reasons set forth in this letter, I hope that the Senate will promptly confirm Debo as the Assistant Attorney General for the Civil Rights Division of the Department of Justice.

Sincerely,

Kenneth P. Thompson

Defending Liberty
Pursuing Justice

James R. Silkenat
President

AMERICAN BAR ASSOCIATION

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January 13, 2014

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

The Honorable Charles Grassley
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Nomination of Debo Adegbile to be Assistant Attorney General for the Civil Rights Division

Dear Senators Leahy and Grassley:

As the Senate Judiciary Committee prepares to deliberate over the nomination of Debo Adegbile to be Assistant Attorney General for the Civil Rights Division, I write to address the criticism this nominee has received regarding the legal representation he provided to a death-sentenced prisoner.

A fundamental tenet of our justice system and our Constitution is that anyone who faces loss of liberty has a right to legal counsel. Lawyers have an ethical obligation to uphold that principle and provide zealous representation to people who otherwise would stand alone against the power and resources of the government – even to those accused or convicted of terrible crimes. The American people understand this obligation, and the corollary principle stated in rule 1.2(b) of the ABA Model Rules of Professional Conduct that "[a] lawyer's representation of a client does not constitute an endorsement of the client's political, economic, social or moral views or activities."

I was alarmed to learn that there is some opposition to Mr. Adegbile's nomination based solely on his efforts to protect the fundamental rights of an unpopular client while working at the Legal Defense Fund. His work, like the work of ABA members who provide thousands of hours of pro bono legal services every year, is consistent with the finest tradition of this country's legal profession and should be commended, not condemned.

Sincerely,

James R. Silkenat

James R. Silkenat

NATIONAL
FRATERNAL ORDER OF POLICE®

328 MASSACHUSETTS AVE., N.E.
WASHINGTON, DC 20002
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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

6 January 2014

The Honorable Barack H. Obama II
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President,

I am writing on behalf of the more than 330,000 members of the Fraternal Order of Police to express our extreme disappointment, displeasure and vehement opposition to the nomination of Debo Adegbile to be the next Assistant Attorney General for the Civil Rights Division at the U.S. Department of Justice.

As word of this nomination spreads through the law enforcement community, reactions range from anger to incredulity. Under this nominee's leadership, the Legal Defense Fund (LDF) of the National Association for the Advancement of Colored People *volunteered* their services to represent Wesley Cook, better known to the world as Mumia Abu-Jamal–our country's most notorious cop-killer. There is no disputing that Philadelphia Police Officer Daniel Faulkner was murdered by this thug. His just sentence–death–was undone by your nominee and others like him who turned the justice system on its head with unfounded and unproven allegations of racism.

We are aware of the tried and true shield behind which activists of Adegbile's ilk are wont to hide–that everyone is entitled to a defense; but surely you would agree that a defense should not be based on falsely disparaging and savaging the good name and reputation of a lifeless police officer. Certainly any legal scholar can see the injustice and absence of ethics in this cynical race-baiting approach to our legal system.

The Administration did not consult the FOP during the decision-making process for this nomination. In fact, to our knowledge, none of our nation's law enforcement organizations were consulted despite a recent pledge by your Attorney General to be more open and transparent with the men and women we rely on to keep us safe. This nomination can be interpreted in only one way: it is a thumb in the eye of our nation's law enforcement officers. It demonstrates a total lack of regard or empathy for those who strive to keep you and everyone else in our nation safe in your homes and neighborhoods–sometimes giving their lives in the effort.

We believe that law enforcement and minority communities need to build even greater bonds of trust and mutual respect. Yet, your Civil Rights Division, under the direction of Thomas E. Perez and Roy L. Austin, Jr., has increasingly built obstacles to this goal with its aggressive and punitive approach towards local law enforcement agencies. Your nominee will certainly exacerbate that growing division and distrust.

Standing up and fighting against racism wherever and whenever you find it is a brave and admirable endeavor; sometimes standing up against racism entails opposing and exposing cynical opportunism disguised in the name of justice. We will make every effort to point this out in our opposition to this nomination and will do everything we can to defeat it in the Senate.

It is our hope that, in the future, you and your Administration will consider candidates with records of fairness and respect to all Americans when selecting nominees for leadership positions at the Justice Department or anywhere else in your administration.

Sincerely,

Chuck Canterbury
National President

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

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Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary
Attn: Denise A. Cardman
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Please respond to:

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VIA EMAIL AND FIRST-CLASS MAIL

November 8, 2013

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: ***Nomination of James Donald Peterson to the United States District Court for the Western District of Wisconsin***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of James Donald Peterson who has been nominated for a position on the United States District Court for the Western District of Wisconsin. As a result of our investigation, the Committee is of the opinion that Mr. Peterson is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Mr. Peterson.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: James Donald Peterson, 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 November 8, 2013.

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

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Boston, MA 02109-2129

SECOND CIRCUIT
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New York, NY 10019-6064

THIRD CIRCUIT
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Courthouse Tower
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D.C. CIRCUIT
Ronald A. Cass
10360 Fox Forest Drive
Great Falls, VA 22066-1743

FEDERAL CIRCUIT
Ellen J. Flannery
1201 Pennsylvania Avenue, NW
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AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
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Attn: Denise A. Cardman
Suite 400
1050 Connecticut Avenue, NW
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Please respond to:

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VIA EMAIL AND FIRST-CLASS MAIL

November 8, 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 Jo Rosenstengel to the United States District Court for the Southern District of Illinois***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Nancy Jo Rosenstengel who has been nominated for a position on the United States District Court for the Southern District of Illinois. As a result of our investigation, the Committee is of the opinion that Nancy Jo Rosenstengel is Unanimously Qualified for this position.

A copy of this letter has been provided to Ms. Rosenstengel.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: Nancy Jo Rosenstengel, 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 November 8, 2013.

CHAIR
Bettina B. Plevan
11 Times Square
New York, NY 10036-8299

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AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on
the Federal Judiciary
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Please respond to:

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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 Indira Talwani to the United States District Court for the District of Massachusetts***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Indira Talwani who has been nominated for a position on the United States District Court for the District of Massachusetts. As a result of our investigation, the Committee is of the opinion that Ms. Talwani is Unanimously Qualified for this position.

A copy of this letter has been provided to Ms. Talwani.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Indira Talwani, 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 24, 2013.

National Asian Pacific American Bar Association | NAPABA

January 8, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for Indira Talwani, Nominee for the United States District Court for the District of Massachusetts

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the National Asian Pacific American Bar Association (NAPABA), we proudly endorse and urge the prompt confirmation of Indira Talwani to the United States District Court for the District of Massachusetts. Ms. Talwani possesses the necessary qualities—intellectual capacity, integrity, experience, and judicial temperament—to serve on the federal judiciary with distinction.

NAPABA is a national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. Now in its 25th year, NAPABA represents the interests of over 60 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA is deeply committed to supporting the appointment of qualified Asian Pacific Americans to the federal bench, where Asian Pacific Americans are significantly underrepresented. Of the approximately 875 active Article III judges, only 21 are Asian Pacific American. If the number of Asian Pacific American Article III judges reflected the number of Asian Pacific Americans in the United States, that number would be over 50.

There has never been an Asian Pacific American federal district court judge in the Commonwealth of Massachusetts. Likewise, there has never been an Asian Pacific American federal judge in any of the courts covered by the United States Court of Appeals for the First Circuit.

Ms. Talwani has had a distinguished career in the law. For over 10 years, she has served as a partner with the Boston law firm of Segal Roitman LLP, where she has practiced

employment and labor law. In addition, she also has been an adjunct professor at Northeastern University School of Law. Prior to relocating to Boston, Ms. Talwani was a partner with Altshuler, Berzon LLP in San Francisco. She began her legal career by serving as a law clerk to the Honorable Stanley A. Weigel for the United States District Court of the Northern District of California.

Ms. Talwani has garnered recognition for her work. She has been selected for inclusion in *Best Lawyers of America* and *Massachusetts Super Lawyer.* Notably, in 2010, Ms. Talwani was named "Lawyer of the Year" by *Massachusetts Law Weekly.*

In addition to using her legal skills on behalf of her clients, Ms. Talwani has continued to give back to the community through countless pro bono projects. This work typically has been on behalf of disadvantaged individuals or those who are unable to afford legal services. Based on this work, the Chinese Progressive Association presented Ms. Talwani with the Workers Justice Award in 2010.

Ms. Talwani's commitment to public service and equal justice stems in part from her background. Her parents are first-generation immigrants who worked hard to integrate into the fabric of American society. Accordingly, Ms. Talwani grew up with a rich appreciation for the strengths and opportunities offered by this country, along with an awareness of the importance of differing viewpoints and perspectives and how that strengthens our society. Ms. Talwani's interest in becoming a federal judge is a reflection of her strong commitment to serving the country and making sure that our nation continues to serve as an example for all cultures worldwide.

Based on her qualifications, intellect, integrity, and commitment to service, the National Asian Pacific American Bar Association proudly supports Ms. Indira Talwani to serve as a District Judge for the United States District Court for the District of Massachusetts.

Sincerely,

William J. Simonitsch
President

Tina Matsuoka
Executive Director

Statement for the Record
Hearing of the Senate Judiciary Committee on Nomination of John P. Carlin
Senator Kirsten Gillibrand
January 8, 2014

While I am unable to appear at today's hearing, I am pleased to offer my strong support for the confirmation of a highly qualified and accomplished New Yorker, John P. Carlin, who has been nominated by President Obama to serve as the Assistant Attorney General for National Security at the Department of Justice. I ask that my remarks be included in the Committee's record of this hearing.

I am proud to support Mr. Carlin because his career as a public servant and federal prosecutor make him an exceptionally well-qualified nominee who will continue to serve the Department of Justice and our country with distinction. Mr. Carlin is currently the Acting Assistant Attorney General for National Security at the Department of Justice. He most recent served as Principal Deputy Assistant Attorney General and Chief of Staff of the National Security Division. Previously, Mr. Carlin served as Chief of Staff and Senior Counsel to Robert S. Mueller, III, Director of the Federal Bureau of Investigation. As a career federal prosecutor since 1999, Mr. Carlin also served as National Coordinator of the Justice Department's Computer Hacking and Intellectual Property Program. His experience as an Assistant United States Attorney for the District of Columbia includes prosecuting cases ranging from homicide and sexual offenses, to cyber, fraud, and public corruption matters.

Mr. Carlin grew up in New York, where his parents still reside. He graduated from Williams College, and earned his Juris Doctor degree from Harvard Law School. He was admitted to the New York State Bar in 2000.

I believe that, if confirmed, he will be an outstanding Assistant Attorney General.

Statement for the Record
Hearing of the Senate Judiciary Committee on Nomination of Debo P. Adegbile
Senator Kirsten Gillibrand
January 8, 2014

While I am unable to appear at today's hearing, I am pleased to offer my strong support for the confirmation of a highly qualified and accomplished New Yorker, Debo P. Adegbile, who has been nominated by President Obama to serve as the Assistant Attorney General for the Civil Rights Division at the Department of Justice. I ask that my remarks be included in the Committee's record of this hearing.

Debo P. Adegbile is Senior Counsel to the United States Senate Judiciary Committee, a position he has held since July 2013. Previously, from 2001 to 2013, Mr. Adegbile held a number of roles at the NAACP Legal Defense and Educational Fund, Inc., including Special Counsel, Acting President and Director-Counsel, Associate Director-Counsel and Director of Litigation, Associate Director of Litigation, and Assistant Counsel. Prior to joining the NAACP, he was an associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York from 1994 to 2001. Mr. Adegbile has strong ties to New York and still lives there. He was born in Manhattan in 1966, and was raised by a single mother in the Bronx. After receiving his B.A. from Connecticut College and a J.D. from New York University School of Law, Mr. Adegbile joined the New York Bar Association. He is admitted to several New York courts, the United States Supreme Court, and the United States Court of Appeals in all 12 regional circuits.

I am proud to support Mr. Adegbile because his career as a civil rights litigator, including several U.S. Supreme Court matters, makes him an exceptionally well-qualified nominee who will serve well the Department of Justice and our country.

I believe that, if confirmed, he will be an outstanding Assistant Attorney General.

MARK KIRK
ILLINOIS

United States Senate

COMMITTEES:
APPROPRIATIONS
BANKING, HOUSING & URBAN AFFAIRS
HEALTH, EDUCATION, LABOR & PENSIONS
AGING

January 8, 2014

SENATOR MARK KIRK'S STATEMENT REGARDING NANCY ROSENSTENGEL,
NOMINEE FOR DISTRICT COURT JUDGE, SOUTHERN DISTRICT OF ILLINOIS

Chairman Leahy and Ranking Member Grassley, thank you for giving me any opportunity provide a statement for the record and comment on Nancy Rosenstengel, President Obama's nominee for the bench in the Southern District of Illinois. I am honored.

Currently, Ms. Rosenstengel is a resident of Belleville, Illinois and serves as the Clerk of Court for the U.S. District Court for the Southern District of Illinois, a position she has held since 2009. Previously Ms. Rosenstengel served for eleven (11) years as a law clerk to Judge Patrick Murphy, also of the Southern District of Illinois.

In addition, Ms. Rosenstengel worked for five years in private practice at Sandberg, Phoenix & von Gontard in St. Louis. In reviewing Ms. Rosenstengel cumulative vitae, I was pleased to see her varied experience in private law practice and within the court system of the Southern District of Illinois.

Ms. Rosenstengel is a graduate of two of my home state's excellent universities, the University of Illinois and Southern Illinois University School of Law. These universities stand for academic rigor and harbor a strong work ethic, traits that Ms. Rosenstengel will certainly need when addressing the varied factual and legal questions of the court.

I support the nomination of Ms. Rosenstengel. I am certain Ms. Rosenstengel will make a fine addition to the bench in the Southern District of Illinois. I look forward to watching her career progress.

I cannot help but take this opportunity to comment on the nomination process as it is conducted in Illinois between the office of Sen. Richard Durbin, Illinois' senior Senator, and my office.

I know of no other pair of U.S. Senators who work more closely and in such a bipartisan manner than Sen. Durbin and our staffs. In discussing judicial nominees, my communications with Senator Durbin have been excellent. Since the day I was swore in as a U.S. Senator representing Illinois, Senator Durbin has been endlessly gracious and courteous. He is a professional and a gentleman. I am proud to call him my friend.

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MARK KIRK
ILLINOIS

United States Senate

COMMITTEES:
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Lastly, it is also true that I cannot let this opportunity pass without praising Senator Chuck Grassley, Iowa's senior Senator, and his excellent work on the Senate Judiciary Committee. Senator Grassley is a loyal and dedicated steadfast anchor on the Judiciary Committee. He is man of family, faith, and public service, and has been a tireless representative for the people of Iowa for decades.

Senator Grassley has obtained advanced academic degrees and done the work of men with sturdy, upright backs and strong hands – a farmer and a sheet metal and assembly line worker. This is the kind of background and valued work experience that roots a man in the things that matter and create first-rate legislators and public servants, a job Senator Grassley has filled on behalf of Iowans in the Iowa Legislature, U.S. House of Representatives, and since 1980 in the U.S. Senate. He has been a great asset in my career in Washington, D.C. For this I thank him and am grateful for his friendship and counsel.

Again, I appreciate the opportunity to address the Senate Judiciary Committee and the time the committee has afforded me.

Thank you.

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Justice's Civil Rights nominee has resume that includes 'Sesame Street' and voting rights
Washington Post
January 2, 2014
By Timothy Phelps

Debo Adegbile, President Obama's nominee to lead the Justice Department's Civil Rights Division, attributes much of his success as an attorney to a nine-year stint as a child actor on "Sesame Street" in the 1970s.

The unusual resume item brought him a kind of mini-celebrity and was a surprisingly frequent focus of job interviews, Adegbile has said, even as he climbed the legal ranks to join a big New York corporate law firm.

But as he faces Senate confirmation hearings this month, Adegbile, 46, is drawing a different kind of attention from conservative activists. They are less interested in stories about the time he explained the letter "S" to Grover the Muppet and more curious about his record as an unapologetically liberal voting-rights lawyer, his representation of a convicted killer of a police officer and his leadership tenure at the NAACP Legal Defense Fund.

"When he ran the unit at the Legal Defense Fund, they took positions far outside of the mainstream of the law, far outside existing jurisprudence as it relates to race, and really advanced a fringe agenda," said J. Christian Adams, a former Justice Department civil rights lawyer who has written a book attacking the Justice Department under Obama. "If he attempts to do the same at the Justice Department, it will be a catastrophe."

Adegbile's nomination, along with the recent news that prominent Stanford University law professor Pamela S. Karlan will be appointed his voting-rights deputy, has been seen by many as a sign that the Obama administration is moving to reinvigorate the Justice Department's voting section, particularly after a Supreme Court ruling last year voided important parts of the 1965 Voting Rights Act.

Adegbile defended the act's constitutionality on behalf of the Legal Defense Fund during the Supreme Court argument. But the justices ruled that a federal requirement forcing some states to seek Justice Department "pre-clearance" before changing their election laws violated the states' sovereignty.

Turning to Adegbile to be the top civil rights official, Attorney General Eric H. Holder Jr. signaled that he intended to fight back hard to safeguard what remains of the landmark Voting

Rights Act and to prevent Southern states from imposing new restrictions or identification requirements at polling stations that Holder argues could effectively disenfranchise minorities.

Republicans on the Senate Judiciary Committee, where Adegbile has worked for several months as senior counsel to Chairman Patrick J. Leahy (D-Vt.), have not yet taken a stand on him. But given the Senate battle over nominations and criticism by Republicans of the Civil Rights Division under Adegbile's predecessor, fireworks are expected.

"He is just so incredibly suited for this position," said Leslie M. Proll, director of the Washington office of the Legal Defense Fund, which was founded in 1940 by former Supreme Court Justice Thurgood Marshall. Among civil rights lawyers, "Debo stands alone in terms of his depth and the breadth of issues (he has worked on) across the board."

Ryan Haygood, a defense fund colleague from the New York office, said Adegbile was raised by a single mother, an Irish immigrant who struggled with poverty and even occasional homelessness when he was a child.

Despite her circumstances and the absence of her son's Nigerian father, Adegbile's mother fought to get her son into top private schools in Manhattan, where he usually received scholarships because of his good grades, Haygood said.

When he was 4 or 5, a friend noticed an ad seeking children to audition for "Sesame Street." Adegbile landed the job and played the part of Debo, a child of the "Sesame Street" neighborhood, until high school. Haygood said his friend had "fond memories of Grover and Cookie Monster" and of meeting Ray Charles during a guest appearance by the singer.

After high school, Adegbile attended Connecticut College and the New York University School of Law.

"His life's trajectory went from humble circumstances in New York City to standing at the podium at the Supreme Court," said Nina Perales, director of litigation at the Mexican American Legal Defense and Education Fund. "It was a special moment to watch him argue and argue well."

But Adegbile's career has suffered some notable disappointments. In 2012, he was passed over for the top job at the Legal Defense Fund after serving as its acting president for eight months. He was asked to stay on as special counsel.

In 2011, Obama asked the American Bar Association to evaluate Adegbile for possible appointment to the U.S. Court of Appeals for the D.C. Circuit, normally a precursor to nomination. But the White House later withdrew his name.

Conservative bloggers say the bar association found Adegbile unqualified. But Florida lawyer Ben Hill, who was chairman of the bar association evaluation committee, said in an interview that Adegbile's name was withdrawn before he was rated by the group.

An administration official said Adegbile's name was withdrawn after Caitlin Halligan, a lawyer in the Manhattan district attorney's office with a moderate record, failed to win Senate approval for the D.C. Circuit, casting doubt on Adegbile's chances.

The White House would not comment on the record or allow Adegbile to be interviewed for this article, as is common practice for nominees.

Adegbile's representation of Mumia Abu-Jamal, a radical Philadelphia journalist who was convicted of killing a police officer in 1981, was another potential liability in judicial confirmation hearings. The issue is already being raised by conservatives in advance of his confirmation hearing for the Justice Department post.

Abu-Jamal was convicted and sentenced to death with what state and federal judges said was overwhelming evidence, including three eyewitnesses to the shooting and two more who said he bragged of the killing when taken to a hospital afterward. But the charismatic Abu-Jamal became an international cause celebre in leftist circles.

Adegbile and other fund lawyers filed a friend-of-the-court brief with the Supreme Court in 2009 asserting that the conviction was invalid because of racial discrimination in jury selection. They directly represented Abu-Jamal when prosecutors asked the Supreme Court to reinstate his death sentence, which had been thrown out because of problems with jury instructions. He is serving life in prison without parole.

Adegbile's supporters say he is well-suited to the civil rights post, not only because of his professional experience in combating discrimination but also, Haygood said, "because of his own life story, empowering people to pursue their dreams and not to be constrained by race, gender or disability."

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November 17, 2013
New Pittsburgh Courier
Link:http://newpittsburghcourieronline.com/2013/11/17/debo-adegbile-nominated-for-nations-top-civil-rights-post/
Content: (NNPA)–President Obama's Nov. 14 nomination of an African-American man to become the government's top civil rights lawyer has been applauded by many in the Black and civil rights communities.

Debo P. Adegbile, who has served as senior counsel to the United States Senate Judiciary Committee since July, is the nominee for the Department of Justice's assistant attorney general for civil rights.

Adegbile is one of the premier civil rights attorneys and would serve admirably in the role if his nomination is approved by the U.S. Senate, said his former colleagues at the NAACP Legal Defense Fund, where he worked since 2001.

"Debo has precisely the type of broad civil rights experience that is required at this pivotal moment in our country," said Sherrilyn Ifill, president and director-counsel of the Legal Defense Fund, a separate entity from the NAACP, in a statement.

"Our country needs someone like Debo with significant experience in voting rights to protect the deeply held American value that each person has the right to a voice in our democracy. Debo has worked tirelessly to ensure that our nation lives up to its promise of equality for all Americans," Ifill continued.

In his years-long tenure at the Legal Defense Fund, Adegbile served in various roles including as special counsel, acting president and director-counsel, associate director-counsel and director of litigation, associate director of litigation, and assistant counsel.

While there, he also made two appearances before the U.S. Supreme Court to defend the Voting Rights Act in Shelby County v. Holder and Northwest Austin Municipal Utility District No. 1 v. Holder. He also represented evacuees from Hurricane Katrina in the first post-Katrina federal voting rights lawsuit.

Prior to joining the NAACP, he was an associate at Paul, Weiss, Rifkind, Wharton & Garrison from 1994 to 2001. This is the same law firm that Jeh Johnson, recently appointed secretary of the Department of Homeland Security, was a partner.

"As we navigate the new Civil Rights-era, Debo offers precisely the type of leadership necessary," Congressional Black Caucus Chairwoman Rep. Marcia Fudge (D-Ohio) said in a statement Nov. 15. "From reforming America's criminal justice system to expanding equality for all Americans, Debo has the civil rights experience and expertise needed to head the Division. Debo's integrity, professionalism and respectable reputation as a legal practitioner and litigator are evidence that he is the right person for this incredibly important role."

"Members of the Congressional Black Caucus strongly support President Obama's nomination of Debo Adegbile and encourage our colleagues in the Senate to confirm him for this position without delay," Fudge said.

The son of immigrants from Ireland and Nigeria, Adegbile's success came after growing up in abject poverty, including periods of homelessness, in New York City. Through scholarships, loans, and the sweat of his brow, Adegbile worked his way through college and law school, eventually obtaining a bachelor's degree from Connecticut College and a law degree from New York University School of Law.

Peers say his upbringing has informed his commitment to defending and upholding the rights of the most vulnerable in our society.

Wade Henderson, president and CEO of The Leadership Conference on Civil and Human Rights said Adegbile is in "a class of his own when it comes to understanding the application and enforcement of complex civil rights issues."

"Millions of Americans rely on the Civil Rights Division to enforce housing, education, and employment discrimination laws, hate crime laws, the Violence Against Women Act, the Americans with Disabilities Act, and the core civil rights statutes that allow all of us to take part in the fullness of American life," Henderson said in a statement.

"Adegbile's skill set, talents, and experience make him the perfect choice to head the Civil Rights Division," he added. "We call on the Senate to swiftly confirm him."

Reprinted from the Afro American

NOMINATIONS OF HON. STEVEN PAUL LOGAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; JOHN JOSEPH TUCHI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; DIANE J. HUMETEWA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; ROSEMARY MARQUEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; HON. DOUGLAS L. RAYES, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; AND HON. JAMES ALAN SOTO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

TUESDAY, JANUARY 28, 2014

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

The Committee met, pursuant to notice, at 10:05 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Mazie Hirono, presiding.

Present: Senators Hirono and Flake.

Senator HIRONO. The Committee will come to order. Good morning, everyone. We are expecting Senator McCain to come, and when he does, I will certainly acknowledge and defer to him for his introductions.

In fact, here he is. Speak and you shall be answered. Good morning, Senator McCain.

Senator MCCAIN. Good morning. Thank you.

Senator HIRONO. Yes, and I just called the hearing to order. I am pleased to call this nomination to order. I would like to welcome each of the nominees, their families, and friends to the U.S. Senate and congratulate all of you on your nominations. And, of course, I would like to once again welcome Senator McCain and my colleague on the Committee, Senator Flake, who will be the Ranking Member this morning.

Would you like to introduce Senator McCain? I would like to defer to you, Senator Flake.

Senator FLAKE. I appreciate the nominees coming, and spouses and family members and friends. A full room. It is not often you get to introduce six nominations of one State and just have one State here at the hearing, too. So this is great. We have been waiting in Arizona for a long time for this, and so we are excited to have you all here.

I will go ahead and ask Senator McCain if he wants to give brief remarks and introduce each of the nominees, and then we will go from there, and thank you all again for being here. Thank you, Senator McCain.

PRESENTATION OF HON. STEVEN PAUL LOGAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; JOHN JOSEPH TUCHI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; DIANE J. HUMETEWA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; ROSEMARY MARQUEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; HON. DOUGLAS L. RAYES, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; AND HON. JAMES ALAN SOTO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA, BY HON. JOHN McCAIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Well, thank you, Madam Chairman, and thank you for your kind words. I would like to thank Chairman Leahy and Ranking Member Grassley for their hard work in bringing these well-qualified nominees to the Committee for its consideration. I am proud to have a partnership with Senator Flake in this process, and I believe that today is a great day for Arizona.

You will be hearing today from six nominees to the United States District Court for the District of Arizona. As the Committee well knows, this is a court that has been under great strain recently. While it has been consistently ranked as one of the top ten busiest courts in the country, it has been strained by a series of recent vacancies. Of the 13 authorized judgeships in this court, 6 are currently vacant. For that reason, the District of Arizona has been declared a "judicial emergency."

To fill these longstanding vacancies, I considered the views of a nonpartisan Judiciary Evaluation Commission that Senator Flake and I were heavily engaged in, and the President ultimately nominated a diverse and historic slate of State court judges, former prosecutors, and other fine Arizona citizens. Whether in combat zones overseas, among some of Arizona's great Native American tribes, or in courtrooms zealously advocating the interests of the people within their communities, each of these nominees has shown in their own unique way that they understand what it means to serve.

Each also understands the magnitude of the commitment they would undertake if they are confirmed to do justice, and each has evidenced the judicial temperament and professional demeanor needed to serve on the bench ably and with integrity. None of those qualities is apparent in Senator Flake or me.

With this in mind, it is my honor to introduce you to first Judge Steven Paul Logan, who is nominated to the District of Arizona

Phoenix Division. Judge Logan currently serves as magistrate judge on that court. For over a decade, Judge Logan was an Assistant United States Attorney where he prosecuted a wide range of cases, ranging from immigration violations to murder for hire and public corruption. During that time he served three tours with the Marine Corps in Afghanistan and Iraq, where we originally crossed paths during my visit to Fallujah in 2007.

During those deployments, Judge Logan served as senior defense counsel and senior legal mentor to the Afghan National Army, among others. Judge Logan's service to our country continues today. He is currently a colonel and serves on the Navy-Marine Corps Court of Criminal Appeals. Judge Logan's experience as a military trial judge, immigration judge, and Federal magistrate judge uniquely qualifies him to serve as an Article III judge in the District of Arizona.

Second is John Joseph Tuchi, who has been nominated to the District of Arizona in Phoenix. After law school, he clerked for Judge William Canby of the U.S. Court of Appeals for the Ninth Circuit. In private practice he gained experience in intellectual property and complex commercial litigation as well as appellate law.

As a career Federal prosecutor in Arizona, he spent his life fighting on the side of victims and currently serves as Chief Assistant United States Attorney. His dedication to public service, extensive trial experience, and practice before Federal courts will prove valuable if he is confirmed to the Federal District Court in Arizona.

It has been said that the Arizona bench "would be enriched by a member who reflects the community it serves." With that in mind, I am particularly excited about our third nominee, Diane J. Humetewa, also to the District of Arizona in Phoenix. Ms. Humetewa's nomination is truly historic. Being a member of the Hopi Nation, if Ms. Humetewa is confirmed, she would be the first Native American woman to ever serve on the Federal bench. Ms. Humetewa's service to the Hopi Nation, which includes work as a prosecutor and an appellate judge to the tribe, runs deep and has remained a cornerstone of her career. She is also a long-time advocate for victims' rights, which can be traced back to her service as a victim advocate before she attended law school.

During law school Ms. Humetewa spent a semester working as an intern on the Senate Committee on Indian Affairs and after law school returned to DC to work on my staff on that Committee, this time as Deputy Counsel. Her distinguished career at the Department of Justice includes work as a special assistant to the Office of Tribal Justice. In 2007, I recommended her for nomination as U.S. Attorney for the District of Arizona, where she served for 2 years with distinction. Today Ms. Humetewa works as special advisor and counsel at Arizona State University.

Fourth, I would like to introduce you to Rosemary Marquez. Ms. Marquez, who is nominated as district judge to the Tucson Division, has worked as a prosecutor and a public defender in Pima County and later as a Federal public defender. Since 2000 she has worked in private practice with a focus on Federal criminal defense. Ms. Marquez's extensive experience in border districts and her Hispanic heritage will be invaluable assets to the Federal court

in Tucson where a large portion of the docket is devoted to immigration-related issues.

Our fifth nominee is Judge Douglas Rayes, nominated to the Federal court in Phoenix. Judge Rayes currently serves as Maricopa County Superior Court Judge, a position he has held since 2000. At that court he has presided over thousands of cases in family law, criminal law, and complex civil litigation. He has also held a number of leadership positions devoted to training and equipping fellow judges and improving processes in the court. He has an impressive background handling personal injury, medical malpractice cases, and police disciplinary matters during his 18 years in private practice representing both plaintiffs and defendants in complex matters.

Finally, I would like to introduce you to Judge James Alan Soto, who is nominated as district judge to the Tucson Division. He gained extensive experience in private practice on a diverse array of cases ranging from criminal defense to civil litigation and commercial law. He ran his own practice for much of that time. As a native of Nogales, Arizona, a deputy city attorney for border communities, and as a long-time judge in Santa Cruz County, Judge Soto has extensive experience in the legal issues unique to our border, including cases involving immigration, drug trafficking, and various aspects of the Fourth and Fifth Amendments. Judge Soto's ability to understand the very real implications of immigration law and those who live and work on the Mexico-Arizona border will be of great value to the Federal bench in Arizona.

These are, of course, only snapshots of each of these nominees and their backgrounds. No remarks can do these nominees, their integrity, or their potential to serve ably and with distinction on the United States District Court for the District of Arizona service. But I hope my remarks are helpful, and I thank these nominees and their families for their willingness to continue serving the Nation, this time in the Federal judiciary.

With that, I commend them to you for your consideration and encourage their swift confirmation by the full Senate.

Thank you, Madam Chairman.

Senator HIRONO. Thank you very much, Senator McCain.

Senator MCCAIN. And I again want to thank my partner, Senator Flake, who I think, given his experience and background and knowledge, has made a very important contribution to our partnership with so many others who have, a consensus nomination, approved and suggested these nominations.

Thank you, Madam Chairman.

Senator HIRONO. Thank you so much. Aloha.

Senator HIRONO. There are currently 95 district and circuit vacancies in the Federal judiciary. More than 10 percent of lower Federal courts are now or will soon be vacant, and as we heard from Senator McCain, this is very much the case in Arizona. More than a third of these vacancies are judicial emergencies.

Indeed, if confirmed, all six of the nominees before the Committee today will be filling a judicial emergency for the District of Arizona. These vacancies have been open in one case for as long as 1,273 days. I applaud the efforts of my colleagues Senator Flake

and McCain in working in a bipartisan fashion with the White House to fill these vacancies.

Our Federal district and appellate courts hear tens of thousands of cases each year ranging from criminal prosecutions to complex environmental and consumer protection litigation. But in order for Americans to receive swift access to justice, these vacancies must be filled. The number of criminal cases has increased 70 percent in the past decade. Because Federal judges are required to give priority to criminal cases over civil ones, judges are forced sometimes to delay civil cases, often for years. This means long delays for American individuals and businesses seeking their day in court.

This hearing is an important step in the process of working to confirm judges in an expeditious manner and ensuring that the courts are able to do the work the American people require of them. I look forward to the Senate's swift action on the President's nominations, and at this point if the nominees could come forward, I will be swearing you in.

Can you raise your right hands, please? Oh, I will wait until you finish.

Thank you. Do you solemnly swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge LOGAN. I do.

Mr. TUCHI. I do.

Ms. HUMETEWA. I do.

Ms. MARQUEZ. I do.

Judge RAYES. I do.

Judge SOTO. I do.

Senator HIRONO. Thank you. Please be seated. And let the record show that the nominees have answered in the affirmative.

I would now invite the nominees to say a few words and to recognize their loved ones and supporters, and we will start with Steven Logan, and we will move through.

STATEMENT OF HON. STEVEN PAUL LOGAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Judge LOGAN. Good morning, Madam Chair Hirono and Ranking Member Flake. I thank you for the invitation this morning. It is a real honor.

I would also like to thank President Obama for the nomination and Senator McCain for his kind words and along with Senator Flake for their assistance in getting all of us here today.

I would like to thank my family. I would not be here without such a great family. And my mother, May—she could not make it this morning—and my late father, David, I think they would be very proud, and I thank them for instilling in all of their children the values that, if you study, if you are respectful and dedicated, you can achieve all of your dreams.

I would like to thank my wife, Raynette. Without her love and support, I would not be here right now.

I would like to thank my four children. My oldest child, Rae, she is actually in attendance today. She is here from Portland, Oregon. My second child, Mariah, she is a junior at Marquette University. She could not make it. She is up there studying, hopefully.

My third daughter, she is a senior in high school, and hopefully she is back home studying.

And my fourth child is a little boy. His name is Jaden, and he is a little 8-year-old, and I hope he is doing okay in school today.

I would like to thank my siblings. My oldest brother, David, is here from Simi Valley, California, and I also have my brother Danny in attendance with his lovely wife, Torri. They are here from San Antonio, Texas. And my sister, Donna, and my brother Tim could not make it. They had some work commitments.

I have to thank my mother-in-law, Dr. Veronica Lindo, for assisting us with watching our youngest child while we are out of town, and I also would like to thank my Federal court family back in Phoenix. I thank my permanent law clerk, Molly Weinstein; my judicial assistant, Joanna Rosales; as well as my courtroom clerk, Marion Holmes.

And last, but not least, I would like to thank all of those servicemembers that I have served with for 24 years, particularly my brothers and sisters in the United States Marine Corps.

Thank you for your invitation. I look forward to your questions.

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

Senator HIRONO. Mr. Tuchi.

STATEMENT OF JOHN JOSEPH TUCHI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Mr. TUCHI. Good morning, Chairwoman Hirono. I want to thank you and Ranking Member Flake for convening the hearing and the Committee for all of their work to make the hearing possible.

Thank you to Senator McCain for the kind remarks about all of us, and thank you to President Obama for the nomination. It is truly a humbling thing to happen to somebody.

I am very proud and pleased to have several members of my family that were able to come and share the day and the experience with me. I will briefly introduce them:

My wife, Maria, who is sitting right behind me, and my wife of 25 years who is in her own right a superior court judge for the last 19 years in Arizona.

Our children, Alex and Katie. Alex is 15 and Katie is 9, and maybe we are little more lax than the Logan family about letting them not study for a couple of days while they are here.

[Laughter.]

Mr. TUCHI. But they are going back tonight.

My mother and father, Patricia and Ben Tuchi, are also here, were able to make the trip from Tucson, which makes me very, very happy and grateful; as well as my brother, Matt, who brought his family. His wife, Alison, and my nephew, Ben, and niece, Grace, are here as well.

Finally, in my family, my Uncle Jim Tuchi came in from New Jersey, and my Aunt Barbara Tuchi came from California.

And, last, we have two very close friends, people I have known since I was a baby, family friends Hiram and Inez Perez. Thank you for being here.

I look forward to answering your questions.

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

Senator HIRONO. Thank you very much.

STATEMENT OF DIANE J. HUMETEWA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Ms. HUMETEWA. Good morning, Chair Hirono, Ranking Member Flake. I want to thank you and the Committee for considering my nomination along with the colleagues I have beside me.

I also do want to express my deep gratitude to President Obama for the nomination. I am deeply honored and privileged to have that nomination.

I also want to say thank you to Senator McCain for his kind remarks about me, and together he and Ranking Member Flake for convening the committee that vetted me and put my name forward for the potential nomination.

I am very happy to be joined here by family members, friends, and former colleagues. My husband, Kevin, is here, along with my mother-in-law, Lynn. My sister and brother-in-law, Donna and Wilfred Kaye, have also traveled to be with me here today.

Family friend Alfred Lomahquahu as well as several of my former colleagues, Julie and Cindy, are in the audience today.

My parents, Don and Ella Humetewa, could not travel to be here, but they are hopefully seated in front of a computer somewhere on the Hopi Indian reservation watching this via webcam, in addition to a number of colleagues, former colleagues, friends, and associates who are watching these proceedings via webcam.

I thank the Committee for its patience and for continuing to move ahead on our nominations, and I look forward to answering questions.

Thank you.

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

Senator HIRONO. Thank you very much.

STATEMENT OF ROSEMARY MARQUEZ, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Ms. MARQUEZ. Thank you, Madam Chair and Ranking Senator Flake, and thank you to the entire Committee for their consideration of my nomination.

I would also like to thank Senator McCain for his kind words and President Obama for the honor of this nomination.

I am also very happy that my parents are here today. I would like to introduce them to you: my mother and father, Catalina and Miguel Marquez Hurtado. They are the reason why I am here today. My mother immigrated to the United States when she was just 16 years old. She came to the United States from Mexico by herself, and her and my father have worked tirelessly to make sure that their daughters receive an education and are able to achieve the American dream. So I am very thrilled to have them here with me today.

Also here are my other set of parents, my in-laws, Helen Kroese and Kenneth Kroese, and they traveled here from Phoenix, Arizona.

Also here is my sister, Leticia Marquez. She is an attorney in Tucson.

And my husband, Kurt Kroese, he is also an attorney in Tucson, and he is here today. Frankly, without their love and support, this also would not be happening today. So thank you.

My two beautiful children, Kenneth Kroese and Matias Kroese, are here today. Last year, they were fortunate enough to witness my sister argue before the U.S. Supreme Court, so hopefully they will find this just as entertaining.

Dale Baige is here. I believe he made the red-eye trip, a friend of ours from Phoenix, and I would like to thank him for coming.

I would also like to thank my brothers-in-law, Andy Kroese and Keith Kroese. I believe they are watching also on the webcast. And our other family and friends who have been very supportive, Scott Biagi, Lindsey Biagi, and I could go on and on, but thank you all for their support, and thank you for considering my nomination.

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

Senator HIRONO. Thank you.

Mr. Rayes.

STATEMENT OF HON. DOUGLAS L. RAYES, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Judge RAYES. Thank you, Madam Chairman Hirono. Thank you for holding this hearing and thank you, Senator Flake, for appearing and being here for the hearing as well.

I want to thank Senator McCain for his kind words and President Obama for this nomination to this important position.

With me today are my family: my wife, Sheri, seated behind me. Without her I would not be here today. We have been married 35 years, in Charlottesville courthouse when I was in the Army JAG school.

Also are my children: my oldest son, Josh, is a second-year law student at ASU; my daughter works in Boulder, Colorado, in IT sales. My two younger sons are twins. They are at ASU. One is in undergraduate school and also works in the airline industry, and my other son runs for the ASU track team.

With me also is my sister, Emily, Dr. Emily Rayes from North Carolina. She came here with her husband, Bill. Excuse me. Her name is no longer Rayes. It is Drinkard. I am sorry. And my cousin, Nick Rayes, and his wife, Carol.

We also have friends here, Nina and Bob, and a friend from Phoenix, David Lee.

Back home watching on webcam are my staff and colleagues and many friends there as well as my mentors throughout the course of my career: Pat McGroder, Ralph Blake, and Joe Gama.

I also want to mention my dad and mom. They are not able to make it here. They are in Globe, Arizona, hopefully watching us on the webcam. And my parents-in-law are watching in Cedar Rapids.

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

Senator HIRONO. Thank you.

STATEMENT OF HON. JAMES ALAN SOTO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Judge SOTO. Good morning, Senator Hirono and Senator Flake, and thank you very much for presiding over this hearing.

I would also like to thank Senator Leahy and Ranking Member Grassley for expediting the nomination hearings for the contingent from Arizona. And I certainly appreciate that, and I thank all Members of the Committee.

I would like to pay a special thanks to Senator McCain and to Senator Flake for coming together and working with the administration to come up with a slate of nominees to serve what is an important process in Arizona. As you know, there is a shortage of Federal judges in Arizona, and it was their coming together and arriving at a consensus that expedited this process. I would also like to thank Senator McCain for his very kind words in his introductory remarks.

I would also like to thank the President of the United States for his confidence in me and nominating me to this very, very important position.

I have a number of family members that are here with me today. My wife of 39 years, a little longer than Doug, is seated directly behind me. She just retired as a school teacher after many years as a teacher.

I also have my three children here, and my oldest son is married, and my daughter-in-law is here. My oldest son, David, and his wife, Eugenia, live in Brooklyn, New York, and they have traveled down to Washington for the hearing today.

My other son, Matthew, resides in Tempe, Arizona, and my daughter, Julia, resides in Phoenix, Arizona, and they have all traveled here today.

I have a younger brother—I refer to him as "my baby brother" because he is quite a bit younger, but he is here with us today. He is an attorney in Phoenix and practices law in Phoenix. I have other brothers and sisters who could not make it here today but who are watching the proceedings today through the webcast.

I would be remiss if I did not mention my parents and my grandparents, who, as I grew up, provided a lot of inspiration to me. They taught me the value of hard work and commitment, and they taught me the importance of truth and integrity, and I think their inspiration to me and the lessons they taught me have served me well during my life.

I look forward to answering any questions that you might have for me.

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

Senator HIRONO. Thank you very much.

Before we start with our 5 minutes, or a little bit longer, of questions, Senator Flake would like to say a few words.

OPENING STATEMENT OF HON. JEFF FLAKE, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator FLAKE. Well, thank you all for being here, and I appreciate Senator McCain coming in and making the introductions. And I do not need to go through everybody's bio again, but I just want

to say what a pleasure it has been to go through this process. I am new to the Senate, have just been here a year, and it is pretty unprecedented to have six nominees at one time come together, and so it was really a baptism by fire in this process for me.

I would like to thank—both Senator McCain and myself enlisted a number of people in Arizona to make suggestions and to vet the nominations and to go through this process, and they did a lot of the hard work, and also our staffs as well. This is, like I said, a big chore. These are lifetime appointments. It is an important step, and we want to be thorough in this process, and I believe that we were.

As I mentioned, it has been great to go through your bios and I can tell you, with this group sitting in front of us, it is a diversity of education and experience that will serve the court well and the State well.

I have to say, I was in Tucson and gave a speech before the Federal Bar Association there, and Judge Collins was there, the Acting Chief Justice, and he did bring up an objection that has been raised to Judge Soto, but it is only from the people in Santa Cruz County who are very upset——

[Laughter.]

Senator FLAKE [continuing]. That you will be leaving them. You have done such fine work there. But looking at your bios, like I said, a diversity of experience and background that will do well.

Ms. Humetewa actually is the only one who has a degree from both ASU and U of A. That sounds like a politician's resume to not anger anybody in Arizona.

[Laughter.]

Senator FLAKE. Is that right?

Ms. HUMETEWA. No, no. I am a two-time ASU grad.

Senator FLAKE. Oh. Who is the—oh, Mr. Tuchi, okay. All right.

[Laughter.]

Senator FLAKE. There is a politician's resume. I am surprised you did not do a seminar at NAU just for balance throughout the State. But, no, that is great. I really look forward to your answers here and look forward to the process. Chairman Leahy and Ranking Member Grassley have expedited this as quickly as possible while being thorough as well. And so we are pleased with this process and look forward to your answers.

Thank you.

Senator HIRONO. Thank you very much, Senator Flake.

I would like to echo acknowledging the diversity that is represented in our nominees this morning. Senator Flake, not to be—and I would like to acknowledge that we have somebody here who is married to someone from Hawaii—not that that is going to make a difference in my judgment of all of you, and that is Mr. Logan, correct?

Senator FLAKE. You just sailed through.

[Laughter.]

Senator HIRONO. And for both Senator Flake and myself, this is our first year serving on this Committee, and it is wonderful to see such a diverse group of nominees and to have all from one State, I think this is the first time this year—or last year, as we have

been serving on this Committee, that this has happened, and it is because of the bipartisan focus on expediting your nominations.

So we will start with 5 minutes of questioning, and if Senator Flake would like a few more minutes, we can certainly do that.

I will start with Ms. Humetewa. Am I pronouncing your name correctly?

Ms. HUMETEWA. "Humetewa," yes. Thank you.

Senator HIRONO. I think it is really critical that our judiciary be as diverse as possible to represent the diversity in our country, and you would be the first American Indian to sit on the Federal bench. Is that correct?

Ms. HUMETEWA. As I understand it, Chair Hirono, upon nomination I did learn that I would be, if confirmed, the first female Native American to serve in the judiciary.

Senator HIRONO. I know that you have worked with the Hopi tribe. How do you think that your experience with that would help you as a Federal district judge?

Ms. HUMETEWA. Thank you for the question, Chair Hirono. Yes, the work that I have performed for the Hopi Tribal Government was twofold:

First, I served for about 5 years as an appellate court judge, and there I only handled civil matters. And in that capacity, I was responsible for applying the Hopi Tribal Constitution, and by the Constitution and the Hopi law and ordinances, you then have to analyze each case based on traditional customary law, and if there was no traditional customary law, you look to the State or Federal law.

So oftentimes, because the court was in its infancy, we would have to apply the Civil Rules of Procedure. We would also have to look to State courts and their decisions. But I think in that capacity, learning how to be objective, making sure that the litigants before you—and oftentimes we did work with pro se litigants, and making sure that they had access to the court and that we treated them patiently and respectfully; and often we would have to turn around our decisions within a 2-day period, and that in and of itself was, I think, a lesson that I learned in terms of being expeditious yet diligent in terms of applying the law.

Here, of course, if confirmed, I would be applying the United States Constitution, our Supreme Court and Ninth Circuit precedents. So I think it has prepared me a great deal.

Senator HIRONO. Thank you.

Ms. Marquez, you have demonstrated a commitment to pro bono work throughout your career, and you have been recognized for your advocacy in that regard. Can you share some brief thoughts about how important pro bono services are, especially in these difficult economic times?

Ms. MARQUEZ. Absolutely. My commitment to pro bono work has been unwavering throughout my career. I do feel that I have been very fortunate to be in the position where I can assist others through legal representation, and oftentimes I have done so because of the nature of the case or certainly just because the person needed representation.

It is my belief that equal access to justice is very important, and without it our legal system would not be able to work. And in order

for that to happen, all lawyers have a responsibility to provide legal services or to work in whatever legal capacity they can to make sure that others do have access to our judicial system.

Senator HIRONO. Judge Soto, you co-authored an article I mentioned. I thought you had written it, but you said you co-authored it. It is entitled, "Let's Keep Politics Out of the Judiciary." Can you just give us briefly why you were moved to write such an article and what your views are?

Judge SOTO. Sure. Thank you, Senator Hirono. I co-authored that article with retired Arizona Chief Justice Ruth McGregor, who is a former English teacher, and I will tell you that I did the initial draft and sent it to her, and she used her red pencil extensively to mark up my initial draft electronically.

But sometime in the 1970s, the Arizona voters adopted a constitutional provision that provided for how judges were to be selected in the State of Arizona. That proposition crafted a very delicate balance between the very—between the different branches of Government, and the result of that was a judiciary that I think is recognized across the country, and in some cases internationally, where there has been a recognition that the system has worked well, that the Arizona judges are of high quality, of high integrity. Judge Rayes next to me is an example of that. And that system has worked very well for almost 40 years.

A couple of years ago, there was a ballot—a proposition that was put on the ballot that would have affected the balance that was carefully crafted in the 1970s. I felt strongly about it, even though it would not have affected me. I am a judge in a small county, and I have to run for election every 4 years. So it was not something that personally impacted me, but I thought it was a bad idea, quite frankly, and the former Chief Justice McGregor agreed with me. So we co-wrote that article because we thought that the result of the proposition, Proposition 115 that went on the ballot, would affect that delicate balance that had served Arizona so well. And I think the voters agreed. They rejected that proposition by a 3:1 margin.

Senator HIRONO. And so in Arizona, you have some of your judges are elected and some are——

Judge SOTO. Yes.

Senator HIRONO [continuing]. Through a nominating process.

Judge SOTO. It is a bifurcated system. The Arizona Supreme Court and the courts of appeals as well as the larger, more populous counties, such as Maricopa County, Pima County, and now Pinal County all have a merit selection process that they go through, and then the other 12 counties of Arizona, judges have to stand for election every 4 years.

Senator HIRONO. As a note, Hawaii probably is one of a minority of States where none of our judges run for office. They are all nominated through a process.

Senator Flake, would you like to proceed?

Senator FLAKE. Thank you.

Judge Logan, you served in the military for an extended period of time and have much experience there. You have also worked on the civilian side, somewhat civilian side, as an immigration judge, a judge in immigration cases, and also a U.S. magistrate judge in

the District of Arizona. How will this experience, both in the military and serving on immigration cases, help you in this role?

Judge LOGAN. Senator, thank you for the question. With every job I think you learned a lot of different things, and the time I have spent in the United States Marine Corps over 23 years, you have different jobs in roughly every 2 or 3 years in terms of what your responsibilities are. As a military practitioner as well as judge in the military, and then a Federal prosecutor and a U.S. magistrate judge, there are a lot of things that you learn about how the process works best.

Judicial temperament, if I am confirmed, will be something that I believe is very important to continue with, because it is a very, very stressful process, and it is very, very important to the people that appear in court.

When you have a situation where a person, whether it is a civil case or a criminal case, sometimes it is the most important thing that is going on in their lives. I think the different jobs that I have had as an immigration judge, a military judge, and a defense counsel and prosecutor qualifies me for this position, if confirmed, because I have seen a lot of the cases that the Federal district court will handle. I am at the courthouse right now, and I am a lower level judge as a magistrate judge, but we have access to a large percentage of what they handle on the district bench.

So I think the jobs that I have held in the past will be of great assistance, Senator.

Senator FLAKE. Thank you. The most important question, I think, for any judicial nominee is what your judicial philosophy is with regard to whether you will demonstrate judicial restraint or be seen as an activist judge. We all know that, as Montesquieu wrote, "There is no liberty, if the power of judging is not separated from the legislative and executive powers."

How would you describe your judicial philosophy?

Judge LOGAN. Well, I think it is very, very important to be fair and impartial. I know that there was a question earlier about diversity, and I think the nominees this morning show what kind of diverse environment we have in Arizona. But in terms of what type of judge, if confirmed, I will be the type of judge that listens to both sides of the aisle. It is very important that you make reasoned decisions about how you apply the rules to the facts of the case.

The rule of law in the United States is very, very important. I have seen what happens in a country, two countries in particular, when there is no rule of law that is active. I will do everything I possibly can, if confirmed, to make sure that I listen to the litigants, that I make sure that I do the necessary research, and get my rulings correct the first time.

Senator FLAKE. Thank you.

Mr. Tuchi, in your role at the U.S. Attorney's Office, you have worked with both tribal and Federal agencies to improve criminal prosecutions in much of Indian country. As you know, last year Congress enacted a law that would in limited circumstances extend jurisdiction of tribal courts over non-Indians.

To what extent do you believe the whole panoply of rights in the Bill of Right would apply to non-Indian defendants who are being

tried in tribal court? Do you have some experience in that? And what are your feelings going forward?

Mr. TUCHI. Yes, thank you, Senator. I believe you are referring to the re-enactment of the Violence Against Women Act and the expanded jurisdiction afforded to those tribes who will opt in and make certain changes and enhancements to their own judicial systems.

It is yet to be seen how that will all work out because no tribe has completed the steps yet, although several are very close. But having spent a great deal of time over the last couple of years as the tribal liaison in the U.S. Attorney's Office, I have gotten to visit with the leadership of most of the 22 tribes, federally recognized tribes in Arizona, to discuss both this and the Tribal Law and Order Act that went in 3 years earlier that slightly expanded jurisdiction for those tribes who wanted to do that in some areas.

And to answer your question most directly, Senator, I think that the requirements that all tribes who wish to take advantage of this jurisdiction will be required to meet in terms of greater due process for the defendants, and licensed judges, State bar licensed judges and defense attorneys will make a large difference in balancing out the experience that a criminal defendant would have in a jurisdiction like that. And I think that is how it will go.

Senator FLAKE. Ms. Humetewa, do you have any thoughts on that?

Ms. HUMETEWA. I do not have anything particular to add to Mr. Tuchi's answer. I think it remains to be seen. I think every tribal government is examining whether or not to implement provisions of those laws and to, I think, weigh whether or not they will impact or change their systems of justice. So I think it is—both of those laws are still in their infancy, and I think implementation is fairly early.

Senator FLAKE. Thank you. In 2003, you helped prepare a report for the Native American Advisory Group of the U.S. Sentencing Commission. The advisory group was formed in response to concerns that Native American defendants were treated more harshly in the Federal sentencing system than if they were prosecuted under respective State laws. The report highlighted a number of different areas where the advisory group found the problem to exist.

Do you believe the problems highlighted in the report still exist? And what can be done to remedy them?

Ms. HUMETEWA. Thank you for the question, and, yes, I was a part of the ad hoc working group. I think there were 13 members who worked on that report and culled through research.

To answer the question, I have been not active in prosecution or applying the guidelines since about 2007 when I took the U.S. Attorney position. And at that time there have been, as you know, changes and modifications to the Sentencing Guidelines. But I do know that in the research that we looked at, we did find areas where there were disparities, and I think primarily in the assault statutes that apply to Indians in Indian country, that there were—we found at least in comparing the data that was before us, the penalties were harsher to Indians who committed various assaults

in Indian country than non-Indians who might be tried and convicted in State courts.

So I think one of the values of that report is it provided guidance to the Sentencing Commission to seek tribal consultation when modifications to the Sentencing Guidelines are being considered.

Senator FLAKE. Well, thank you. I grew up in northern Arizona, in Snowflake, next to the Navajo Indian reservation, close to the Hopi Indian reservation as well, and I just have to say for your parents watching at home this webcast, they must be extremely proud, as the whole State is and the country, for, you know, the trailblazing way that you are going through this, to be the first Native American woman to serve on the Federal bench. It is a great thing, so if nominated—or, I am sorry, if confirmed, I should always qualify. But thank you for being here.

Ms. HUMETEWA. Thank you, Senator.

Senator FLAKE. Ms. Marquez, there has been much discussion about liberty and fundamental rights. It is an ongoing debate we have had in this country for a long time. Can you describe the framework the Supreme Court uses to analyze whether a particular liberty is a fundamental right? For example, what powers do you believe the Tenth Amendment to the Constitution guarantees to the State? What is the difference between fundamental rights and liberty?

Ms. MARQUEZ. Thank you for the question. I do believe that the Supreme Court has analyzed what would constitute a fundamental right and under what situation, what type of scrutiny would be used in analyzing what constitutes a fundamental right. And certainly, if confirmed, I would follow the Supreme Court precedent and the Ninth Circuit precedent in applying the law to certain facts of each case and in determining what would constitute a fundamental right.

Certainly, as we know, if a law infringes upon a right that affects liberty, then certainly that would require higher scrutiny. And I would be very mindful and review all Supreme Court precedent and apply that when making that decision. Thank you.

Senator FLAKE. The Commerce Clause, do you believe the Commerce Clause applies to non-economic activity?

Ms. MARQUEZ. Well, the Supreme Court has limited the powers of the Commerce Clause and where it applies and when it does not. So, if confirmed, then I would follow that precedent as well. And the Supreme Court has determined that there are limitations, and certainly I would follow that precedent.

Senator FLAKE. Thank you.

Judge Rayes, you authored an article entitled, "Packing Heat in Arizona," discussing Arizona's concealed-carry law and advising citizens of the parameters of Arizona's self-defense law. Do you believe that the right to self-defense is a fundamental right?

Judge RAYES. Senator Flake, thank you very much. I believe that the Supreme Court has decided that the Second Amendment provides individuals the absolute right to bear arms. It is a fundamental right, and I think consistent with that, at least consistent with that and Arizona law, the right to self-defense is a justification in certain circumstances.

My concern when I wrote the article is I would seeing people come to court for offenses involving weapons when they did not realize they had committed an offense or did not realize the severity of their offense, and I wanted to educate the public that when Arizona law became such that there was no longer a crime to carry concealed weapons, that citizens who carry concealed weapons would go out and educate themselves on the law.

Senator FLAKE. Well, thank you.

Judge Soto, you have represented in private practice local businesses and agricultural entities that do business across the border. You have a lot of experience there. As a judge, you have obviously dealt with issues concerning the border.

From your experience, what are the difficulties in allowing the freest commerce that we can allow and have between Arizona and Mexico? Mexico is our country's third largest trading partner, second largest recipient of our exports, so there is a lot of business that is done. A lot of people away from the border do not recognize that. They see the border as something that could be sealed and that is it, over, done. But we see it in Arizona as a place of much commerce.

What difficulties does that present? And how does that experience working on those issues benefit you in this new role?

Judge SOTO. Well, as you touched on, Senator, I was born and raised on the border. I like to think I am quite familiar with a lot of the issues that affect the border, and the longer I see these issues, the more I realize how complex these issues are. There are no simple solutions. There are a lot of facets to the issues along the border, and there are no simple solutions.

I think the individuals and the Government through their policies need to encourage cross-border commerce. I think it benefits both countries. I think some of the side benefits of increased commerce between the two countries is to hopefully reduce some of the drug issues and immigration issues that are really seriously affecting our Nation and certainly affecting the border.

On the other hand, as a judge it is my responsibility to follow the law as it is written, to follow the precedents from the Supreme Court and from the Ninth Circuit. So even though I may have a lot of experience with border issues, I am still going to strictly follow the law as it is written in applying that law to the facts of a particular case that would come before me.

Senator FLAKE. Well, thank you, and I appreciate the indulgence of my colleague here in letting me go double beyond the time. But this is an important hearing, and, again, I am so grateful that you are all here. And I can tell you, in talking to those serving on the bench in Arizona now, they are happy to see the caseload probably cut in half now as we go. It has been better this year, obviously, than last, but, boy, you are sure going to help there, and it is going to be a great benefit to the State of Arizona. And we will probably have some written questions to followup. I know others on the Committee will as well. But thank you for your forthright answers here today, and thank you for making the trip.

Thank you.

Senator HIRONO. Thank you very much, Senator Flake. I must say that I enjoyed very much your very precise questions about

fundamental rights and constitutional rights and all that. We are both lawyers, but, you know, it is always really—oh, you are not? He sounds like one, doesn't he?

[Laughter.]

Senator HIRONO. Okay. But it was illuminating to hear some of your views on the questions that Senator Flake asked.

Just to end this hearing, I would just like to ask each of you briefly to respond. What do you consider the most important trait of someone who will be serving lifetime on our bench? We will start with you, Mr. Logan.

Judge LOGAN. Senator, as a sitting judge, if confirmed, I think it is very, very important that I continue to listen to the litigants when they come in. Sometimes it is very emotional in court. Sometimes as a judge it can be very, very difficult because someone will leave the courtroom disappointed over how you ruled in the case, and it is very important to listen, make sure that you are always fair and impartial, and apply the law to the facts, and that way the general public will understand that it is very transparent and that the courts can be trusted.

Mr. TUCHI. Senator, I would adopt Judge Logan's answer, but also say that the most—it is encompassed in treating every matter that is before you at that moment as the most important matter that you have to be concerned with, and all of what Judge Logan said flows from that.

Ms. HUMETEWA. I would also align my views with the two previous responses. I would say that in particular in this district, because of the high volume, it is important to not only show patience and respect of the parties and to listen to them diligently and carefully and make sure that you understand their issues completely, but I think it is incumbent upon judges to rule and to decide expeditiously yet carefully so that there can be finality of process for the litigants to be able to manage the large volume of cases that will come before us, if confirmed.

Ms. MARQUEZ. I would just add that, if confirmed, I would strive to make sure that every litigant would walk away feeling that they were heard and understood. Many times even as a litigant myself, even if you do not agree with the court's decision, you are able to accept it and move on and reason a lot better if you feel that the court has listened to you and has been impartial when making its decision. And I would strive to follow that and make sure that I am a good listener, an active listener, and that the parties walk away feeling that they were respected in the courtroom and that their views were respected and that they were heard.

Judge RAYES. Thank you. I think you asked for one character trait, and if I were to summarize it, I would say respect—respect for the other branches of Government, respect for the litigants, respect for the lawyers, and respect for precedent. And I adopt what my other colleagues have said on the other issues.

Judge SOTO. Yes, I would agree with my fellow nominees. I think their comments are—I agree with them. I think it is important, though, for litigants, when they come to court, that they know that you have done your homework and that you are prepared, so when they come into court, you know about the facts of the case, you know the law that applies to the case. So whether it is in a crimi-

nal sentencing, you have an individual before you that you are sentencing, or perhaps whether it is a complex civil matter, I think it is important for the litigants to know that this particular judge has studied the case, knows the facts of the case, and is deciding the case in accordance with the law, and that it is important for us to be able to explain our decisions so that they—so when they leave there, although they may not be happy with the decision, they understand how we arrived at that decision.

Senator HIRONO. Thank you. I want to again thank all of you for being here, and welcome once again to all of your friends and family who are here and those who are watching.

The record will remain open for 1 week for submission of written questions for the witnesses or other materials. And with that, this hearing is adjourned.

[Whereupon, at 11 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"

Tuesday, January 28, 2014
Dirksen Senate Office Building, Room 226
10:00 a.m.

Steven Paul Logan, to be a United States District Judge for the District of Arizona

John Joseph Tuchi, to be a United States District Judge for the District of Arizona

Diane J. Humetewa, to be a United States District Judge for the District of Arizona

Rosemary Marquez, to be a United States District Judge for the District of Arizona

Douglas L. Rayes, to be a United States District Judge for the District of Arizona

James Alan Soto, to be a United States District Judge for the District of Arizona

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Steven Paul Logan

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

   United States District Judge for the District of Arizona

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

   United States District Court for the District of Arizona
   Sandra Day O'Connor United States Courthouse
   401 West Washington Street, Suite 324, SPC 82
   Phoenix, Arizona 85003

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

   1965; Tacoma, 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.

   Civilian Education:

   1996 – 1997, National University; M.A., 1997
   1989 – 1992, University of Oklahoma; J.D., 1992
   1985 – 1988, University of Louisville; B.S., 1988
   1984 – 1985, Murray State University; No Degree

   Military Education:

   2007 – 2008, United States Air Force, Air War College (Non-resident)
   2000 – 2001, United States Marine Corps, Command and Staff College (Non-resident)
   January – March 1996, Naval Justice School
   May – November 1994, Amphibious Warfare School (Non-resident)
   August – November 1993, Contracting and Disbursing Officer Course
   1992 – 1993, The Basic School

June – August 1990, Officer Candidate School

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.

Civilian Employment:

2012 – present
United States District Court for the District of Arizona
Sandra Day O'Connor United States Courthouse
401 West Washington Street, Suite 324, SPC 82
Phoenix, Arizona 85003
United States Magistrate Judge

2010 – 2012
United States Department of Justice
Executive Office for Immigration Review
Eloy Immigration Court
1705 East Hanna Road, Suite 366
Eloy, Arizona 85131
United States Immigration Judge

2001 – 2010
United States Department of Justice
United States Attorney's Office for the District of Arizona
Two Renaissance Square, 40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Assistant United States Attorney (2001 – 2010)
Chief, White Collar/Public Corruption Section (2008 – 2009)

1999 – 2001
United States Department of Justice
United States Attorney's Office for the District of Minnesota
United States Courthouse
300 South Fourth Street, Suite 600
Minneapolis, Minnesota 55415
Assistant United States Attorney

1988 – 1992
Wal-Mart (This store location no longer exists)
Cash Office
Norman, Oklahoma

Military Employment:

2013 – present
United States Marine Corps Reserves
Navy-Marine Corps Court of Criminal Appeals
Washington Navy Yard, District of Columbia
Military Court of Appeals Judge

2012 – 2013
United States Marine Corps Reserves
I Marine Expeditionary Force, Third Marine Aircraft Wing
Marine Corps Air Station Miramar
San Diego, California 92145
Staff Judge Advocate

January 2012 – July 2012
United States Strategic Command (Joint Assignment)
United States Marine Corps Reserves
Offutt Air Force Base
Omaha, Nebraska 68113
Staff Judge Advocate

2005 – 2011
United States Department of the Navy
United States Marine Corps Reserves
Navy-Marine Corps Trial Judiciary
Article I Deputy Chief Reserve Military Judge (2009 – 2011)
Article I Military Judge (2005 – 2009)

2008 – 2009
United States Marine Corps Reserves
II Marine Expeditionary Force (Camp Lejeune, North Carolina)
Second Marine Division
Afghanistan Deployment (Operation Enduring Freedom)
Senior Legal Mentor to the Afghanistan National Army

2007 – 2008
United States Marine Corps Reserves
II Marine Expeditionary Force (Camp Lejeune, North Carolina)
Second Marine Division
Iraq Deployment (Operation Iraqi Freedom)
Liaison Officer to the Al Anbar, Iraq Provincial Chief Judge

February 2004 – October 2004
United States Marine Corps Reserves
I Marine Expeditionary Force (Camp Pendleton, California)

First Marine Division
Iraq Deployment (Operation Iraqi Freedom)
Senior Defense Counsel

1999 – 2004
United States Marine Corps Reserves
United States Marine Corps Trial Advocacy Team
Team Member

1996 – 1999
United States Department of Defense
United States Marine Corps
Marine Corps Base Hawaii
Kaneohe Bay, Hawaii 96863
Chief Prosecutor (1996 – 1999)
Chief Civil Law Attorney (March 1996 – November 1996)

1993 – 1996
United States Department of Defense
United States Marine Corps
Marine Corps Air Ground Combat Center (MCAGCC)
29 Palms, California 92278
Contracting Officer

1990 – 1993
United States Department of Defense
United States Marine Corps
Marine Corps Base Quantico
24164 Belleau Avenue
Quantico, Virginia 22134
Officer, Basic School (1992 – 1993)
Officer, Candidate School (June 1990 – August 1990)

Other affiliations (uncompensated):

2007 – 2010
Federal Bar Association, Phoenix Chapter
(No physical address)
Board Member

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

United States Marine Corps Reserves, 1999 – present;
Current Rank: Colonel of Marines

United States Marine Corps Active Duty, 1992 – 1999

At the conclusion of each period of duty service, I was awarded an honorable discharge as follows:

August 18, 1990
Rank at Honorable Discharge: Second Lieutenant
Discharge: I was discharged after completion of Marine Corps Officer Candidate School.
May 1, 1999
Rank at Honorable Discharge: Captain
Discharge: I was discharged after completion of my period of active duty.
October 22, 2004
Rank at Honorable Discharge: Major
Discharge: I was discharged after completion of my deployment to Iraq.
April 2, 2008
Rank at Honorable Discharge: Lieutenant Colonel
Discharge: I was discharged after completion of my deployment to Iraq.
May 21, 2009
Rank at Honorable Discharge: Lieutenant Colonel
Discharge: I was discharged after completion of my deployment to Afghanistan.

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.

Civilian Awards:
U.S. Department of Justice, Southwest Regional Organized Crime Drug Enforcement Task Force Award (2011)
U.S. Internal Revenue Service Award (2010)
U.S. Department of Education Award (2010)
U.S. Postal Inspection Service Award (2010)
U.S. Marshal Service Award (2010)
Judge Advocate Association, Outstanding Career Armed Services Attorney Award (2009)
U.S. Forest Service Award (2006)
Surprise Police Department Award (2006)
U.S. Department of Justice, Director's Award for Superior Performance (2004)
Scottsdale Police Department Award (2004)
Drug Enforcement Administration Award (2004, 2003, 2001)
U.S. Department of Justice, Southwest Regional Organized Crime Drug Enforcement Task Force Award (2003)
U.S. Department of Justice Office of the Inspector General's Award (2003)

Arizona Law Enforcement Coordinating Committee Award (2003)
U.S. Department of Justice, 20th Anniversary Organized Crime Drug Enforcement Task Force National Award (2002)
Federal Bureau of Investigation Director's Award (2001)
Minnesota Bureau of Criminal Apprehension Award of Appreciation (2001)
Minneapolis Police Department Award (2000)
American Bar Association Finalist for the Legal Assistance for Military Personnel (LAMP) Award for Superior Performance (1997)
American Jurisprudence Award (Civil Procedure) (1990)

Military Individual Awards and Decorations (In Order of Precedence):
Bronze Star, Operation Iraqi Freedom (2008)
Defense Meritorious Service Medal, Operation Enduring Freedom (2009)
Meritorious Service Medal (2012)
Meritorious Service Medal, Operation Iraqi Freedom (2004)
Navy and Marine Corps Commendation Medal, Two Gold Stars (2002, 1999, 1997)
Navy and Marine Corps Achievement Medal (1994)
Combat Action Ribbon, Operation Iraqi Freedom (2008)

Military Unit Awards and Decorations (In Order of Precedence):
Joint Meritorious Unit Award, Operation Enduring Freedom (2009)
Navy Unit Commendation (2004)
Navy Meritorious Unit Commendation (2008)
Selected Marine Corps Reserve Medal, Two Gold Stars (2008, 2005, 2002)
National Defense Service Medal, One Gold Star (2003, 1990)
Afghanistan Campaign Medal, One Campaign Star (2008)
Iraqi Campaign Medal, Three Campaign Stars (2008, 2007, 2004)
Global War on Terrorism Expeditionary Medal (2004)
Global War on Terrorism Service Medal (2004)
Navy Sea Service Deployment Ribbon, Three Stars (2009, 2008, 2004, 1997)
Navy and Marine Corps Overseas Service (2006)
Armed Forces Reserve Medal, Mobilization Device Three (2008, 2007, 2004)
NATO Medal, International Security Assistance Force (2008)

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 Inns of Court, Sandra Day O'Connor Chapter (2002 – 2006)
Federal Bar Association, Phoenix Chapter (2005 – present)
Board Member (2007 – 2010)
United States District Court for the District of Arizona (2012 – present)
Veteran Program Committee
Magistrate Judge Utilization Committee
Non-Appropriated Funds Committee
Sandra Day O'Connor History Museum Project Committee

10. **Bar and Court Admission**:

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

Arizona, 2011
District of Columbia, 1996
Pennsylvania, 1993 (inactive)

There have been no lapses in membership, although as indicated, my membership in Pennsylvania 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.

Supreme Court of Arizona, 2011
United States Court of Appeals of Veterans Claims, 2007
United States Court of International Trade, 2007
United States Navy-Marine Corps Trial Judiciary, 2005
United States District Court for the District of Arizona, 2002
United States Court of Appeals for the Ninth Circuit, 2002
Supreme Court of the United States of America, 1999
United States Court of Federal Claims, 1999
United States District Court for the District of Minnesota, 1999
United States Court of Appeals for the Eighth Circuit, 1999
United States Court of Appeals for the Federal Circuit, 1999
United States Court of Appeals for the District of Columbia, 1996
United States Court of Appeals for the Armed Forces, 1996
Supreme Court of Pennsylvania, 1993

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.

Federal Magistrate Judges Association (2012 – present)
Marine Corps Reserves Association (2000 – 2005)

Marine Corps Toys for Tots (1993 – present)
National Association of Immigration Judges (2010 – 2011)

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

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

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

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

I have not written or edited any published 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.

I have not prepared or contributed to any report, memorandum or policy statement on behalf of any bar association, committee, conference, or organization.

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

I have not issued, provided, nor have others presented on my behalf, any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation.

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

I have not maintained a record of my public speaking appearances. To respond to this question, I have reviewed my files and calendars and conducted an extensive Internet search. The following reflects the results of this research.

On the following dates, I have presided over naturalization ceremonies: February 17, 2012; April 20, 2012; May 4, 2012; May 18, 2012; July 13, 2012; September 28, 2012; October 26, 2012; November 16, 2012; February 1, 2013; March 22, 2013; May 3, 2013; August 2, 2013; and September 6, 2013. During these ceremonies, I have offered congratulatory remarks. I have no transcripts, notes or recordings of my congratulatory remarks. All ceremonies were held at the Sandra Day O'Connor Courthouse, United States District Court, located at 401 West Washington Street, Phoenix, Arizona 85003.

October 1, 2013: Speaker, Phoenix School of Law, Phoenix, Arizona. I spoke during a presentation to law students concerning my experience as a United States Marine Corps Judge Advocate. The address for the sponsoring organization, Phoenix School of Law, is 1 North Central Avenue, Phoenix, Arizona 85004. Podcast available at: http://video.phoenixlaw.edu/recordings/90112d11c33fd8c1e9467f89a724d383.

November 10, 2012: Guest of Honor, 237th Marine Corps Birthday Celebration, Arizona Country Club, Phoenix, Arizona. I offered celebratory remarks during the banquet ceremony. I have no notes, transcripts, or recordings of my remarks. The sponsorship organization was the Marine Corps Birthday Luncheon Committee, which does not have a physical address.

November 9, 2012: Remarks, 237th Marine Corps Birthday Celebration, Special Proceedings Courtroom, Sandra Day O'Connor United States Courthouse, Phoenix, Arizona. I offered celebratory remarks to the Marines, both retired and active. I have no notes, transcripts, or recordings. The ceremony was sponsored by the Honorable Michael Daly Hawkins, Senior Judge for the Ninth Circuit Court of Appeals, 401 West Washington Street, Phoenix, Arizona 85003.

June 21, 2012: Moderator, State Bar of Arizona 2012 Convention, Arizona Biltmore Resort & Spa, Phoenix, Arizona. I moderated and spoke at the convention during a session entitled "Lawyers in the Aftermath of War and

Human Rights Abuses." I discussed my service in the Marine Corps while serving in Iraq and Afghanistan. I have no notes, transcripts or recordings. The address for the State Bar of Arizona is 4201 North 24th Street, Suite 100, Phoenix, Arizona 85016.

April 27, 2012: Speaker, Investiture Ceremony of United States Magistrate Judge Steven P. Logan, Sandra Day O'Connor United States Courthouse, United States District Court, Phoenix, Arizona. Transcript supplied.

January 21, 2008: Keynote Speaker, Fellowship Hall, in Camp Ramadi, Iraq. I spoke at a ceremony held in memory of Dr. Martin Luther King, Jr. and made remarks regarding King's contributions. I have no notes, transcripts, or recordings, but press coverage is supplied. The sponsoring organization for this ceremony was the United States Army, First Brigade Combat Team, Third Infantry Division, Garrison: 1061 Harmon Avenue, Fort Stewart, Georgia 31314.

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

I have not maintained a record of interviews that I have given to newspapers, magazines or other publications, or radio or television stations. To respond to this question, I have conducted an extensive Internet search. This research resulted in the following news sources that reported statements from prior interviews.

Maureen Kane, *Hon. Michael D. Ryan: Friend, Mentor, Hero,* Arizona Attorney, July/August 2012. Copy supplied.

Doug Murphy, *Local Marine Awarded Bronze Star*, Ahwatukee Foothills News, July 4, 2008. Copy supplied.

Joshua Coffman, *North Hardin Grad Receives Bronze Star*, The News-Enterprise, June 20, 2008. Copy supplied.

Ray Stern, *Valley Attorney Back from Iraq, Battlefield Law Kept Him Hopping*, East Valley Tribune, December 18, 2004. 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.

United States Military Trial Judge:
On May 13, 2005, I was appointed a United States Military Judge by the United States Navy-Marine Corps Trial Judiciary. The court-martial is a court of limited jurisdiction, adjudicating cases in accordance with the Uniform Code of Military Justice (UCMJ),

enacted by the United States Congress pursuant to Article I, Section 8 of the United States Constitution. While serving as a military judge, I presided over special court-martial proceedings (misdemeanor proceedings) and general court-martial proceedings (felony proceedings), in which United States military members were charged with military crimes. I served as a Military Trial Judge when on duty as a United States Marine Corps Reservist between May 2005 and December 2011.

United States Immigration Judge:
On August 29, 2010, I was appointed a United States Immigration Judge for the United States Department of Justice, Executive Office for Immigration Review. The United States Attorney General appoints immigration judges. The immigration court is a court of limited jurisdiction with the mission of adjudicating immigration cases under the authority of the United States Attorney General. While serving as an immigration judge, my responsibilities included, but were not limited to, presiding over proceedings requiring determinations on inadmissibility, removability, eligibility for relief, and detention. I served as a United States Immigration Judge for the Eloy Immigration Court from August 2010 through January 2012.

United States Magistrate Judge:
On January 30, 2012, I was appointed a United States Magistrate Judge by the United States District Court for the District of Arizona. As a magistrate judge, I am authorized to perform those responsibilities set forth in 28 U.S.C. § 636. Those responsibilities include, but are not limited to: presiding over all matters in civil proceedings in which there is consent of the parties; presiding over pretrial, non-dispositive matters, and post-judgment matters in civil proceedings referred by a district judge; presiding over 18 U.S.C. § 3401 misdemeanor or petty offense criminal proceedings; presiding over initial appearances, arraignments, preliminary and detention hearings, for criminal defendants arrested in the district; issuing search warrants, seizure warrants, and criminal complaints for federal law enforcement agencies in the district; and presiding over pretrial, felony plea, probation, and supervised release criminal proceedings referred by a district judge.

United States Military Appellate Judge:
On May 21, 2013, I was appointed a United States Military Appellate Judge by the Navy-Marine Corps Court of Criminal Appeals in Washington, District of Columbia. The Court conducts mandatory review, unless waived by the appellant pursuant to Articles 62, 66, 69 and 73, Uniform Code of Military Justice. When necessary in furtherance of its jurisdiction, the Court reviews all petitions for extraordinary relief properly filed before it. I currently serve in this capacity while on duty as a United States Marine Corps Reservist.

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

   As an immigration judge, I presided over numerous administrative immigration bench trials that resulted in a decision on removability or a pending application for relief. However, the records in immigration proceedings are not accessible to

the general public, and I do not have personal access to the number of cases over which I presided that went to judgment. Based on supposition alone, I would approximate that during the 18 months I was an immigration judge, each week approximately 40 matters went to judgment (issuance of an order of removal or grant of relief), of which three were the result of a bench trial. Therefore, based on those numbers, I would estimate that approximately 2,880 civil immigration matters over which I presided went to judgment, of which approximately 216 were the result of a bench trial.

As a United States military judge, I also presided over numerous military bench and jury trials that resulted in judgments and verdicts. However, the records in military proceedings are not accessible to the general public, and I do not have personal access to the number of cases over which I presided that went to verdict or judgment. Based on supposition alone, I would approximate that 50 matters went to verdict or judgment, of which 12 were tried by jury.

As a United States magistrate judge, I have presided, by consent of the parties, over approximately 53 civil cases that have gone to judgment. I have also presided over guilty plea and sentencing proceedings in approximately five Class A misdemeanor criminal cases, and approximately 80 Class B misdemeanor criminal cases that have gone to judgment.

Based upon a rough approximation of those cases that proceeded to trial, I have provided a breakdown below. I have also provided an estimated breakdown of civil and criminal proceedings over which I have presided in the course of these three judicial offices that were resolved by judgment or verdict.

i. Of these, approximately what percent were:

jury trials:	25%
bench trials:	75%
civil proceedings:	75%
criminal proceedings:	25%

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

I have attached a list of citations for all opinions issued while I have been a magistrate judge. However, I am unable to provide a list of my opinions as an immigration judge or as a military judge because those records are not accessible to the general public and I do not have personal access to this information.

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).

Because the records in immigration proceedings and military proceedings are not accessible to the general public and I do not have personal access to this specific information, I have provided information relating to ten of the most significant cases over which I have presided as a magistrate judge (listed in alphabetical order).

1) *Anderson v. United States*, No. CV-10-00816-PHX-SPL (CM/ECF) (D. Ariz. January 24, 2013) (copy of unreported opinion supplied).

The plaintiff was stopped in his vehicle at a checkpoint by United States Border Patrol agents, and was subsequently arrested by officers of the Arizona Department of Public Safety (DPS). The plaintiff filed a complaint against the United States of America for the actions of the Border Patrol agents and the DPS officers. The plaintiff brought claims under the Federal Tort Claim Act and 42 U.S.C. § 1983 for excessive force, false arrest, negligence, breach of duty of care, assault, and intentional infliction of emotional distress. The parties consented to magistrate judge jurisdiction, and the DPS officers moved for summary judgment. In granting the motion, I found that no reasonable juror could conclude that the defendants lacked probable cause to arrest the plaintiff but that a reasonable fact-finder could conclude that the use of force was unreasonable and constitutionally excessive. However, I also concluded that the defendant was entitled to the defense of qualified immunity and that the defendants could not be held vicariously liable or liable for failing to intervene. The plaintiff and the remaining defendant, United States of America, ultimately reached a resolution of the case.

For Plaintiff: Keith M. Knowlton, Keith M. Knowlton LLC, 9920 South Rural Road, Suite 108 PMB 132, Tempe, Arizona 85284, Tel: (480) 755-1777; and Marc Jeffrey Victor, Attorney at Law, 3920 South Alma School Road, Suite 5, Chandler, Arizona 85248, Tel: (480) 755-7110.

For Defendants: Suzanne M. Chynoweth, United States Attorney's Office, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7500; and Paul Correa, Office of the Attorney General, 177 North Church Street, Suite 1105, Tucson, Arizona 85701, Tel: (520) 638-2809.

2) *Bain v. State Farm Mutual Auto. Ins. Co.*, No. CV-10-02335-PHX-SPL (CM/ECF) (D. Ariz. September 4, 2012) (copy of unreported opinion supplied).

Following a car accident, the plaintiff brought an action against the defendant State Farm Mutual Automobile Insurance Company for breach of contract, bad faith, and punitive damages. The case was removed from

state court and the parties consented to magistrate judge jurisdiction. The defendant moved for summary judgment on all counts. Finding the defendant had not shown that there was no genuine issue as to any material fact concerning the plaintiff's bad faith claim, I denied the motion. Subsequent to my ruling, the parties reached a resolution of the case.

For Plaintiff: James F. Brook, James F. Brook & Associates, 7150 East Camelback Road, Suite 415, Scottsdale, Arizona 85251, Tel: (480) 990-0104.

For Defendants: Michael Matthew Roberts, Daniel Campbell III, and Michael R. Altaffer, O'Connor & Campbell PC, 3838 North Central Avenue, Suite 1800, Phoenix, Arizona 85012, Tel: (602) 241-7000.

3) *Demery v. Astrue*, No. CV-11-02237-PHX-SPL (CM/ECF) (D. Ariz. December 12, 2012) (copy of unreported opinion supplied).

The plaintiff sought judicial review and reversal of the final decision of Commissioner of the Social Security Administration denying her Social Security disability benefits pursuant to 42 U.S.C. § 405(g). The parties consented to magistrate judge jurisdiction. Finding that the Administrative Law Judge's decision was not supported by substantial evidence, I reversed the decision and remanded for an award of benefits. The parties did not appeal my decision.

For Plaintiff: Mark Ross Caldwell, Caldwell & Ober PLLC, 1940 East Camelback Road, Suite 150, Phoenix, Arizona 85016, Tel: (602) 277-1745.

For Defendant: Michael A. Johns, United States Attorney's Office, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7500; and Pamela M. Wood, Social Security Administration, 1001 17th Street, Suite 600, Denver, Colorado 80202, Tel: (303) 844-0449.

4) *Fidelity & Guaranty Life Ins. Co. v. Bradfield*, No. CV-12-00805-PHX-SPL (CM/ECF) (D. Ariz. August 20, 2012) (copy of unreported opinion supplied).

The defendants were competing claimants to a death benefit owed under a term life insurance policy issued by the plaintiff Fidelity & Guaranty Life Insurance Company. The plaintiff filed a complaint for interpleader and permanent injunction, requesting that the Court determine to whom the death benefit should be paid. The defendant filed a cross claim, alleging causes of action for lack of testamentary capacity, undue influence, conversion, and intentional infliction of emotional distress. The parties

consented to magistrate judge jurisdiction, and moved to deposit the death benefit with the Court, to be dismissed from the case, and to be discharged of any and all liability. I granted the motion and dismissed the plaintiff from the case, awarding it reasonable attorneys' fees. The parties ultimately reached a resolution of the case.

For Plaintiff: Ann-Martha Andrews and Kathleen Kelly Kahn, Lewis & Roca LLP, 40 North Central Avenue, Suite 1900, Phoenix, Arizona 85004, Tel: (602) 262-5707.

For Defendants/Cross Claimants: Gary Dukarich and Steven Lynn Evans, Steven L. Evans PLC, 322 West Roosevelt Street, Phoenix, Arizona 85003, Tel: (602) 288-3325.

5) *GoRenter.com LLC v. Barber*, No. CV-13-00165-PHX-SPL (CM/ECF) (D. Ariz. April 4, 2013) (copy of unreported opinion supplied).

The plaintiff filed a complaint against the defendant in state court asserting a claim for breach of contract. The defendant filed an answer and counterclaim, in which she asserted various state-law claims. The defendant subsequently removed the case to federal court, and the parties consented to magistrate judge jurisdiction. The plaintiff moved to strike the notice of removal and the defendant moved to dismiss. I granted the plaintiff's motion to strike and denied the motion to dismiss as moot, concluding that the court lacked subject-matter jurisdiction and removal was otherwise untimely. The case was remanded to state court.

For Plaintiff: Daxton Reese Watson, John F. Fyke, and Michael Herman Orcutt, Mack Watson & Stratman PLC, 3200 North Central Avenue, Suite 1200, Phoenix, Arizona 85012, Tel: (602) 778-9947.

For Defendant: *Pro se.*

6) *Harper v. Spizzirri,* No. CV-12-08094-PCT-SPL (CM/ECF) (D. Ariz. March 7, 2013) (copy of unreported opinion supplied).

The plaintiff brought thirteen causes of action including, among others, claims for breach of contract, fraudulent concealment and nondisclosure, and negligent misrepresentation, arising out of the purchase of a 1965 Plymouth Belvedere from the defendants over the phone and internet. The parties consented to magistrate judge jurisdiction, and the defendants moved to dismiss and, in the alternative, to transfer venue. Although I found the defense of improper venue was not untimely, I concluded it was without merit, and denied the motion in part. I further found that the Central District of California was a more convenient forum and transfer would serve the interests of justice, and granted the motion in part. The

case was transferred to that district and remains pending.

For Plaintiff: Bryan W. Shook, Dethlefs-Pykosh Law Group LLC, 2132 Market Street, Camp Hill, Pennsylvania 17011, Tel: (717) 975-9446; Teresita Angela Tan Mercado, Phoenix Law Group of Feldman Brown Wala Hall & Agena, 8765 East Bell Road, Suite 110, Scottsdale, Arizona 85260, Tel: (480) 444-3500.

For Defendant: Roger Douglas Smith, Law Office of Roger D. Smith, 7373 East Doubletree Ranch Road, Suite 200, Scottsdale, Arizona 85258, Tel: (480) 443-7600.

7) *Mirabel Golf Club Inc. v. Altman*, No. CV-12-00784-PHX-SPL (CM/ECF) (D. Ariz. June 19, 2013) (copy of unreported opinion supplied).

The plaintiff was a golf club who filed a breach of contract action in state court against the defendant, the former spouse of a member of the golf club. The defendant removed the case, and the parties consented to magistrate judge jurisdiction. The defendant moved to dismiss the complaint for failure to state a claim, which I granted with leave to amend. The plaintiff filed an amended complaint and a motion to dismiss ensued. I granted the motion and dismissed the case with prejudice, concluding that the plaintiff failed to plead sufficient facts under which a claim for breach of contract could proceed. Subsequent to my ruling, the parties reached a resolution of the case.

For Plaintiff: Andrew S. Jacob and John Frederick Barwell, Polsinelli PC, One East Washington Street, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 650-2096.

For Defendant: Christopher Larry Hering and John R. Dacey, Gammage & Burnham PLC, Two North Central Avenue, 15th Floor, Phoenix, Arizona 85004, Tel: (602) 256-4445.

8) *Ortega v. Clinton,* No. CV-11-00140-PHX-SPL (CM/ECF) (D. Ariz. June 11, 2012) (copy of unreported opinion supplied).

Petitioner brought a declaratory action seeking a court order declaring her a national of the United States and entitlement to a United States passport. The parties consented to magistrate judge jurisdiction, and the government moved to dismiss the action for lack of subject matter jurisdiction. I denied the motion, finding that subject matter jurisdiction existed pursuant to 8 U.S.C. § 1503. The government later filed a motion to dismiss for lack of prosecution, which I granted. The parties did not appeal my decision.

For Petitioner: *Pro se.*

For Defendants: Cynthia M. Parsons, United States Attorney's Office, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7500.

9) *United States v. $576,566.54 in United States Currency*, No. CV-11-01578-PHX-SPL (CM/ECF) (D. Ariz. July 13, 2012) (copy of unreported opinion supplied).

The plaintiff filed a complaint seeking forfeiture of defendant currency, alleging it was traceable to the harboring of aliens and a conspiracy to engage in money laundering. The parties consented to magistrate judge jurisdiction and the claimant moved for partial judgment on the pleadings. In granting the motion, I concluded that the plaintiff had established probable cause for only $199,580 of the seized funds. I ordered the plaintiff to return the remaining amount, $376,986, to the claimant. The parties ultimately reached a resolution of the case as to the remaining seized funds.

For Plaintiff: Donald Eugene Conrad (Retired). Supervisor, Keith Eric Vercauteren, United States Attorney's Office, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7621.

For Claimant: Gary Charles Rosen, Becker & Poliakoff PA, 3111 Stirling Road, Fort Lauderdale, Florida 33312, Tel: (954) 985-4133; and Paul Andrew Loucks, Mesch Clark & Rothschild PC, 259 North Meyer Avenue, Tucson, Arizona 85701, Tel: (520) 624-8886.

10) *Williams v. City of Tempe,* No. CV-11-00213-PHX-SPL (CM/ECF) (D. Ariz. May 25, 2012) (copy of unreported opinion supplied).

The plaintiff brought an action pursuant to 42 U.S.C. § 1983 in which he alleged claims against City of Tempe police officers. The parties consented to magistrate judge jurisdiction. The plaintiff ultimately filed a second amended complaint alleging four causes of action, and the defendants moved to dismiss. Having determined that three counts of the complaint failed to state a claim for relief, and the remaining count only alleged facts against defendants who had been previously dismissed, I granted the motion to dismiss. The plaintiff moved for relief from the judgment, which I denied. The parties did not appeal my decision.

For Plaintiff: *Pro se.*

For Defendants: Andrew Bryce Ching, Clarence E. Matherson, Jr., and Catherine Mary Bowman, Tempe City Attorney's Office, Post Office Box 5002, Tempe, Arizona 85280, Tel: (480) 350-8227.

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.

Because the records in immigration proceedings and military proceedings are not accessible to the general public and I do not have personal access to this specific information, I have provided information relating to ten of the most significant opinions that I have written as a magistrate judge (listed in alphabetical order).

1) *Anderson v. United States*, No. CV-10-00816-PHX-SPL (CM/ECF) (D. Ariz. January 24, 2013) (order supplied in 13c).

For Plaintiff: Keith M. Knowlton, Keith M. Knowlton LLC, 9920 South Rural Road, Suite 108 PMB 132, Tempe, Arizona 85284, Tel: (480) 755-1777; and Marc Jeffrey Victor, Marc J. Victor Attorney at Law, 3920 South Alma School Road, Suite 5, Chandler, Arizona 85248, Tel: (480) 755-7110.

For Defendants: Suzanne M. Chynoweth, United States Attorney's Office, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7500; and Paul Correa, Office of the Attorney General, 177 North Church Street, Suite 1105, Tucson, Arizona 85701, Tel: (520) 638-2809.

2) *Bain v. State Farm Mutual Auto. Ins. Co.*, No. CV-10-02335-PHX-SPL (CM/ECF) (D. Ariz. September 4, 2012) (order supplied in 13c).

For Plaintiff: James F. Brook, James F. Brook & Associates, 7150 East Camelback Road, Suite 415, Scottsdale, Arizona 85251, Tel: (480) 990-0104.

For Defendants: Michael Matthew Roberts, Daniel Campbell III, and Michael R. Altaffer, O'Connor & Campbell PC, 3838 North Central Avenue, Suite 1800, Phoenix, Arizona 85012, Tel: (602) 241-7000.

3) *Demery v. Astrue*, No. CV-11-02237-PHX-SPL (CM/ECF) (D. Ariz. December 12, 2012) (order supplied in 13c).

For Plaintiff: Mark Ross Caldwell, Caldwell & Ober PLLC, 1940 East Camelback Road, Suite 150, Phoenix, Arizona 85016, Tel: (602) 277-1745.

For Defendant: Michael A. Johns, United States Attorney's Office, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7500; and Pamela M. Wood, Social Security Administration, 1001 17th Street, Suite 600, Denver, Colorado 80202, Tel: (303) 844-0449.

4) *Fidelity & Guaranty Life Ins. Co. v. Bradfield*, No. CV-12-00805-PHX-SPL (CM/ECF) (D. Ariz. August 20, 2012) (order supplied in 13c).

For Plaintiff: Ann-Martha Andrews and Kathleen Kelly Kahn, Lewis & Roca LLP, 40 North Central Avenue, Suite 1900, Phoenix, Arizona 85004, Tel: (602) 262-5707.

For Defendants/Cross Claimants: Gary Dukarich and Steven Lynn Evans, Steven L. Evans PLC, 322 West Roosevelt Street, Phoenix, Arizona 85003, Tel: (602) 288-3325.

5) *GoRenter.com LLC v. Barber*, No. CV-13-00165-PHX-SPL (CM/ECF) (D. Ariz. April 4, 2013) (order supplied in 13c).

For Plaintiff: Daxton Reese Watson, John F. Fyke, and Michael Herman Orcutt, Mack Watson & Stratman PLC, 3200 North Central Avenue, Suite 1200, Phoenix, Arizona 85012, Tel: (602) 778-9947.

For Defendant: *Pro se.*

6) *Harper v. Spizzirri,* No. CV-12-08094-PCT-SPL (CM/ECF) (D. Ariz. March 7, 2013) (order supplied in 13c).

For Plaintiff: Bryan W. Shook, Dethlefs-Pykosh Law Group LLC, 2132 Market Street, Camp Hill, Pennsylvania 17011, Tel: (717) 975-9446; Teresita Angela Tan Mercado, Phoenix Law Group of Feldman Brown Wala Hall & Agena, 8765 East Bell Road, Suite 110, Scottsdale, Arizona 85260, Tel: (480) 444-3500.

For Defendant: Roger Douglas Smith, Law Office of Roger D. Smith, 7373 East Doubletree Ranch Road, Suite 200, Scottsdale, Arizona 85258, Tel: (480) 443-7600.

7) *Mirabel Golf Club Inc. v. Altman*, No. CV-12-00784-PHX-SPL (CM/ECF) (D. Ariz. June 19, 2013) (order supplied in 13c).

For Plaintiff: Andrew S. Jacob and John Frederick Barwell, Polsinelli PC, One East Washington Street, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 650-2096.

For Defendant: Christopher Larry Hering and John R. Dacey, Gammage & Burnham PLC, Two North Central Avenue, 15th Floor, Phoenix, Arizona 85004, Tel: (602) 256-4445.

8) *Ortega v. Clinton,* No. CV-11-00140-PHX-SPL (CM/ECF) (D. Ariz. June 11, 2012) (order supplied in 13c).

For Petitioner: *Pro se.*

For Defendants: Cynthia M. Parsons, United States Attorney's Office, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7500.

9) *United States v. $576,566.54 in United States Currency*, No. CV-11-01578-PHX-SPL (CM/ECF) (D. Ariz. July 13, 2012) (order supplied in 13c).

For Plaintiff: Donald Eugene Conrad (Retired). Supervisor, Keith Eric Vercauteren, United States Attorney's Office, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7621.

For Claimant: Gary Charles Rosen, Becker & Poliakoff PA, 3111 Stirling Road, Fort Lauderdale, Florida 33312, Tel: (954) 985-4133; and Paul Andrew Loucks, Mesch Clark & Rothschild PC, 259 North Meyer Avenue, Tucson, Arizona 85701, Tel: (520) 624-8886.

10) *Williams v. City of Tempe,* No. CV-11-00213-PHX-SPL (CM/ECF) (D. Ariz. May 25, 2012) (order supplied in 13c).

For Plaintiff: *Pro se.*

For Defendants: Andrew Bryce Ching, Clarence E. Matherson, Jr., and Catherine Mary Bowman, Tempe City Attorney's Office, Post Office Box 5002, Tempe, Arizona 85280, Tel: (480) 350-8227.

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

To the best of my knowledge, certiorari has not been requested or granted in any of my cases.

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

United States Magistrate Judge:

To the best of my knowledge, none of my opinions have been reversed by a reviewing court. The following reflects the cases in which a Report and Recommendation was issued, but was not accepted by the assigned district judge.

Cotton v. Zitterman Bosh & Assocs., No. CV-11-02024-PHX-DGC (CM/ECF), 2013 U.S. Dist. LEXIS 29063 (D. Ariz. January 14, 2013), *district judge opinion reported at* 2013 U.S. Dist. LEXIS 29071 (D. Ariz., February 28, 2013).

In post-judgment proceedings, the plaintiff filed a Motion for Issuance of a Civil Arrest Warrant. The matter was referred to me by the Honorable David G. Campbell. I issued a Report and Recommendation, recommending that a civil arrest warrant be issued. Judge Campbell did not accept the recommendation, and remanded the matter for consideration of a memorandum which the plaintiff's counsel would file. On remand, the plaintiff did not file the memorandum and withdrew the motion.

Morceli v. Kane, No. CV-11-01225-PHX-GMS (SPL) (CM/ECF), 2012 U.S. Dist. LEXIS 28221 (D. Ariz. February 28, 2012); *district judge opinion reported at* 2012 U.S. Dist. LEXIS 28224 (D. Ariz. March 5, 2012).

Petitioner filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, seeking release from custody pending deportation. Petitioner was subsequently released from immigration detention, and I issued a Report and Recommendation, recommending that the petition be dismissed because the action was moot. The Honorable G. Murray Snow terminated the Report and Recommendation as moot, finding that due to Petitioner's release from custody, his case should be dismissed as moot.

United States Immigration Judge:

Because the records in immigration proceedings are not accessible to the general public, I do not have personal access to this specific information concerning the cases over which I have presided. To respond to this question, I have conducted an extensive appellate search on Westlaw and LexisNexis. No results were reported from my query.

United States Military Judge:

Because records in military judicial proceedings are not accessible to the general public, I do not have personal access to this specific information concerning the cases over which I have presided. To respond to this question, I have conducted an extensive appellate search on Westlaw and LexisNexis. Of the decisions reported by my query, the following are relevant to this question.

United States v. Kendrick, 2011 CCA LEXIS 773 (N.M. Ct. Crim. App. 2011).

The accused pled guilty to unauthorized absence and missing movement by neglect. I sentenced him to 120-days' confinement, forfeiture of $600 per month for four months, and a bad-conduct discharge. The convening authority approved the sentence pursuant to a plea agreement and suspended all confinement in excess of time served for a period of six months from the date of sentencing. The accused sought review by the United States Navy-Marine Corps Court of Criminal Appeals. The appellate court found that neither I nor the convening authority had specified whether the forfeiture ordered was of pay, or of pay and allowances. Concluding that no prejudice resulted, the appellate court affirmed, but issued a supplemental promulgating order.

United States v. Luera, 2011 CCA LEXIS 759 (N.M. Ct. Crim. App. 2011).

The accused pled guilty to unauthorized absence, and I sentenced him to four-months' confinement, forfeiture of $500 pay per month for four months, reduction of pay, and a bad-conduct discharge from the United States Marine Corps. The convening authority approved the sentence. The accused sought review by the United States Navy-Marine Corps Court of Criminal Appeals. Although not assigned as an error, the appellate court found that the convening authority had agreed to disapprove all confinement as part of a pretrial agreement with the accused. Consequently, the appellate court affirmed the sentence, but vacated the term of confinement.

United States v. Saracoglu, 2011 WL 3691948; 2011 CCA LEXIS 162 (N. M. Ct. Crim. App. 2011).

The accused pled guilty to conspiracy, making a false official statement, selling military property without proper authority, and larceny of the same military property. I sentenced him to 12 months of confinement, which was approved by the convening authority. He sought review by the United States Navy-Marine Corps Court of Criminal Appeals, arguing that I erred by denying his motion to dismiss due to unlawful command influence. The appellate court agreed with my conclusion that there was no actual unlawful command influence, but disagreed with respect to the existence of apparent unlawful command influence. The appellate court concluded that the proceedings were not prejudiced by that finding however, and affirmed the plea and sentence.

United States v. Caudill, 65 M.J. 756 (N.M. Ct. Crim. App. 2007).

The accused pled guilty to drug use and distribution, intent to distribute, violation of orders, obstruction of justice, and communicating a threat. I sentenced her to seven months of confinement, which was approved by the convening authority. She sought review by the United States Navy-Marine Corps Court of Criminal

Appeals, arguing that I should have explained the elements of the offenses prior to accepting her plea. The appellate court found that although I had inquired as to the factual basis of the offenses, I should not have relied on her agreement that defense counsel had properly explained the offense elements and should have explained the elements to her. The pleas with regard to intent to distribute and obstruction of justice were set aside, and the remaining pleas were affirmed. The appellate court affirmed the sentence, finding that the accused would not have received a lesser sentence even if she had not pled guilty to the two set-aside offenses.

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.

United States Magistrate Judge:
None of my opinions have been published in an official reporter. All of my opinions and reports and recommendations are filed electronically in the Court's Electronic Case filing system (CM/ECF), making them available to the public. In addition, some opinions are available on Westlaw or LexisNexis.

United States Immigration Judge:
All decisions I issued as an immigration judge are unpublished opinions and are filed non-electronically in the related record of proceedings. These decisions are not available on Westlaw or LexisNexis.

United States Military Judge:
All decisions I have issued as a military judge are unpublished opinions and are filed non-electronically in the related record of proceedings. These decisions are not available on Westlaw or LexisNexis.

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

Because the records in immigration proceedings and military proceedings are not accessible to the general public and I do not have personal access to this specific information, I have provided the following information relating to significant opinions on constitutional issues that I have written as a magistrate judge.

Anderson v. United States, No. CV-10-00816-PHX-SPL (CM/ECF) (D. Ariz. January 24, 2013) (order supplied in 13c).

Ortega v. Clinton, No. CV-11-00140-PHX-SPL (CM/ECF) (D. Ariz. June 11, 2012) (order supplied in 13c).

Williams v. City of Tempe, No. CV-11-00213-PHX-SPL (CM/ECF) (D. Ariz. May 25, 2012) (order supplied in 13c).

In addition, I routinely issue reports and recommendations in prisoners' rights cases arising under 42 U.S.C. § 1983 and petitions for habeas corpus relief brought pursuant to 42 U.S.C. § 2254 and 42 U.S.C. § 2255. To the best of my knowledge, these actions involved the application of long-standing and well-settled constitutional principles and did not constitute "significant" opinions on federal 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.

In May 2013, I was appointed a United States Military Judge for the Navy-Marine Corps Court of Criminal Appeals. To date, I have not presided over any appellate matter.

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.

Because the records in immigration and military proceedings are not accessible to the general public and I do not have personal access to this specific information, I have provided the following information in response to this question only with regard to my time as a magistrate judge.

I follow the federal recusal statutes and the Code of Conduct for United States Judges. In addition to the court's internal conflict-check system, I monitor all criminal and civil cases for potential conflicts. When a notice of potential conflict is filed in a case by the United States Attorney's Office, I review the case to determine whether recusal is appropriate. I recuse myself in any case litigated by the United States Attorney's Office

in which I was formerly involved in a direct or supervisory capacity. In addition, I recuse myself in any case in which my spouse appears or has appeared, or has or had direct or supervisory involvement. Further, I recuse myself from any civil or criminal matter involving a party subject to immigration proceedings in which I presided as an immigration judge.

Based on these standing recusal guidelines, to the best of my recollection, I have recused myself in the following cases (listed in alphabetical order).

In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, No. CV-12-01211-PHX-PGR (CM/ECF) (D. Ariz.), I recused myself *sua sponte* because I had involvement in a related criminal case while I was an Assistant United States Attorney.

In *LaRocca v. Colvin*, No. CV-13-01269-PHX-LOA (CM/ECF) (D. Ariz.), I recused myself *sua sponte* because of a personal conflict with the law firm representing the plaintiff.

In *Lonh v. Kane*, No. No. CV-12-00425-PHX-NVW (CM/ECF) (D. Ariz.), the government filed a motion for reassignment on the grounds that I had presided as the immigration judge in petitioner's immigration proceedings, and had ordered him removed from the United States. I granted the motion and recused myself.

In *Roosevelt Irrigation District v. Salt River Project Agricultural Improvement and Power District,* No. CV-10-00290-PHX-DAE (CM/ECF) (D. Ariz.), I was informed by my law clerk that she had a personal conflict in this case. In order to avoid the appearance of impropriety, I recused myself *sua sponte*.

In *United States v. Hammonds*, No. CR-13-00444-PHX-ROS (CM/ECF) (D. Ariz.), I recused myself *sua sponte* after reviewing a notice of potential conflict filed in this case by the United States Attorney's Office. The notice indicated that this case was assigned to my wife.

In *United States v. Lu*, No. CR-06-00676-PHX-DGC (CM/ECF) (D. Ariz.), I recused myself *sua sponte* after reviewing a notice of potential conflict filed in this case by the United States Attorney's Office. The notice indicated that I had involvement in the underlying case while I was an Assistant United States Attorney.

In *United States v. Pacchiana,* No. CR-12-02086-3-PHX-GMS (CM/ECF) (D. Ariz.), I recused myself *sua sponte* after reviewing a notice of potential conflict filed in this case by the United States Attorney's Office. The notice indicated that I had involvement in the underlying case while I was an Assistant United States Attorney.

In *United States v. Pihakis,* No. CR-10-01721-2-PHX-PGR (CM/ECF) (D. Ariz.), I recused myself *sua sponte* after reviewing a notice of potential conflict filed in this case by the United States Attorney's Office. The notice indicated that I had involvement in the underlying case while I was an Assistant United States Attorney.

In *United States v. Sabori*, No. CR-13-00295-PHX-NVW (CM/ECF) (D. Ariz.), I recused myself *sua sponte* after reviewing a notice of potential conflict filed in this case by the United States Attorney's Office. The notice indicated that this case was assigned to my wife.

In *United States v. Slade*, No. CR-13-00460-PHX-ROS (CM/ECF) (D. Ariz.), I recused myself *sua sponte* after reviewing a notice of potential conflict filed in this case by the United States Attorney's Office. The notice indicated that I had involvement in the underlying case while I was an Assistant United States Attorney.

In *United States v. Wright,* No. CR-13-00829-1-PHX-NVW (13-00196M) (CM/ECF) (D. Ariz.), I recused myself *sua sponte* after reviewing a notice of potential conflict filed in this case by the United States Attorney's Office. The notice indicated that this case was assigned to my wife.

In *Vamos v. Colvin*, No. CV-13-02092-PHX-GMS (CM/ECF) (D. Ariz.), I recused myself *sua sponte* because of a personal conflict with the law firm representing the plaintiff.

In *Wells v. American Polygraph Association,* No. CV-13-00607-PHX-GMS (CM/ECF) (D. Ariz.), the plaintiffs moved for an emergency temporary injunction. The defendants had neither appeared nor consented to magistrate judge jurisdiction. Given the exigent nature of the motion, I recused myself *sua sponte* for reassignment to a district judge.

In *Winningham v. County of Navajo,* No. CV-13-01120-PHX-NVW (CM/ECF) (D. Ariz.), the plaintiff, appearing *pro se*, filed a notice asserting various allegations against me. Although incoherent, out of an abundance of caution that the notice could be construed as an amended complaint, I recused myself from the case *sua sponte.*

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

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

       I have not held any public office other than a judicial office. I have not had an unsuccessful candidacy for an elective office or unsuccessful nomination for an 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 membership with, held office in, or rendered services to any political party or election committee. I have not held any position or played any role in any political campaign.

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

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

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

I 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.

Civilian Law Practice and Legal Experience:

1999 – 2001
United States Department of Justice
United States Attorney's Office for the District of Minnesota
United States Courthouse
300 South Fourth Street, Suite 600
Minneapolis, Minnesota 55415
Assistant United States Attorney

2001 – 2010
United States Department of Justice
United States Attorney's Office for the District of Arizona
Two Renaissance Square, 40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Assistant United States Attorney (2001– 2010)
Chief, White Collar/Public Corruption Section (2008 – 2009)

Military Law Practice and Legal Experience:

1993 – 1996
United States Department of Defense

United States Marine Corps
Marine Corps Air Ground Combat Center
29 Palms, California 92278
Contracting Officer

1996 – 1999
United States Department of Defense
United States Marine Corps
Marine Corps Base Hawaii
Kaneohe Bay, Hawaii 96863
Chief Civil Law Attorney (March 1996 – November 1996)
Chief Prosecutor (1996 – 1999)

1999 – 2004
United States Marine Corps Reserves
United States Marine Corps Trial Advocacy Team
Chief Defense Counsel

February 2004 - October 2004
United States Marine Corps Reserves
I Marine Expeditionary Force (Camp Pendleton, California)
First Marine Division
Iraq Deployment (Operation Iraqi Freedom)
Senior Defense Counsel

2007 – 2008
United States Marine Corps Reserves
II Marine Expeditionary Force (Camp Lejeune, North Carolina)
Second Marine Division
Iraq Deployment (Operation Iraqi Freedom)
Liaison Officer to the Al Anbar, Iraq Provincial Chief Judge

2008 – 2009
United States Marine Corps Reserves
II Marine Expeditionary Force (Camp Lejeune, North Carolina)
Second Marine Division
Afghanistan Deployment (Operation Enduring Freedom)
Senior Legal Mentor to the Afghanistan National Army

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

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

b. Describe:

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

From 1993 to 1999, while on active duty in the United States Marine Corps, I served as a contracting officer, chief civil law attorney, and chief prosecutor. As a contracting officer, I supervised Marine and civilian employees who provided contracting services; I examined and adjusted government defense contracts; and I provided advice to the Commanding General concerning contract disputes and accounting. As chief civil law attorney, I supervised staff in providing legal counsel in matters involving consumer affairs, family law, wills and estates, taxation, accidents, torts, real property, personal finances, landlord-tenant, contracts, FOIA, and various civilian court issues. As chief prosecutor, I prosecuted military criminal cases involving rape, forcible sodomy, theft of government property, selling government property, receiving stolen property, wrongful use, sale, possession of controlled substances, theft, adultery, assault, battery, obstruction of justice, kidnapping and driving under the influence. I assisted in coordinating criminal investigations with the Military Police, Criminal Investigation Division and the Naval Criminal Investigative Service.

From 1999 to 2010, I served as an Assistant United States Attorney in the District of Minnesota and District of Arizona. I prosecuted cases which included, but were not limited to: murder for hire; possession of a firearm with an obliterated serial number; felon in possession of a firearm; possession or use of a firearm in a crime of violence with a silencer; continuing criminal enterprise; conspiracy to import narcotics, manage or control an establishment for storing a controlled substance; conspiracy to possess with the intent to distribute narcotics and importation of narcotics; introduction of narcotics into a prison facility; possession with the intent to distribute narcotics; immigration violations; bank robbery; counterfeiting operations; mail fraud; bank fraud; interstate child sex trafficking; interstate prostitution and several other federal offenses. I litigated numerous motions hearings, including those which involved orders of electronic surveillance, statutory post-authorization duties, suppression, grand jury witnesses, pen register and trap and trace devices, as well as electronic surveillance exempted from Title III, such as intercepted oral communications, and visual, non-verbal conduct.

While serving as an Assistant United States Attorney in the Organized Crime Drug Enforcement Task Force Section in the District of Arizona from 2001 to 2007 and 2009 to 2010, I worked with the FBI, DEA, ATF, as well as other federal and local agencies, and assisted in drafting

complex affidavits for electronic surveillance, seeking T-III wiretap interceptions. Based on wiretaps and proactive investigations, I frequently handled complex litigation involving various jurisdictions, states and countries, multiple defendants, large quantities of narcotics, as well as significant funds and other assets seized.

While serving as the Chief of the White Collar/Public Corruption Section (now, Financial Crimes and Public Integrity Section) in the District of Arizona from 2008 to 2009, I supervised a staff of attorneys, financial analysts, and legal assistants assigned to cases involving mortgage fraud, corporate fraud, intellectual property fraud, public corruption, postal theft, health care fraud, identity theft, internet telemarketing fraud, and federal tax crimes.

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

As a United States Marine Corps Judge Advocate with the Department of Defense and as an Assistant United States Attorney with the Department of Justice, my clients were the United States, its agencies and its employees.

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 law practice was in litigation. I appeared in court frequently. As an attorney with the United States Marine Corps, I appeared in federal court on average four to ten times per month for guilty pleas, motions, and sentencing hearings. Approximately five percent of those proceedings were civil in nature, and the remaining were criminal. As an attorney with the United States Attorney's Office, I appeared in federal court on average 16 times per month. My practice only involved criminal proceedings.

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: 2%
   2. criminal proceedings: 98%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As an attorney with the United States Marine Corps, I had approximately 40 federal criminal cases tried to verdict as lead counsel. Of those, five percent were bench trials and the remaining were jury trials. As an attorney with the United States Attorney's Office, I had approximately 16 federal criminal cases tried to verdict. 13 of those cases I litigated as sole counsel, and three I litigated as lead or co-counsel. All cases were tried before a jury.

i. What percentage of these trials were:
   1. jury: 98%
   2. non-jury: 2%

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

I have 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. Acosta*, CR-07-00871-PHX-ROS (CM/ECF), United States District Court for the District of Arizona; Honorable Roslyn O. Silver; March 2008 to September 2009.

The defendant was indicted on charges for transporting a juvenile and three adult females throughout the United States as part of a prostitution enterprise. After a seven-day trial, a jury found the defendant guilty of transportation of a minor in interstate commerce for prostitution. The defendant was sentenced to 262 months' imprisonment. The Ninth Circuit Court of Appeals affirmed the conviction and sentence in an unpublished decision reported at *United States v. Acosta*, 388

Fed.Appx. 620 (9th Cir. 2010). I represented the United States as lead co-counsel at trial and sentencing and briefly on appeal.

Co-Counsel: Tracey Bardorf, Immigration and Customs Enforcement, Office of the Assistant Secretary, 500 North 12th Street SW, Washington, District of Columbia 20024, Tel: (202) 534-2700.

For Defendant: Barbara L. Hull, Law Office of Barbara Hull, 637 North Third Avenue, Suite Three, Phoenix, Arizona 85003, Tel: (623) 465-1705.

2) *United States v. Branon,* (Mark David Branon) CR-02-00750-1-PHX-SRB (CM/ECF), United States District Court for the District of Arizona; Honorable Susan R. Bolton; July 2002 to February 2006.

The defendant was charged in state court following an investigation of several members believed to be associated with the Mexican Mafia and Hell's Angels, who were involved in an international drug trafficking network. During those proceedings, the defendant conspired to murder various counsel and witnesses in the case. The defendant was indicted in federal court, and I represented the United States as lead counsel. After a nine-day trial, the jury found the defendant guilty of eight charges, including continuing criminal enterprise, conspiracy to possess with the intent to distribute marijuana, establishment of storing a controlled substance, conspiracy to import marijuana, possession or use of a firearm in a crime of violence with a silencer, felon in possession of a firearm, and possession of a firearm with an obliterated serial number. The defendant was sentenced to 720 months' imprisonment. The defendant appealed the judgment to the Ninth Circuit Court of Appeals. In an unpublished decision found at *United States v. Branon*, 146 Fed.Appx. 168 (9th Cir. 2005), the Ninth Circuit affirmed his convictions but granted a limited remand under *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). On remand, the defendant was resentenced to 720 months' imprisonment. The defendant appealed the resentencing, and in an unpublished decision reported at *United States v. Branon*, 274 Fed.Appx. 587 (9th Cir. 2008), the Ninth Circuit affirmed the judgment. I represented the United States as sole counsel at trial and sentencing and as co-counsel on the first appeal.

For Defendant: Peter Claussen, Post Office Box 2272, Squamish, BC Canada V8B0B5, Tel: (604) 374-4071 (formerly with Law Offices of Zielinski & Claussen LLC).

3) *United States v. Castillo-Melendres*, (Oscar Nunez-Medina) CR-05-00861-3-PHX-JAT (CM/ECF), United States District Court for the District of Arizona; Honorable James A. Teilborg; Ninth Circuit Court of Appeals No. 06-10484; August 2005 to October 2007.

The defendant was indicted on charges for his participation in a marijuana growth operation in the Arizona Coconino National Forest, the largest operation of its

kind in the history of Arizona. The defendant entered into a plea of guilty to conspiracy to manufacture with intent to distribute marijuana, and was sentenced to 120 months' imprisonment. The defendant filed an appeal to the Ninth Circuit Court of Appeals, which was dismissed. The Supreme Court denied certiorari. I represented the United States as lead co-counsel before the district court, but did not participate on appeal.

Co-Counsel: Michael Allen Lee, United States Attorney's Office, Two Renaissance Square, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7500.

For Defendant: Eugene Marquez, Eugene Marquez PLC, 925 West Baseline Road, Suite 105-S4, Tempe, Arizona 85283, Tel: (602) 631-9595.

4) *United States v. Duarte-Cardenas,* (David Camacho) CR-05-00865-4-PHX-ROS (CM/ECF), United States District Court for the District of Arizona; Honorable Roslyn O. Silver; Ninth Circuit Court of Appeals No. 06-10509; August 2005 to June 2007.

The defendant was indicted on charges for leading a local organization that imported methamphetamine from Mexico to traffic throughout the United States. The defendant pled guilty to conspiracy to possess with the intent to distribute methamphetamine, and was sentenced to 210 months' imprisonment. The defendant appealed to the Ninth Circuit Court of Appeals, but subsequently moved for voluntarily dismissal. In this case, I represented the United States as sole counsel in the plea and sentencing proceedings.

For Defendant: Eugene Marquez for David Camacho, Eugene Marquez PLC, 925 West Baseline Road, Suite 105-S4, Tempe, Arizona 85283, Tel: (602) 631-9595.

5) *United States v. Gleason,* (Sandra Kay Brown) CR-00-00900-2-PHX-SRB (CM/ECF), United States District Court for the District of Arizona; Honorable Susan R. Bolton; February 2002 to December 2008.

The defendant was indicted on charges for recruiting, through sex, pilots that would transport marijuana from Mexico to the United States. After a five-day trial, a jury found the defendant guilty of conspiracy to possess with the intent to distribute marijuana and money laundering. The defendant was sentenced to two concurrent terms of 60 months' imprisonment. In an unpublished decision reported at *United States v. Brown,* 91 Fed.Appx. 585 (9th Cir. 2004), the Ninth Circuit Court of Appeals affirmed her conspiracy conviction, but reversed the defendant's money-laundering conviction and remanded for resentencing. The defendant was resentenced to 60 months' imprisonment. In this case, I represented the United States as sole counsel at trial and sentencing, but did not participate on appeal.

For Defendant: Mark Paige, 2733 North Power Road, Suite 102, Mesa, Arizona 85215, Tel: (602) 254-5457.

6) *United States v. Gutierrez-Padilla*, (Miguel Angel Gutierrez-Padilla) CR-05-00858-1-PHX-MHM (CM/ECF), United States District Court for the District of Arizona; Honorable Mary H. Murguia; August 2005 to March 2006.

The defendant was indicted on drug charges and entered a plea of guilty to conspiracy to manufacture with intent to distribute more than 1,000 kilograms of marijuana. The defendant was sentenced to 37 months' imprisonment. The parties did not challenge the judgment. In this case, I represented the United States as sole counsel in the plea proceedings.

For Defendant: Mark J. Berardoni for Miguel Gutierrez-Padilla, Law Office of Mark J. Berardoni, 45 West Jefferson, Suite 810, Phoenix, Arizona 85003, Tel: (602) 257-1295.

7) *United States v. Hernandez,* (Michael Edward Hernandez) CR-03-00275-1-PHX-ROS-DWM (CM/ECF), United States District Court for the District of Arizona; Honorable Roslyn O. Silver; March 2003 to May 2007.

The defendant was indicted on charges for conspiring to distribute marijuana. After a five-day trial, a jury found the defendant guilty of conspiring to possess with the intent to distribute more than 100 kilograms of marijuana and was sentenced to 60 months' imprisonment. The defendant's conviction and sentence were affirmed on appeal. The defendant appealed, and in an unpublished decision reported at *United States v. Hernandez,* 282 Fed.Appx. 593 (9th Cir. 2008), the Ninth Circuit Court of Appeals affirmed his convictions and sentence. I represented the United States as sole counsel at trial, sentencing, and briefly on appeal.

For Defendant: Bobbi A. Berry, Law Office of Bobbi A. Berry, 177 North Church Avenue, Suite 200, Tucson, Arizona 85701, Tel: (520) 881-9869.

8) *United States v. Hill,* CR-99-00275-DWF-AJB (CM/ECF), United States District Court for the District of Minnesota; Honorable Donovan W. Frank; October 1999 to April 2001.

The defendant was indicted on drug and weapon charges. After a three-day trial, a jury found the defendant guilty of possession with intent to distribute cocaine, felon in possession of a firearm, and possession of a firearm after a misdemeanor conviction for domestic violence. The defendant was sentenced to 210 months' imprisonment. In a published decision reported at *United States v. Hill*, 249 F.3d 707 (8th Cir. 2001), the court affirmed his conviction and sentence. In this case, I represented the United States as sole counsel at trial and sentencing. I also submitted briefing and oral argument as lead counsel on appeal.

For Defendant: James E. Ostgard, II, Ostgard Law Office, Post Office Box 582536, Minneapolis, Minnesota 55458, Tel: (612) 750-1455.

9) *United States v. Muirs,* (Rasford Muirs) CR-02-00156-1-PHX-SRB (CM/ECF), United States District Court for the District of Arizona; Honorable Susan R. Bolton; January 2003 to April 2006.

The defendant was indicted on charges for running a large drug trafficking organization that would import marijuana from Mexico and distribute it throughout the United States, using the United States postal system. The defendant was considered the leader and organizer of the operation. After a three-day trial, a jury found the defendant guilty of conspiracy to possess with intent to distribute marijuana, and was sentenced to 210 months' imprisonment. In an unpublished decision reported at *United States v. Muirs,* 145 Fed.Appx. 208 (9th Cir. 2005), the Ninth Circuit affirmed his conviction but granted a limited remand under *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). On remand, the defendant was resentenced to 210 months' imprisonment. In this case, I represented the United States as lead co-counsel at trial, sentencing, and on appeal.

Co-Counsel: John R. Lopez IV, United States Attorney's Office, Two Renaissance Square, 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004, Tel: (602) 514-7450.

For Defendant: George F. Klink, Law Office of George Klink, 45 West Jefferson, Suite 810, Phoenix, Arizona 85003, Tel: (602) 253-3889.

10) *United States v. Tyler*, CR-99-00197-PAM-ESS (CM/ECF), United States District Court for the District of Minnesota; Honorable Paul A. Magnuson; July 1999 to March 2002.

The defendant was indicted on drug charges and pled guilty to two counts of possession of crack cocaine with intent to distribute. The defendant was sentenced to 120 months' imprisonment. In a published decision reported at *United States v. Tyler*, 238 F.3d 1036 (8th Cir. 2001), the Eighth Circuit affirmed his conviction and sentence. In this case, I represented the United States as sole counsel in the plea and sentencing proceedings. I also submitted briefing and oral argument as lead counsel on appeal.

For Defendant: Larry E. Reed, Reed Law Offices, Post Office Box 43596, Minneapolis, Minnesota 55443, Tel. (612) 529-3322.

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.)

Assistant United States Attorney:
As an Assistant United States Attorney, I participated in numerous cases which were resolved by plea agreement and did not progress to trial. As the White Collar/Public Corruption Chief, my legal responsibilities included oversight of cases and development of policies regarding criminal prosecutions, case dispositions, and case management.

Afghanistan Deployment:
During my deployment to Afghanistan, I served as the Senior Legal Mentor to the Afghan National Army from September 2008 through April 2009. I oversaw the legal mentoring of Afghan National Army attorneys. I mentored the Afghanistan Judge Advocate General (Brigadier General), the Chief Judge of the Court of Military Appeals (Brigadier General), the Chief of ANA Ethics (Brigadier General), the Chief of ANA Legal Services (Colonel), and the Chief of ANA Personnel Law Department (Colonel). I assisted the senior Afghan Ministry of Defense and Staff (GS) legal department members in understanding and prosecuting corruption crimes in Afghanistan. I conducted site inspections at the Kabul Military Training Camp, 201st Corps, 203rd Corps-Gardez, 205th Corps-Kandahar, 207th Corps-Heart, and Pul-e-Charkhi. I also worked to ensure the reallocation of manpower assets to resolve critical personnel shortages.

Iraq Deployment:
During my deployment to Iraq, I served as the Liaison Officer to the Al Anbar, Iraq Provincial Chief Judge from June 2007 through March 2008. I mentored the Provincial Chief Judge and assisted the Anbari Judiciary in reestablishing the Rule of Law in Al Anbar. I led a team which established the Anbar Major Crimes Court #18, which was designed to try terrorism suspects in the Al Anbar Province. I convened the first Terrorism Court in Iraq using local judges. I facilitated the development plan for a Rule of Law Judicial Complex in Al Anbar Province (Ramadi), which led to the obligation of $16,000,000 for the Rule of Law Complex in Ramadi, Iraq. I also facilitated tours of the complex for senior experts, political appointees, and principal staff members from the U.S. Department of Defense, the U.S. Department of Justice, Multi-National Force Iraq, the U.S. Department of State, Joint Contracting Command Iraq, and the Multi-National Corps Iraq.

Iraq Deployment:
During my deployment to Iraq, I served as Senior Defense Counsel from February 2004 through October 2004. I supervised a team of attorneys who were responsible for providing defense services to Marines, Sailors, and Soldiers, in 56 felony and misdemeanor prosecutions in Fallujah, Al Taqaddum, Al Asad, Korea Village, Zaidon, Hurricane Point, Najaf, Kut, Az Zubayr, and Abu Ghurayb. I represented personnel against charges including: conspiracy, disrespect to a superior commissioned officer, assault on a superior commissioned officer, insubordinate conduct towards a warrant

officer, failure to obey orders, misbehavior before the enemy, false official statement, wrongful destruction of military property, drunk on duty, misbehavior of a lookout, provoking speeches, larceny, assault, conduct unbecoming an officer, and fraternization. I also provided civil legal assistance to approximately 300 service members.

I have not performed any lobbying activities on behalf of any client or organization.

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

    I have not taught any courses.

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

    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, with or without compensation, during my service with the Court, other than my continued service in the United States Marine Corps Reserves.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

    My wife is an Assistant United States Attorney. Consistent with my current practice, I would recuse myself in any case in which she is involved or has had any involvement. I would follow the Judicial Code of Conduct and federal recusal statutes in recusing myself in any matter involving litigants I know personally. I am not aware of any category of litigation or financial arrangement that is likely to present potential conflicts of interest.

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

    I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, and any and all other such relevant canons, statutes and rules 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 September of 2005, 2006, and 2009, I volunteered with the "Kids to Court" program, which was organized by the Honorable Mary H. Murguia, in conjunction with Sandra Day O'Connor College of Law. This program is designed to introduce local eighth grade students to the judicial system. Students participate in mock trials and serve as witnesses and court staff. Local attorneys provide feedback and mentor the students.

26. **Selection Process**:

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

In March 2013, I submitted my application to Senator John McCain's Federal Judicial Evaluation Committee (FJEC) and provided a copy of my resume and letter of interest to the offices of Senator Jeff Flake and Congressman Ed Pastor. On June 8, 2013, I appeared for an interview with the FJEC in Phoenix, Arizona. On June 28, 2013, I was notified by the FJEC Chairman that I had been selected as a potential nominee to the United States District Court for the District of Arizona. Since June 30, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 7, 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
LOGAN, STEVEN P.	U.S. DISTRICT COURT - DISTRICT OF ARIZONA - PHOENIX	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**
UNITED STATES DISTRICT JUDGE	☑ Nomination Date 09/19/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 09/17/2013
7. Chambers or Office Address		
STEVEN P. LOGAN UNITED STATES DISTRICT COURT - DISTRICT OF ARIZONA 401 W. WASHINGTON STREET PHOENIX, ARIZONA 85003-2120		

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 6	Name of Person Reporting LOGAN, STEVEN P.	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.		
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 LOGAN, STEVEN P.	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 LOGAN, STEVEN P.	Date of Report 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)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
1. Janus Mercury Fund	A	Dividend	K	T	Exempt				
2. Wells Fargo Checking	A	Int./Div.	K	T					
3. Navy Federal Credit Union Checking	A	Int./Div.	J	T					
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
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 5 of 6	Name of Person Reporting LOGAN, STEVEN P.	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 LOGAN, STEVEN P.	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/ STEVEN P. LOGAN

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		21	053	Notes payable to banks-secured (auto)			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		17	937	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		215	174
Real estate owned – personal residence		470	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		95	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		489	964				
				Total liabilities		215	174
				Net Worth		878	780
Total Assets	1	093	954	Total liabilities and net worth	1	093	954
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 Mercury Fund	$ 17,937
Total Listed Securities	$ 17,937

AFFIDAVIT

I, STEVEN PAUL LOGAN, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

20 SEPT. 2013 (DATE)

(NAME)

OFFICIAL SEAL
MARGARET S. EVERETTE
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Sept. 28, 2014

(NOTARY)

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
SANDRA DAY O'CONNOR UNITED STATES COURTHOUSE
401 WEST WASHINGTON STREET, SUITE 324
PHOENIX, ARIZONA 85003

CHAMBERS OF
STEVEN P. LOGAN
UNITED STATES MAGISTRATE JUDGE

TEL: (602) 322-7550
FAX: (602) 322-7559

January 6, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, District of Columbia 20510

Dear Mr. Chairman:

I have reviewed the Questionnaire for Judicial Nominees submitted to the United States Senate Committee on the Judiciary in connection with my nomination on September 19, 2013, for the position of United District Court Judge for the District of Arizona. Incorporating the following, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Question 12(d):

Since my previously-submitted Questionnaire, I have given the following speeches or talks:

> November 2, 2013: Guest of Honor, 238th Marine Corps Birthday Celebration, Tempe, Arizona. I offered celebratory remarks during the banquet ceremony. I have no notes, transcripts, or recordings of my remarks. The sponsorship organization was the Marine Corps Birthday Luncheon Committee, which does not have a physical address.
>
> November 1, 2013: I presided over a naturalization ceremony in Phoenix, Arizona. During the ceremony, I offered congratulatory remarks. I have no transcripts, notes or recordings of my congratulatory remarks. The ceremony was held at the Sandra Day O'Connor Courthouse, United States District Court, located at 401 West Washington Street, Phoenix, Arizona 85003.

Question 13(a):

Since my previously-submitted Questionnaire, I have presided, by consent of the parties, over two more civil cases that have gone to judgment. Also since that time, I have presided over guilty plea and sentencing proceedings in approximately two Class A misdemeanor criminal cases, and approximately 16 Class B misdemeanor criminal cases that have gone to judgment.

Question 13(b):

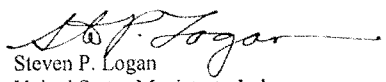
I have attached a list of opinions I have issued since my previously-submitted Questionnaire.

Question 14:

Since my previously-submitted Questionnaire, I recused myself *sua sponte* because of a personal conflict with the law firm representing the plaintiff in *Clark v. Colvin*, No. CV-13-01939-PHX-BSB (CM/ECF) (D. Ariz.).

I am also forwarding an updated net worth statement and financial disclosure report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Steven P. Logan
United States Magistrate Judge

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, District of Columbia 20510

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

Question 13b (reported written opinion citations):

Reidhead v Meyers, No. CV-07-08027-PCT-GMS (CM/ECF), 2013 U.S. Dist. LEXIS 165747 (D. Ariz. October 25, 2013).

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
LOGAN, STEVEN P.	U.S. DISTRICT COURT - DISTRICT OF ARIZONA - PHOENIX	1/6/2014
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 1/6/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/15/2013
7. Chambers or Office Address		
STEVEN P. LOGAN UNITED STATES DISTRICT COURT - DISTRICT OF ARIZONA 401 W. WASHINGTON STREET PHOENIX, ARIZONA 85003-2120		

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 6	Name of Person Reporting LOGAN, STEVEN P.	Date of Report 1/6/2014

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.			
2.			
3.			
4.			

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting	Date of Report
	LOGAN, STEVEN P.	1/6/2014

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 LOGAN, STEVEN P.	Date of Report 1/6/2014

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. Janus Mercury Fund	A	Dividend	K	T	Exempt				
2. Wells Fargo Checking	A	Int./Div.	K	T					
3. Navy Federal Credit Union Checking	A	Int./Div.	J	T					
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
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	Date of Report
	LOGAN, STEVEN P.	1/6/2014

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting LOGAN, STEVEN P.	Date of Report 1/6/2014

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/ STEVEN P. LOGAN

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		32	724	Notes payable to banks-secured (auto)		17	888
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		19	906	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		210	320
Real estate owned – personal residence		470	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		95	000				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		492	817				
				Total liabilities		228	208
				Net Worth		882	239
Total Assets	1	110	447	Total liabilities and net worth	1	110	447
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 Mercury Fund	$ 19,906
Total Listed Securities	$ 19,906

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   John Joseph Tuchi

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

   United States District Court Judge for the District of Arizona

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 District of Arizona
   40 North Central Avenue, 12th Floor
   Phoenix, Arizona 85004

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

   1964; Colver, 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, Sandra Day O'Connor College of Law, Arizona State University;
   J.D. (*magna cum laude*), 1994

   1987 – 1989, Eller College of Business and Public Administration, University of Arizona;
   M.S., 1989

   1982 – 1987, West Virginia University College of Engineering; B.S., 1987

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

1998 – present
United States Attorney's Office for the District of Arizona
40 North Central Avenue, 12th Floor
Phoenix, Arizona 85004
United States Attorney (for the interim period between presidential appointees) (2009)
Chief Assistant United States Attorney (2012 – present)
Senior Litigation Counsel (2009 – 2012)
Tribal Liaison (2009 – 2012)
Criminal Chief (2006 – 2009)
Deputy Appellate Chief (2005 – 2006)
Assistant United States Attorney (1998 – 2009, 2010 – present)

2001 – 2007
Sandra Day O'Connor College of Law, Arizona State University
Post Office Box 877906
Tempe, Arizona 85287
Adjunct Faculty Member

1995 – 1998, Summer 1993
Brown & Bain, P.A. (now Perkins Coie LLP)
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012
Associate (1995 – 1998)
Summer Associate (Summer 1993)

1994 – 1995
United States Court of Appeals for the Ninth Circuit
Sandra Day O'Connor United States Courthouse
401 West Washington Street
Phoenix, Arizona 85003
Law Clerk to the Honorable William C. Canby, Jr.

1992
Warner Angle Roper & Hallam PC (now Warner Angle Hallam Jackson & Formanek PLC)
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Summer Law Clerk

1989 – 1991
Arthur Andersen Consulting PA (now Accenture)
3200 East Camelback Road, Suite 245
Phoenix, Arizona 85018
Senior Consultant (1991)
Staff Consultant (1989 – 1990)

1987 – 1989
Hughes Aircraft Company, Missile Systems Division (now Raytheon Corporation)
1151 East Hermans Road
Tucson, Arizona 85756
Project Engineer

Other Affiliations (uncompensated unless otherwise indicated):

2011 – present
Grand Canyon Council of Boy Scouts of America, Boy Scout Troop 401
2969 North Greenfield Road
Phoenix, Arizona 85016
Assistant Scoutmaster (2011 – present)
Eagle Scout Advisor (2012 – present)

1999 – present
Nueve Ltd. (compensated)
Reeder & Shuman
256 North High Street
P.O. Box 842
Morgantown, West Virginia 26507
5.5% Shareholder

2006 – 2010
Grand Canyon Council of Boy Scouts of America, Cub Scout Troop 107
2969 North Greenfield Road
Phoenix, Arizona 85016
Leadership Committee (2006 – 2010)
Cubmaster (2007 – 2010)

2001 – 2008
Saint Thomas More Society
c/o Roman Catholic Diocese of Phoenix
400 East Monroe Street
Phoenix, Arizona 85004
Director (2001 – 2008)
Red Mass Chair (2005)

1995 – 1999
Arizona State University College of Law Alumni Association
Post Office Box 877906
Tempe, Arizona 85287
Director (1995 – 1999)
Board Chairman (1996 – 1998)

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

   I have not served in any branch of the United States Military. I did timely register for the selective service.

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

   Inter-Tribal Council of Arizona, Indian Country Intelligence Network, Exceptional Service Award (2011)

   United States Department of Education, Office of Inspector General, Award of Special Appreciation (2011)

   United States Department of Justice, Executive Office for United States Attorneys, Director's Award for Outstanding Performance in Indian Country (2010)

   United States Postal Inspection Service, Exceptional Performance Award (2010)

   United States Department of Agriculture, Office of Inspector General, Special Commendation (2008)

   Arizona State University College of Law, Armstrong Award Winner, elected by the faculty as the Outstanding Graduate of the Class of 1994 (1994)

   Arizona State Law Journal, Editor-in-Chief (1993 – 1994)

   Arizona State University College of Law, Sandra Day O'Connor Award Winner for Outstanding Student in Constitutional Law Courses (1994)

   Arizona State University College of Law, Order of the Coif (1994)

   Arizona State University College of Law, AmJur Book Awards for Highest Grades in Constitutional Law I, Constitutional Law II, Federal Jurisdiction and Business Associations II Courses (1992 – 1994)

   University of Arizona Eller College of Business and Public Administration, Howard Hughes Graduate Fellowship Award (1987 – 1989)

   West Virginia University College of Engineering, Department of Industrial Engineering, Robert D. Fowler Award for the Outstanding Senior Engineering Design Project (1987)

West Virginia University, Honors Program Scholar (1982 – 1986)

West Virginia University, National Merit Scholarship (1982 – 1986)

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

Arizona State, Tribal and Federal Court Forum (2010 – 2013)

Horace Rumpole American Inn of Court (1994 – 1998)

Los Abogados Hispanic Bar Association (2005 – present)

State Bar of Arizona Attorney Fee Arbitration Committee (1996 – 2006)

State Bar of Arizona Professionalism Committee (2001 – 2002)

Supreme Court of Arizona Attorney Regulation Advisory Committee (2011 – present)
Chair of Admissions Subcommittee (2011 – present)

Supreme Court of Arizona Committee on Character and Fitness (2006 – present)
Chair (2011 – present)

Supreme Court of Arizona Commission on Trial Court Appointments for Maricopa County (1999 – 2006)

United States District Court Local Rules Committee (2005 – present)
Chair of Criminal Rules Subcommittee (2008 – 2010)

United States Court of Appeals for the Ninth Circuit Committee on Jury Trial Improvement (2010 – 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.

Arizona, 1994

There has never been a lapse in my membership.

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

Supreme Court of Arizona, 1994
United States District Court for the District of Arizona, 1995
United States Court of Appeals for the Ninth Circuit, 1995

There have been no lapses in my membership.

11. **Memberships**:

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

Arizona State University Law Society (1995 – 1997, 1998 – 2009)

Grand Canyon Council of Boy Scouts of America, Boy Scout Troop 401 (2010 – present)
Parent Committee (2010 – present)
Assistant Scoutmaster (2011 – present)
Eagle Scout Advisor (2012 – present)

Grand Canyon Council of Boy Scouts of America, Cub Scout Pack 107 (2006 – 2010)
Leadership Committee (2006 – 2010)
Cubmaster (2007 – 2010)

Madison Futbol League (2008 – 2009)
Co-educational team soccer coach

Nueve Ltd. (1999 – present)
5.5% Shareholder

Phoenix Country Club (2009 – present)

Saint Francis Xavier Athletic Association (2005 – 2010)
Boys' and girls' soccer coach (2005 – 2010)
Girls' softball coach (2011 – present)

Saint Thomas More Society (2001 – 2008)
Director (2001 – 2008)
Red Mass Chair (2005)

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 understand that before my wife and I joined the Phoenix Country Club, it previously had maintained policies prohibiting women from using the golf course or an area of the clubhouse called "the Men's Grill" during certain days or hours of business. 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.

Creditors Take Heed: The Interpretation of Arizona's Community Property Management and Control Statute and its Effect on Partnership Debts, 25 Ariz. St. L. J. 695 (1993). Copy supplied.

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

Tribal Justice News—In Focus: District of Arizona, United States Department of Justice, February 15, 2013. Copy supplied.

Supreme Court of Arizona Attorney Regulation Advisory Committee Annual Report for 2013. Copy supplied.

Supreme Court of Arizona Attorney Regulation Advisory Committee Annual Report for 2012. Copy supplied.

United States District Court for the District of Arizona Local Rules Committee Annual Reports of Recommendations on proposed rule amendments for 2005 through 2012. Copies supplied.

2011 Arizona Indian Country Report, United States Attorney's Office for the District of Arizona, March 2012. 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.

From 2011 to the present, I have served on the Arizona Supreme Court's Attorney Regulation Advisory Committee. At those committee meetings, I have made statements relating to public policy on the issues of attorney admission and regulation in Arizona. The minutes for the following meetings at which I provided statements are:

April 11, 2013, Meeting. Minutes supplied.

January 10, 2013, Meeting. Minutes supplied.

November 1, 2012, Meeting. Minutes supplied.

October 3, 2012, Meeting. Minutes supplied.

September 7, 2012, Meeting. Minutes supplied.

April 19, 2012, Meeting. Minutes supplied.

March 19, 2012, Meeting. Minutes supplied.

December 12, 2011, Meeting. Minutes supplied.

October 7, 2011, Meeting. Minutes supplied.

June 29, 2011, Meeting. Minutes supplied.

September 24, 2012: Official statement to the Navajo Nation Council, Law and Order Committee, regarding a proposed criminal detainer system for defendants in Navajo custody who also have committed federal offenses. I have no notes, transcript or recording, but press coverage is supplied.

May 1, 2012: Letter to Chief Justice of Supreme Court of Arizona in my capacity as Chair of Character and Fitness Committee opposing rule changes to create a new class of admittee to the State Bar of Arizona. Copy supplied.

January 10, 2012: Petition to the Supreme Court of Arizona for a change to multiple Supreme Court rules affecting the conduct of written examinations and character and fitness determinations for bar applicants. Copy supplied.

From April 2010 to December 2012, I represented the United States Attorney's Office on the Arizona State, Tribal and Federal Court Forum, and advised the membership of relevant United States Attorney policy affecting Indian Country at quarterly meetings. Although I do not have personal copies of any minutes and the meetings were not public, in searching the Internet, I have discovered that the Arizona Court website published them. The minutes for the following forum meetings at which I provided policy statements are:

September 7, 2012, Meeting. Minutes supplied.

April 22, 2011, Meeting. Minutes supplied.

January 28, 2011, Meeting. Minutes supplied.

October 1, 2010, Meeting. Minutes supplied.

April 16, 2010, Meeting. Minutes supplied.

April 2, 2009: presentation to the Attorney General of Mexico, at the United States-Mexico Bi-National Conference on Firearms Trafficking, regarding evidentiary requirements in United States Courts to prove straw purchasing of firearms. Outline and memorandum on which presentation was based supplied.

February 22, 2000: testimony before Arizona State Senate Judiciary Committee during a hearing on my confirmation as a member of the Arizona Supreme Court Commission on Judicial Nominations. 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.

June 21, 2013: Panel Presenter, Tribal Law and Order Act and Violence Against Women Act Reauthorization, State Bar of Arizona Annual Convention, Arizona Biltmore, Phoenix, Arizona. I discussed the features and operation of both new laws in Indian Country. I have no notes, transcript or recording. The address for

the State Bar of Arizona is 4201 North 24th Street, Suite 100, Phoenix, Arizona 85016.

November 9, 2012: Speaker, United States Attorney Initiatives in Indian Country, Native American Family Preservation Coalition Annual Conference, Mesa, Arizona. I discussed Indian-Country-specific outreach and public safety initiatives in which the United States Attorney's office was engaged. I have no notes, transcript or recording. The Native American Family Preservation Coalition has no physical address

October 19, 2012: Presenter, Building Effective Partnerships with the United States Attorney's Office: the Arizona Example, Phoenix, Arizona (via Department of Justice Community Oriented Policing Services (COPS) Program webinar series). Video available at: http://www.youtube.com/watch?v=uUpTmPk0CNw.

August 17, 2012: Lecturer, Avoiding Prosecutorial Misconduct, Arizona Tribal Prosecutors' Association, Scottsdale, Arizona. I presented the current Ninth Circuit law on commonly reviewed prosecutorial misconduct. I have no notes, transcript or recording. The address for the Arizona Tribal Prosecutors' Association is 10005 East Osborn Road, Scottsdale, Arizona 85256, Attention of President Alane Breland.

August 2, 2012: Speaker, District of Arizona Public Safety Initiatives with Tribal Leadership, United States Attorney's Annual Tribal Leadership Consultation, Talking Stick Conference Center, Salt River Pima-Maricopa Indian Community, Arizona. PowerPoint supplied.

April 19, 2012: Panel Member, Identifying the Client and Conflicts for Government Lawyers, State Bar of Arizona CLE, Phoenix, Arizona. Video available for purchase at: http://www.legalspan.com/azbar/catalog.asp?UGUID=T20121125125419QCBHDJZ9J18&ItemID=20120517-314499-152708.

April 4-6, 2012: Instructor, Criminal Jurisdiction in Indian Country, Bureau of Indian Affairs Special Law Enforcement Commission Training, Hopland, California. PowerPoint supplied.

March 19-21, 2012: Instructor, Criminal Jurisdiction in Indian Country, Bureau of Indian Affairs Special Law Enforcement Commission Training, Catoosa, Oklahoma. I instructed tribal police officers seeking their federal commissions on the law of federal criminal jurisdiction in Indian Country and federal criminal procedure. I used the same PowerPoint in the April 4-6, 2012 events

March 7, 2012: Lecturer, Tribal Law and Order Act and Federal Prosecution of Violent Crime in Indian Country, Rogers College of Law, University of Arizona, Tucson, Arizona. Video available at: http://mediasite.law.arizona.edu/mediasite/Viewer/?peid=063edd8f76fc447b86c7ba0a8bf6e6ca1d.

October 17, 2011: Panel Presenter, Diversity in Merit Selection of Judges, State Bar of Arizona CLE, Phoenix, Arizona. Video supplied.

July 19, 2011: Lecturer, Federal Agent Criminal Discovery and Case Management, Inspector General of the United States Department of Education and her Inspector Corps, Washington, D.C. PowerPoint supplied.

April 21, 2011: Panel Presenter, Tribal Law and Order Act, Federal Bar Association, Sandra Day O'Connor Federal Courts Building, Phoenix, Arizona. I discussed the features and operation of the new law in Indian Country. I have no notes, transcript or recording. The address for the Federal Bar Association's Phoenix Chapter is 40 North Central Avenue, 12th Floor, Phoenix, Arizona 85004, attention Christina Wu Covault.

April 7, 2011: Presenter, Federal Treatment of Arizona's Medical Marijuana Statutory Scheme, Arizona Governor's Office of Health, Phoenix, Arizona. I presented on the United States Attorney's continued enforcement of the federal Controlled Substances Act in Indian Country after the State of Arizona enacted its medical marijuana statute. I have no notes, transcript or recording, but an agency summary is supplied. The address for the Arizona Governor's Office of Health is 1700 West Washington Street, Phoenix, Arizona 85007.

January 7, 2011: Presenter, the Tribal Law and Order Act, Inter-Tribal Council of Arizona, Phoenix, Arizona. PowerPoint supplied.

August 6, 2010: Presenter, Criminal Jurisdiction in Indian Country, Arizona Tribal Prosecutors' Association, United States Attorney's Office in Flagstaff, Arizona. PowerPoint supplied.

January 21, 2010: Panel Presenter, Annual Update of White Collar Criminal Issues, State Bar of Arizona CLE, Phoenix, Arizona. Video supplied.

December 10, 2009: Keynote Speaker, San Carlos Apache Tribal Police Department Annual Awards Dinner, Apache Gold Conference Center, San Carlos, Arizona. I discussed the challenges of policing large rural areas and United States Attorney initiatives to assist tribal police facing those challenges. I have no notes, transcript or recording. The address for the San Carlos Apache Tribal Police is Post Office Box 1360, San Carlos, Arizona 85550, attention Chief Alejandro Benally.

September 15, 2009: Speaker, United States Attorney's Four Corners Indian Country Conference on Law Enforcement, High Country Conference Center, Flagstaff, Arizona. Attendees included tribal law enforcement and victim services professionals. Outline and media coverage are supplied.

August 13, 2009: Speaker, Community Conference on Illegality of Straw Purchases of Firearms, Tucson Hilton East, Tucson, Arizona. Outline and media coverage are supplied.

April 11, 2008: Lecturer, Professional Responsibility and the Law of Lawyering, Arizona State University Sandra Day O'Connor College of Law, Tempe, Arizona. Outline supplied and video available at: http://www.law.asu.edu/currentstudents/CurrentStudents/BarInformation/BarPrepVideos08.aspx.

June 20, 2007: Lecturer, Federal Criminal Procedure for Tribal Law Enforcement Officers, United States Attorney's Office, Phoenix, Arizona. I discussed the life cycle of a federal criminal case and the procedural protections afforded to defendants as set forth in the Federal Rules of Criminal Procedure and related law. I used the same PowerPoint in the April 4-6, 2012 events.

June 15, 2006: Panel Presenter, Merit Selection of Judges, State Bar of Arizona Annual Convention, Arizona Biltmore, Phoenix, Arizona. I discussed my experience on one of the state judicial selection commissions in applying Arizona's laws on merit selection. I have no notes, transcript or recording. The address for the State Bar of Arizona is 4201 North 24th Street, Suite 100, Phoenix, Arizona 85016.

April 21, 2006: Lecturer, Legal Ethics and Professionalism, State Bar of Arizona CLE Program, Phoenix, Arizona. I discussed the Arizona Rules of Professional Responsibility and the State Bar of Arizona's Professionalism requirements. I have no notes, transcript or recording. The address for the State Bar of Arizona is 4201 North 24th Street, Suite 100, Phoenix, Arizona 85016.

November 2001 – February 2002: Panelist, Criminal Sentencing Workshop, Arizona State University College of Law, Tempe, Arizona. I discussed deterrent, retributive, restorative and rehabilitative aspects of criminal sentencing decisions at monthly conference meetings. I have no notes, transcripts or recordings. The address for the College of Law is P.O. Box 877906, Tempe, Arizona 85287.

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.

Mihio Manus, *U.S. Attorney Visits Hopi Tribal Council to Foster Continuing Relationship*, The Hopi Tutuveni, Feb. 5, 2013. Copy supplied.

Maryann Batlle, *Hopi Criminal Code Overhaul Could "Open the Door" to Lower Crime, Fewer Social Ills*, Cronkite News Services, Sept. 7, 2012. Copy supplied (reprinted in multiple outlets under different titles).

Felicia Fonseca, *Ariz. Tribe Boosts Jail Time for Reservation Crime*, The Associated Press, Sept. 5, 2012. Copy supplied (reprinted in multiple outlets).

Hopi Encouraged by Federal Vow to Combat Crime in Indian Country, Navajo-Hopi Observer, Jan. 28, 2010. Copy supplied.

Mike Sunnucks, *Border Crimes Distract Prosecutors from White Collar Fraud*, Business Journal (Phoenix), Oct. 15, 2009. Copy supplied.

Paul Elias, *High Court's Calif. Pot Ruling Also Outlaws Homemade Machine Guns*, Associated Press, Jul. 1, 2006. Copy supplied.

Amanda Lee Myers, *Businessman Appeals Fraud Conviction*, Scottsdale Tribune, Dec. 20, 2005. Copy supplied.

Dennis Wagner, *Man Convicted of Fraud in Biotech Scam; Investors Taken for $2.5 Million, Prosecutor Says*, Arizona Republic, Oct. 8, 2003. Copy supplied.

U.S. Alleges Home Mailing Plan is Fraud, Organized Crime Digest, Nov. 1, 2002. Copy supplied.

Press Releases:

From November 2011 to the present, I have served as Chair of the Supreme Court of Arizona's Committee on Character and Fitness. During that tenure the Court periodically issued press releases in my name, although I did not personally prepare the releases:

> Press release, *Results of the July 2013 Uniform Bar Examination*, Supreme Court of Arizona's Committee on Character and Fitness, October 11, 2013. Copy supplied.
>
> Press release, *Results of the July 2012 Uniform Bar Examination*, Supreme Court of Arizona's Committee on Character and Fitness, October 12, 2012. Copy supplied.
>
> Press release, *Results of the February 2012 Uniform Bar Examination*, Supreme Court of Arizona's Committee on Character and Fitness, May 11, 2012. Copy supplied.

Press release, *Charges Announced in 1973 Murder of Tucson Woman*, United States Attorney's Office for the District of Arizona, Aug. 28, 2009. Copy supplied.

Press release, *Mexican Citizen Sentenced to 22 Years for His Role in a Violent Peoria, Arizona Drop House*, United States Attorney's Office for the District of Arizona, Aug. 19, 2009. Copy supplied.

Press release, *ATF, U.S. Attorney, Arizona Attorney General and Firearms Industry Join Forces to Stop Illegal Purchases of Firearms in Tucson*, United States Attorney's Office for the District of Arizona, Aug. 13, 2009. Copy supplied.

Press release, *Four Sentenced for Conspiracy and Money Laundering as Part of Large scale Marijuana Trafficking Organization*, U.S. Justice Department Drug Enforcement Administration Phoenix Field Office, Aug. 12, 2009. Copy supplied.

Press release, *Arizona Man Sentenced to Five Years in Prison for Receipt of Child Pornography*, United States Department of Justice and United States Attorney's Office for the District of Arizona, August 12, 2009. Copy supplied.

Press Conferences:

August 13, 2009: Press conference announcing the "Don't Lie for the Other Guy" Campaign in Tucson, Arizona. No transcript or recording of the event exists. Related press release supplied above.

October 30, 2007: Press conference announcing the results of Hurricane Katrina Assistance Fraud sweep. Press coverage supplied.

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

I have not held any judicial office.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

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

I have not held any judicial office.

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

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

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

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

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

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

In 1999 Arizona Governor Jane Dee Hull appointed me to serve as Commissioner on the Supreme Court of Arizona Merit Selection Commission for Trial Court Appointments in Maricopa County. I served from December 1999 to February 2006.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have never held office in or rendered services, whether compensated or not, to any political party or election committee. I have never held a position or played a role in a political campaign.

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

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

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

From 1994 to 1995, I served as a law clerk to the Honorable William C. Canby, Jr., Circuit Judge of the United States Court of Appeals for the Ninth Circuit.

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

I have never practiced law alone.

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

1995 – 1998
Brown & Bain, P.A. (now Perkins Coie LLP)
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012
Associate (1995 – 1998)

1998 – present
United States Attorney's Office for the District of Arizona
40 North Central Avenue, 12th Floor
Phoenix, Arizona 85004
United States Attorney (for the interim period between presidential appointees) (2009)
Chief Assistant United States Attorney (2012 – present)
Senior Litigation Counsel (2009 – 2012)
Tribal Liaison (2009 – 2012)
Criminal Chief (2006 – 2009)
Deputy Appellate Chief (2005 – 2006)
Assistant United States Attorney (1998 – 2009, 2010 – present)

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

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

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, as a private civil attorney in a large firm, I practiced in intellectual property litigation, complex commercial litigation and appellate law. I also focused on government and election law. During my time in private civil practice I tried matters to a jury, the bench and an arbitrator, both as sole counsel and as co-counsel.

From 1998 until 2001, as a new prosecutor, I handled immigration, firearms and drug trafficking cases involving the litigation of Title III electronic surveillance, the use of cooperating defendants, professional confidential informants and expert testimony on the modus operandi of

drug trafficking organizations. Trial matters ranged from single-defendant drug courier cases to organizational conspiracy charges.

From 2001 through 2005, I prosecuted in the office's White Collar Bureau, specializing in complex investment fraud and computer crime, investigating several offenses with an overseas nexus. I developed experience obtaining evidence and testimony in foreign jurisdictions, and became the District's Mutual Legal Assistance Treaty (MLAT) Coordinator, as well as our Computer and Telecommunications Crime Coordinator. In these capacities I advised all AUSAs on law, policy, methods and protocol for obtaining electronic evidence and evidence from foreign jurisdictions. My trial experience in this assignment ranged from low-level federal employee corruption cases that took a few days to try to bankruptcy fraud and offshore investment fraud matters that lasted several weeks to more than a month.

From mid-2005 through 2006, I served as the Appellate Deputy Chief, supervising the Phoenix Appellate Section and editing the appellate work product of all line AUSAs in the Civil and Criminal Divisions for the Phoenix, Yuma and Flagstaff offices. I also wrote appellate briefs and handled oral arguments before the Ninth Circuit. During this time I became the District's Professional Responsibility Officer, responsible for training all AUSAs on their ethical obligations and advising them on issues as they arose.

From late 2006 to 2009, I was Chief of the Criminal Division, responsible for the supervision of every AUSA in the Criminal Division and every criminal case filed in the Phoenix, Flagstaff and Yuma offices. I developed standards of practice, ran our attorney training program, drafted district policies and procedures consistent with broad Department-wide procedures, reviewed and approved all charging and non-guideline plea decisions, and staffed cases. For six months of this time in late 2008 and early 2009, I also served as Acting First Assistant United States Attorney, supervising all aspects of the office's operations and personnel issues in all our locations. I did not maintain a caseload during this time.

On July 31, 2009, I was appointed by the Attorney General to serve as United States Attorney for the interim period between presidential appointees. I managed and represented the District in that capacity until the Senate confirmation of the President's nominee for United States Attorney in mid-September 2009.

From November 2009 through December 2012, I served as Senior Litigation Counsel and Tribal Liaison for the District. As Senior Litigation Counsel, I was responsible for the development of all

District-wide Criminal Division policies, and the training of all AUSAs on those policies, including the Department's and the District's new criminal discovery and disclosure policies. I also was tasked with training every federal agent in the district who might act as case agent or witness in federal cases on the government's disclosure obligations under the law and Department policy. As Tribal Liaison I formulated and delivered programs to improve the success of criminal investigations and prosecutions in Indian Country. I trained tribal and federal law enforcement on substantive law, procedure, evidentiary requirements and investigative practices that would meet federal prosecution standards, and I evaluated and revised federal practices that limited our effectiveness. I also was responsible for developing and maintaining working relationships with the elected leaders, police chiefs, judges and prosecutors of the 22 tribes in Arizona.

In January 2013 I became Chief Assistant United States Attorney, where I presently manage the civil and criminal personnel and operations in our Phoenix, Flagstaff and Yuma offices and represent the United States Attorney in dealings with our partner agencies, the federal judges and the public. I continue to serve as the Professional Responsibility Officer for all Assistant United States Attorneys in the District and in that capacity I provide legal ethics advice and counseling on a daily basis.

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

From 1995 to 1998, my typical clients included large technology firms and smaller entrepreneurs and I specialized in patent and commercial litigation, as well as some securities transactional law. The firm also assigned me work on election law matters for individual and organizational clients.

Since 1998, my client has been the United States Government and the people it serves. During that time, I have specialized in the substantive criminal law areas of fraud and computer crime, in federal Indian law, in professional responsibility and the law of lawyering, and in criminal discovery.

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 1995 through early 2007, almost one hundred percent of my practice was in litigation, and I would appear daily in magistrate court and district court from the time I joined the United States Attorney's Office in 1998 until I began managing the office's Appellate Section. Since 2007 my court appearances have been less

frequent, as I have spent the great majority of my time managing office operations or training and mentoring other prosecutors.

i. Indicate the percentage of your practice in:
   1. federal courts: 95%
   2. state courts of record: 5%
   3. other courts: 0%
   4. administrative agencies: 0%

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

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

I have tried approximately twelve matters to conclusion. I was associate counsel on two of those matters and chief counsel or sole counsel on the remainder.

i. What percentage of these trials were:
   1. jury: 92%
   2. non-jury: 8%

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. Taylor*, Docket Number 04-CR-00809-PHX-NVW (District of Arizona 2004 – 2008), Honorable Neil V. Wake presiding; 2007 WL 2087149 (9th Cir. July 19, 2007).

This case involved a bankruptcy fraud scheme by a businessman. Defendant repeatedly filed for Chapter 7 protection to discharge his debts and those of his sole proprietorship, repeatedly altering the name under which he filed and never acknowledging his prior petitions. Defendant also concealed several hundred thousand dollars in assets from creditors and the bankruptcy court. I represented the United States in this matter, substituting on along with co-counsel in early 2005. Co-counsel and I prepared and tried the matter to a jury during the first two weeks of May 2005, after which defendant was found guilty of nine counts of bankruptcy fraud. I briefed the appeal, after which the Circuit Court affirmed six counts of conviction and reversed on three counts, under Ninth Circuit Docket Number CA 05-10822. I remained on the case until finality in 2008.

Defendant was represented at trial by Cameron A. Morgan, 4295 North 75th Street, Scottsdale, AZ 85251; (480) 990-9507.

My co-counsel on this matter was Assistant United States Attorney John R. Lopez, 40 North Central Avenue, 12th Floor, Phoenix, AZ 85004; (602) 514-7528.

2. *United States v. Hankins*, 04-CR-00372-PHX-SRB (District of Arizona 2004 – 2006), Honorable Susan R. Bolton presiding.

This case involved the theft and subsequent sale of over one million rounds of ammunition by associates of a nationwide criminal gang. I charged the defendant with possessing stolen ammunition in April 2004, and prepared and tried the case to a jury over three days in January 2005 with co-counsel. After the jury deadlocked and the key cooperating witness passed away, the defendant entered a felony plea to being a drug addict in possession of firearms and ammunition. I represented the United States in this matter from 2004 to October 2006.

Defendant was represented at trial by Michael V. Black, 3219 East Camelback Road, Suite 446, Phoenix, AZ 85018; (602) 265-7200.

My co-counsel at trial was Assistant United States Attorney William C. Solomon, 40 North Central Avenue, 12th Floor, Phoenix, AZ 85004; (602) 514-7547.

3. *United States v. Rainey*, 04-CR-00227-PHX-NVW (District of Arizona 2004 – 2005), Honorable Neil V. Wake presiding.

This matter involved the theft from a secured United States Department of Interior facility of sensitive electronic equipment that was on loan from the Department of Defense and whose loss raised national security implications. Within a day of learning of the theft, federal agents had identified one of the unique stolen

components being offered for sale on eBay. I came into the matter with the task of tracking the stolen equipment from an eBay listing to a physical location as fast as possible. Within 18 hours, through a combination of court orders for electronically stored records and working with counsel for internet service providers, the investigation traced the item from a fictitious eBay seller account to a fictitious Hotmail account to a concrete Cox Communications internet service subscriber to a residential address. I then obtained a search warrant for the house, where all of the stolen sensitive items were recovered. Defendant was charged with theft of government property and conspiracy and entered a guilty plea. I represented the United States on this matter from its inception in January 2004 to finality in 2005.

Defendant was represented by Baltazar J. Iniguez, 3106 North 16th Street, Phoenix, AZ 85016; (602) 285-5688.

4. *United States v. Coleman*, 02-CR-00487-PHX-EHC (District of Arizona 2002 – 2005), Honorable Earl H. Carroll presiding.

This matter involved the systematic defrauding of the Combined Federal Campaign for Arizona—the vehicle through which federal employees make their contributions to recognized charitable organizations—by its executive director. Defendant provided false reports to the campaign board and falsified co-signatures on campaign accounts and lines of credit to divert to his own use nearly $130,000 in federal employee charitable contributions. While investigating the defendant's accounting, the prosecution team discovered that the defendant had at the same time defrauded the United States Small Business Administration into issuing him a $460,000 loan for a business he did not have. Defendant pleaded guilty to theft of government property and false statements and was sentenced to thirty-three months in prison. I represented the United States in this matter from charging in May of 2002 through finality in May of 2005.

Defendant was represented by Gabriel Valdez, Jr., 337 North Fourth Avenue, Phoenix, AZ 85003; (602) 254-2010.

5. *United States v. Sanabria*, Docket Number 01-CR-01135-PHX-FJM (District of Arizona 2001 – 2003), Honorable Frederick J. Martone presiding; 2003 WL 21949805 (9th Cir. August 12, 2003).

This matter involved theft by a United States Postal Service facility manager of tens of thousands of dollars from the facility under her management. The defendant scheduled other employees to work in other parts of the facility so she could be alone with the registered items, and then falsified shipping and inventory records to lay blame on other employees. I substituted into the matter along with co-counsel in May 2002, several days before trial, when assigned counsel took ill. Co-counsel and I prepared the matter and executed a four-day trial, after which the jury convicted defendant on the sole count of the indictment. I helped draft the

appellate brief. On appeal, the Circuit Court affirmed the conviction in a memorandum disposition under Docket Number CA 02-10548. I remained on the matter until finality in late 2003.

Defendant was represented by James Sun Park, Park Law Office PLC, 2702 North Third Street, Suite 4005, Phoenix, AZ 85004; (602) 462-5700.

My co-counsel at trial was former Assistant United States Attorney Daniel R. Drake, now in private practice, at Drake Law PLC, 4340 East Indian School Road, Suite 21-113, Phoenix, AZ 85018; (602) 881-5341.

6. *United States v. Hernandez, et al.*, 01-CR-00981-PHX-SRB (District of Arizona 2001 – 2004), Honorable Susan R. Bolton presiding.

This case involved a scheme to defraud an Arizona chemical processing company of nearly $800,000 via false and inflated supplier billing. Hernandez, a maintenance manager for the victim chemical company, reached agreements with five separate suppliers to submit orders for unnecessary supplies and services, and then approved the invoices for which no product had been shipped, in exchange for kickbacks of fifty percent of the false invoice totals. Over a seven year period, the ring collected a minimum of $791,500 for product the victim never received. Preparing the case involved the analysis and organization of voluminous documents. The suppliers all agreed to cooperate and provide testimony against Hernandez, who ultimately pleaded guilty on the eve of trial.

Lead defendant Hernandez was represented by Patricia Gitre, 1616 East Indian School Road, Phoenix, AZ 85016; (602) 254-3400.

Defendant Saltman was represented by Allan B. Bickart, 812 West Clubhouse Drive, Prescott, AZ 86303; (602) 255-0330.

Defendant Goldstein was represented by Jerry Y. Fong, 706 Cowper Street, Suite 203, San Francisco, CA 94301; (650) 322-6123.

Defendant White was represented by David Michael Cantor, One East Washington Street, Suite 1800, Phoenix, AZ 85004; (602) 307-0808.

Defendant Mattison was represented by Michael V. Black, 3219 East Camelback Road, Suite 446, Phoenix, AZ 85018; (602) 265-7200.

Defendant Wistar was represented by Thomas C. Foster, now deceased.

7. *United States v. Drizin*, Docket Number 00-CR-00857-PHX-SMM (District of Arizona 2000-2006), Honorable Stephen M. McNamee presiding; 2007 WL 1853978 (9th Cir. June 25, 2007).

The case involved a multi-million dollar investment fraud scheme. The defendant solicited victims to invest in an empty shell corporation he owned by promising the shell would imminently merge with a private firm that had developed an HIV-inhibiting drug. Defendant also represented that the merger was backed by wealthy European investors who had already invested millions, and he produced false documentation to that effect. In reality, there were no such investors, and defendant was using the banking and corporate secrecy laws of the British Channel Islands to conceal this fact from victims.

I represented the United States, substituting into the matter in early 2003 to prepare the case for trial. Through the use of Fed. R. Crim Pr. 15 and the Mutual Legal Assistance Treaty the United States has with the Isle of Guernsey, I compelled the appearance and testimony in a Guernsey court of a banker who refused to travel to the United States or give evidence voluntarily, and then introduced that video-recorded testimony at defendant's trial in Arizona. I prepared and served as lead counsel for the approximately four-week trial, after which defendant was convicted on multiple counts of wire fraud in late 2003. I briefed and argued the appeal, and defendant's conviction was affirmed in 2007, under Ninth Circuit Docket Number CA 05-10820.

Defendant Drizin was represented through trial and sentencing by Robert M. Ross, of Klass, Helman & Ross, 16133 Ventura Boulevard, Suite 1145, Encino, CA 91436; (818) 788-7007.

Defendant Drizin was represented on appeal by Glen T. Jonas, Jonas & Driscoll, LLP, 555 West Fifth Street, 31st Floor, Los Angeles, CA 90013; (213) 683-2033.

Co-defendant Kyle Gillman was represented by Bruce Feder, Feder Law Office PA, 2930 East Camelback Road, Suite 160, Phoenix, AZ 85016; (602) 257-0135.

My co-counsel at trial in this matter was Assistant United States Attorney Howard D. Sukenic, 40 North Central Avenue, 12th Floor, Phoenix, AZ 85004; (602) 514-7522.

8. *United States v. Duarte*, 99-CR-01053-PHX-SMM (District of Arizona 1999 – 2001), Honorable Stephen M. McNamee presiding; 2001 WL 1154631 (9th Cir. October 1, 2001).

The case involved a drug courier transporting nearly twenty-pound quantities of methamphetamine from Mexico through California and into Arizona. I substituted onto the matter in March 2000 with co-counsel to prepare and try the matter. The four-day jury trial centered on the government's expert testimony on the modus operandi of drug trafficking organizations to counter the defense that the defendant had no idea the methamphetamine was in his vehicle. The jury convicted the defendant of possession with intent to distribute methamphetamine. I briefed and argued the appeal, which the Circuit Court affirmed by memorandum

decision under docket number CA 00-10552. I represented the United States in this matter from April 2000 through finality in October 2001.

Defendant was represented at trial and on appeal by Gerald A. Williams, Federal Defender's Office, 850 West Adams Street, Suite 250, Phoenix, AZ 85007; (602) 372-2564.

My co-counsel on the trial in this matter was Assistant United States Attorney Soo C. Song, now of the United States Attorney's Office for the Western District of Pennsylvania, United States Post Office and Courthouse, 700 Grand Street, Suite 4000, Pittsburgh, PA 15219; (412) 894-7420.

9. *Hershey v. Conseco, Inc., et al.*, Docket Number CV 96-22453 (Superior Court of Arizona in and for Maricopa County 1996 – 1997), Honorable Rebecca S. Albrecht presiding.

This matter involved an attempt by a minority shareholder in an insurance company doing business nationwide, Capitol American Life Insurance Company, to use Arizona insurance regulations to hold up the $680 million acquisition of Capitol American by another national insurer, Conseco. Plaintiff Hershey sought an injunction in the Arizona courts against the closing of the acquisition on the ground that it would be "inequitable" to Capitol American shareholders, which would violate the Arizona Insurance Code. I was associate counsel for Capitol American. Lead counsel and I prepared for and executed a two-day bench trial on the injunction, where I was responsible for identifying and preparing affidavits or testimony from other substantial shareholders in Capitol American who would testify that the acquisition tender offer from Conseco was very favorable. Upon conclusion of the trial, the court denied the injunction, and the parties to the acquisition immediately filed the acquisition closing documents with all federal and state securities regulators and corporation commissions, obviating any appeal. Lead counsel and I represented Capitol American in this matter from January 17, 1997 until the conclusion of the trial on March 6, 1997 and the subsequent closing of the transaction that same day.

Counsel for Plaintiff Hershey was Andrew S. Gordon, now of Coppersmith, Schermer & Brockelman PLC, 2800 North Central Avenue, Suite 1200, Phoenix, AZ 85004; (602) 381-5460.

Counsel for Co-defendant Conseco, Inc., was S. David Childers, now of Kutak Rock LLP, 8601 north Scottsdale Road, Suite 300, Scottsdale, AZ 85253; (480) 429-4880.

My lead counsel was Daniel C. Barr, now of Perkins Coie LLP, 2901 North Central Avenue, Suite 2000, Phoenix, AZ 85001; (602) 351-8000.

10. *Cutler v. Crum*, Docket Number CV 95-13079 (Superior Court of Arizona in and for Maricopa County 1995 – 1996), Honorable Crane McClennen presiding; 186 Ariz. 351, 922 P.2d 316 (Ariz. App. 1996).

This case culminated in a defamation trial over whether defendant had impugned plaintiff's integrity as an attorney and a businessman. As associate counsel for plaintiff, I prepared most of the discovery and pleadings and examined witnesses at trial. I also briefed and argued the interlocutory appeal in this matter. After a three-day trial, the jury found plaintiff had been defamed. I represented the plaintiff from September 1995 through conclusion of the trial in 1996.

Defendant was represented by Paul F. Lazarus, now of Burch and Cracchiolo PA, 702 East Osborn Road, Suite 200, Phoenix, AZ 85014; (602) 234-8766.

My lead counsel was Daniel C. Barr, now of Perkins Coie LLP, 2901 North Central Avenue, Suite 2000, Phoenix, AZ 85001; (602) 351-8000.

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 2002 through 2004 I was responsible for addressing all requests for assistance in the District of Arizona by foreign nations' prosecution agencies made pursuant to Mutual Legal Assistance Treaties, or MLATs, that the United States had with those other sovereigns. The district court in Arizona appointed me as a Commissioner under the relevant MLATs in approximately thirty matters, and I exercised that authority to compel the production of testimony and evidence for use by foreign prosecutors, in a format that would be admissible in their tribunals.

Since 2004 I have been the Professional Responsibility Officer for an office of 170 lawyers, advising them and answering their questions on a daily basis on issues that could affect their ability to practice law. That experience, coupled with my years of teaching Professional Responsibility at the O'Connor College of Law, has created a facility with critical ethical issues, such as prohibited contacts with represented persons, the law of privilege, the extent of discovery obligations and the variations of prosecutorial misconduct.

In the past three years I have drafted the United States Attorney's Office Criminal Policy Manual, its Criminal Discovery Policy, its Electronic Discovery Policy and its Operation Plan for Public Safety in Indian Country. These lengthy exercises have allowed me to analyze and reflect deeply on how to develop quality policy and procedure for large legal organizations with high case volume that nonetheless must deliver careful consideration to

each individual matter, to ensure rights are observed in every case.

As Tribal Liaison I advised prosecutors and tribal government officials on the complex law of Indian Country jurisdiction, and applied that knowledge to resolving longstanding issues relevant to several of Arizona's tribal governments.

Finally, in my work as Chair of the Arizona Supreme Court's Committee on Character and Fitness and its Attorney Regulation Advisory Committee, I have worked to improve substantially the function of evaluating applicants for admission to the practice of law in Arizona, balancing the need to protect clients, the public and the judicial system from unfit practitioners, on the one hand, with the need to be fair and provide due process to every applicant, no matter what load the system may bear.

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

    In the Fall 2001 academic semester, I taught the Business Associations I course at the Arizona State University College of Law (now the O'Connor College of Law). The course covered the creation, governance, liabilities, dissolution and winding up of partnerships and limited liability companies. I no longer have a copy of the syllabus for the course.

    From 2002 through 2007, I taught the required Professional Responsibility course a total of six semesters at the O'Connor College of Law at Arizona State University. The course covered the duties owed by attorneys and their agents to clients, the court, other counsel and third persons under the American Bar Association Model Rules of Professional Responsibility, as well as the law of privilege. I no longer 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, stock, options, uncompleted contracts or other future benefits that I expect to derive from previous business relationships or any other sources.

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 commitments or agreements to pursue outside employment, with or

without compensation. I currently serve on the Arizona Supreme Court's Attorney Regulation Advisory Committee, and since the beginning of 2012, as Chair of the Admissions Subcommittee, I have managed a comprehensive review of the current attorney admissions process. My Subcommittee is tasked with creating a complete written recommendation for a new applicant evaluation and admission process for Arizona. The information gathering process will conclude in November 2013 and final written recommendations are expected to be transmitted to the Supreme Court by Summer 2014. I would like to see this process through to completion and would consult with the Administrative Office of the Courts and the applicable judicial canons and the Code of Conduct for United States Judges to determine whether such volunteer work would in any way present a conflict of interest or the appearance thereof. If it did, I would resign from the relevant Arizona Supreme Court Committees and end my involvement with the review and recommendation process.

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 form.

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

    Please see the attached financial net worth statement.

24. **Potential Conflicts of Interest**:

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

       Because all criminal and civil matters currently pending in the Phoenix Division of the United States Attorney's Office are under my supervision I would recuse from those cases. I am not aware of any other person or entity with whom I have a personal, financial or professional relationship that is likely to present a conflict of interest.

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

       To avoid any real or potential conflict of interest, I would consult the rules and decisions addressing what constitutes a conflict of interest, including 28 U.S.C. Section 455, Canon 3 of the Code of Judicial Conduct for United States Judges, and

any and all other laws, rules, and practices governing such circumstances. If I had any uncertainty about a potential conflict issue I would consult with my fellow judges and or others designated by the court to advise on such 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.

During my years in private practice, from 1995 to 1998, the law firm for which I worked was very active in pro bono legal representation of indigent individuals and not-for-profit organizations serving the poor and the public interest, and the firm provided several of those opportunities to me. I performed legal research and writing on a capital habeas matter and represented an indigent client in a consumer fraud matter involving the purchase of a used car.

During my time at the United States Attorney's Office from 1998 to the present, Department of Justice policies and ethical rules have prohibited my direct representation of indigent clients, so I have directed my pro bono service toward programs improving the justice system and the delivery of quality legal services. From 1999 to 2006 I served on the Supreme Court Merit Selection Commission for Trial Court Appointments, recruiting, evaluating and nominating to the Governor judges of the Superior Court bench for Maricopa County, one of the largest state trial benches in the United States. While on the Commission I participated in the selection of 43 superior court judges.

Since 2006, I have served on the Arizona Supreme Court's Committee on Character and Fitness, which evaluates the suitability of every applicant for admission to the State Bar of Arizona. Each Committee member reads the character reports of assigned applicants and participates in at least one formal applicant hearing and several informal hearings per month. Since 2011, I have served as Chair of that committee, where I rule on procedural and evidentiary motions made by applicants' counsel and preside over all formal hearings.

Since 2011, I have also served on the Arizona Supreme Court's Attorney Regulation Advisory Committee, where as Chair of the Admissions Subcommittee I am responsible for a systemic review of, and final recommendations to modernize, Arizona's process for evaluating applicants to the practice of law.

I have also volunteered outside of the legal community. From 1994 to 1998, my wife and I volunteered through the Tempe Cares Program to work shifts on local Habitat for Humanity build sites. Finally, my family and I have been regular volunteers preparing and serving meals at the Saint Vincent de Paul shelter and preparing food boxes at the Interfaith Missions food pantry in Phoenix since 2006 and 2011, respectively. Either through our associations with Boy Scouts, Boys' Team Charity or our children's school service organization, we currently serve about one shift a month as a family.

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 8, 2013, I submitted an application and cover letter to Senator John McCain's Federal Judicial Evaluation Committee. In April 2013, I sat for an interview in Phoenix, Arizona, with a member of this Committee, and on June 8, 2013, I sat for an interview with the entire Committee in Phoenix, Arizona. On June 28, 2013, the Chairman of that Committee advised me that Senator McCain was submitting my name to the President for his consideration. Since June 28, 2013, I have been in contact with officials from the Office of Legal Policy in the Department of Justice. On August 28, 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
Tuchi, John J.	United States District Court - District of Arizona	09/19/2013
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 09/19/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2012 to 09/17/2013
7. Chambers or Office Address United States Attorney's Office 40 North Central Avenue, 12th Floor Phoenix, Arizona 85004		

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 6	Name of Person Reporting Tuchi, John J.	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	Superior Court of Arizona in and for Maricopa County - salary
2.	2013	Superior Court of Arizona in and for Maricopa County - salary
3.		
4.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Tuchi, John J.	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 Tuchi, John J.	Date of Report 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)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
1. Vanguard Windsor II Fund (IRA)	A	Dividend	J	T					
2. Vanguard Windsor II Fund	A	Dividend	J	T					
3. Columbia Management Global Dividend Opportunity Fund Z	A	Dividend	J	T					
4. Bank of America Accounts		None	J	T					
5. Nueve Ltd.	C	Distribution	J	W					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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 Tuchi, John J.	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 Tuchi, John J.	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/ **John J. Tuchi**

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		13	059	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds		8	200	Notes payable to banks-unsecured			
Listed securities – see schedule		13	802	Notes payable to relatives		44	321
Unlisted securities		15	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		370	626
Real estate owned – personal residence		600	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		12	750				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		330	162				
				Total liabilities		414	947
				Net Worth		578	026
Total Assets		992	973	Total liabilities and net worth		992	973
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	
Columbia Global Dividend Opportunity Fund	$ 5,464
Vanguard Windsor II Fund	8,338
Total Listed Securities	$ 13,802
Unlisted Securities	
Nueve LTD	$ 15,000
Total Unlisted Securities	$ 15,000

I, JOHN JOSEPH TUCHI, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

SEP 23, 2013
(DATE)

J J Tuchi
(NAME)

VIVIANA M. MARTINEZ
Notary Public - Arizona
Maricopa County
My Commission Expires
July 4, 2016

Viviana M Martinez
(NOTARY)

40 North Central Avenue, 12th Floor
Phoenix, Arizona 85004
January 6, 2014

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

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on September 19, 2013, to be a United States District Court Judge for the District of Arizona. I certify that the information contained in that document is and remains, to the best of my knowledge, true and accurate.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

John J. Tuchi

Cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

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
Tuchi, John J.	United States District Court - District of Arizona	01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
United States District Judge - Nominee	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/27/2013
7. Chambers or Office Address		
United States Attorney's Office 40 North Central Avenue, 12th Floor Phoenix, Arizona 85004		

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 6	Name of Person Reporting Tuchi, John J.	Date of Report 01/06/2014

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.	2013	Superior Court of Arizona in and for Maricopa County - salary
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 Tuchi, John J.	Date of Report 01/06/2014

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 Tuchi, John J.	Date of Report 01/06/2014

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. Vanguard Windsor II Fund (IRA)	A	Dividend	J	T					
2. Vanguard Windsor II Fund	A	Dividend	J	T					
3. Columbia Management Global Dividend Opportunity Fund Z	A	Dividend	J	T					
4. Bank of America Accounts		None	J	T					
5. Nueve Ltd.	C	Distribution	J	W					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market

3. Value Method Codes (See Column C2)
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Tuchi, John J.	Date of Report 01/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Tuchi, John J.	Date of Report 01/06/2014

IX. CERTIFICATION.

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

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

Signature: **s/ John J. Tuchi**

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		17	517	Notes payable to banks-secured			
U.S. Government securities-Series EE bonds		8	200	Notes payable to banks-unsecured			
Listed securities – see schedule		14	764	Notes payable to relatives		41	424
Unlisted securities		15	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		369	099
Real estate owned – personal residence		600	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		12	250				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		332	219				
				Total liabilities		410	523
				Net Worth		589	427
Total Assets		999	950	Total liabilities and net worth		999	950
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	
Columbia Global Dividend Opportunity Fund	$ 5,785
Vanguard Windsor II Fund	8,979
Total Listed Securities	$ 14,764
Unlisted Securities	
Nueve LTD	$ 15,000
Total Unlisted Securities	$ 15,000

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Diane Joyce Humetewa
   Diane Killigrew
   Diane Joyce Juarez

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

   United States District Judge for the District of Arizona

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

   Arizona State University
   Fulton Center 410
   300 East University Drive
   P.O. Box 877705
   Tempe, Arizona 85287

   Residence: Phoenix, Arizona

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

   1964; Phoenix, Arizona

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

   1990 – 1993 Arizona State University College of Law; J.D., 1993
   1985 – 1987 Arizona State University; B.S., 1987
   1982 – 1985 Phoenix College; A.A.S., 1985

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

2011 – present
Arizona State University
Fulton Center 410
300 East University Drive
P.O. Box 877705
Tempe, Arizona 85287
Special Advisor to the President (2011 – present)
Special Counsel, Office of General Counsel (2011 – present)
Professor of Practice, Sandra Day O'Connor College of Law (2011 – present)

2009 – 2011
Squire, Sanders & Dempsey (US) LLP
One East Washington Street, Suite 2700
Phoenix, Arizona 85004
Of Counsel and Principal

August – September 2009
The Hopi Tribe
Hopi Tribal Prosecutor's Office
P. O. Box 306
Keams Canyon, Arizona 86034
Acting Chief Prosecutor

1998 – 2009
United States Attorney's Office, District of Arizona
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
United States Attorney (2007 – 2009)
Senior Litigation Counsel (2001 – 2007)
Assistant U.S. Attorney (1998 – 2007)

2002 – 2007
The Hopi Tribe
Hopi Appellate Court
P.O. Box 156
Keams Canyon, Arizona 86034
Appellate Court Judge (uncompensated)

2005 – 2006
United States Senate
Committee on Indian Affairs
838 Hart Office Building
Washington, D.C. 20510
One-year detail from the United States Department of Justice

1996 – 1998
United States Department of Justice
Office of the Deputy Attorney General
Office of Tribal Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Counsel to the Deputy Attorney General (1996 – 1998)
Special Assistant U.S. Attorney, District of Arizona (1997 –1998)

1993 – 1996
United States Senate
Committee on Indian Affairs
838 Hart Office Building
Washington, D.C. 20510
Deputy Counsel

May – September 1992
U.S. Attorney's Office, District of Arizona
230 North First Avenue, Room 4000
Phoenix, Arizona 85251
Summer Law Clerk

January – May 1992
United States Senate
Committee on Indian Affairs
838 Hart Office Building
Washington, D.C. 20510
Law Student Intern

May – August 1991
Hon. Stephen M. McNamee
United States District Court
Sandra Day O'Connor United States Courthouse
401 West Washington Street, Suite 625
SPC 60
Phoenix, Arizona 85003
Law Student Intern

1990 – 1991
Arizona State University College of Law
Indian Legal Program
1151 South Forest Avenue
Tempe, Arizona 85287
Legal Research Assistant

1987 – 1990
U.S. Attorney's Office, District of Arizona
230 North First Avenue, Room 4000
Phoenix, Arizona 85251
Victim Advocate

Other Affiliations (uncompensated)

2010 – present
The Nature Conservancy in Arizona
7600 North 15th Street, Suite 100
Phoenix, Arizona 85020
Member, Board of Trustees (2010 – present)
Secretary, Board of Trustees (2013 – present)

2010 – present
National Indian Justice Center
5250 Aero Drive
Santa Rosa, California 95403
Member, Board of Directors

2006 – present
The Udall Foundation
130 South Scott Avenue
Tucson, Arizona 85701
Member, Board of Trustees (2006 – present)
Secretary, Board of Trustees (2013)

2001 – 2004
The Phoenix Heard Museum
2301 North Central Avenue
Phoenix, Arizona 85004
Member, Board of Directors

2000 – 2002
The Hopi Education Endowment Fund
P.O. Box 605
Kykotsmovi, Arizona 86039
Member, Board of Directors

1997 – 2011
Arizona State University
Sandra Day O'Connor College of Law
Indian Legal Program
1151 South Forest Avenue

Tempe, Arizona 85287
Member, Advisory Council

1996 – 1997
Maricopa County Bar Association
Public Lawyers Division
303 East Palm Lane
Phoenix, Arizona 85004
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 am not required to 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.

   Named as one of the Best Lawyers in America for the Native American Law practice area by The Best Lawyers publication (August 2013)

   48 Intriguing Women of Arizona Award, Arizona State Historical Society in recognition of Arizona's Centennial Celebration (2012)

   Women in Business Honoree, Phoenix Business Journal (2010)

   Distinguished Service Award, Federal Bar Association, Arizona Chapter (2009)

   President's Award, Women in Federal Law Enforcement Association (2009)

   John S. Lancy Award, Sandra Day O'Connor College of Law (2009)

   Native American Indian Alumni of the Year, Arizona State University (2009)

   Director's Award for Superior Performance, U.S. Department of Justice, Executive Office of United States Attorneys (1999)

   Hopi Tribal Education Scholarship, The Hopi Tribe (1992 – 1993)

   Hopi Women's Scholarship, Arizona State University College of Law (1991 – 1992)

   Recognition for Outstanding Contribution, United States Attorney's Office, District of Arizona (1990)

Certificate of Appreciation for Contribution to the District of Arizona, U.S. Attorney's Office (1987 – 1990)

Certificate of Appreciation for Outstanding Dedication, Service & Advocacy, Richard A. Abell, Assistant Attorney General, U.S. Department of Justice (1989)

Golden Key National Honor Society (1987)

Arizona Bank Scholarship (1987)

Dean's List, Phoenix College (1985 – 1987)

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

Ad Hoc Native American Advisory Committee on Sentencing Issues, U.S. Sentencing Commission (2002 – 2003)

American Bar Association (2009 – present)

Arizona State Bar Association (1995 – present)

Arizona State Bar Association's annual State Bar Conference Planning Committee (2006 – 2007)

Arizona U.S. Magistrate Judge Merit Selection and Reappointment Committee
Chairperson (April 2011 – July 2011)
Chairperson (November 2011 – February 2012)
Chairperson (July 2012 – October 2012)
Member (2006)

Federal Bar Association (1998 – present)

Judge Learned Hand Award Selection Committee, Arizona Chapter of the American Jewish Committee (2008 – present)

Maricopa County Public Lawyers (1996 – 1997)
Board of Directors (1996 – 1997)

National Association of Former United States Attorneys (2009 – present)

National Crime Victim Law Institute (2009 – present)
Education Advisory Committee Advisor

National Indian Justice Center (2010 – present)
Board of Directors

Ninth Circuit Court of Appeals Task Force on Racial, Religious and Ethnic Fairness (1997)
Advisor

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.

Arizona, 1995

There have been no lapses in membership.

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

Arizona State Courts, 1995
United States Court of Appeals for the Ninth Circuit, 1997
United States District Court for the District of Arizona, 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.

Arizona State, Tribal and Federal Court Forum, Arizona Supreme Court (2003 – 2009)

Arizona State University Alumni Association (2011 – present)

Arizona State University College of Law Indian Legal Program Advisory Committee (1997 – 2011)

Attorney General's Border and Immigration Law Enforcement Subcommittee (2007 – 2009)

Attorney General's Native American Issues Subcommittee (2007 – 2009)

LA Fitness (2003 – present)

Mount Central Place Homeowners Association (2003 – present)

National Association of Former U.S. Attorneys (2009 – present)

The American Inns of Court, Phoenix Chapter (1997)

24 Hour Fitness (1998 – 2003)

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

To my knowledge, none of the organizations or associations that I am a member of or have been a member of has ever invidiously discriminated on the basis of race, sex, religion or national origin.

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

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

Introduction to The State of Indian Country Arizona (Aug. 2013). Copy supplied.

1984 Act Has Helped Victims of Crime; More Can Be Done, Arizona Republic, Apr. 25, 2009. Copy supplied.

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

In my capacity as a member of the Education Advisory Committee of the National Crime Victim Law Institute (NCVLI), I reviewed a Frequently Asked

Questions fact page, regarding crimes committed on Indian lands, which is posted on the NCVLI web page, on April 6, 2012. Copy supplied.

2010 – 2011, Annual Report, National Crime Victim Law Institute. Copy supplied.

2009 Indian Country Report, United States Attorney's Office, District of Arizona. Copy supplied.

2008 Indian Country Report, United States Attorney's Office, District of Arizona. Copy supplied.

Report of the Native American Advisory Group, United States Sentencing Commission, November 4, 2003. Copy supplied.

1997 Report, Ninth Circuit Court of Appeals Task Force on Racial, Religious and Ethnic Fairness. Available for purchase at: http://www.docstoc.com/docs/63122425/David-Nakashima-Management-Consultant-Oakland.

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

Joint Letter from Former U.S. Attorneys to the Senate Judiciary Committee in Support of the Confirmation of Jim Comey to be Director, Federal Bureau of Investigation, July 3, 2013. Copy supplied.

I have been an advisory member to the Education Committee of the Board of the National Crime Victim Law Institute since 2009. Although I have not drafted, reviewed, or voted on various resolutions that have been issued during my tenure, my name has appeared on the letterhead of resolutions from time to time. In an abundance of caution I am listing those that I could locate below:

> Resolution on Political Endorsements and Political Action Committee Policy, National Crime Victim Law Institute, December 5, 2012. Copy supplied.
>
> Resolution on Anti-Discrimination Policy, National Crime Victim Law Institute, April 16, 2012. Copy supplied.

Joint Letter from Former U.S. Attorneys to the Senate Indian Affairs Committee in Support of the Confirmation of Kevin Washburn to be Assistant Secretary for Indian Affairs (Sept. 13, 2012). Copy supplied.

Letter to U.S. Representative Nick J. Rahall re: H.R. 1924, March 26, 2010. Copy supplied.

Testimony to the United States Sentencing Commission, October 20, 2009. Written testimony supplied.

Testimony to the Senate Indian Affairs Committee, "Law and Order in Indian Country," March 17, 2008. Written testimony supplied.

Testimony to the United States Sentencing Commission re: "Proposed Amendments," March 13, 2008. Written testimony supplied.

Testimony to the United States Sentencing Commission re: Findings of the Native American Advisory Group, November 4, 2003. I have no notes, transcript, or recording.

Arizona State, Tribal and Federal Court Forum, Meeting Minutes, 2001 – 2009. Meeting 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.

I have, to the best of my ability, listed all of the remarks, speeches, lectures and conference discussions that I have participated in. Throughout the course of my professional career, I have conducted numerous presentations, trainings and speeches and I have attempted to provide all that I could recall or locate in my records. Where specific dates are not listed, I have attempted to narrow the date by month and year.

June 21, 2013: Panelist, "The Tribal Law and Order Act – Meeting the Challenges for Justice in Indian Country," Arizona State Bar Association's Annual Conference, Phoenix, Arizona. Notes supplied.

February 20 – 21, 2013: Presenter, "Pending and Declined Prosecutions in Indian Country - Working with U.S. Attorneys," National Judicial Center, Reno, Nevada. I presented three sessions: 1) Putting Together a Viable Federal Prosecution, 2) Whether to Accept or Decline a Criminal Case and 3) Tribal Provisions of the Violence Against Women Act. Presentation slides and handout supplied.

February 14, 2013: Panelist, "48 Intriguing Women of Arizona" panel presentation, Arizona State Legislature's Centennial Celebration, Phoenix, Arizona. I was on a panel of five Honorees speaking on women in public service. I have no notes, transcript, or recording. The address for the 48 Women Governing Board is 7904 East Chaparral Road, PMB 196, Scottsdale, Arizona 85250.November 2012: Speaker, "Native American Heritage Month" commemorative speaker at the Lawrence Livermore Labs, Livermore, California. I have no notes, transcript or recording. The address for the Lawrence Livermore Labs is 7000 East Avenue, Livermore, California 94550.

August 2012: Speaker, "Rising to New Heights," Arizona Association for Economic Development Conference, Phoenix Country Club, Phoenix, Arizona. Presentation slides supplied.

June 21, 2012: Panelist, "48 Intriguing Women of Arizona," Changing Hands Bookstore, Tempe Arizona. I was one of four Honorees who gave a brief personal biography and answered audience questions. I have no notes, transcript or recording. The address for Changing Hands Bookstore is 6428 South McClintock, Drive, Tempe, Arizona 85283.

June 18 – 19, 2012: Presenter, "NAGPRA Roundtable," Sandra Day O'Connor College of Law, Indian Legal Program, Tempe, Arizona. Presentation slides supplied.

April 24, 2012: Speaker, "Construction in Indian Country Conference," Arizona State University, Del E. Webb School of Construction, Gila River Indian Community. I provided welcome remarks to conference participants. I have no notes, transcript or recording. The address for the Del E. Webb College is P.O. Box 870204, Tempe, Arizona 85287.

April 3, 2012: Speaker, "RECHARGE," Arizona State University, Phoenix, Arizona. I provided welcome remarks to visiting tribal high school students. I have no notes, transcript or recording. The address for the ASU Education Outreach Office is P.O. Box 871112, Tempe, Arizona 85287.

March 30, 2012: Presenter, "Indian Country Criminal Jurisdiction" for a continuing legal education program "Indian Law 101," Sandra Day O'Connor College of Law, Indian Legal Program, Tempe, Arizona. I provided substantially the same program in 2006 and 2003. Presentation notes and slides supplied for 2012 presentation.

March 29, 2012: Presenter, "Indian Country Criminal and Civil Jurisdiction," Arizona State Attorney General's Office Continuing Education Program, Phoenix, Arizona. Presentation slides supplied.

February 2, 2012: Presenter, "Native American Graves Repatriation Act"

seminar, Arizona State University, American Indian 13th Annual Studies Conference, Tempe, Arizona. I also provided brief welcome remarks. Presentation slides supplied.

December 2, 2011: Panelist, Professional Responsibility Continuing Legal Education Seminar, Sandra Day O'Connor College of Law, Indian Legal Program, Tempe, Arizona. Notes supplied.

November 16, 2011: Panelist, "Arizona State Bar Association's Leadership Forum," Law Offices of Udall Shumway, Tempe, Arizona. I was one of five presenters providing professional and career advice. I have no notes, transcript or recording. The address for the Arizona State Bar Association is 4201 North 24th Street, Suite 100, Phoenix, Arizona 85016.

October 2011: Panelist, Department of the Interior, Victim Advocate Academy, Crime Victimization, Albuquerque, New Mexico. The curriculum was developed by an Interior Department vendor. Presentation materials supplied.

October 21, 2011: Moderator, "Indian Water Law" Seminar, Arizona State University Sandra Day O'Connor College of Law, Indian Legal Program, Tempe, Arizona. I moderated a panel presentation and provided welcome remarks. I have no notes, transcript or recording. The address for the Sandra Day O'Connor College of Law is 1151 South Forest Avenue, Tempe, Arizona 85287.

August 31, 2011: Speaker, welcome event, HEATHERS (a Native American student's club), Arizona State University, Tempe, Arizona. I provided inspirational remarks to new students at Arizona State University. I have no notes, transcript or recording. The HEATHERS student group is defunct.

August 9, 2011: Speaker, "Hopi Summer Send-Off," Hopi Education Endowment Fund, Kykotsmovi, Arizona. I provided comments on college readiness. I have no notes, transcript or recording. The address for the Hopi Education Endowment Office is P.O. Box 605, Kykotsmovi, Arizona 86039.

July 26, 2011: Presenter, "Tribal Jurisdiction and Energy Development," Annual Southwest Regional Conference on Native American Fish and Wildlife Association, Santa Fe, New Mexico. I spoke about regulations governing Indian country energy development. I have no notes, transcript or recording. The address for the Native American Fish and Wildlife Society is 8333 Greenwood Boulevard, Suite 260, Denver, Colorado 80221.

June 2011: Presenter, "Establishing Victim's Rights in Tribal Courts," National Crime Victim Law Institute, Annual Conference, Portland, Oregon. Presentation slides supplied.

June 13, 2011: Speaker, College America Convocation, Northern Arizona

University campus, Flagstaff, Arizona. I provided inspirational remarks to the graduating class. I have no notes, transcript or recording. The address for College America is 3012 East Route 66, Flagstaff, Arizona 86004.

April 28 – 29, 2011: Speaker, "Treaty to Trust to Carcieri: The Economic Future for Indian Lands," Sandra Day O'Connor College of Law Indian Legal Program Conference, Tempe, Arizona. I provided welcome remarks. I have no notes, transcript or recording. The address for the Sandra Day O'Connor College of Law is 1151 South Forest Avenue, Tempe, Arizona 85287.

April 15, 2011: Panelist, "Best Practices for Civil Litigators," Arizona State Bar Association Minority Bar Convention, Tempe, Arizona. I participated in a substantially similar presentation for the same event in 2010. Notes from 2011 presentation supplied.

April 4 – 7, 2011: Panelist, "Cultural Resource Crimes," To Bridge a Gap Conference, U.S. Department of Agriculture and the Chickasaw Nation, Norman, Oklahoma. I was on a panel of presenters discussing cultural resource crimes. I have no notes, transcript or recording. The address for the Chickasaw Nation is P.O. Box 1548, Ada, Oklahoma 74821.

March 23, 2011: Panelist, "Legal and Political Barriers to Successful Economic Development," Arizona Indian Town Hall Business Summit, Arizona Commission on Indian Affairs, Phoenix, Arizona. I was one of four panelists who spoke about business transactions on Indian lands. I have no notes, transcript or recording. The address of the Arizona Commission on Indian Affairs is 1700 West Washington Street, Suite 430, Phoenix, Arizona 85007.

March 5, 2011: Panelist, "Contemporary Issues for American Indians and American Immigrants," Wisconsin Journal of Law, Gender and Society Symposium, Madison Wisconsin. I spoke about victimization of American Indians and immigrants in Arizona. I have no notes, transcript or recording. The address for the University of Wisconsin Law School is 975 Bascom Mall, Madison, Wisconsin 53706.

February 18, 2011: Panelist, "A Tribal Judge's and Federal Prosecutor's Perspective on Domestic and Other Violence Against Indian Women," Ruth Bader Ginsburg Lecture, the Thomas Jefferson School of Law, San Diego, California. I spoke about violent crimes in Indian country. I have no notes, transcript or recording. The address for the Thomas Jefferson School of Law is 1155 Island Avenue, San Diego, California 92101.

December 2010: Presenter, "Indian Cultural Issues and Considerations in Family Violence Cases" workshop, U.S. Department of Justice Crime Victim's Conference, Offering Hope to Victims in the Spirit of Justice, Palm Springs, California. Presentation slides supplied.

October 2010: Panelist, "NAGPRA in the Courts," National Park Service, National Native American Graves Protection Act [NAGPRA] Office, "NAGPRA at 20 Conference," Washington, D.C. Presentation slides supplied.

July 2010: Presenter, "The Impact of Tribal Law and Order Act to Tribal Justice Systems," National Indian Justice Center, "For All My Relations Conference," Anaheim, California. Presentation slides provided (my co-presenter contributed one or two slides).

July 2010: Speaker, National Indian Justice Center, "For All My Relations Conference," Anaheim, California. I provided remarks on the progress of victim issue awareness in Indian Country. I have no notes, transcript or recording. The address for the National Indian Justice Center is 5250 Aero Drive, Santa Rosa, California 95403.

June 11, 2010: Panelist, "Expanding the Jurisdiction of Tribal Courts," Annual Arizona State Bar Convention, Glendale, Arizona. Presentation slides supplied.

April 27, 2010: Presenter, "Gang and Juvenile Delinquency Issues," U.S. Department of Justice, Office of Juvenile Delinquency and Prevention Tribal Regional Training, Phoenix, Arizona. Presentation slides supplied.

April 21, 2010: Speaker, "Our Elders–Living Treasures," Annual Arizona Indian Council on Aging Conference, Fort McDowell Yavapai Nation. Presentation slides supplied.

April 8 – 9, 2010: Presenter, "Hot Topics, NAGPRA, 20 Years Later," Federal Bar Association, 35th Annual Federal Bar Association's Indian Law Section Conference, Santa Fe, New Mexico. Presentation slides supplied.

February 12, 2010: Presenter, "Animal Law in Indian Country," Arizona State Bar Association's Animal Law Section, Arizona State Bar Office, Tucson, Arizona. Presentation slides supplied.

December 1 – 3, 2009: Presenter, "Combating Crime in Indian Country, Combining State and Tribal Solutions," National Association of Attorneys General, Winter Meeting, Phoenix, Arizona. Presentation slides supplied.

November 2009: Speaker, San Carlos Apache Tribe's Temporary Assistance for Needy Families [TANF] Conference, San Carlos, Arizona. I spoke about my personal and professional history. I have no notes, transcript or recording. The address for San Carlos Tribal TANF is P.O. Box 871, Peridot, Arizona 85542.

August 23 – 27, 2009: Speaker, 35th Annual National Organization for Victim Assistance Conference, Scottsdale, Arizona. I provided welcome remarks to

conference attendees. I have no notes, transcript or recording. The address for the National Organization for Victim Assistance is 510 King Street, Suite 424, Alexandria, Virginia 22314.

August 6 – 7, 2009: Panelist, Udall Foundation Scholars Orientation, Tucson, Arizona. I participated in a panel discussion on federal Indian policy. I have no notes, transcript or recording. The address for the Udall Foundation is 130 South Scott, Tucson, Arizona 85701.

August 4 – 6, 2009: Presenter, "Lessons Learned," Wind River Native American Conference, U.S. Attorney's Office for the District of Wyoming, Wind River Indian reservation. Presentation slides supplied.

June 24, 2009: Presenter, "Project Safe Neighborhoods," Office of the Mayor, Mesa, Arizona. I provided the Mesa City Prosecutor's Office and Police Chief a plaque for their support of an initiative to prevent and prosecute drug and firearm offenses. I have no notes, transcript or recording. The address for the Mesa Mayor is P.O. Box 1466, Mesa, Arizona 85211-.

June 16, 2009: Speaker and panelist, "Women in Federal Law Enforcement," Women in Federal Law Enforcement Association, Tucson, Arizona. I provided welcome remarks and participated on a panel discussing border crimes. I have no notes, transcript or recording. The address for the Women in Federal Law Enforcement Association is 2200 Wilson Boulevard, Suite 102, PMB-204, Arlington, Virginia 22201.

June 2, 2009: Speaker, Society of American Indian Government Employees [SAIGE] Sixth Annual Conference, "Many Nations, One Spirit," San Diego, California. I spoke about the importance of women in leadership positions. I have no notes, transcript or recording. The SAIGE organization lists www.saige.org as its web page but no mailing or delivery address.

May 13 – 14, 2009: Panelist, Border Security Expo and Conference, Phoenix Convention Center, Phoenix, Arizona. I was part of a federal law enforcement panel speaking on Arizona border crimes. I have no notes, transcript or recording. The address for the U.S. Border Patrol is 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

March 6, 2009: Presenter, Arizona U.S. District Court Conference, Tucson, Arizona, sponsored by the Federal Bar Association, Tucson Chapter. I provided an overview of the current state of the U.S. Attorney's Office and the U.S. Department of Justice priorities and presented on "Access to Justice in Arizona's Indian Country." I have no notes, transcript or recording. The address of the Tucson Chapter of the Federal Bar Association is 407 West Congress, Suite 501, Tucson, Arizona 85701.

February 27, 2009: Speaker, Law Enforcement Coordinating Committee Conference "Inter-agency Forum on Alien Smuggling and Associated Violence," Phoenix, Arizona. I spoke about the law enforcement cooperation necessary to combat violence. I have no notes, transcript or recording. The address for the U.S. Attorney's LECC Program is 40 North Central, Suite 1200, Phoenix, Arizona 85004.

January 13, 2009: Speaker, "Preventing Domestic Violence," Empire School of Beauty, Chandler, Arizona. I provided a talk on domestic violence. I have no notes, transcript or recording. The address of the Empire School of Beauty is 2978 North Alma School, Chandler, Arizona 85224.

December 11 – 13, 2008: Speaker, "Closing the Gap in Indian Country: Criminal Jurisdiction and its impact on Crime Victim Services," 11th Annual Indian Nations Conference, Justice for Victims of Crime, Palm Springs, California. I have no notes, transcript or recording. The address of the U.S. Department of Justice, Office for Victims of Crime is 810 Seventh Street N.W., Eighth Floor, Washington, DC 20531.

November 2008: Speaker, "Native American Heritage Month," Federal Bureau of Investigation, Washington, D.C. I spoke about the impact of the FBI's work on communities and families in Indian country. I have no notes, transcript or recording. The address of the Federal Bureau of Investigation is 950 Pennsylvania Avenue, N.W., Washington, D.C. 200535.

October 16, 2008: Panelist, "Panel on Sovereignty: Changing Perspectives," hosted by Northern Arizona University, Flagstaff, Arizona. I commented on panelist presentations on sovereignty and answered student questions. I have no notes, transcript or recording. The address of the Northern Arizona University is South San Francisco Street, Flagstaff, Arizona 86011.

September 18, 2008: Panelist, "Tribal Sacred Places and Cultural Resources on Public Lands," American Bar Association Environmental Law Section Conference, Phoenix, Arizona. I was on a panel discussing federal, state and tribal cultural resource laws. I have no notes, transcript or recording. The address for the American Bar Association is 1050 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.

September 2008: Presenter, "Evolution of a Federal Victim Services Program," Annual Four–Corners Conference, U.S. Attorney's Offices for Arizona, New Mexico, Colorado and Utah, Albuquerque, New Mexico. Presentation slides supplied.

August 7, 2008: Speaker, "Safe School Summit," Window Rock Department of Education, Window Rock, Arizona. I provided welcome remarks to this forum discussing school safety, violence prevention and responses. I have no notes,

transcript or recording, but press coverage is supplied. The address for the Window Rock Department of Education is P.O. Box 670, Window Rock, Arizona 86515.

August 2 – 6, 2008: Panelist, Udall Foundation Scholars Orientation, Tucson, Arizona. I participated in a panel discussion on federal Indian policy. I have no notes, transcript or recording. The address for the Udall Foundation is 130 South Scott, Tucson, Arizona 85701.

August 1 – 2, 2008: Panelist, "Weed and Seed" Conference, U.S. Attorney's Office, District of Arizona, Law Enforcement Coordinating Committee's Weed and Seed Conference, Flagstaff, Arizona. I provided remarks on the importance of Weed and Seed neighborhood partnerships to achieving crime suppression. I have no notes, transcript or recording. The address for the U.S. Attorney's Office is 40 North Central, Suite 1200, Phoenix, Arizona 85004.

July 23, 2008: Speaker, "Homeland Security CLE," Sandra Day O'Connor College of Law Indian Legal Program, Tempe, Arizona. I participated in a continuing legal education program on homeland security in Indian country. I have no notes, transcript or recording. The address of the Sandra Day O'Connor College of Law is 1151 South Forest Avenue, Tempe, Arizona 85287.

June 2008: Speaker, "Third Annual Division of Public Safety Conference," Fort McDowell Yavapai Resort and Casino, Fountain Hills, Arizona. I provided remarks on the office's role and commitment to addressing Indian country crimes and working with tribal law enforcement. I have no notes, transcript or recording, but press coverage is supplied. The address for the Navajo Division of Public Safety is P.O. Box J, Window Rock, Arizona 86515.

May 28, 2008: Speaker, "Federal Law Enforcement Memorial Service," Federal Bureau of Investigation, Phoenix Division, Phoenix, Arizona. I spoke on the importance of remembering the sacrifices made by our federal law enforcement. I have no notes, transcript or recording. The address for the Federal Bureau of Investigation is 21711 North 7th Street, Phoenix, Arizona 85024.

May 5 – 6, 2008: Speaker, Annual TANF Conference, Fort McDowell, Yavapai Nation. I provided remarks to encourage individuals to continue attaining their personal goals. I have no notes, transcript or recording, but press coverage is supplied. The address of TANF is U.S. Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

April 4, 2008: Speaker, Vigil at the beginning of National Crime Victims Week, Arizona State Capitol, Phoenix, Arizona. I provided remarks on my experiences as a crime victim service provider. I have no notes, transcript or recording. The address of the Arizona State Capitol is 1700 West Washington Street, Phoenix, Arizona 85007.

April 4, 2008: Presenter, "Legal Issues in Museum Administration," 36th Annual ALI-ABA Conference, Scottsdale, Arizona. I discussed the use of traditional and non-traditional experts. I have no notes, transcript or recording. The address for the American Law Institute is 4025 Chestnut Street, Philadelphia, Pennsylvania 19104.

February 23, 2008: Judge, "Native American Law Student's Association Moot Court Competition," Sandra Day O'Connor College of Law, Tempe, Arizona. I participated as a competition judge. I have no notes, transcript or recording. The address for the Sandra Day O'Connor College of Law is 1151 South Forest Avenue, Tempe, Arizona 85287.

February 2008: Speaker, "Walk Away from Drugs," Arizona Methamphetamine Coalition, Mohave County, Kingman, Arizona. I was one of several speakers on fighting methamphetamine abuse. I have no notes, transcript or recording. The address for the Kingman Methamphetamine Coalition is 310 North Fourth Street, Kingman, Arizona 86401.

December 18, 2007: Speaker, U.S. Attorney for the District of Arizona Investiture, Sandra Day O'Connor U.S. Courthouse. I provided brief remarks upon being sworn in as U.S. Attorney. I have no notes, transcript or recording. The address of the U.S. Attorney's Office, District of Arizona, is 40 North Central, Suite 1200, Phoenix, Arizona 85004.

September 25 2007: Panelist, "15th Annual Four Corners Indian Country Conference," in Colorado Springs, Colorado. I provided remarks on the impact of substance abuse on Indian country crimes. I have no notes, transcript or recording. The address of the U.S. Attorney's Office, District of Arizona is 40 North Central, Suite 1200, Phoenix, Arizona 85004.

August 1, 2007: Speaker, "Tribal Crime Data and Information Sharing," U.S. Attorney's Office, Law Enforcement Coordinating Committee Conference, Phoenix, Arizona. I provided opening remarks. I have no notes, transcript or recording. The address for the U.S. Attorney's Office is 40 North Central Avenue, Suite 1200, Phoenix, Arizona 85004.

July 30, 2001: Speaker, "National Criminal Justice Association National Forum on Criminal Justice and Public Safety Conference" Phoenix, Arizona. I provided welcome remarks on behalf of the U.S. Attorney's Office. I have no notes, transcript or recording. The address for the U.S. Attorney's LECC Program, District of Arizona is 40 North Central, Suite 1200, Phoenix, Arizona 85004.

June 2007: Speaker, "2007 Crime Victim Law and Litigation Conference," National Crime Victim Law Institute, Portland, Oregon. I spoke about federal crime victim's rights. I have no notes, transcript or recording. The address for

the National Crime Victim Law Institute is 10015 Southwest Terwilleger Boulevard, Portland, Oregon 97219.

2006: Presenter, "Looting and Trafficking Issues in Indian Country," National Association of Tribal Historic Preservation Officers Conference, Santa Fe, New Mexico. I provided an overview of federal archeological and cultural resource crime statutes. I have no notes, transcript or recording. The address for the National Association of Tribal Historic Preservation Officers is 1785 Massachusetts Avenue, N.W., Washington D.C. 20036.

December 9 – 11, 2004: Panelist, "Financial Fraud Victim Issues," U.S. Department of Justice, Office for Victims of Crime, National Indian Nations Justice for Victims of Crime Conference, Palm Springs, California. The panel discussed financial fraud crimes and victim impact. I have no notes, transcript or recording. The address for the U.S. Department of Justice, Office for Victims of Crime is 810 Seventh Street, N.W., Eighth Floor, Washington, D.C. 20531.

2004 – 2008: Presenter, "Indian Cultural Issues and Considerations in Family Violence Cases." I taught this course to various state and federal criminal justice agencies in Arizona. This seminar provided information on how to identify and understand cultural issues in Indian country crime cases. I have no notes, transcript or recording, but the presentation would have been substantially similar to the one in December 2010, for which presentation slides have been supplied.

2000 – 2006: Presenter, "The Unusual Expert," National Park Service and U.S. Department of Justice training course on natural resource crimes. The training was provided to state, local and federal prosecutors and heritage resource officers. Training took place in Vermont, Florida, New Mexico and California. I generally taught courses on how to prosecute the Archeological Resource Protection Act and the Native American Graves Protection Act crimes. Video supplied.

April 7, 1995: Speaker, Federal Bar Association's Annual Indian Law Conference, Albuquerque, New Mexico. I provided an update on congressional legislation. I have no notes, transcript or recording. The address of the Federal Bar Association's Indian Law Section is 1220 North Fillmore Street, Suite 444 Arlington, Virginia 22201.

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.

On July 3, 2013, I was interviewed by U.S. Magistrate Judge Michelle Burns for an article that she is writing on the Hon. Stephen M. McNamee, U.S. District Court Judge for the District of Arizona, for the Federal Bar Association magazine.

I was asked to provide a historical perspective of Judge McNamee. The article is currently being written.

Dennis Wagner, *Andrew Chambers Jr. Was Once the 'Highest-Paid Snitch' in DEA History, but the Government Severed Ties with Him in 2000 After He Gave False Testimony*, Arizona Republic, June 5, 2013. Copy supplied.

Tsosie Joins the Ranks of ASU's Most Prestigious Scholars," Sandra Day O'Connor College of Law News, Feb. 5, 2013. Copy supplied.

Lee Allen, *Construction in Indian Country Conference Addresses the Need to "Grow our Own,"* Indian Country Today, Apr. 30, 2012. Copy supplied.

48 Women, Arizona's Most Intriguing Women, Arizona Historical Society, Mar. 2012. Copy supplied.

In January 2012, I was interviewed for a video clip describing the ASU College Access Grant "Tribal Nations Tour" recruitment initiative. Video available at: http://www.youtube.com/watch?v=gZpk2QMi2Iw.

Joshua Armstrong, *Native American Women Face High Rates of Sexual Assaults, Low Access to Support*, Associate Press, Dec. 15, 2011. Copy supplied.

JJ Hensley and Yvonne Wingett Sanchez, *With Released MCSO Records, Case-Delay Questions Emerge*, Arizona Republic, Apr. 23, 2011. Copy supplied.

Yvonne Wingett, *Loughner Trial Sets Up Clash of Legal Minds*, Arizona Republic, Jan. 24, 2011. Copy supplied.

Ingrid V. Eagly, *Local Immigration Prosecution: A Study of Arizona Before SB 1070*, 58 UCLA L. Rev. 1749, 1788 (2011). Copy supplied.

Mike Sunnucks, *2010 Women in Business,* Business Journal (Phoenix), Mar. 12, 2010. Copy supplied.

Kerry Young, *A New Era of Influence for American Indians*, CQ Weekly, Nov. 29, 2009. Copy supplied.

Zaher Karp, *Q&A: Hopi Attorney to Represent Native American Interests in Global Legal Firm*, News Watch Native America, Sept. 25, 2009. Copy supplied.

U.S. Attorney: Tribe Needs Programs to Prevent Repeat Offenders, Navajo Times, Mar. 19, 2009. Copy supplied.

Note, *Alumni Spotlight: Diane Humetewa,* Sandra Day O'Connor College of Law News, Nov. 20, 2008. Copy supplied.

Alexis Huicochea, *Life is Better Along 29th Street*, Arizona Daily Star, Nov. 20, 2008. Copy supplied.

David Teibel, *Fed Program Reduces Crime Along 29th Street Corridor*, Tucson Citizen, Nov. 19, 2008. Copy supplied.

David Schwartz, *Leading Lady*, Phoenix Magazine (Oct. 2008). Copy supplied.

On September 9, 2008, I was interviewed by the Native America Calling radio program on my role as the U.S. Attorney. The program aired on tribal radio stations nationwide. The interview is archived and can be accessed at www.nativeamericacalling.com.

The Issue: SRP Settlement, Arizona Republic, Aug. 24, 2008. Copy supplied.

Nick R. Martin, *U.S. Attorney Denies Renzi Probe Pressure: Arizona's Hametewa Says Letter on Rumor 'Very Harsh,' Unjustified*, Tribune (Mesa, AZ), July 7, 2008. Copy supplied.

Chris Kahn, *Authorities Round Up 312 Fugitives in Arizona*, Associated Press, July 7, 2008. Copy supplied.

Arthur Rotstein, *Officials: Entry Prosecutions Success in Arizona*, Associated Press, July 6, 2008. Copy supplied.

Rob Capriccioso, *First Female Native U.S. Attorney Airs Her Concerns*, Indian Country Today, June 25, 2008. Copy supplied.

Chris Kahn, *Grand Canyon Tourist's Killer Sentenced to Life in Prison*, Associated Press, June 20, 2008. Copy supplied.

Josh Brodesky, *Border Cases Pose Stern Test for Prosecutors*, Arizona Daily Star, June 11, 2008. Copy supplied.

Lou Dobbs Tonight (Apr. 7, 2008). Relevant portion of transcript supplied.

Bush Taps Hopi for Ariz.'s U.S. Attorney, Arizona Republic, Nov. 16, 2007. Copy supplied.

Mark Brodie, *Analysis: Artifacts Amnesty Program to Get Back Stolen American Indian Artifacts*, NPR, Morning Edition, Aug. 5, 2004. Transcript supplied.

Alumni Spotlight: Diane Humetewa, Class of 93, Sandra Day O'Connor College of Law's Alumni Newsletter, Dec. 2003. Copy supplied.

Violence Plagues Ariz. Indians Reservation Murder Rate 5 Times that of U.S., Arizona Republic, Oct. 7, 2003. Copy supplied.

Crime Rate on Indian Reservations Much Higher than U.S., Associated Press, Oct. 7, 2003. Copy supplied.

MacDonald Owes Over $1.5 Million, Navajo Times, Mar. 1, 2001. Copy supplied.

Mark Smith, *Cultural Divide: Collecting Indian Artifacts Can Be Illegal, Thanks to a Law Protecting Them, a Law Many Call Too Vague*, Houston Chronicle, Feb. 22, 1998. Copy supplied.

Press releases

Press release, *ASU Welcomes 5 New American Indian Scholars to Faculty*, Arizona State University, Aug. 28, 2013. Copy supplied.

Press release, *New State of Indian Country Arizona Report Released*, Arizona State University, Aug. 21, 2013. Copy supplied.

Press release, *ASU Athletes, American Indian Students to visit Navajo, Hopi Tribal Nations*, Arizona State University, June 20, 2013. Copy supplied.

Press release, *Native Research Trailblazer Joins Ranks of ASU's Most Prestigious Scholars*, Arizona State University, Feb. 7, 2013. Copy supplied.

Press release, *Gift to ASU Will Aid American Indian Retention Efforts*, Arizona State University, June 18, 2012. Copy supplied.

Press release, *ASU, EPA Partner to Engage Students in Green Careers*, Arizona State University, Apr. 18, 2012. Copy supplied.

Press release, *Arizona State University Appoints Diane Humetewa to Advise President on Indian Affairs,* Arizona State University, Mar. 24, 2011. Copy supplied.

Press release, *Former U.S. Attorney for Arizona Joins Squire Sanders Native American Law Practice*, Squire, Sanders & Dempsey LLP, Sept. 14, 2009. Copy supplied.

Press release, *Arizona Man Pleads Guilty to Mailing Child Pornography*, U.S. Attorney's Office, District of Arizona, July 29, 2009. Copy supplied.

Press release, *U.S. Attorney in Arizona Announces Resignation,* U.S. Attorney's Office, District of Arizona, July 28, 2009. Copy supplied.

Press release, *Federal Officers in Arizona Indicted in Fraud, Bribery Scheme*, U.S. Attorney's Office, District of Arizona, July 17, 2009. Copy supplied.

Press release, *Pair Sentenced for Charges Related to Illegal Base Jumping in Grand Canyon National Park,* U.S. Attorney's Office, District of Arizona, July 15, 2009. Copy supplied.

Press release, *Arizona Woman Sentenced on Money Laundering and Tax Charges,* U.S. Attorney's Office, District of Arizona, July 8, 2009. Copy supplied.

Press release, *Globe Woman Indicted for $1.2 Million Embezzlement from Arizona Credit Union*, U.S. Attorney's Office, District of Arizona, July 8, 2009. Copy supplied.

Press release, *Tucson Man Sentenced to 3 Years in Prison for Identity Theft and Fraud Charges,* U.S. Attorney's Office, District of Arizona, July 2, 2009. Copy supplied.

Press release, *Illinois Brothers Indicted in February 2004 Package Bombing of Scottsdale Diversity Office*, U.S. Attorney's Office, District of Arizona, June 26, 2009. Copy supplied.

Press release, *65 Individuals Charged in Federal Financial Aid Fraud Resulting in the Loss of Over $530,000*, U.S. Attorney's Office, District of Arizona, June 24, 2009. Copy supplied.

Press release, *Drug Dealer on Gila River Indian Reservation Sentenced to 160 Months in Prison*, U.S. Attorney's Office, District of Arizona, June 24, 2009. Copy supplied.

Press release, *Mexican Citizen Found Guilty in Jury Trial, Faces Over 100 Years in Prison for Violent Hostage Taking and Alien Smuggling Conspiracy,* U.S. Attorney's Office, District of Arizona, June 23, 2009. Copy supplied.

Press release, *Convicted Human Smuggler Faces More than 100 Years in Prison*, U.S. Immigration and Customs Enforcement, June 25, 2009. Copy supplied.

Press release, *Large Scale Cocaine Trafficker Found Guilty of Drug Trafficking and Money Laundering*, U.S. Attorney's Office, District of Arizona, June 18, 2009. Copy supplied.

Press release, *Federal Prosecutors in Arizona Recognized for Outstanding Achievement by National Law Enforcement Association*, U.S. Attorney's Office, District of Arizona, June 16, 2009. Copy supplied.

Press release, *Jury Finds Tucson Man Guilty of Knowingly Littering on National Wildlife Refuge*, U.S. Attorney's Office, District of Arizona, June 3, 2009. Copy supplied.

Press release, *Third Serial Bank Robber in Three Weeks Caught by FBI Task Force*, U.S. Attorney's Office, District of Arizona, May 29, 2009. Copy supplied.

Press release, *U.S. Attorney, Prosecutors Honored with Top Awards by the Association of Women in Federal Law Enforcement*, U.S. Department of Justice, May 28, 2009. Copy supplied.

Press release, *Take 25 Minutes to Remind Your Kids About Internet Safety*, U.S. Attorney's Office, District of Arizona, May 21, 2009. Copy supplied.

Press release, *Federal, State, Tribal Partnership Seeks Protection for Drug Endangered Children*, U.S. Attorney's Office, District of Arizona, May 13, 2009. Copy supplied.

Press release, *FBI Bank Robbery Task Force Announced*, FBI Phoenix Field Office, May 7, 2009. Copy supplied.

Press release, *Mesa Man Pleads Guilty to Lying to FBI*, U.S. Attorney's Office, May 6, 2009. Copy supplied.

Press release, *Eight Charged in Scheme to Smuggle Semiautomatic Rifles to Mexico*, U.S. Attorney's Office, District of Arizona, May 6, 2009. Copy supplied.

Press release, *Mexican National Sentenced to 57 Months in Prison for Possessing Firearm*, U.S. Attorney's Office, District of Arizona, May 6, 2009. Copy supplied.

Press release, *Texas Man Pleads Guilty to Travel With Intent to Engage in Sexual Conduct with a Minor, Possession of Child Pornography*, U.S. Attorney's Office, District of Arizona, May 5, 2009. Copy supplied.

Press release, *Criminal Justice Personnel Honored for their Role in Helping Crime Victims*, U.S. Attorney's Office, District of Arizona, Apr. 30, 2009. Copy supplied.

Press release, *Promoter of High-Yield Investment Scheme Sentenced to Federal Prison*, U.S. Attorney's Office, District of Arizona, Apr. 20, 2009. Copy supplied.

Press release, *U.S. Attorney's Office Highlights Recent Arizona Federal Tax Enforcement Results*, U.S. Attorney's Office, District of Arizona, Apr. 14, 2009. Copy supplied.

Press release, *Former Lake Havasu City Couple Pleads Guilty to Fraudulently Distributing Drugs from India*, U.S. Attorney's Office, District of Arizona, Mar. 17, 2009. Copy supplied.

Press release, *Navajo Nation President Joe Shirley, Jr., Welcomes Arizona U.S. Attorney Diane J. Humetewa to Navajoland*, The Navajo Nation, Mar. 13, 2009. Copy supplied.

Press release, *U.S. Border Patrol Agent Indicted on Federal Civil Rights Charge for Assault in Federal Detention Facility*, U.S. Attorney's Office, District of Arizona, Mar. 13, 2009. Copy supplied.

Press release, *Arizona Man Pleads Guilty to Receipt of Child Pornography*, U.S. Attorney's Office, District of Arizona, Mar. 10, 2009. Copy supplied.

Press release, *Two Arizona Men Sentenced to Prison for Elaborate Securities and Tax Fraud Scheme*, U.S. Attorney's Office, District of Arizona, Mar. 3, 2009. Copy supplied.

Press release, *Real Estate Agent and Two Others Sentenced to Prison for Role in Mortgage Fraud Scheme – Scheme involved Approximately $2.5 in Losses to Lending Institutions*, U.S. Attorney's Office, District of Arizona, Feb. 26, 2009. Copy supplied.

Press release, *Canadian Man Sentenced to 24 Months for Falsely Claiming to be a U.S. Citizen*, U.S. Attorney's Office, District of Arizona, Feb. 17, 2009. Copy supplied.

Press release, *Mortgage Fraud Leaders Sentenced to Prison*, U.S. Attorney's Office, District of Arizona, Feb. 12, 2009. Copy supplied.

Press release, *Arizona Man Sentenced to Five Years for Distribution of Child Pornography*, U.S. Attorney's Office, District of Arizona, Feb. 10, 2009. Copy supplied.

Press release, *Former Northern Arizona Postmaster Sentenced for Misappropriation of Postal Funds*, U.S. Attorney's Office, District of Arizona, Feb. 4, 2009. Copy supplied.

Press release, *Customs Official and His Wife Charged with Accepting Bribes to Smuggle Drugs into U.S.*, U.S. Attorney's Office, District of Arizona, Jan. 28, 2009. Copy supplied.

Press release, *Drug Kingpin Sentenced to 20 Years in Federal Prison for Directing Criminal Enterprise*, U.S. Attorney's Office, District of Arizona, Jan. 6, 2009. Copy supplied.

Press release, *Arizona Man Pleads Guilty to Sex Tourism Charge*, U.S. Attorney's Office, District of Arizona, Dec. 29, 2008. Copy supplied.

Press release, *Former Palo Verde Software Engineer Sentenced to Federal Prison*, U.S. Attorney's Office, District of Arizona, Dec. 16, 2008. Copy supplied.

Press release, *Federal, State, Local and Tribal Police Join Forces Against Drug Trafficking on Arizona Highways*, U.S. Attorney's Office, District of Arizona, Dec. 10, 2008. Copy supplied.

Press release, *Arizona Man Sentenced to More than 18 Years in Prison on Child Pornography Charges*, U.S. Attorney's Office, District of Arizona, Dec. 10, 2008. Copy supplied.

Press release, *Office Manager in Work Site Enforcement Probe Sentenced to Jail and Fined*, U.S. Attorney's Office, District of Arizona, Nov. 25, 2008. Copy supplied.

Press release, *Tribal Police Earn Federal Enforcement Authority in Indian Country*, U.S. Attorney's Office, District of Arizona, Nov. 20, 2008. Copy supplied.

Press release, *Nogales Family Sentenced for Trafficking in Cocaine, Marijuana*, U.S. Attorney's Office, District of Arizona, Nov. 20, 2008. Copy supplied.

Press release, *Meth Trafficker Sentenced to 134 Months I Prison; Methamphetamine Had Purity of 99 Percent*, U.S. Attorney's Office, District of Arizona, Nov. 13, 2008. Copy supplied.

Press release, *Smuggler Charged in Drowning Deaths of Four in Arizona Canal*, U.S. Attorney's Office, District of Arizona, Nov. 7, 2008. Copy supplied.

Press release, *U.S. Attorney Announces Election Day Program for the District of Arizona*, U.S. Attorney's Office, Nov. 3, 2008. Copy supplied.

Press release, *U.S. Attorney Participates in 16th Annual Four-Corners Indian Country Conference*, U.S. Attorney's Office, District of Arizona, Oct. 29, 2008. Copy supplied.

Press release, *U.S. Attorney Announces Election Day Program for the District of Arizona*, U.S. Attorney's Office, District of Arizona, Oct. 27, 2008. Copy supplied.

Press release, *Former Arizona Police Officer Pleads Guilty to Civil Rights Violation*, U.S. Attorney's Office, District of Arizona, Oct. 3, 2008. Copy supplied.

Press release, *ATF, U.S. Attorney for the District of Arizona and Firearms Industry Join Forces to Stop Illegal Purchase of Firearms in Phoenix; "Buy a Gun for Someone Who Can't and Buy Yourself 10 Years in Jail,"* U.S. Attorney's Office, District of Arizona, Sept. 24, 2008. Copy supplied.

Press release, *Former Indian Housing Director Sentenced to Prison for Theft from Tohono O'odham Nation and Failure to File Federal Tax Returns*, U.S. Attorney's Office, District of Arizona, Sept. 18, 2008. Copy supplied.

Press release, *Drug Kingpin Gonzalez Pleads Guilty to Controlling Criminal Enterprise*, U.S. Attorney's Office, District of Arizona, Sept. 16, 2008. Copy supplied.

Press release, *Two Arizona Men Convicted in Elaborate Securities and Tax Fraud Scheme Involving Publicly Traded Company*, U.S. Attorney's Office, District of Arizona, Sept. 15, 2008. Copy supplied.

Press release, *Officials Host First Ever Training Academy for Arizona Tribal Gaming Agents*, U.S. Attorney's Office, District of Arizona, Sept. 11, 2008. Copy supplied.

Press release, *Tribal Leader in Arizona Charged in 65-Count Indictment for Theft of Tribal Funds*, U.S. Attorney's Office, District of Arizona, Sept. 11, 2008. Copy supplied.

Press release, *Casino Employee Indicted for Embezzling $664,442 from Desert Diamond Casino*, U.S. Attorney's Office, District of Arizona, Sept. 5, 2008. Copy supplied.

Press release, *Two Indicted in Multi-Million Dollar Business Opportunity Scheme*, U.S. Attorney's Office, District of Arizona, Aug. 21, 2008. Copy supplied.

Press release, *Canadian Man Sentenced to Four Years in Prison for Sex Tourism Case*, U.S. Attorney's Office, District of Arizona, Aug. 15, 2008. Copy supplied.

Press release, *Cultivating Marijuana in Tonto National Forest Nets Defendant 10 Years in Federal Prison*, U.S. Drug Enforcement Agency, Phoenix Field Office, Aug, 14, 2008. Copy supplied.

Press release, *Driver of Rollover Crash that Killed Nine Near Florence, Ariz., Arrested and Charged*, U.S. Attorney's Office, District of Arizona, Aug. 13, 2008. Copy supplied.

Press release, *Federal Government Announces Settlement with Coal-Fired Power Plant*, U.S. Attorney's Office, District of Arizona, Aug. 12, 2008. Copy supplied.

Press release, *Training Targets Prevention of School Violence*, U.S. Attorney's Office, District of Arizona, Aug. 7, 2008. Copy supplied in response to Q.12d.

Press release, *Violent Kidnapper Sentenced to 25 Years in Prison*, U.S. Attorney's Office, District of Arizona, Aug. 6, 2008. Copy supplied.

Press release, *More Bootlegging Suspects Nabbed on Navajo Nation,* U.S. Attorney's Office, District of Arizona, Aug. 6, 2008. Copy supplied.

Press release, *Arizona Man Pleads Guilty to Distributing Child Pornography*, U.S. Attorney's Office, District of Arizona, Aug. 4, 2008. Copy supplied.

Press release, *Bootlegging Suspects Nabbed on Navajo Nation*, U.S. Attorney's Office, District of Arizona, July 15, 2008. Copy supplied.

Press release, *Tribal and State Police Earn Federal Enforcement Authority in Indian Country*, U.S. Attorney's Office, District of Arizona, June 30, 2008. Copy supplied.

Press release, *Havasupai Man Sentenced to Life in Prison for Murder of Japanese Tourist in Northern Arizona*, U.S. Attorney's Office, District of Arizona, June 19, 2008. Copy supplied.

Press release, *36 Defendants Charged for Roles in Mortgage Fraud Schemes as Part of Operation Cash Back*, U.S. Attorney's Office, District of Arizona, June 19, 2008. Copy supplied.

Press release, *U.S. Marine Corps Awards Bronze Star to Local Federal Prosecutor for Performance During Second Tour of Duty in Iraq*, U.S. Attorney's Office, District of Arizona, June 17, 2008. Copy supplied.

Press release, *Federal, Tribal, State and Local Officials Take on Meth Trafficking in Four Corners*, U.S. Attorney's Office, District of Arizona, June 13, 2008. Copy supplied.

Press release, *Southern Arizonans Charged with Distributing Tons of Marijuana to East Coast*, U.S. Attorney's Office, District of Arizona, June 13, 2008. Copy supplied.

Press release, *Tempe Man Found Guilty on Charges Related to Super Bowl Threats*, U.S. Attorney's Office, District of Arizona, June 12, 2008. Copy supplied.

Press release, *Whiteriver, Arizona Man Sentenced to Life in Prison for Brutal 2005 Murder*, U.S. Attorney's Office, District of Arizona, May 29, 2008. Copy supplied.

Press release, *Yuma Customs Officer and Others Arrested for Conspiracy to Bring Illegal Aliens into U.S.*, U.S. Attorney's Office, District of Arizona, May 13, 2008. Copy supplied.

Press release, *Trucker Sentenced to Over Six Years in Prison for His Role in Marijuana Transportation Conspiracy*, U.S. Attorney's Office, District of Arizona, May 9, 2008. Copy supplied.

Press release, *Smuggler Linked to Rollover that Caused 10 Deaths Receives Life Sentence*, U.S. Immigration and Customs Enforcement, May 9, 2008. Copy supplied.

Press release, *Mexican Man Sentenced to Life in Prison for Transportation Illegal Aliens Resulting in 10 Deaths*, U.S. Attorney, District of Arizona, May 8, 2008. Copy supplied.

Press release, *Forest Service Recovers $500,000 for Costs Associated with Fighting the 2006 LaBarranca Fire*, U.S. Attorney's Office, District of Arizona, May 7, 2008. Copy supplied.

Press release, *Phoenix Man Sentenced to Six Years in Federal Prison for Role in Marijuana Distribution Conspiracy*, U.S. Attorney's Office, District of Arizona, Apr. 18, 2008. Copy supplied.

Press release, *TSA Supervisor Sentenced for Stealing Laptop*, U.S. Attorney's Office, District of Arizona, Mar. 7, 2008. Copy supplied.

Press release, *Tribal and State Police Earn Federal Enforcement Authority in Indian Country*, U.S. Attorney's Office, District of Arizona, Feb. 29, 2008. Copy supplied.

Press release, *U.S. Congressman and Associates Indicted on Multiple Counts Including Fraud, Extortion and Money Laundering*, U.S. Attorney's Office, District of Arizona, Feb. 22, 2008. Copy supplied.

Press release, *Former Mexican Police Chief Sentenced to Prison for Bribery*, U.S. Attorney's Office, District of Arizona, Feb. 19, 2008. Copy supplied.

Press release, *Federal Jury Convicts Arizona Man for Distributing and Possessing Child Pornography*, U.S. Attorney's Office, District of Arizona, Feb. 15, 2008. Copy supplied.

Press release, *Violent Hostage Taker Receives Life Sentence*, U.S. Attorney's Office, District of Arizona, Feb. 12, 2008. Copy supplied.

Press release, *Mexican Receives Life Sentence in Smuggling-Related Phoenix Hostage Case*, U.S. Immigration and Customs Enforcement, Feb. 12, 2008. Copy supplied.

Press release, *Two White Mountain Apache Tribal Police Department Officials Sentenced for Conspiracy to Falsify Records*, U.S. Attorney's Office, District of Arizona, Jan. 18, 2008. Copy supplied.

Press release, *Diane Humetewa Sworn in as U.S. Attorney*, U.S. Attorney's Office, District of Arizona, Dec. 18, 2007. Copy supplied.

Press release, *U.S. Attorney Nominee Honored*, U.S. Attorney's Office, District of Arizona, Nov. 16, 2007. Copy supplied.

Press conferences

On July 9, 2009, I participated in a press conference "Operation Falcon" U.S. Marshall's Service, Phoenix, Arizona. We announced the arrest of hundreds of federal fugitives nationally and in Arizona. I have no transcript or recording.

On June 26, 2009, I participated in a press conference at the Arizona U.S. Attorney's Office with the ATF announcing the indictment of Dennis Mahon and Daniel Mahon for bombing the Scottsdale City Office of Diversity. I have no notes, transcript or recording.

On June 24, 2009, I participated in a press conference with the U.S. Department of Education, announcing the indictment of individuals involved in large financial fraud schemes. I have no transcript or recording, but related press release has been previously supplied and press coverage is supplied.

On September 24, 2008, I participated with the ATF in a press conference "Don't Lie for the Other Guy," ATF Phoenix Field Division Office, Phoenix Arizona. The conference was meant to educate the public about federal laws and penalties associated with illegal gun purchasing. I have no transcript or recording, but related press release has been previously supplied.

On September 18, 2008, I participated in a press conference for Indian tribal news outlets on federal prosecution of Indian country crimes during a meeting of the

Attorney General's Native American Issues Subcommittee, Phoenix, Arizona. I have no notes, transcript or recording.

On July 15, 2008, I participated in a press conference in Flagstaff, Arizona announcing the results of a four-month undercover operation into the illegal transport and sale of alcohol on the Navajo Nation. I have no transcript or recording, but representative press coverage is supplied.

On April 24, 2008, I introduced U.S. Deputy Attorney General Mark Filip in a press conference announcing additional federal resources to respond to southwest border crimes. I have no notes, transcript or recording.

On February 22, 2008, I participated in a press conference with the FBI and Department of Justice officials announcing the unsealing of a federal grand jury indictment charging Arizona Congressman Richard Renzi with federal crimes. I have no transcript or recording, but related press release has been previously supplied and press coverage is supplied.

January 11, 2008: Speaker, Press Conference announcing "National Human Trafficking Awareness Day," United States Attorney's Office, Phoenix, Arizona. Federal law enforcement and human rights organizations provided remarks to bring awareness to human trafficking. I have no notes, transcript or recording, but press coverage is supplied.

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

In 2002, I was confirmed by the Hopi Tribal Council as an Appellate Court Judge for the Hopi Tribal Court. I voluntarily served in that capacity without compensation up to the time I resigned in 2007. The Hopi Tribal Appellate Court's jurisdiction is governed by the Hopi Tribal Constitution and Hopi Tribal law. The Court's authority is limited to reviewing civil and criminal tribal court final judgments for matters arising on Hopi lands. The Hopi Constitution and tribal law authorize the Court to answer certified questions of law.

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

I participated in several Appellate Court oral arguments. I was one of three or four Justices presiding over the arguments. As such, I did not preside over any trials.

i. Of these, approximately what percent were:

jury trials: ___%
bench trials: ___%

civil proceedings: ___%
criminal proceedings: ___%

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

A check of Hopi Tribal Court records shows that I participated in issuing the following majority decisions. I contributed, in part, to the drafting of each of the decisions and I do not recall wholly authoring any one decision.

In the Matter of Arthur Batala, November 21, 2003 (No. 03AP000008)

Day v. Chief Judge of the Trial Court I, April 9, 2004 (No. 04AP000003)

Day v. Chief Judge of the Trial Court II, November 19, 2004 (No. 04000003)

Honyaoma et al. v. Nuvamsa I, November 8, 2007 (No. AP0005)

Honyaoma et al. v. Nuvamsa II, ____ __ 2007 (No. AP0005)

In the Matter of the Estate of Komaquaptewa, August 16, 2002 (No. 01AP000013)

Laban v. Yu Weh Loo Pah Ki Community I, November 21, 2003 (No. 03AP000007)

Laban v. Yu Weh Loo Pah Ki Community II, November 21, 2003 (No. 3AP000012)

Mahkewa v. Mahkewa, April 9, 2004 (No. 03AP000009)

Monestersky v. Tribe, et al., June 24, 2002 (No. 01AP000015)

Sipaulovi Village Board of Directors v. Sunrise Quoyavema II, March 30, 2006 (No. 04AP000004)

Sipaulovi Village Board of Directors v. Sunrise Quoyavema I, April 9, 2004 (No. 04AP000004)

Thomas v. Hopi Tribe, November 22, 2002 (No. 02AP000006)

Village of Mishongnovi Cultural Preservation Board v. Mishongnovi Board of Directors, November 19, 2004 (No. 04AP000002)

In Re the Order of the Upper Village of Moenkopi, April 5, 2007 (No. AP0001)

In the Matter of Certified Question of Law Re: In the Matter of the Practice of Law of All Persons Admitted to Practice as Lay Counsel in the Hopi Tribal Court, April 9, 2004 (No. 03AP000005)

In the Matter of Certified Question of Law: First Mesa Consolidated Villages, November 19, 2004 (No. 4AP000001)

Mishongnovi Cultural Preservation Board, November 19, 2004 (No. 02AP000013)

In Re Sekayumptewa, et al. v. Tribal Election Board, November 8, 2007 (No. AP0006)

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. *In the Matter of Certified Question of Law Re: In the Matter of the Practice of Law*, April 9, 2004 (No. 03AP000005). Opinion supplied.

The Appellate Court analyzed whether lay advocates should be permitted to practice in the Hopi Tribal Courts. The question was posed by the Tribal Court Chief Judge after a number of advocates were disciplined by the Trial Courts. The Appellate Court's answer recognized that lay advocates offered a benefit to the Hopi courts by providing information on traditional common law and customary practices within each of the twelve Hopi villages. The Appellate Court further recognized a need to facilitate the professional practice of law in the Hopi courts therefore it ordered the Chief Judge to establish a committee to develop professional practice rules and procedures for all Hopi Court practitioners.

Petitioner: Gary Larance, Hopi Tribal Court Chief Judge (former)
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Scottsdale, Arizona 85250
(928) 401-1842

2. *Sekayumptewa v. Hopi Election Board*, November 18, 2007 (No. 2007AP006). Opinion supplied.

The Appellate Court declined to exercise its jurisdiction to hear a Motion for Extraordinary Writ. Petitioner sought to appeal a decision of the Hopi Election Board finding that Mr. Nuvamsa met the qualifications to run for Hopi Tribal Chairman. Petitioners filed a claim seeking a review of the Election Board decision. The Election Board filed a Motion for Summary Judgment and Petitioner filed a Responsive Motion. The Trial Court held a hearing on the

Motion and took the matter under advisement. Petitioner filed a Motion for Extraordinary Writ with the Appellate Court to compel the Trial Court's decision. While the Motion was pending, the Trial Court issued its order negating a need for Appellate Court review.

Petitioner/Lay Counsel:	Mr. Sekayumptewa (no address available)
Respondent's Counsel:	record of counsel unavailable

3. *In the Matter of the Estate of Komaquaptewa*, August 16, 2002 (No. 1AP000013). Opinion supplied.

The parties disputed the ownership of decedent's home in the Village of Bacavi. This matter of first impression required an analysis of the Tribal Court's jurisdiction and process for distribution of property located in a Village that is not organized by a Constitution and that waived its authority and jurisdiction to resolve internal village property disputes pursuant to the Hopi Tribal Constitution. The Appellate Court ordered the parties to brief the following legal questions: 1) when a Village decides not to exercise its Hopi Constitutional power to resolve internal Village property disputes, does the Constitution give the tribal court the power to distribute property according to a valid will; and (2) whether the Hopi Trial Court may validate, recognize and probate wills in the absence of a village or tribal statute authorizing and defining the process for recognizing such wills. The Hopi Appellate Court deemed this matter to have legal and procedural implications for all Hopi Villages. Therefore, the Appellate Court remanded the case to the Trial Court to have the parties develop a record on custom, tradition and familial property use and further invited each Hopi Village to submit amicus briefs on the questions.

Appellant's Counsel:	Gary L. Thomas 723 West Polk Street, Suite Two Phoenix, Arizona 85007 (602) 265-2414
Lay Advocate:	Mr. Brandel (no address available)

4. *Thomas v. Hopi Tribe*, November, 22 2002 (No. 02AP000006). Opinion supplied.

The parties were involved in an employment contract dispute concerning a four-month termination provision. The primary issues were: (1) the Trial Court's admission of hearsay evidence based on Arizona Rules of Evidence 803(8), the public records and reports exception; and (2) the Trial Court's finding of Accord and Satisfaction to absolve the employer from further liability. The Appellate Court found that the trial court erred in admitting the hearsay statement but that the error failed to meet the clear abuse standard for appellate review of trial court evidentiary rulings and that admitting the statement was not prejudicial. The

Appellate Court found Accord and Satisfaction when an employer makes a clear offer to settle a dispute by offering a check accompanied by an explanatory letter and the former employee subsequently cashes the check, regardless of the former employee's protest that the check does not fully satisfy his claim.

Appellant's Counsel: Gary L. Thomas
723 West Polk Street, Suite Two
Phoenix, Arizona 85007
(602) 265-2414

Appellee's Counsel: Scott Canty
Hopi General Counsel (former)
Law Offices of Scott Canty
P.O. Box 22353
Flagstaff, Arizona 86002
(928) 380-3900

5. *Sipaulovi Village Board of Directors v. Quoyavema,* April 19, 2004; November 11, 2005; March 30, 2006 (No. 04AP000004). Opinions supplied.

The Village appealed a Tribal Court Summary Judgment order finding for Appellee. The Village filed a claim in Tribal Court seeking an Order compelling Appellee to remove a body that he buried on alleged "Clan lands" and a finding of trespass by Appellee on the Clan lands. Appellee argued that the claim violated the Native American Graves Protection Act and alternatively, Hopi Ordinance 26 which required the Village to receive a license to remove human remains. He also claimed that he received authority to use the land from a Village Leader. Appellant claimed that the land was not owned by one individual but rather it is common use Clan land and disputed that the person granting Appellee land access was a bona fide Village Leader. After a hearing on Appellee's Summary Judgment Motion, the Trial Court informed the parties that he would take the matter under advisement and inform them of his decision. The Appellate Court reversed and remanded the case finding that the Trial Court erred because it failed to give the parties, orally or in writing, a basis for its ruling. The Appellate Court further found that abundant issues of fact remained warranting a remand of the case. I filed a dissenting opinion to indicate a concern that the Appellate Court's written decision overreached by prematurely invoking Hopi Ordinance 26.

Appellant's Counsel: Franklin Hoover
Magnum, Wall, Stoops and Warden LLP
100 East Elden Street
Flagstaff, Arizona 86001
(928) 779-6951

Appellee's Counsel: Fredrick Aspey
Aspey, Watkins and Diesel LLP

123 North San Francisco Street
Flagstaff, Arizona 86001
(928) 774-1428

6. *Monestersky v. The Hopi Tribe, The Hopi Tribal Chairman Wayne Taylor, Jr. and the Hopi Tribal Council*, June 24, 2002 (No. 01AP000015). Opinion supplied.

Appellant appealed a Trial Court's affirmation of an Order of Exclusion excluding her from the Hopi reservation issued by the Chairman of the Hopi Tribe pursuant to Hopi Tribal Ordinance 46. Appellant argued that Hopi Tribal Ordinance 46 violated her due process rights. A Trial Court affirmed the Hopi Tribe's administrative decision to exclude Appellant, a non-Indian, from the Hopi reservation. The Trial Court found that it had jurisdiction to review the Order of Exclusion and that no due process violations occurred during Appellant's the exclusion process. The Appellate Court affirmed the Trial Court's decision.

Appellant/Lay Advocate: Ms. Monestersky (Pro Se)

Appellee's Counsel: Lynelle Hartway (former General Counsel)
The Washoe Tribe (General Counsel)
919 Highway 395 South
Gardnersville, Nevada 89410
(775) 265-8600

7. *In Re the Order of the Upper Village of Moencopi*, April 5, 2007 (No. 2007AP0001). Opinion supplied.

The Appellate Court affirmed the Trial Court's evidentiary hearing process and certification of the Village of Moencopi's order requiring Appellant to remove a mobile home from the Village. Appellant argued that the Trial Court lacked jurisdiction to hear an internal Village land controversy. The Appellate Court held that the Trial Court's review of the Village Board's decision, the evidence presented at the Village meeting, and the Order to remove Appellant's mobile home were appropriate and necessary to ensure that all parties were provided "minimal fundamental fairness" required by *Honie v. Hopi Tribal Housing Authority*, ___ ___, 1998 (No. 96AP0007), and affirmed the Trial Court's certification of the Village of Moencopi's Order.

Lay Advocate: Ms. Saufkie (Pro Se)

Appellee's Counsel: Franklin J. Hoover
Magnum, Wall, Stoops and Warden
100 East Elden Street
Flagstaff, Arizona 66001
(928) 779-6951

8. *Day v. Chief Judge of the Hopi Trial Court*, April 19, 2004; November 11, 2004 (No.04AP000003). Opinions supplied.

Appellant appealed an order suspending him from practicing in the Hopi Courts for violating various ethical rules of the American Bar Association and the Model Rules of Professional Conduct, imposing a fine and ordering him to attend an Arizona State Bar course on professionalism. The Appellate Court decided this matter as an Extraordinary Writ to facilitate an immediate resolution. On the merits, Appellant argued that the Trial Court lacked the authority to discipline him as such proceedings are administrative rather than adversarial and that lay counsel are not ministerial officers. As a matter of first impression, the Appellate Court analyzed whether the Trial Court has the authority to discipline Tribal Court practitioners in the absence of approved Hopi tribal ethics or professional rules. The Court found that Hopi Ordinance 21 generally provides the Court with authority to regulate and discipline members of the Hopi Bar so long as the Court's conduct is reasonable and appropriate to restore the conduct of its officers. The Appellate Court held that the Trial Court followed the ABA Model Code for Judicial Conduct by providing Day a fair hearing and ample opportunity to be heard. The Appellate Court affirmed the Trial Court's Order suspending Day from appearing in Hopi Tribal Court.

Lay Advocate: Mr. Day (Pro Se)

Appellee's Counsel: Gary Larance
Hopi Tribal Court Chief Judge (former)
7904 East Chaparral Road, Suite A110-146
Scottsdale, Arizona 85250
(928) 401-1842

9. *In the Matter of Certified Question of Law Re The First Mesa Consolidated Villages*, November 19, 2004 (No. 4AP00001). Opinion supplied.

The Hopi Tribal Council requested that the Appellate Court answer whether the Tribal Council was required to allocate funding to the Village leader of one of the three First Mesa villages or if it could allocate funds to the First Mesa Consolidated Villages, a cooperative village entity. The question required the Appellate Court to analyze whether a Hopi Tribal Council's Resolution permitting it to disburse funding to the First Mesa Consolidated Villages, rather than to each of the three original villages, violated the Hopi Tribal Constitution. The Appellate Court analyzed the Hopi Tribal Constitution and its provisions that authorize the Tribal Council to provide for the welfare of the Hopi Tribe, generally. The Appellate Court held that nothing in the Tribal Council's Resolution violated the Constitution or the individual villages' governing structure and that payment to the Consolidated Villages was within the discretion

of the Tribal Council under its authority to provide for the health and welfare of the Hopi Tribe.

Petitioner: Scott Canty, Hopi General Counsel (former)
Law Offices of Scott Canty
P.O. Box 22353
Flagstaff, Arizona 86002
(928) 380-3900

10. *Honyouma v. Nuvamsa*, November 9, 2007 (No. AP0005). Opinions supplied.

The Appellate Court granted Appellee Nuvamsa's Motion to Dismiss an Appeal by the Hopi Tribe and the Hopi Tribal Council of the Trial Court's decision in *Nuvamsa v. Honyouma,* __, 2006 (No. CV0068). The Appellate Court held that neither the Tribe nor the Council were parties in the underlying cause of action. Rule 37(b) of the Hopi Indian Rules of Criminal and Civil Procedure governs Hopi Court appellate practice. The Appellate Court interpreted HIRCCP 37(b) to apply to the real parties to an underlying case. Because neither the Tribe nor the Council were parties in *Nuvamsa v. Honyouma*, the Appellate Court concluded that they were not real parties pursuant to HIRCCP 37(b) and could not appeal the Trial Court's judgment.

Appellate/Lay Advocate: Mr. Honyouma (Pro Se)

Appellee's Counsel: Gary Larance
7904 East Chaparral Road, Suite A110-146
Scottsdale, Arizona 85250
(928) 401-1842

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

1. *In the Matter of the Estate of Komaquaptewa*, August 16, 2002 (No. 01AP000013). Opinion supplied in response to 13c.

Appellant: Gary L. Thomas
723 West Polk Street, Suite Two
Phoenix, Arizona 85007
(602) 265-2414

Lay Advocate: Mr. Brandel (no address available)

2. *Monestersky v. Tribe, et al.*, June 24, 2002 (No. 01AP000015). Opinion supplied in response to 13c.

Lay Advocate: Ms. Monestersky (Pro Se)

Appellee: Lynelle Hartway
Hopi Associate General Counsel (former)
The Washoe Tribe (General Counsel)
919 Highway 395 South
Gardnersville, Nevada 89410
(775) 265-8600

3. *Thomas v. Hopi Tribe*, November 22, 2002 (No. 02AP000006). Opinion supplied in response to 13c.

Appellant's Counsel: Gary L. Thomas
723 West Polk Street, Suite Two
Phoenix, Arizona 85007
(602) 265-2414

Appellee's Counsel: Scott Canty
Hopi General Counsel (former)
Law Offices of Scott Canty
P.O. Box 22353
Flagstaff, Arizona 86002
(928) 380-3900

4. *Laban v. Yu Weh Loo Pah Ki Community I*, November 21, 2003 (No. 03AP000007). Opinion supplied.

Appellant's Lay Advocate: Mr. Brandel (no address available)

Appellee's Lay Advocate: Mr. Day (no address available)

5. *Laban v. Yu Weh Loo Pah Ki Community II*, November 21, 2003 (No. 3AP000012) . Opinion supplied.

Appellant's Lay Advocate: Mr. Brandel (no address available)

Appellee's Lay Advocate: Mr. Day (no address available)

6. *Sipaulovi Village Board of Directors v. Sunrise Quoyavema II*, March 30, 2006 (No. 04AP000004). Opinion supplied in response to 13c.

Appellant's Counsel: Franklin Hoover
Magnum, Wall, Stoops and Warden LLP

100 East Elden Street
Flagstaff, Arizona 86001
(928) 779-6951

Appellee's Counsel: Fredrick Aspey
Aspey, Watkins and Diesel LLP
123 North San Francisco Street
Flagstaff, Arizona 86001
(928) 774-1428

7. *Sipaulovi Village Board of Directors v. Sunrise Quoyavema I*, April 9, 2004 (No. 04AP000004). Opinion supplied in response to 13c.

Appellant's Counsel: Franklin Hoover
Magnum, Wall, Stoops and Warden LLP
100 East Elden Street
Flagstaff, Arizona 86001
(928) 779-6951

Appellee's Counsel: Fredrick Aspey
Aspey, Watkins and Diesel LLP
123 North San Francisco Street
Flagstaff, Arizona 86001
(928) 774-1428

8. *In the Matter of Certified Question of Law Re: In the Matter of the Practice of Law of All Persons Admitted to Practice as Lay Counsel in the Hopi Tribal Court*, April 9, 2004 (No. 03AP000005). Opinion supplied in response to 13c.

Petitioner: Gary Larance, Hopi Tribal Court Chief Judge (former)
7904 East Chaparral Road, Suite A110-146
Scottsdale, Arizona 85250
(928) 401-1842

9. *In the Matter of Certified Question of Law: First Mesa Consolidated Villages*, November 19, 2004 (No. 4AP000001). Opinion supplied in response to 13c.

Petitioner: Scott Canty, Hopi General Counsel (former)
Law Offices of Scott Canty
P.O. Box 22353
Flagstaff, Arizona 86002
(928) 380-3900

10. *Mishongnovi Cultural Preservation Board*, November 19, 2004 (No. 02AP000013). Opinion supplied.

Petitioner: record of petitioner unavailable

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

None.

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

None.

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

To the best of my knowledge, only three Hopi Appellate Court decisions that I participated in drafting were ever formally published. Generally, copies of court opinions were mailed to the parties and a copy of the decision is maintained in the Hopi Tribal Court Clerk'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.

No Hopi Appellate Court matter involved 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 served by designation on any federal court.

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

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

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

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

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

I recused myself from all tribal criminal appeals. Tribal criminal violations have a high probability of being referred to the U.S. Attorney's Office for federal prosecution. At the time, I was heavily involved in violent crime prosecutions, many arising in Indian Country, including matters arising on Hopi lands. I sought to avoid future potential conflicts of interest for me and my office. The Hopi Tribal Court Clerk reviewed all cases that were referred to the Appellate Court to ensure that I was not assigned any criminal appeals or writs.

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.

On November 15, 2007, I was nominated by President George W. Bush to the position of United States Attorney for the District of Arizona. I was confirmed by the U.S. Senate and appointed to that position in December 2007.

On November 13, 2006, I was nominated by President George W. Bush to the Board of Trustees for the Udall Foundation. I was confirmed by the U.S. Senate in December 2006 and am currently serving on the Board in an expired hold-over term.

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

I have not held office in or played a role in a political party or 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 never served as a law clerk for a judge.

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

        I have not engaged in the solo practice of law.

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

        1993 – 1996
        United States Senate
        Committee on Indian Affairs
        838 Hart Office Building
        Washington, D.C. 20510
        Deputy Counsel

        1996 – 1998
        United States Department of Justice
        Office of the Deputy Attorney General
        Office of Tribal Justice
        950 Pennsylvania Avenue, N.W.
        Washington, D.C. 20530
        Counsel to the Deputy Attorney General (1996 – 1998)
        Special Assistant U.S. Attorney, District of Arizona (1997 – 1998)

        1998 – 2009
        U.S. Attorney's Office, District of Arizona
        Two Renaissance Square
        40 North Central Avenue, Suite 1200
        Phoenix, Arizona 85004
        United States Attorney (2007 – 2009)
        Senior Litigation Counsel (2001 – 2007)
        Assistant U.S. Attorney (1998 – 2007)

        August – September 2009
        The Hopi Tribe

Hopi Tribal Prosecutor's Office
P. O. Box 306
Keams Canyon, Arizona 86034
Acting Chief Prosecutor

2009 – 2011
Squire, Sanders & Dempsey (US) LLP
One East Washington Street, Suite 2700
Phoenix, Arizona 85004
Of Counsel and Principal

2011– present
Arizona State University
Fulton Center 410
300 East University Drive
P.O. Box 877705
Tempe, Arizona 85287
Special Advisor to the President (2011 – present)
Special Counsel, Office of General Counsel (2011 – present)
Professor of Practice, Sandra Day O'Connor College of Law (2011 – present)

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

From approximately 2004 to 2007 I was on a list of Arbitration lawyers for Arizona. I was designated an arbitration judge on at least two matters. However, the matters settled or the parties elected not to use arbitration.

b. Describe:

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

From 1993 to 1996 as Deputy Counsel to the U.S. Senate Committee on Indian Affairs, I provided research and advice to Committee members and staff. I drafted federal legislation and prepared legal memoranda on pending legislation, staffed hearings, and drafted letters and talking points for the Committee Chairman.

From 1996 to 1998 as counsel to the Deputy Attorney General, I provided legal research and advice to the Director and staff of the Office of Tribal Justice on national issues affecting Indian tribal governments and the Justice Department, including Indian gaming, tribal courts, litigation involving the federal government and Indian tribes and the federal

prosecution of Indian Country crimes and affiliated resource issues. In 1997 I was assigned to the United States Attorney's Office for the District of Arizona as a Special AUSA, where I handled a variety of Indian Country related policy matters and cases.

In 1998 I was hired as a permanent AUSA for the District of Arizona. I was assigned to a general crimes group and later assigned to a violent crimes group. I handled a wide variety of cases from criminal complaint, grand jury proceedings, and trials through sentencing and appeal. In approximately 2001, I transferred to the civil division where I handled claims against the federal government and prosecuted federal bankruptcy claims. I appeared in the Federal Magistrate, District and Bankruptcy Courts and Phoenix City Court.

In approximately 2001, I was elevated to Senior Litigation Counsel to the United States Attorney where I handled a criminal caseload. I also supervised the Victim Witness Program staff and served as the Office's Victim Witness Ombudsman and the Tribal Liaison. As the Tribal Liaison, I provided advice to the U.S. Attorney on issues relating to our work with and for Indian tribes, developed training programs for tribal investigators and prosecutors, and interfaced with tribal government officials to build trust with our federal investigation agencies. I represented the U.S. Attorney on the Arizona State, Tribal and Federal Court forum.

In 2007 I was confirmed as the United States Attorney for the District of Arizona. I oversaw one of the largest offices in the nation with one of the highest caseloads (four offices with over 300 employees). I coordinated major federal investigations with federal, state and tribal law enforcement agencies. I was assigned to the U.S. Attorney General's Southwest Border Crimes Advisory Group and the Native American Issues Advisory Group. As part of my responsibilities, I testified before the U.S. Sentencing Commission on border crimes issues and the United States Senate on Indian Country crime issues. I worked with the Chief Judge of the Arizona District Court to address the high volume of immigration violations and border crimes cases affecting the federal courts in Arizona.

In August 2009 I was hired by the Hopi Tribe on a temporary emergency basis as the Acting Chief Prosecutor while the Tribe attempted to fill the vacant position. I handled a variety of tribal criminal cases from initial charging through disposition in the Hopi Tribal Court. I resigned that position in late September 2009 due to a prior employment commitment.

From 2009 to 2011 I worked in the Squire, Sanders and Dempsey law firm where I was assigned to the Federal Indian law and Environmental Law practices group. I represented clients, tribal and non-tribal, on federal

Indian law, renewable energy development and water law issues. I was responsible for building client relationships with tribal governments or with clients who sought relationships with tribal governments. As the Principal in the Public Advocacy group, I provided a tribal client advice and counsel on federal agency rules, regulations and Tribal consultation.

In private practice, I was retained by Arizona State University ("ASU") to work for the ASU President. In October 2011, I resigned my position in private practice to work full-time for ASU. As Special Advisor and Special Counsel, I provide research and advice on a variety of higher education law matters, including legal and policy matters affecting ASU and its relationships with Indian tribes.

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

As an Indian Affairs Committee Counsel, I interfaced with federal agencies for which the Committee had oversight, including the Bureau of Indian Affairs and the Indian Health Service. I met with tribal, state and local agency representatives on matters affected by federal law, government action or Indian legal issues.

As Deputy Counsel, my client was the Department of Justice. By Executive Order, I was required to consult with federal Indian tribes on matters affecting the Indian tribes and the federal government. As an Assistant U.S. Attorney, Senior Litigation Counsel and U.S. Attorney, I represented federal agencies and the interests of the federal government in the federal courts. As the Acting Chief Prosecutor for the Hopi Tribe, I represented the Hopi Tribe and its interests. I interfaced with the federal and local agencies assigned to investigate and enforce the laws of the Hopi Tribe. As Of Counsel and Principal with Squire, Sanders and Dempsey, I was retained by Indian tribes, private companies and public agencies on specific legal and public policy matters. As Special Advisor and Special Counsel for the ASU President, I represent ASU and its interests in negotiating agreements with Indian tribes, review federal regulation compliance. I represent ASU and its interests in addressing Arizona Indian tribal higher education issues.

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

As an Assistant U.S. Attorney and up to the time I was confirmed as the United States Attorney in 2007, I handled the initial stages of criminal cases including presentment of cases to Federal Grand Juries. I appeared regularly in initial court proceedings in U.S. Magistrate Court including representing the United States in

initial appearances, detention and preliminary hearings. I regularly appeared in Federal District Court in pre–trial motion hearings, voluntariness hearings, change of plea hearings and sentencing hearings. I have tried approximately 20 cases to jury or judge verdict. My trial experience ranges from homicides and child sex crimes to defending federal agencies and their interests in City and Federal Courts, including Federal Bankruptcy Court. I have also handled Federal Juvenile Delinquency proceedings, including juvenile to adult transfer proceedings. As necessary, I researched and drafted appellate briefs arising from my cases.

As the Acting Chief Prosecutor for the Hopi Tribe from August to September 2009, I handled misdemeanor tribal court criminal offenses from making the initial charging decision through plea hearing and sentencing. I appeared in Hopi Tribal Court multiple times a day, four out of five days a week for approximately six weeks.

i. Indicate the percentage of your practice in:
   1. federal courts: 98%
   2. state courts of record: 1%
   3. other courts: 1%
   4. administrative agencies: 0%

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

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

I have handled approximately 255 criminal or civil cases. I was lead counsel in all but approximately 12 cases. I tried approximately 20 cases to judge or jury verdict. I was co-counsel on three of the criminal cases that went to trial. As co-counsel, I generally shared responsibility for pre-trial motion research and motion drafting, witness preparation and an equal division of witness examination and opening and closing arguments. Of the cases that I have solely tried, I handled all aspects of the case from the Federal Grand Jury presentation of charges through pre-trial motion practice, trial preparation, trial and sentencing.

i. What percentage of these trials were:
   1. jury: 99%
   2. non-jury: 1%

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

I have not appeared before the United States Supreme Court.

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

a. the date of representation;

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

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

1. *United States v. James,* CR 05–00172–PCT–DGC (2006 – 2007).

I obtained a conviction after a jury trial for Aggravated Sexual Abuse of a Minor, Abusive Sexual Contact and Attempted Aggravated Sexual Abuse of a Minor. The defendant was sentenced to thirty-years in federal custody, one of the longest sentences for crimes of this nature. The defendant, a transient tribal member, was an acquaintance of the victim's mother. He was invited to stay the evening with her family on the White Mountain Apache reservation. The minor victim awoke to the defendant sexually assaulting him. The defendant was immediately arrested and the Federal Bureau of Investigation conducted an investigation. The case was transferred to me after the matter was set for trial. Immediately before trial, I discovered that the defendant had a prior state court conviction for similar conduct occurring approximately 15 years prior. Upon motion, I was permitted to introduce the prior conviction. I handled all pre-trial pleadings, witness preparation, trial and sentencing. The presiding judge was David G. Campbell.

Defense Counsel: Gerald Williams
Federal Defenders Office
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
(602) 382-2700

2. *United States v. Rocc,* CR 99–616–PCT– RGS (1999 – 2000).

I indicted and convicted by plea the defendant on one count of Aggravated Sexual Abuse with a Child Under Twelve for sexually assaulting his step-daughter. The defendant engaged in anal intercourse with an eight-year-old incapacitated victim and was discovered in the act by the victim's older sister. The child witness immediately called the tribal police and the defendant was arrested. The victim was transported to the local Indian Health Service hospital where a medical examination confirmed the sexual assault. In the examination, the victim revealed that the defendant engaged in at least ten sex acts with her. The Navajo Nation Criminal Investigation handled the investigation. I handled all matters from charging through sentencing. The presiding judge was Roger G. Strand. (In a related case, the victim's mother pled guilty to Witness Tampering for causing the victim to recant her statement. The court sentenced her to one year in federal custody. I handled all matters from charging to disposition. *See United States v. Begay*, CR 99–726–PCT–RCB (1999)).

Defense Counsel: Celia M. Rumann (former Assistant Public Defender)
One North Central Avenue
Phoenix, Arizona 85004
(602) 682-6800

3. *United States v. Yazzie,* CR 99–753–PCT–EHC (1999 – 2000).

I obtained a conviction after a jury trial for Involuntary Manslaughter, a lesser-included offense of Second Degree Murder. The defendant and his elderly father were consuming alcohol and driving around the area of Cameron on the Navajo Indian reservation. Sometime during the night, the defendant and his father fought. During the fight, the defendant struck his father on the head with a bottle. The defendant dumped his father's body off on the side of the road where he was later discovered. The victim's cause of death was a result of severe head injuries. The defendant's pick-up truck was found at his home. Evidence of blood spatter was detected in the truck's interior cab. The defendant was sentenced to 20 months in federal custody. I handled all pre-trial motions preparation, pre-trial witness preparation, jury selection, trial and sentencing. The presiding judge was Earl H. Carroll.

Defense Counsel: James S. Park
Park Law Office
2702 North Third Street, Suite 4005
Phoenix, Arizona 85004
Phone: (602) 462-5700

4. *United States v. Nakai, Yazzie et al*, CR 99-075–PCT–EHC (1999 – 2000).

I prosecuted two adult defendants and two juveniles for Second Degree Murder for

the beating death of their aunt's boyfriend. One of the juveniles was convinced that the victim was a witch who had placed him under a curse resulting in his constant illness. The group lured the victim from the home, beat him and hid his body. I separately filed federal juvenile delinquency violations against the juveniles. I was the attorney of record and handled all matters from the federal grand jury proceedings, pre-trial motion preparation and witness interviews, through plea negotiation and sentencing in both the adult and federal juvenile delinquency proceedings. The Presiding Judge was Earl H. Carroll.

Defense Counsel: (Richard Nakai)
Thomas E. Haney
101 North First Avenue, Suite 460
Phoenix, Arizona 85003
(602) 861-5915

Defense Counsel: (Lewis Yazzie)
Deborah Williams
Federal Defenders Office
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
(602) 382-2700

5. *United States v. Tidwell,* CR 97–93–PCT-EHC (1997 – 1998).

After a two-week jury trial, the defendant was convicted of numerous ARPA, NAGPRA, and Conspiracy and Theft of Government Property crimes involving cultural patrimony and archeological resources of two Indian tribal governments, the Acoma Pueblo and the Hopi Tribe. The case began as an undercover operation with the Bureau of Indian Affairs guided by former AUSA Paul K. Charlton. Charlton sought my assistance as co-counsel prior to the federal grand jury presentation due to my familiarity with the NAGPRA law and Indian Tribal matters. The division of labor was equally divided. We jointly presented witnesses and evidence at trial. The presiding judge was Earl H. Carroll. The trial verdict was affirmed on appeal. I helped to draft the appellate briefing. Charlton argued the appeal before the Ninth Circuit Court of Appeals. The published appellate decision is recorded at *United States v. Rodney Tidwell*, 191 F.3d 976 (1999). This case was one of several cases that led to a new section in the U.S. Sentencing Guidelines for calculating sentences involving national heritage resource and tribal cultural resource crimes.

Co-counsel:
Paul K. Charlton (former U.S. Attorney)
Gallagher & Kennedy
2572 East Camelback Road, Suite 1100
Phoenix, Arizona 85016
(602) 530-8585

Defense Counsel:
Arthur E. Lloyd
113 East Frontier Street

Payson, Arizona 85541
(928) 474-6727

6. *United States v. Thurman,* CR 98 –005–PCT–EHC (1997–1998).

This case involved the five-year-old unsolved murder of a two-year-old child. There was no physical evidence or witnesses to the crime. The lead counsel, AUSA Wallace H. Kleindienst requested my assistance on the case as co-counsel. Together, we employed two lengthy federal grand jury investigations that spanned the course of one year. We re-interviewed witnesses, called uncooperative witness before the federal grand jury and developed numerous leads. Together, the FBI Special Agent assigned to this case and I identified a critical witness who led to information about prior physical assaults on another child by the suspect. I was also able to build rapport with a critical witness who eventually provided new evidence of the suspect's involvement in the child's murder. This information provided the momentum for other witness to come forward. The suspect later pled guilty to Second Degree Murder resulting in a 22–year sentence. AUSA Kleindienst and I jointly interviewed witnesses and presented federal grand jury testimony and appeared at the plea and sentencing hearing. The presiding judge was Earl H. Carroll.

Co-counsel: Wallace H. Kleindienst
United States Attorney's Office
Evo A. DeConcini Courthouse
405 West Congress Avenue, Room 4800
Tucson, Arizona 85701
(520) 620-7300

Defense Counsel: Deborah Williams
Federal Defenders Office
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
(602) 382-2700

7. *United States v. Youvella,* CR 98–476–PCT–PGR (1998 – 1999).

I directed a joint Federal Bureau of Investigation and Bureau of Indian Affairs Criminal Investigation undercover operation that including telephonic monitoring between the child victim and the defendant. This type of investigation technique is rarely used in Indian Country crime investigations. The investigation resulted in a tribal grade school girls' basketball coach's conviction for two-counts of Sexual Abuse of a Minor. I guided the investigation, presented the case to the federal grand jury and handled all matters through sentencing. The presiding judge was Paul G. Rosenblatt.

Defense Counsel: Deborah Williams
Federal Defenders Office

850 West Adams Street, Suite 201
Phoenix, Arizona 85007
(602) 382-2700

8. *United States v. Slowman*, CR 97–496–PCT–PGR (1998).

The defendant pleaded guilty to Second Degree Murder and was sentenced to 216 months in federal custody. The victim was at home repairing his car. The defendant came by and the two men began drinking alcohol. A verbal confrontation took place, followed by a physical fight. The defendant punched the victim, who fell inside an unfinished portion of a home that contained various construction and mechanics tools. While the victim attempted to get up, the defendant heaved a car crank-shaft on his head. Thereafter, he picked up a pick-ax and struck the victim in the chest five times. The defendant fled into the mountains. A federal and tribal law enforcement manhunt located the defendant the next day. I handled this matter from the federal grand jury presentation through sentencing. The presiding judge was Paul G. Rosenblatt.

Defense Counsel: Gerald Williams
Federal Defenders Office
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
(602) 382-2700

9. *United States v. Zeena,* CR 99–019–PCT–RCB (1999 – 2000).

On April 16, 1999 a federal trial jury convicted the defendant of Aggravated Sexual Abuse of a Child. The defendant was in a brief relationship with the victim's mother. Almost immediately, he moved in with her and her three children, including the eight-year-old victim. The victim's sexual abuse was disclosed as a result of a separate sexual abuse incident involving the defendant and the victim's ten-year-old sister. At trial, the defendant claimed that the children were jealous of his relationship with their mother and fabricated the crimes. The defendant was sentenced to 164 months in federal custody. I handled all matters from the federal grand jury presentation, trial motion preparation, pre-trial witness preparation, trial and sentencing. The presiding judge was Robert C. Broomfield.

Defense Counsel: Gerald Williams
Federal Defenders Office
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
(602) 382-2700

10. *James, Guardian Ad Litem v. United States,* CR 99–0599–PCT–SLV (2000 – 2001).

The plaintiff filed a Federal Tort Claims Act claim against the United States for

protracted neurological and physical injuries sustained by the fourteen-year-old minor while he was a youth worker for the Bureau of Indian Affairs. The minor claimed that he was no longer able to physically exert himself and complained of constant headaches. Through deposition of witnesses, the plaintiff's physician and detailed evidence collection, I discovered that the plaintiff's injuries were severely overstated. This matter was transferred to me with looming discovery and motions deadlines. I settled this matter for $16,000. The presiding judge was U.S. Magistrate Judge Stephen L. Verkamp.

Defense Counsel: Dale Itschner
2482 North Oakmont Drive
Flagstaff, Arizona 86004-7466
(928) 774-2708

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 2002, as Senior Litigation Counsel, I assisted the U.S. Department of the Interior, Bureau of Indian Affairs Office of Justice Services and the U.S. Attorney Offices in Arizona, Colorado, New Mexico and Utah in developing a law enforcement initiative to recover cultural resources belonging to Indian Tribes from the general public. The "Four –Corners Amnesty Initiative" included a public campaign to educate the public about the Archeological Resource Protection Act and Native American Graves Protection and Repatriation Act laws. The initiative ran for approximately two months and permitted individuals to turn in cultural resources or human remains to partner museums without fear of federal prosecution. The initiative resulted in the return of significant items with cultural importance to numerous Indian Tribes in the southwest.

As the United States Attorney, I instituted an office-wide policy requiring AUSAs to issue a press release on all Indian Country crime convictions or civil verdicts to the affected Indian Tribe. The intent was to inform the tribes of the extent to which violent crimes occurred in their communities, the role of the federal judicial system in addressing those crimes and to share information on the federal and tribal law enforcement resources used to resolve such cases.

As an Advisor to the Education Committee of the National Crime Victim Law Institute, I have been able to integrate Indian tribal jurisdictional elements where appropriate to the Institute's curriculum and initiatives. I have provided education and training to the Committee and Institute conference participants on the interplay between the state, tribal and federal justice systems relative to crime victims.

I have not engaged in lobbying nor have I ever registered as a lobbyist.

In March 2013 ASU Public Advocacy Director Stuart Hadley and I met with various Arizona Congressional members staff and staff in the Bureau of Indian Affairs and U.S. Department of Education to express Arizona State University's support for the Navajo Nation, National Indian Education Association and the American Indian Higher Education Association requests to forward fund the Bureau of Indian Education higher education grants and scholarships.

In March 2010, while in private practice, I accompanied a tribal client to the Inter Tribal Council of Arizona Inc.'s legislative impact week. I accompanied my client, the Hualapai Tribe, and various ITCA members to meet various U.S. Congressional delegation staff on Arizona tribal issues. We met with staff of the following Congressional Members: Cong. Pastor, Cong. Grijalva, Cong. Norton, Senator Inouye and Senator Akaka. We met with Senator Tom Udall. I prepared my clients and I accompanied them to the meetings but they advocated on their own behalf.

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

    Fall Semester 2012, Cultural Resource Law Seminar, Sandra Day O'Connor College of Law. I have provided a copy of the course syllabus.

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

    I have a deferred Thrift Savings Plan and federal retirement benefits from prior federal government service. This information is included in the attached Financial Statement.

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

    I have no 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 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).

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 believe any persons, parties, categories of litigation or financial interests will present a conflict of interest for me. As the U.S. Attorney for the District of Arizona and as a lawyer handling matters for the Office, I have handled numerous cases in Arizona federal court. Some matters may still be pending while others may involve defendants whom I previously convicted and who may appear on a violation of release conditions. If confirmed, I will diligently review all parties and cases to identify potential conflicts of interest. At all times, I will adhere to the Code of Conduct for United States Judges Canon 3 and Federal Rule 28 U.S.C. § 455 to avoid, prevent and address any potential conflicts of interest.

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

If confirmed, I will handle all matters through the diligent application of the United States Judicial Code of Conduct, including Canon 3(C) and (D) and Federal Rule 28 U.S.C. § 455.

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

From 2009 to the present, I have participated as an advisor to the National Crime Victim Law Institute's Education Committee, a non-profit crime victim legal advocacy organization. I attend conference calls approximately six times a year and when able, provide training during the annual conference. Generally, I provide advice on educational programing designed to foster understanding of victims' rights in tribal, state and federal courts.

I also have been very involved in providing legal services to tribal communities. For example, I agreed to serve as an uncompensated Appellate Court Judge for the Hopi Tribe from 2002 to 2007. During that time, at least twice a year for two to three days I traveled to the Hopi reservation to preside over civil appellate court cases. I also participated in drafting the Hopi Tribal Court rules of practice and in developing standards of conduct for tribal court practitioners. From 2010 to 2011, I chaired a Hopi Tribal Court committee that was responsible for drafting professional practice rules. While in private practice from 2009 to 2011 I provided pro-bono services to the Western Apache NAGPRA Working Group comprised of the San Carlos Apache, Yavapai-Apache, White Mountain Apache and the Tonto Apache Tribes. I provided information and advice to the Working Group on federal agency and museum repatriation practices.

I have also been involved in moot court competitions. From approximately 1997 to 2001, I judged various Arizona State University law student activities such as client counseling, client negotiation and moot court competitions. In February 2013, I judged the National Cultural Heritage Moot Court brief writing competition for the DePaul University.

26. **Selection Process**:

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

I submitted a Federal Judicial Candidate Questionnaire to U.S. Senator John S. McCain on March 8, 2013. I interviewed with Senator McCain's Federal Judicial Evaluation Committee in Phoenix, Arizona, on June 11, 2013. On June 28, 2013, the Chairman of the Committee called me stating that Senator McCain approved the Committee's recommendation of me for a federal judge position. He advised that my name would be submitted to the White House for further consideration. Since June 30, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 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.

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
Humetewa, Diane J.	U.S. District Court, Arizona	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 Court Judge	☑ Nomination Date 9/19/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	1/1/2012 to 8/31/2013
7. Chambers or Office Address		
Arizona State University, Fulton Center 410, 300 E. University Drive P.O. Box 877705 Tempe Arizona 85287-7705		

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.	Special Advisor, Special Counsel & Professor of Practice	Arizona State University
2.	Member, Board of Trustees	Udall Foundation
3.	Member, Board ofTrustees	The Nature Conservancy in Arizona
4.	Member, Board of Trustees	National Indian Justice Center
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 Humetewa, Diane J.	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.	2011	Squire, Sanders & Dempsey LLP - salary	$221,973.00
2.	2011	Arizona State Government - salary	$16,318.54
3.	2012	Arizona State Government - salary	$194,714.00
4.	2013	Arizona State Government - salary	$78,465.14

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Humetewa, Diane J.	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 7	Name of Person Reporting Humetewa, Diane J.	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)
1. American Century Diversified Bond Investment Class	A	Dividend	J	T	Exempt				
2. Fidelity Adv.New Insight Fund I	A	Dividend	K	T					
3. Credit Suisse Commodity Return Strategy A	A	Dividend	J	T					
4. Dodge & Cox Income Fund	A	Dividend	K	T					
5. Fidelity Adv. Mid Cap II	A	Dividend	J	T					
6. General Money Market Fund	A	Dividend	J	T					
7. Harbor Bond Fund	A	Dividend	J	T					
8. Hartford High Yield A	A	Dividend	J	T					
9. Harbor Real Return	A	Dividend	J	T					
10. Eagle Small Cap Fund A	A	Dividend	J	T					
11. Perkins Mid Cap Value Fund Class T	A	Dividend	J	T					
12. Columbia Acorn Intern'l A	A	Dividend	J	T					
13. MFS Value Fund	A	Dividend	K	T					
14. MFS Intern'l Growth I	A	Dividend	J	T					
15. Northern Small Cap Value Fund	A	Dividend	J	T					
16. Oakmark Intern'l Small Cap	A	Dividend	J	T					
17. Oakmark Intern'l Fund	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Humetewa, Diane J.	Date of Report 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)
18. Aliance GI NFJ Dividend Value Fund A	A	Dividend	K	T					
19. Pimco Income Fund A	A	Dividend	K	T					
20. T Rowe Emerging Market Stock Fund	A	Dividend	K	T					
21. Templeton Global Bond Fund A	A	Dividend	J	T					
22. T Rowe Price Real Estate	A	Dividend	J	T					
23. Scout Intern'l Fund	A	Dividend	J	T					
24. Bank of America Cash Accounts	A	Interest	K	T					
25. First Credit Union Cash Accounts	A	Interest	L	T					
26. Northwest Mutual Whole Life Insurance "65 Life"	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 6 of 7	Name of Person Reporting Humetewa, Diane J.	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	Date of Report
	Humetewa, Diane J.	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/ **Diane J. Humetewa**

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		92	816	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		350	711	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		187	166
Real estate owned – personal residence		376	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000				
Cash value-life insurance		25	589				
Other assets itemize:							
Thrift Savings Plan		692	286				
				Total liabilities		187	166
				Net Worth	1	375	236
Total Assets	1	562	402	Total liabilities and net worth	1	562	402
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AllianzGI NFJ Dividend Value Fund	$ 19,670
American Century Diversified Bond Fund	11,494
Columbia Acorn Fund	8,768
Credit Suisse Commodity Return Strategy Fund	16,111
Dodge & Cox Income Fund	20,068
Eagle Small Cap Growth Fund	5,501
Fidelity Mid Cap II Fund	12,747
Fidelity New Insights Fund	50,888
General Money Market Fund	11,242
Harbor Bond Fund	11,581
Harbor Real Return Fund	7,542
Hartford High Yield Fund	11,804
MFS International Growth Fund	14,233
MFS Value Fund	34,849
Northern Small Cap Value Fund	5,403
Oakmark International Fund	13,329
Oakmark International Small Cap Fund	9,207
Perkins Mid Cap Value Fund	12,319
PIMCO Income Fund	21,778
Scout International Fund	12,143
T. Rowe Price Emerging Markets Stock Fund	18,748
T. Rowe Price Real Estate Fund	12,957
Templeton Global Bond Fund	8,329
Total Listed Securities	$ 350,711

AFFIDAVIT

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

Sept 20, 2013
(DATE)

(NAME)

Kathy Cook
(NOTARY)

OFFICIAL SEAL
KATHY COOK
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Mar. 4, 2014

Diane J. Humetewa
10236 N. Central Avenue
Phoenix, Arizona 85020

January 6, 2014

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

Dear Chairman Leahy:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination on September 19, 2013, to be a United States District Court Judge for the District of Arizona. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

Q.12d:

November 22, 2013: Moderator, "The Legal Landscape of Tribal Renewable Energy Development" Conference, Arizona State University, Sandra Day O'Connor College of Law, Tempe, Arizona. I moderated a panel presentation on legal ethics and professional responsibility. Presentation slides and notes supplied.

December 17, 2013: Speaker, "Fall 2013 American Indian Student Convocation" Arizona State University, Tempe, Arizona. I provided brief welcome remarks. I have no notes, transcript or recordings. The address of Arizona State University is 1151 South Forest Avenue, Phoenix, Arizona 85287.

I am also providing an updated Net Worth Statement and Financial Disclosure Report as required by the Senate Questionnaire. I appreciate the Committee's consideration of my nomination.

Sincerely,

Diane J. Humetewa

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

THE LEGAL LANDSCAPE OF TRIBAL RENEWABLE ENERGY DEVELOPMENT

November 22, 2013

1:15-3:00

DIANE:

1. INTRODUCTIONS

2. DISCLAIMERS

HYPOTHETICAL 1: [NICCOLE TO LEAD]

You are the chief legal counsel for your tribe. ZEN Energy, a renewable energy company, and TRY, a tribal enterprise, have proposed developing valuable tribal renewable energy resources to the tribal leadership. The leadership asks you to enter into a Letter of Intent and to carry out the development of the project for the tribe. You have limited experience in developing renewable energy resources for an Indian tribe.

Q. What ethical issues arise?

*Who is the client? [*Discuss: Council delegates, President or Chairman, committees of the Council, tribal enterprise, competing governmental entities?]

Q. Are you able to hire independent counsel for the other governmental unit?

Discuss:

* Attorney role as mediator
* Charter responsibility for representation
* What are the objectives of representation?
* Has a final decision been made to develop the project?

Q. If you question the viability of the project or question the competence of the ZEN Energy, is it within your responsibility to investigate these issues?

MRPC Ethical Rule 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

THE LEGAL LANDSCAPE OF TRIBAL RENEWABLE ENERGY DEVELOPMENT
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(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 16-101 of New Mexico Rules. & ABA MR 1.1

Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation **reasonably necessary for the representation**.

Q. How do you determine whether to handle the matter yourself or hire outside counsel?

Considerations: **Competence**

* Evaluate your own competence; honestly.
* Assess what you know about legal requirements for project development?
* What don't you know? Do you have sufficient knowledge on the complex issues involved? Including complex laws and regulations that are constantly changing, e.g., permitting, federal subsidies, financing vehicles, tax credits, etc.
* How much work will be required for you to get up to speed?
* Do you have the time?
* Whose ethical rules apply?
* Expertise of a general practitioner is required.
* Can you limit your representation?
* How will due diligence be conducted?

DH Comment to 1.1: in determining competence – suggests focusing on the following factors: Relative Complexity of the Matter and the Specialized Nature of the Work

Q. *How do you achieve competence to meet the parameters of the rule?*

DH Practical Considerations that I assume every tribal general counsel must consider:

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Q. If you need to hire outside counsel, how do you select a firm?

Discussion regarding selecting an outside firm:

* References. Check out any references yourself.
* Utmost care required
* Due diligence quandary - How do you know which attorneys to hire prior to completion of diligence?
* Lawyers do not know it all. You will also need industry experts. The right law firm should know of such experts. Insist on experts.
* Experience in the specific subject matter – you want someone who has done it before
* Expertise required of outside counsel
* Indian law knowledge * Knowledge of laws governing the tribe

Q. What do you do in special situations? For instance, what issues arise when the enterprise has its own counsel and partners? Is there an implied "association"?

Discuss:

* Be wary of sharing confidential information
* Attorney has discretion to make limited disclosures

New Mexico Rule 16-104 Communication ABA MR 1.4

A. Status of Matters. A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

B. Client's Informed Decision-Making. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Q. With a tribal government client – how do you comply with "Communication"?

* Obtaining tribal approvals
* Inclusion of approving committee members on project team
* Hiring expert consultants
* Committee reports

New Mexico Rule 16-106 Confidentiality of Information/ ABA MR 1.6

A. Disclosure of Information Generally. A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in Paragraphs B, C and D.

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* Issue of disclosure to enterprise and ZEN Energy attorneys
* Non-Disclosure Agreements
* Executive Sessions
* Tribal Access to Information Acts [**[How many here work for or know of tribes who have enacted these kinds of laws]?**
* Who is authorized to consent to disclosure of confidential or attorney client privileged information?

New Mexico Rule 16-103 Diligence / ABA MR 1.3

A lawyer shall act with reasonable diligence and promptness in representing a client.

DH Comment states that lawyers shall pursue the matter despite opposition, obstruction or personal inconvenience.

Discuss diligence considerations:

* Get expert consultants quickly.
* If the tribe will contribute financing or guarantee the project
  Do feasibility and market studies
  * Bank loan will require bond counsel
* What natural or renewable resources of the tribe will be utilized?
  * If water is to be used, is there a water right and is there an available supply?
  * Will the tribe discount the value of resources it provides to the enterprise?
    * Beware of escalated commitment
    * Enterprises' participation should be long term feasible
* Infrastructure availability
  * Transportation facilities
  * Pipelines, transmission lines, railroads, trucking
* Time to bring the project to completion
  * Environmental assessments or EIS
  * Federal action
  * Endangered species Act compliance
* Critical path
  * Investment tax credit
  * PPA with utility company necessary for financing
  * Transmission and interconnection rights
  * Environmental/endangered species/cultural resource studies
* Construction within allowable time frames to qualify for tax credits

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HYPOTHETICAL 2: [PETER TO LEAD]

Attorney A in your firm's Texas office represents Client A in a loan transaction. The matter is small and ongoing, although there has been no activity recently. After some time, Client B seeks to have Attorney B in your firm's Sacramento office represent Client B in an energy development project in California. Client A is one of many entities who have a role in the California transaction. 2 clients; same firm but 2 attorney's in the firm handling each client

What issues arise? What if Client A is a former client?

Conflicts of Interest!

- **MRPC Rule 1.7 Conflict Of Interest: Current Clients**

  (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

  (1) the representation of one client will be directly adverse to another client; or

  (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Q. *What if you identify that adverse interest present*? See **Model Rules Comments 6 and 7 to Rule 1.7.** ("Absent consent a lawyer may not act as an advocate in one matter against the person the lawyer represents in some other matter, even when the matters are wholly unrelated.").

Q. *Could the representation of Client A or B materially limited*? What if the firm represents Clients A and B in an economic development project?

Could the lawyer be limited in his representation due to the duty of loyalty to each?

Comment: consider whether the representation will interfere w/lawyers "independent professional judgment"

Accordingly, the lawyer may be limited in its ability to recommend all possible positions that each Client may take. See Model Rules Comment 8 to Rule 1.7.

- Consider also attorney's knowledge of confidential information about a client that may be adverse the interests of other client. For example - What is Client B's source of funds?

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□ **MRPC Rule 1.7(b). Waiver.[Informed Consent]**

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) **the lawyer reasonably believes** that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives **informed consent**, confirmed in writing.

□ What is the math on reasonable belief? Could the attorney undertake the representation despite the presence of a concurrent conflict?

Consider professional judgment, **independence, duty of loyalty,** potential for material limitation, potential for disagreements and prejudice from any conflict.

Consider how antagonistic the Client's interests are with respect to each other.

□ **Can the Client consent**? And more importantly, how would the lawyer's representation of each be impacted? Can the lawyer provide competent and diligent representation to each client. See **MRPC Rules 1.1, 1.3.**

[Informed consent is described in MR 1.0 (6)– terminology – Requires a reasonable effort to ensure that the client possesses information to make an informed decision]

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.1 Comment 1: "In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question."

□ What if a portion of the subject matter is outside of a lawyer's wheelhouse?

o In for a penny in for a pound?

o Coming to speed.

o Association?

o Limitation of representation. See **Arizona State Bar Opinion 05-06**. But see **MRPC Rule 1.8(h)**("a lawyer shall not make an agreement prospectively limiting the lawyer's responsibility to a client for malpractice unless the client is independently represented in making the agreement.")

□ Consider attorney "competence" vs. a wonderful opportunity for malpractice.

MRPC Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.3 Comment: "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf." But see Arizona: removal of "and with zeal in advocacy upon the client's behalf."

□ Attorney availability and responsiveness.

o Consider prejudice to client interests in business negotiations. See also Rule 1.4 – Communication. See the discipline section of the Arizona Attorney magazine for various transgressions involving failure to communicate and failure to take action by a required date.

□ Assuming you have the time, subject matter expertise, and feel comfortable representing the client in a transaction where a conflict may be present, how does the client consent to such representation?

□ Informed consent. What is informed consent? **Comment 6 to Model Rule 1.0**. It depends upon the situation.

"The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or

implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid."

- Consider how to request a waiver. Engagement letter or other writing with discussion.

  The more detail the better. But consider Rules regarding confidentiality.

Organization as Client

- Entity Consent. Who is the client? Is it a state or tribal law entity? Governmental agency? A government?

- **Illinois State Bar Opinion 07-01.**

  - "We conclude that for the purpose of conflict of interest questions, there is not one entity, composed of all state agencies. But, we caution this does not mean that each state governmental agency is necessarily a separate entity from every other state governmental agency. On a case-by-case basis additional information must be considered, such as "whether or not each government entity has independent legal authority to act on the matter in question, and whether representation of one government entity has any importance to the other government entity. Because the state government is not one entity composed of all departments under the jurisdiction of the Governor for purposes of resolving conflict of interest questions, a lawyer may represent one government agency while representing a private party adverse to another state government agency."

- Waiver of conflict of interest by Government? Some jurisdictions do not permit public entities to waive conflicts of interest. Look to particular jurisdiction.

- The identity of the entity client is largely dependent upon facts and law. **NY City Ethics Opinion 2004-03.**

- Limitation on scope of representation of entities in Arizona. **Arizona Bar Opinion 02-06.**

  A lawyer may form a business entity for various individuals and be counsel only for the yet-to-be-form entity, if appropriate disclosures and consents occur. Alternatively, a lawyer may represent all of the incorporators collectively, with appropriate disclosures.

  Consider:

  - **MRPC Rule 1.6 – Confidentiality**

  - **MRPC Rule 1.7 – Conflict of Interest General Rule**

  - **MRPC Rule 1.13 – Organization as Client**

- o What is informed consent for the entity? Are the individuals providing informed consent? What disclosures should be made? Representation of the LLC vs. representation of the members.

□ Majority Rule re Corporate Families. A lawyer who represents a corporation or other organization does not by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Comment 34 to Model Rule 1.7. That being said, consider the facts and circumstances.

MRPC Rule 1.13 Organization As Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those

paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

- *Who speaks for the Entity Client? Confirm this early and often. Who gets to say yes?*
- *What are the ultimate approvals? Are there delegations of authority in place?*
- *When do you notify higher authorities within the entity?*

Former Clients

What if Client A is a former client? How might this impact your representation?

MRPC Rule 1.9 Duties To Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

□ Consider knowledge gained in prior representation.

□ Informed consent waiver. *Who provides?*

Negotiation Ethics. Communication, Omissions and Truthfulness.

□ The Model Professional Responsibility Rules have a number of communication rules to consider during the negotiation of any transaction.

□ A large transaction may involve a number of players which may include both attorneys and the actual represented parties. Due to subject matter expertise, individual parties may take an active role within contract negotiations. The following are a few of the rules which can be triggered in the agreement negotiations.

□ Don't lie.

Rule 1.4 Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation

o Confirm informed decisions with client. Consider communication reports when client is an organization.

o Clarity regarding legal counsel role.

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Rule 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

o Note materiality standard.

o Representation by omission?

o Rule 1.6 – Confidentiality considerations.

Rule 4.2 Communication With Person Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

o See Formal Opinion 92-362 (2002) and 06-443 (2006) of ABA Ethics Committee.

o More recently, ABA Ethics Committee Formal Opinion 11-461.

o Set expectations and obtain consent.

Rule 4.3 Dealing With Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

o Disclosure of role of attorney.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

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(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

This broad rule applies to communications with adverse parties and opposing counsel.

HYPOTHETICAL 3 [ROXANN TO LEAD]

Due to the complexity of tribal energy development transactions, a request for legal services by tribes and tribal entities asks responding firms to identify similar clients and transactions that they have worked on in the past.

*Q. Is the identification of those **clients** or **transactions** a violation of the ethical rules regarding confidentiality?*

Yes, a lawyer must have the consent of the clients prior to providing the responses or must identify the transaction so generally that the client cannot be surmised.

1.6 Confidentiality. A lawyer shall not disclose information about a client that the lawyer has gained in the professional relationship. Some rules are broad and would hold that even disclosure of the name would violate ethical rules and some rules say that only if the information is embarrassing or detrimental must the lawyer withhold it.

A lawyer may, however reveal the information with the consent of the client.

Bay Mills Code of Ethical Conduct Rule 2.303(E), California Rules of Professional Conduct Rule 3-100, ABA Model Rule 1.6

HYPOTHETICAL 4 [PETER TO LEAD]

During the course of negotiating the structure of a tribal energy transaction for Tribe X, the client asks the lawyer who is known to have recently worked on a similar transaction for Tribe Y, how Tribe Y structured their transaction.

Q. Can the lawyer reveal this information?

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Q. If the lawyer cannot reveal the information, can they nevertheless use the same structure?

1. Confidentiality1.6 . A lawyer shall not disclose information about a client that the lawyer has gained in the professional relationship.

2. Duties to Former Clients. A lawyer who has formerly represented a client shall not thereafter reveal information relating to the representation. Is this practical? ***ABA Model Rule 1.7 and 1.8***

Q. What if Tribe X's energy project will compete directly with Tribe Y's energy project?

Duties to Former Clients. A lawyer who has formerly represented a client shall not thereafter use information relating to the representation to the disadvantage of the former client (except including when the information becomes generally known). ***ABA Model Rule 1.9***

Q. Can the lawyer use documents from Tribe Y transaction as the base documents for the Tribe X transaction?

Q. If the same forms are used but adapted for Tribe X, can the lawyer charge the same amount for legal fees associated with drafting the documents?

1. Fees. A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) **the time and labor required, the novelty and difficulty of the questions involved,** and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

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ABA Model Rule 1.5

HYPOTHETICAL 5 [NICCOLE TO LEAD]

The lawyer represents two separate tribal utility authorities both owned and operated by the same tribal nation. Both authorities provide energy and both want to apply for the same federal grant funds. Both entities have asked the lawyer to assist in the preparation and submission of their grant applications.

Q. Is it a conflict of interest for the lawyer to represent both entities in this situation? Is it a waivable conflict?

> Conflict of Interest: A lawyer shall not represent a client if the representation of the client is directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with either client and the clients consent after consultation.

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyers responsibilities to another client unless the lawyer reasonably believes that the clients would not be adversely affected and the clients consent.

NOTE: Consent includes a full explanation of the implications of the common representation, the scope and the risks and advantages involved. Bay Mills Code of Ethical Conduct Rule 2.303(F), California Rules of Professional Conduct Rule 3-310; ABA Model Rule 1.7 and 1.8

HYPOTHETICAL 6 [ROXANN TO LEAD]

A lawyer has developed an expertise for a specific type of tribal solar projects. Sometimes the lawyer is engaged by the tribe and sometimes by the development company. After completing a number of projects, the lawyer discovers an error in the project documents that could be fatal the project structure. The error is in the documents for most of the projects that have been completed.

Q. Does the lawyer have a duty to report the error to his existing clients? How about his former clients? What if fixing the error in the deal with Tribe X would harm his other client, Tribe Y or his current development client?

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HYPOTHETICAL 7 **[DIANE or ROXANN TO LEAD]**

A lawyer represents a utility created by the tribal governmental authority. Most of the lawyer's work is requested by the entity's most senior employee, which is a CEO in this instance. The CEO calls the lawyer and tells him that the entity's Board of Directors is micromanaging him and asks for the lawyer's assistance in defining his and the Board's duties pursuant to the entity's governing documents. The lawyer agrees to the task. Later that week the the lawyer gets a call from the Board chair complaining about the CEO and asking the lawyer to perform a due diligence investigation of the CEO.

Q. Is there a conflict now proceeding against the CEO when the lawyer was previously acting at his request?

California Rules of Professional Conduct Rule 3-600, ABA Model Rule 1.13

In representing an organization, a lawyer shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body or constituent overseeing the engagement.

If you find out that person is acting in a way that is or may be a violation of the law, the lawyer may take such actions that are in the best interest of the organization, including (i) urging reconsideration or (ii) reporting it to the next higher internal authority. If no response, then the lawyer must resign. **Q. Is the work request by the CEO in the interest of the organization?**

In dealing with the board, the lawyer must explain the identity of the client and must explain that the individual members are not the clients. The board cannot be mislead into believing that they are entitled to individual confidentiality.

DH 1.13 "Comment : provides that the organization can only act through its officers, directors, etc... so if any of those officers, directors etc.. speaks to the organization's lawyer – and does so in his capacity as an officer – ABA MR. 1.6 -Confidentiality is also implicated [READ Comment]"

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HYPOTHETICAL 8 **[DIANE and/or ROXANN TO LEAD]**

Similarly, the lawyer is engaged as borrower's counsel for a tribe borrowing money to make improvements to utility facilities. The tribe does not have sufficient expertise to operate the utility and has hired an outside management company. All of the lawyer's work is at the request of a senior employee of the management company and paid for out of the authority's operating account. One day the tribe decides to fire the management company and the new tribal president calls the lawyer and asks why the lawyer has been doing work at the request of the management company rather than at the request of the tribe?

Q. Has the lawyer committed an ethical violation by acting at the request of an outside management company, rather than the tribe? Who is the client?

Though it is unlikely that an ethical violation was committed in either instance, these are both areas were COMMUNICATION at the outset and identification of the client would likely have avoided the issues.

HYPOTHETICAL 9 **[DIANE and/or ROXANN TO LEAD]**

The lawyer is licensed in Arizona but is engaged as special counsel for a tribe located in Oklahoma. The energy project documents specify that state law will apply to certain portions of the contract (e.g., the perfection of security interests) and the documents contain a limited waiver of sovereign immunity. The lawyer is asked to give an opinion regarding the enforceability of the project documents. The opinion would therefore require the lawyer to opine on both tribal law and State of Oklahoma law.

Can the lawyer give this opinion without breaching the ethical rules?

Can the lawyer give this opinion if he relies on the opinions of other counsel whom he associates with for the deal, for example, the tribe's in-house counsel and an attorney licensed in the state of Oklahoma?

What if the tribe has adopted State law as a fill-in where they don't have applicable laws. Are you bound by State law?

1. The Unauthorized Practice of Law A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. Arizona Ethical Rule 5.5, California Rules of Professional Conduct Rule 1-300

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2. Competence. A lawyer shall not handle a legal matter which the lawyer knows that the lawyer is not competent to handle, without associating a lawyer who is competent to handle it. Bay Mills Code of Ethical Conduct Rule 2.303(A)

HYPOTHETICAL 10 [DIANE TO /ROXANN TO LEAD]

A lawyer has served as counsel to the office of the tribal president for several years. In this capacity, the lawyer has advised the President X on projects related to coal technology. A new tribal president, President Y, has been elected and has decided to go in the direction of green technology. President Y has asked the lawyer to prepare materials to be used in a lobby effort against the use of coal and for the development of green technology instead.

Q. What are the potential conflicts involved?

Q. Is the lawyer obligated to complete this request? What if the lawyer knows that abandoning coal production will cause the loss of a significant number of jobs?

> Lawyer as Advisor. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation. ABA Model Rule 2.1

HYPOTHETICAL 11 [ROXANN TO LEAD]

In order to get out of the coal business, President Y asks the lawyer to find loopholes in the contracts that the lawyer previously helped negotiate.

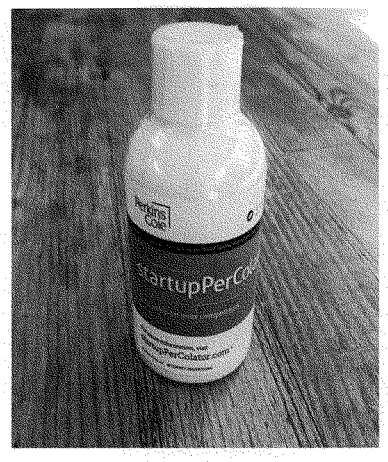
What should the lawyer do?



Legal Landscape of Tribal Renewable Energy Development

By:

Diane Humetewa, Special Advisor to ASU President Michael M. Crow, Special Counsel, General Counsel's Office & Professor of Practice, College of Law
Louis Denetsosie, Breach of Trust Counsel for the Navajo Nation
Peter Larson, Partner, Lewis Roca Rothberger LLP
Roxann Gallagher, Sacks Tierney P.A.



SUDDENLY, THE PERKINS COIE FOLKS BEGAN TO REALIZE THEY HAD TERRIBLY MISUNDERSTOOD THE TRENDING "ENERGY LAW" SECTOR.

Disclaimers

- The hypotheticals have been created for discussion only and are not necessarily reflective of any actual experience, client, lawyer, firm, or other entity. Further, the opinions that each of us are expressing today are our own and are not to be attributed to any employing firm, entity or any other individual attorney.

- Unless otherwise indicated, for discussion purposes the ABA Model Rules of Professional Conduct ("**MRPC**") are referenced. A selection of the MRPC Rules discussed in this presentation have been included as an Appendix. Please note that tribal and state law may be different so please consult the laws of all applicable jurisdictions.

Hypothetical 1

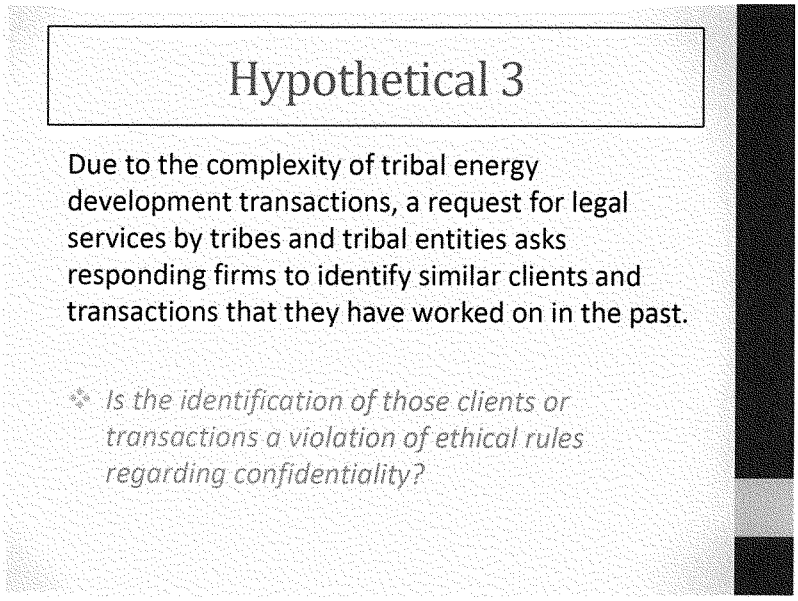
You are the chief legal counsel for your tribe. ZEN Energy, a renewable energy company, and TRY, a tribal enterprise, have proposed developing valuable tribal renewable energy resources to the tribal leadership. The leadership asks you to enter into a letter of intent and to carry out the development of the project for the tribe. You have limited experience in developing renewable energy resources for an Indian tribe.

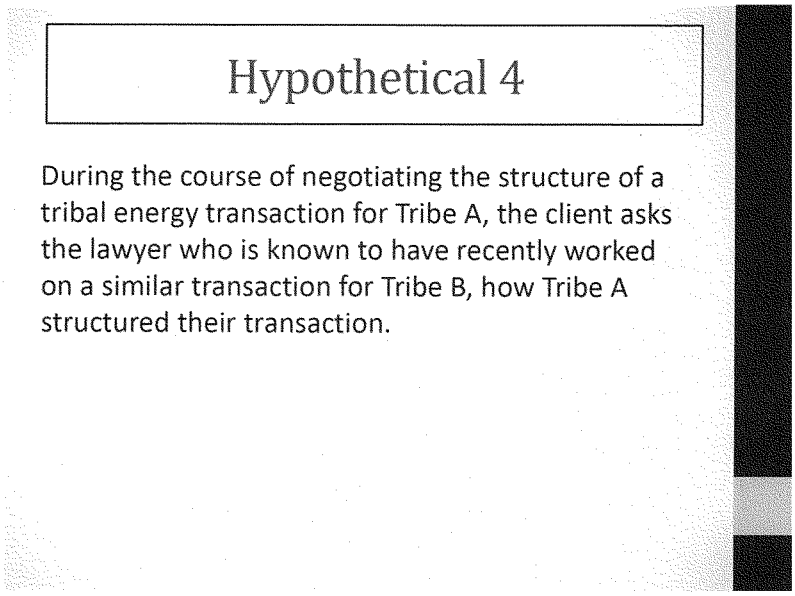
- *What ethical issues arise?*

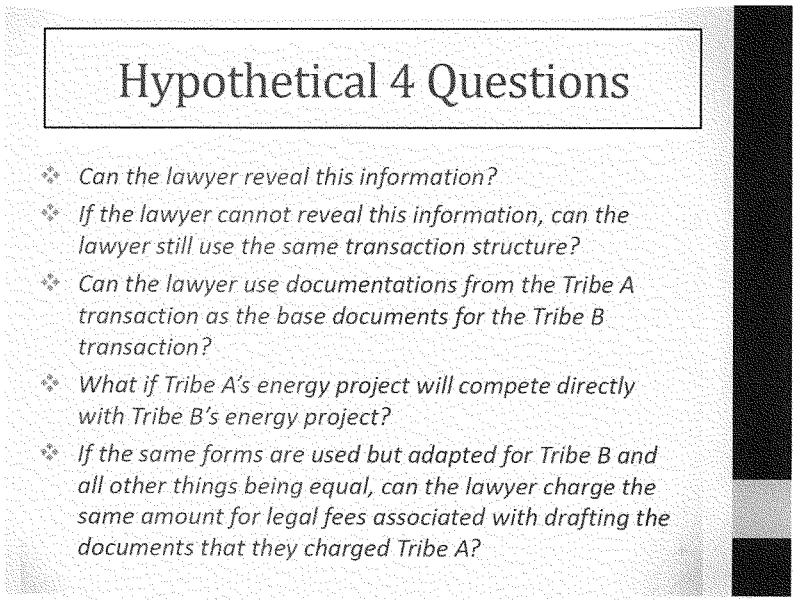
Hypothetical 2

Attorney A in your firm's Texas office represents Client A in an loan transaction. The matter is small and ongoing, although there has been no activity recently. After some time, Client B seeks to have Attorney B in your firm's Sacramento office represent Client B in an energy development project in California. Client A is one of many entities who has a role in the California transaction.

- *What ethical issues arise?*
- *What if Client A is a former client?*


Hypothetical 3
Due to the complexity of tribal energy development transactions, a request for legal services by tribes and tribal entities asks responding firms to identify similar clients and transactions that they have worked on in the past.
Is the identification of those clients or transactions a violation of ethical rules regarding confidentiality?


Hypothetical 4
During the course of negotiating the structure of a tribal energy transaction for Tribe A, the client asks the lawyer who is known to have recently worked on a similar transaction for Tribe B, how Tribe A structured their transaction.


Hypothetical 4 Questions
Can the lawyer reveal this information?
If the lawyer cannot reveal this information, can the lawyer still use the same transaction structure?
Can the lawyer use documentations from the Tribe A transaction as the base documents for the Tribe B transaction?
What if Tribe A's energy project will compete directly with Tribe B's energy project?
If the same forms are used but adapted for Tribe B and all other things being equal, can the lawyer charge the same amount for legal fees associated with drafting the documents that they charged Tribe A?

Hypothetical 5

A lawyer represents two separate tribal utility authorities both owned and operated by the same tribal nation. Both authorities provide energy and both want to apply for the same federal grant funds. Both entities have asked the lawyer to assist in the preparation and submission of their grant applications.

- *Is it a conflict of interest for the lawyer to represent both entities in this situation?*
- *If so, is the conflict waiveable?*

Hypothetical 6

A lawyer has developed an expertise for a specific type of tribal solar projects. Sometimes the lawyer is engaged by the tribe and sometimes by the development company. After completing a number of projects, the lawyer discovers an error in the project documents that could be fatal to the project structure. The error is in the documents for most of the projects that have been completed.

- *Does the lawyer have a duty to report the error to his existing clients?*
- *How about former clients?*
- *What if fixing the error for Tribe A would harm his other client, Tribe B or his current energy company client?*

Hypothetical 7

A lawyer represents a utility created by the tribal governmental authority. Most of the lawyer's work is requested by the entity's most senior employee, which is a CEO in this instance. The CEO calls the lawyer and tells him that the entity's board of directors is micromanaging him and asks for the lawyer's assistance in defining his and the board's duties pursuant to the entity's governing documents. The lawyer agrees to the task. Later that week the lawyer gets a call from the board chair complaining about the CEO and asking the lawyer to perform a due diligence investigation of the CEO.

- *Is there a conflict now proceeding against the CEO when the lawyer was previously acting at his request?*

Hypothetical 8

A lawyer is engaged as borrower's counsel for a tribe borrowing money to make improvements to utility facilities. The tribe does not have sufficient expertise to operate the utility and has hired an outside management company. All of the lawyer's work is at the request of a senior employee of the management company and paid for out of the authority's operating account. One day the tribe decides to fire the management company and the new tribal president calls the lawyer and asks why the lawyer has been doing work at the request of the management company rather than at the request of the tribe?

- *Who is the client?*
- *Has the lawyer committed an ethical violation by acting at the request of the management company rather than the tribe?*

Hypothetical 9

A lawyer is licensed in Arizona but is engaged as special counsel for a tribe located in Oklahoma. The energy project documents specify that state law will apply to certain portions of the contract and the documents contain a limited waiver of sovereign immunity. The lawyer is asked to give an opinion regarding the enforceability of the project documents. The opinion would therefore require the lawyer to opine on both tribal law and State of Oklahoma law.

- *Can the lawyer give this opinion without breaching the ethical rules?*
- *Can the lawyer give this opinion if he relies on the opinions of other counsel whom he associates with for the deal (e.g., the tribe's in-house counsel and an attorney licensed in the State of Oklahoma)?*

Hypothetical 10

A lawyer has served as counsel to the office of the tribal president for several years. In this capacity, the lawyer has advised the President A on projects related to coal technology. A new tribal president, President B, has been elected and has decided to go in the direction of green technology. President B has asked the lawyer to prepare materials to be used in a lobby effort against the use of coal and for the development of green technology instead.

- *What potential conflicts are involved?*
- *Is the lawyer obligated to complete this request?*
- *What if the lawyer knows that abandoning coal production will cause the loss of a significant number of jobs?*

Hypothetical 11

Same facts as Hypothetical 10. In order to get out of the coal business, President B asks the lawyer to find loopholes in the contracts that the lawyer previously helped negotiate and draft?

- *What should the lawyer do?*

AO 10
Rev. 1/2012

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Humetewa, Diane J.	U.S. District Court, Arizona	01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Court Judge	☑ Nomination Date 1/6/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2013 to 12/31/2013
7. Chambers or Office Address		
Arizona State University, Fulton Center 410, 300 E. University Drive P.O. Box 877705 Tempe Arizona 85287-7705		

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Special Advisor, Special Counsel & Professor of Practice	Arizona State University
2.	Member, Board of Trustees	Udall Foundation
3.	Member, Board ofTrustees	The Nature Conservancy in Arizona
4.	Member, Board of Trustees	National Indian Justice Center
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 Humetewa, Diane J.	Date of Report 01/06/2014

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2012	Arizona State Government - salary	$194,714.00
2.	2013	Arizona State Government - salary	$124,670.79
3.			
4.			

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Humetewa, Diane J.	Date of Report 01/06/2014

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Humetewa, Diane J.	01/06/2014

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 Century Diversified Bond Investment Class	A	Dividend	J	T	Exempt				
2. Fidelity Adv.New Insight Fund I	A	Dividend	K	T					
3. Brown Cap Management Small Cap	A	Dividend	J	T					
4. Dodge & Cox Income Fund	A	Dividend	K	T					
5. Fidelity Adv. Mid Cap II	A	Dividend	J	T					
6. General Money Market Fund	A	Dividend	J	T					
7. Harbor Bond Fund	A	Dividend	J	T					
8. Hartford High Yield A	A	Dividend	J	T					
9. Harbor Real Return	A	Dividend	J	T					
10. John Hancock Mid Cap Fund	A	Dividend	J	T					
11. PIMCO Commodity Strategy A	A	Dividend	K	T					
12. Columbia Acorn Intern'l A	A	Dividend	J	T					
13. MFS Value Fund	A	Dividend	K	T					
14. MFS Intern'l Growth I	A	Dividend	J	T					
15. Northern Small Cap Value Fund	A	Dividend	J	T					
16. Oakmark Intern'l Small Cap	A	Dividend	J	T					
17. Oakmark Intern'l Fund	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Humetewa, Diane J.	01/06/2014

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. NFJ Dividend Value A	A	Dividend	K	T					
19. Pimco Income Fund A	A	Dividend	K	T					
20. Templeton Global Bond Fund A	A	Dividend	J	T					
21. T Rowe Price Real Estate	A	Dividend	J	T					
22. Scout International Fund	A	Dividend	J	T					
23. Credit Suisse Commodity Return Strategy A	A	Dividend							
24. Eagle Small Cap Fund A	A	Dividend							
25. Perkins Mid Cap Value Fund Class T	A	Dividend							
26. T Rowe Emerging Market Stock Fund	A	Dividend							
27. Bank of America Cash Accounts	A	Interest	K	T					
28. First Credit Union Cash Accounts	A	Interest	L	T					
29. Northwest Mutual Whole Life Insurance "65 Life"	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 6 of 7	Name of Person Reporting	Date of Report
	Hunnetewa, Diane J.	01/06/2014

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

Please note that the Asset previously reported as AllianzGI NFJ Dividend Value Fund is now known and listed as NFJ Dividend Value Fund on line 18.

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Hunetewa, Diane J.	Date of Report 01/06/2014

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/ Diane J. Humetewa

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		108	073	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		354	271	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		183	100
Real estate owned – personal residence		376	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000				
Cash value-life insurance		31	551				
Other assets itemize:							
Thrift Savings Plan		702	087				
				Total liabilities		183	100
				Net Worth	1	413	882
Total Assets	1	596	982	Total liabilities and net worth	1	596	982
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 Century Diversified Bond Fund	$ 12,670
Brown Cap Management and Small Cap Fund	5,631
Columbia Acorn Fund	9,618
Dodge & Cox Income Fund	22,124
Fidelity Mid Cap II Fund	13,707
Fidelity New Insights Fund	53,239
General Money Market Fund	7,971
Harbor Bond Fund	12,778
Harbor Real Return Fund	9,128
Hartford High Yield Fund	12,986
John Hancock Mid Cap Fund	13,380
MFS International Growth Fund	14,998
MFS Value Fund	36,399
NFJ Dividend Value Fund	21,208
Northern Small Cap Value Fund	5,902
Oakmark International Fund	13,471
Oakmark International Small Cap	9,470
PIMCO Commodities Strategy Fund	18,699
PIMCO Income Fund	24,130
Scout International Fund	13,019
T. Rowe Price Real Estate Fund	14,495
Templeton Global Bond Fund	9,248
Total Listed Securities	$ 354,271

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Rosemary Marquez

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

   United States District Judge for the District of Arizona

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.

   55 West Franklin Street
   Tucson, Arizona 85701

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

   1968; Los Angeles, California

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

   1990 – 1993, University of Arizona, College of Law; J.D., 1993
   1987 – 1990, University of Arizona; B.A., 1990
   1986 – 1987, Cochise Community College; no degree

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

   2008 – Present
   Marquez Law Firm, PLLC
   55 West Franklin Street
   Tucson, Arizona 85701
   Sole Practitioner

2000 – 2008
Montoya and Marquez, PLLC
55 West Franklin Street
Tucson, Arizona 85701
Partner

2000 – 2003
Pima County Law Enforcement Merit System Council
Pima County
Tucson, Arizona 85701
Volunteer Hearing Officer

1996 – 2000
Federal Public Defender's Office
407 West Congress Street #501
Tucson, Arizona 85701
Assistant Federal Public Defender

1994 – 1996
Pima County Legal Defender's Office
32 North Stone Avenue
Tucson, Arizona 85701
Assistant Legal Defender

1993 – 1994
Pima County Attorney's Office
33 North Stone Avenue
Tucson, Arizona 85701
Law Clerk (1993)
Deputy County Attorney (1994)

1993
Edgar and Soto, PLLC
4400 East Broadway
Tucson, Arizona 85711
Law Clerk

1992 – 1993
National Law Center for Northern America Free Trade
440 North Bonita Avenue
Tucson, Arizona 85745
Law School Externship

1992 – 1993
Law Office of Juan Perez-Medrano
360 North Court Avenue
Tucson, Arizona 85701
Law Clerk

Fall 1992
Pima County Superior Court
Honorable Gilbert Veliz, Retired
Tucson, Arizona 85701
Superior Court Judicial Clerkship

Summer 1992
Los Angeles District Attorney's Office
210 West Temple Street
Los Angeles, California 90012
Deputy District Attorney Student Program

Summer 1991
Pima County Attorney's Office
33 North Stone Avenue
Tucson, Arizona 85701
Law Clerk

Summer 1991
Council on Legal Education Opportunity
University of Arizona College of Law
1201 East Speedway Boulevard
Tucson, Arizona 85721
Assistant Director/Teaching Assistant

Other Affiliations (uncompensated unless otherwise indicated):

2008 – Present
Beacon Group
308 West Glenn
Tucson, Arizona 85703
Executive Board

2007 – Present
Pima County Bar Association
177 North Church Avenue #101
Tucson, Arizona 85701
Board Member

2004 – Present
Marquez Investments, LLC
55 West Franklin Street
Tucson, Arizona 85701
Co-owner (receive rental income)

2002 – 2003
Women's Foundation of Southern Arizona
2250 East Broadway Boulevard
Tucson, Arizona 85719
Board of Trustees

1997 – 1998
Arizona Minority Bar Association
3079 West Ina Road
Tucson, Arizona 85741
President

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

   I have not served in the military. I have not registered for selective service.

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

   Pima County Bar Association Dedicated Service Award, 2009
   Pima County Board of Supervisors Appreciation for Dedicated Service, 2003
   Florence Immigrant & Refugee Rights Project, Pro Bono Legal Services Award, 2002
   Arizona Supreme Court Commission on Minorities Award, 1999
   National Criminal Defense College, Trial Practice Institute Certificate Award, 1997
   Courts Are Us, Lawyer-Mentor for Local Teens, Certificate of Appreciation, 1997
   Council on Legal Education Fellowship, 1990 – 1993
   Rosenstiel Scholarship, 1991 – 1992
   Cordova A. Valdemar Scholarship, 1990 – 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.

   Arizona Attorneys for Criminal Justice, 1993 – 2000
   Arizona Commission on Judicial Performance Review
   Pima/Appellate Committee, 2000

Arizona Minority Bar Association, 1993 – Present
President, 1997 – 1998
Arizona Women Lawyers Association
Steering Committee, 2010 – Present
Social Committee, 2010 – Present
Federal Bar Association, 2009 – Present
Hispanic National Bar Association, 1993 – 2000, 2009 – Present
Los Abogados, Member, Tucson Liaison, 2009 – Present
Morris K. Udall Inn of Court, 2000 – 2005
National Institute for Trial Advocacy, Mexico Project Teacher, 2009
Pima County Bar Association
Board Member, 2007 – present
Membership Committee, 2007 – 2011
State Bar of Arizona, 1993 – Present
Conflict Case Committee, 2008 – Present
Commission on Judicial Performance, 2000

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.

Arizona, 1993

There has been no lapse in membership.

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

United States Court of Appeals for the Ninth Circuit, 1997
United States District Court for the District of Arizona, 1993
Arizona Supreme Court, 1993
Executive Office of Immigration Review, 2000

There has been no lapse in membership.

11. **Memberships**:

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

Beacon Group
Executive Board, 2008 – Present
Finance Committee, 2008 – Present
Investment Committee, 2008 – Present
Nominating Committee, 2008 – Present

Citizens Advisory Committee for Tucson City Manager Recruitment, 2004

Florence Immigrant and Refugee Rights Project, Volunteer, 2000 – 2004

Tucson Hispanic Chamber of Commerce, 2010 – Present

Women's Foundation of Southern Arizona
Grants Allocation Committee, 1999 – 2000
Board of Trustees, 2000 – 2003

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

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

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

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

In 1999, I was a guest writer for a weekly local newspaper in the Spanish language. The newspaper was published by "El Imparcial" and Aguila Publishing Company, Inc. The articles I recall and have copies of are the following:

Es Usted Deportable? El Aguila, Aug. 1999. Copy supplied.

Importancia del Censo 2000, El Aguila, Feb. 1999. Copy supplied.

Que Espera Para Hacerse Ciudadano? El Aguila, 1999. Copy supplied.

Sus Derechos Constitucionales, El Aguila, 1999. Copy supplied.

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

Report of the Arizona Commission on Judicial Performance Review (2000). 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.

October 4, 2006: "Course on Professionalism," State Bar of Arizona. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 220, Phoenix, Arizona 85016.

January 19, 2005: "Course on Professionalism," State Bar of Arizona. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 220, Phoenix, Arizona 85016.

November 18, 2004: "More Sex, Murder and the Media," State Bar of Arizona. Video supplied.

June 25, 2004: "12th Annual White Mountains Trial Skills," State Bar of Arizona. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 220, Phoenix, Arizona 85016.

June 8, 2002: "Course on Professionalism," State Bar of Arizona. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 220, Phoenix, Arizona 85016.

July 22, 2000: "CLE by the Sea," State Bar of Arizona. I presented the year in review of federal cases. I have no notes, transcript or recording. The address of the State Bar is 4201 North 24th Street, Suite 220, Phoenix, Arizona 85016.

August 13, 1999: "The Judicial Appointment Workshop," Arizona Supreme Court Commission on Minorities. I helped plan the workshop and introduced the panel. I have no notes, transcript or recording. The address of the Supreme Court is 1501 West Washington Street, Phoenix, Arizona 85007.

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.

Pilar Marrero, *Juez John Roll Estaba Protegido*, La Opinion, Jan. 13, 2011. Copy supplied.

Josh Brodesky, *Conflict Diamonds' Case Nears Resolution*, Arizona Daily Star, Apr. 20, 2007 [quotes re-printed in multiple outlets]. Copy supplied.

Rhonda Bodfield Sander, *Entrepreneur Gets Probation on Securities Fraud Charges*, Arizona Daily Star, Oct. 23, 2001. Copy supplied.

Antonio L. Sharp, *Commission Gives Judges High Marks*, The Arizona Republic, June 24, 2000. Copy supplied.

Rhonda Bodfield, *Ex-Inmate to Fight Death Penalty*, Tucson Citizen, Nov. 9, 1996. Copy supplied.

Sarah Mayhew Schlosser, *Death Row Prisoner is Freed in 2nd Trial*, Arizona Daily Star, Nov. 7, 1996. Copy supplied.

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

I have not held a judicial office.

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

i. Of these, approximately what percent were:

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

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

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

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

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

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

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

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

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

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system

by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

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

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

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

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

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

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

I have not held public office. I have had no 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 not been a member or officer of, or rendered services to, any political party or election committee.

I lent my home for a fundraiser for Congressman Grijalva in 2002. I also lent my home for an introduction/fundraiser for a local city council member, Regina Romero, in 2009.

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;

Fall 1992
Pima County Superior Court
Honorable Gilbert Veliz, Retired
This clerkship was for school credit for the fall semester of my third year of law school.

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

2008 – Present
Marquez Law Firm, PLLC
55 West Franklin Street
Tucson, Arizona 85701

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

1993
Edgar and Soto, PLLC
4400 East Broadway
Tucson, Arizona 85711
Law Clerk

1993 – 1994
Pima County Attorney's Office
33 North Stone Avenue, 17th Floor
Tucson, Arizona 85701
Law Clerk (1993)
Deputy County Attorney (1994)

1994 – 1996
Pima County Legal Defender's Office
32 North Stone Avenue
Tucson, Arizona 85701
Assistant Legal Defender

1996 – 2000
Federal Public Defender's Office
407 West Congress Street #501
Tucson, Arizona 85701
Assistant Federal Public Defender

2000 – 2008
Montoya and Marquez, PLLC
55 West Franklin Street
Tucson, Arizona 85701
Partner

2008 – Present
Marquez Law Firm, PLLC
55 West Franklin Street
Tucson, Arizona 85701
Sole Practitioner

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

I have not served as a mediator or arbitrator.

b. Describe:

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

In 1993, I worked as a law clerk at Edgar and Soto, PLLC, while I studied for the bar exam. From 1993 to August 1994, my law practice was with the Pima County Attorney's office, first as a law clerk and later as a Deputy County Attorney. As a Deputy County Attorney I handled an average of 650 cases at a time, prosecuting indictments of driving under the influence, domestic violence and other misdemeanor charges. In that capacity I tried over 10 jury trials and over 30 bench trials.

In 1994, I joined the Office of the Legal Defender. As an Assistant Legal Defender, I represented indigent clients the Public Defender's Office could not represent due to conflict. I represented defendants accused of murder, violent crimes, and felony aggravated driving under the influence charges. I made daily court appearances and tried over 20 felony jury trials.

In 1996, I joined the Arizona Federal Public Defender's Office. As an Assistant Federal Defender, I represented indigent clients accused of

government fraud, bank fraud, money laundering, immigration offenses, and drug conspiracies. By 1998, the majority of my cases consisted of assaults and sexual abuse crimes in the Tohono O'odham Nation. I also briefed and argued appeals in the Ninth Circuit Court of Appeals.

Since 2000, I have been in private practice, first as a partner in a small law firm with two associates and later as a sole practitioner. My practice has centered on criminal defense in both state and federal courts and the Ninth Circuit Court of Appeals. I have also litigated civil personal injury matters, civil forfeitures, immigration and deportation matters and appeals to the Board of Immigration Appeals.

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

As a prosecutor, my clients were the people of the State of Arizona. As a state and federal public defender, I was appointed by the court to represent indigent defendants. While in private practice, the majority of my clients accused of criminal offenses have been through appointments pursuant to the Criminal Justice Act. In addition to representing criminal defendants, I have represented individual clients in civil matters, including immigration, deportation, forfeiture, school expulsion and personal injury 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.

My practice has always focused on litigation at the trial level. I handle an average of two appeals to the Ninth Circuit per year. I appear in court almost every day.

i. Indicate the percentage of your practice in:
   1. federal courts: 90%
   2. state courts of record: 5%
   3. other courts: 0%
   4. administrative agencies: 5%

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

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

I have tried 35 cases to a jury. I was co-counsel on three cases, and sole counsel in the rest. I have tried over 40 cases before administrative law judges, immigration judges, hearing officers and justice court and city court judges.

i. What percentage of these trials were:
   1. jury: 46%
   2. non-jury: 54%

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. Diane*, CR07-0302-DCB (D. Ariz., closed Apr. 24, 2007)

I represented the defendant Diane. He was charged with Conspiracy to Smuggle Goods into the United States, Contrary to Law and Aiding and Abetting in violation of 18 U.S.C. §§ 371, 545, 2. I believe that this was the first charge in the country under a statute created to prevent "Blood Diamonds" from entering the United States from certain countries in Africa. In this case, the quality of the diamonds and the certification requirement was at issue. Diane eventually pled to a civil citation and received a sentence of probation. United States Magistrate Judge Glenda Edmonds presided over this case.

Opposing Counsel: Danny Roetzel
United States Attorney's Office
405 West Congress Street, #4800
Tucson, Arizona 85701
(520) 620-7445

2) *United States v. Juarez*, CR06-1703-RCC (D. Ariz., closed Mar. 2, 2009)

This was a 55-defendant case with an over 500-count indictment. The charges related to an alien smuggling organization rooted in Arizona with ties throughout the United States. I represented defendant Leyva-Perez, who was charged with money laundering counts. We were able to prove to the prosecution that the majority of the funds in question stemmed from legitimate means. Leyva-Perez was a Legal Permanent Resident Alien and any type of criminal conviction would have rendered him deportable. Leyva-Perez pled guilty to a civil violation and was sentenced to a term of probation. United States District Judge John M. Roll presided over the case.

Opposing Counsel: Michael LoGalbo
United States Attorney's Office
405 West Congress Street, #4800
Tucson, Arizona 85701
(520) 620-7300

Lead Defense Counsel: Bates Butler
250 North Meyer Avenue
Tucson, Arizona 85701
(520) 624-6200

3) *United States v. Brandon*, CR99-920 (D. Ariz., closed Oct. 22, 2001)

The defendant was indicted in 1999 on eight counts of securities fraud. This case was declared a complex case by the court. I was appointed to represent the defendant. Brandon founded Work Recovery, Inc. ("WRI"), a company that manufactured and licensed products that evaluated people's recovery from injury and measured their ability to return to the work force. WRI stock was publicly traded on NASDAQ and such stock was regulated by the Securities and Exchange Commission. In 1995 the SEC began an investigation of WRI as a result of allegations regarding a scheme to defraud WRI due to a publication in the Wall Street Journal which caused the price of WRI stock to fall dramatically. Brandon pled guilty to one count of obstruction of justice and received 5 years probation. This case was heard by United States District Judge Frank R. Zapata.

Opposing Counsel: Robert L. Miskell
United States Attorney's Office
405 West Congress Street, #4800
Tucson, Arizona 85701
(520) 620-7300

4) *United States v. Evans*, CR99-1267-FRZ (D. Ariz., closed Aug. 30, 2002)

I represented defendant Evans. He was indicted on 18 counts of embezzlement and theft from an Indian tribal organization, theft or bribery concerning programs receiving federal funds, wire fraud, frauds and swindles. Due to severe flooding in 1993, the Federal Emergency Management Agency (FEMA) granted the Tohono O'odham Nation ("the Nation") an award in excess of $4,000,000 to repair its flood-damaged San Lucy Farm. FEMA's grant supplied 75% of the monies to be expended on the San Lucy restoration, and the Nation itself was responsible for 25% of the funds. Evans was accused of engaging in a scheme to defraud the tribe and misapply funds received from FEMA and profits from the restoration project. It was alleged Evans was responsible for authorizing the payment of those funds to a company he owned, which constituted a conflict of interest and unauthorized self-dealing. Evans pled guilty to one count of filing fraudulent tax returns and all other charges were dismissed. Evans was sentenced to serve 15 months in custody. This case was heard before United States District Judge Frank R. Zapata.

Opposing Counsel: Thomas L. Fink
Former Assistant United States Attorney
1220 North Hohokam Drive, Suite 2
Nogales, Arizona 85621
(520) 281-1338

5) *United States v. Alvarez-Zavala*, CR 07-0518-TUC-RCC (D. Ariz., closed Apr. 3, 2008)

I represented defendant, Alvarez-Zavala. He was arrested in a vehicle that was transporting large quantities of marijuana in the United States. While agents attempted to stop the vehicle, Alvarez-Zavala was shot in the nose. The agents alleged the driver attempted to run them over as they ordered the vehicle to stop. Based on my investigation of evidence in the vehicle and where the bullet entered the vehicle, the government allowed my client to plead to the possession of the marijuana and dismissed the aggravated assault charges. Alvarez-Zavala was sentenced to a term of time served. This case was presided over by United States District Judge Raner C. Collins.

Opposing Counsel: Celeste B. Corlett
Assistant United States Attorney
405 West Congress Street, #4800
Tucson, Arizona 85701
(520) 620-7300

6) *United States v. Abril-Molina*, CR07-1166-DCB (D. Ariz., closed July 14, 2008)

I represented the defendant, Abril-Molina. He was charged under 8 U.S.C. § 1324(a)(1)(A)(ii)(a)(1)(B)(i) with Bringing in and Harboring Aliens. After an evidentiary hearing, the judge ruled there was no reasonable suspicion for the stop of my client and suppressed all evidence. Charges against my client were dismissed. Motions were heard by United States District Judge Glenda E. Edmonds.

Opposing Counsel: Munish Sharda
Assistant United States Attorney
405 West Congress Street, #4800
Tucson, Arizona 85701
(520) 620-7300

7) *United States v. Golden State Transp.*, CR 01-1969-RCC (D. Ariz., closed May 6, 2001)

I represented defendant, Ortiz-Maciel. Ortiz-Maciel was accused of being one of the many drivers used by Golden State Transportation to move undocumented aliens throughout the United States. This case involved numerous superseding indictments with over 50 counts, as well as separate forfeiture issues. Based on my investigation of the evidence and trial preparation, the government allowed my client to plead guilty to a non-deportable, lower class felony. He was sentenced to a term of probation. This case was presided over by United States District Judge Raner C. Collins.

Opposing Counsel: Danny Roetzel
United States Attorney's Office
405 West Congress Street, #4800
Tucson, Arizona 85701
(520) 620-7445

Co-Counsel: Walter Nash
110 South Church, Suite 4297
P.O. Box 2310
Tucson, Arizona 85702
(520) 792-1613

8) *United States v. Zarate-Martinez*, 133 F.3d 1194 (9th Cir. 1998)

I was co-counsel for defendant on this appeal and argued the case in the Ninth Circuit. The defendant was convicted of Illegal Re-Entry after Deportation pursuant to 18 U.S.C. § 1326. This case held that in a prosecution for Illegal Re-entry, due process requires meaningful opportunity for judicial review of the underlying deportation. If that deportation fails to provide this opportunity or violates due process the validity of the deportation may be collaterally attacked. The case was heard by Judge Ruggero J. Aldisert (of the Third Circuit, sitting by designation), Judge Dorothy W. Nelson, and Judge A. Wallace Tashima.

Co-Counsel: Maria Borbon
1311 East Miles Street
Tucson, Arizona 85719
(520) 383-2028

Opposing Counsel: John Leader
Former Assistant United States Attorney
1715 East Skyline Drive, Suite 121
Tucson, Arizona 85718
(520) 575-9040

9) *State of Arizona v. Grannis* (Pima County Superior Court, 1996-1997)

In 1991, defendant Grannis and a co-defendant were found guilty of the 1989 murder of a Tucson investment banker; they both received the death penalty. On appeal, the Arizona Supreme Court found that the trial court erred in its jury instructions and in the admission of certain evidence. 900 P.2d 1 (Ariz. 1995). Myself and co-counsel retried the case to a jury and the court granted our motion for a directed verdict. My client, Grannis, was released that evening. Superior Court Judge Bernardo Velasco presided over the re-trial.

Co-Counsel: Isabel Garcia
Pima County Legal Defender
32 North Stone Avenue
Tucson, Arizona 85701
(520) 740-5775

Opposing Counsel: Kenneth Peasley
33 North Stone Avenue
Tucson, Arizona 85701
(520) 327-1121

10) Matter of *Cruz* (Executive Office for Immigration Review, 2003)

I represented respondent Cruz during her removal proceedings in Immigration Court in Florence, Arizona. After a Bond Hearing, Cruz was released on bond. After a motion for change of venue, Cruz' case was transferred to Immigration Court in Tucson, Arizona. Cruz had never had legal permission to live in the United States, but had resided in Tucson, Arizona for over ten years. During that time, she had a child. That child died from a rare disease at the age of nine. Cruz' younger child also suffered from the same disease and needed extensive medical treatment that was not available in Mexico. I filed an application for relief (EOIR-42A). The Immigration Court granted the cancellation of removal. Cruz is now a permanent resident alien and resides in the United States with her child. This case was tried before Immigration Judge Richard H. Knuck.

Opposing Counsel: John Seaman
BCIS District Counsel
6431 South Country Club
Tucson, Arizona 85706
(520) 670-4773

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

Throughout my career, I have been actively involved with the State Bar of Arizona. I have served on State Bar committees and have prepared and presented continuing education seminars. Since 2008, I have served on the State Bar Conflict Case Committee. Our committee reviews and prosecutes ethical complaints against lawyers, where the state bar has a conflict. In that capacity, I investigate the alleged ethical violation, make factual and legal determinations and decide what sanctions should be imposed. This requires researching the applicable professional code and ethical cannons, and preparing orders.

For over two years, I was a hearing officer for the Pima County Law Enforcement Merit System Council. I presided over administrative hearings and prepared orders in relation to the termination and disciplinary actions of Pima County employees.

As a Beacon Group board member, I manage investment funds as part of the finance committee. The Beacon Group is an organization that provides services and employment opportunities for mentally and physically disabled people.

My practice is very active in the defense of clients accused of having entered the United States illegally after having been deported. The vast majority of these cases are resolved by non-trial disposition. In addition, I have handled various civil matters, such as immigration, property forfeitures and personal injury. Although, these matters have settled, they involved significant litigation.

I have not performed lobbying activities on behalf of any client or organization.

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

    I have not taught any courses.

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

    I have no deferred income arrangements or future benefits.

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

    None.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

My husband is an attorney in private practice. My sister is an Assistant Federal Public Defender, habeas unit. If I am confirmed as a judge, I expect to recuse myself from any case in which they represent 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.

If confirmed as a judge, I will apply all relevant guidelines, including the Code of Conduct for United States Judges, relevant Canons and statutory provisions to avoid any actual or potential conflicts.

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

Throughout my legal career, I have regularly performed legal services at no charge or on a reduced fee basis for financially disadvantaged clients. I have provided pro bono representation for many different clients in diverse areas of practice. Most recently, I represented a student athlete at the University of Arizona. I represented this client in both his criminal case and the expulsion proceedings from school. This case required lengthy witness interviews, extensive administrative hearings and a trial before a panel. Additionally, collateral issues existed such as his athletic scholarships and release from his eligibility-to-play contract.

I have also represented high school students in expulsion proceedings. I have represented clients in employment termination and demotion administrative proceedings without charge. I have represented clients in contract disputes with their landlords and contract disputes with their builders. Through the Florence Project and on a private level, I have filed briefs in immigration courts on behalf of clients who cannot afford an attorney but have potential relief from deportation available. I have also filed appeals of those decisions free of charge.

I also have engaged in pro bono work in areas that educate the community about the legal justice system. Through the State Bar of Arizona I have volunteered to answer legal questions for homeless veterans and people looking to become United States citizens. Through the Arizona Minority Bar Association, I assist in coordinating fundraisers to provide scholarship money to University of Arizona, College of Law students.

26. **Selection Process**:

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

There is no selection commission in Arizona. In February 2010, I expressed my interest in a letter and sent my resume to all the members of the Arizona Democratic Delegation in the House of Representatives. At the same time, I also expressed my interest in a letter and sent my resume to Senator Kyl and Senator McCain. In March 2010, I expressed my interest in a letter and sent my resume to White House Counsel Robert Bauer. In mid-March 2010, I was interviewed by Congresswoman Kirkpatrick, Congressman Pastor and Congressman Grijalva. I was also interviewed telephonically by Congresswoman Giffords. In July 2010, I met with Senator Kyl.

Since February 10, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On March 14, 2011, I met with representatives of the White House Counsel's Office and the Department of Justice in Washington, DC. On June 23, 2011, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2010

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Marquez, Rosemary	District of Arizona	06/23/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination, Date 06/23/2011 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2010 to 5/31/2011
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Marquez Law Firm PLLC 55 W. Franklin Tucson, AZ 85701	Reviewing Officer_____ Date_____	

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

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member	Marquez Law Firm, PLLC
2. Member	Marquez Investments, LLC
3. Board Member	The Beacon Group
4. Board Member	Pima County Bar Association
5.	

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

☑ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Marquez, Rosemary	Date of Report 06/23/2011

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2011	Marquez Law Firm, PLLC	$43,859.00
2.	2010	Marquez Law Firm, PLLC	$53,477.00
3.	2009	Marquez Law Firm, PLLC	$89,824.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2011	Self-employed, lawyer
2.	2010	Self-employed, lawyer
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	Exempt	Exempt	Exempt	Exempt
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Marquez, Rosemary	Date of Report 06/23/2011

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

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt	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.	Bank of Arizona	Commercial Loan -- office building	N
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Marquez, Rosemary	06/23/2011

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Wells Fargo accounts	A	Interest	L	T	Exempt				
2. Capital Account from Udall Law Firm LLP		None	K	U	Exempt				
3. Rental Property #1, Tucson, Arizona	A	Rent	M	W	Exempt				
4. Marquez Investments LLC, Tucson, Arizona	B	Rent	O	W	Exempt				
5. Alliance Bernstein Int'l Value Fund A	A	Int./Div.	J	T	Exempt				
6. American Funds Capital Inc. Builder	C	Int./Div.	K	T	Exempt				
7. American Funds Growth Fund of America	C	Int./Div.	K	T	Exempt				
8. American Funds Income Fund of America R3	B	Int./Div.	J	T	Exempt				
9. American Funds New World Fund	D	Int./Div.	L	T	Exempt				
10. Black Rock Government Income Inv Fund A	A	Int./Div.	J	T	Exempt				
11. Franklin Income Fund A	C	Int./Div.	K	T	Exempt				
12. Ivy MidCap Growth Y Fund	D	Int./Div.	K	T	Exempt				
13. PNC S&P 500 Index Fund A	C	Int./Div.	K	T	Exempt				
14. Putnam Small Cap Growth Fund A	C	Int./Div.	K	T	Exempt				
15. Capital Account, Biaggi & Kroese PLLC	A	Int./Div.	L	T	Exempt				
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 Marquez, Rosemary	Date of Report 06/23/2011

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

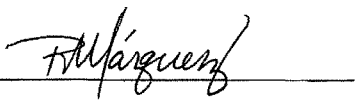
Sole asset of Marquez Investments, LLC is office building in Tucson, Arizona

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Marquez, Rosemary	Date of Report 06/23/2011

IX. CERTIFICATION.

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

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

Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		20	700	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		209	945	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:		20	000	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		580	200
Real estate owned – see schedule	1	485	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		38	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		580	200
				Net Worth	1	193	445
Total Assets	1	773	645	Total liabilities and net worth	1	773	645
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Alliance Bernstein International Value Fund A	$7,511
American Funds Capital Income Builder	22,072
American Funds Growth Fund of America	20,796
American Funds Income Fund of America R3	7,972
American Funds New World Fund	65,820
Black Rock Government Income Inv Fund A	14,651
Franklin Income Fund A	17,555
Ivy MidCap Growth Y Fund	22,030
PNC S&P 500 Index Fund A	15,860
Putnam Small Cap Growth Fund A	15,678
Total Listed Securities	$209,945

Real Estate Owned	
Primary residence	$450,000
Second residence	300,000
Rental property	150,000
Office address (held by Marquez Investments)	585,000
Total Real Estate Owned	$1,485,000

Real Estate Mortgages Payable	
Primary residence	$257,200
Office address (held by Marquez Investments)	323,000
Total Real Estate Mortgages Payable	$580,200

AFFIDAVIT

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

6/21/11
(DATE)

R Márquez
(NAME)

Notary Public State of Arizona
Pima County
Denise E Gomez
My Commission Expires
12/06/2012

Denise E Gomez
(NOTARY)

MARQUEZ LAW FIRM, P.L.L.C.
55 West Franklin Street
Tucson, Arizona 85701
Telephone (520) 624-0755
Facsimile (520) 624-0743

January 6, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on June 23, 2011, for the position on the United States District Court for the District of Arizona. Incorporating the information in the re-nomination letter submitted to the Committe on January 8, 2013. I certify that the information contained in the Senate Questionnaire is, to the best of my knowledge, true and accurate.

Additionally, I am forwarding an updated Net Worth Statement and Financial Disclosure Report, as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Rosemary Marquez

cc: The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10
Rev. 1/2012

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Marquez, Rosemary	District of Arizona	1/6/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/20/2013
7. Chambers or Office Address		
Marquez Law Firm PLLC 55 W. Franklin Tucson, AZ 85701		

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Member	Marquez Law Firm, PLLC
2.	Member	Marquez Investments, LLC
3.	Treasurer	The Beacon Group
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Marquez, Rosemary	Date of Report 1/6/2014

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	Marquez Law Firm, PLLC	$62,650.00
2.	2012	Marquez Law Firm, PLLC	$153,992.00
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2013	Self-employed, lawyer
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	Exempt	Exempt	Exempt	Exempt
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting	Date of Report
	Marquez, Rosemary	1/6/2014

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	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.	Bank of Arizona	Commercial Loan -- office building	N
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Marquez, Rosemary	1/6/2014

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. Wells Fargo Accounts	B	Interest	L	T	Exempt				
2. Capital Account – Biaggi & Kroese PLLC	A	Interest	L	T	Exempt				
3. Rental Property #1, Tucson, Arizona	A	Rent	M	W	Exempt				
4. Marquez Investments LLC, Tucson, Arizona	B	Rent	O	W	Exempt				
5. American Funds Capital Inc. Builder	B	Int./Div.	K	T	Exempt				
6. American Funds Growth Fund of America	B	Int./Div.	K	T	Exempt				
7. American Funds New World Fund	B	Int./Div.	K	T	Exempt				
8. American Funds Capital World Growth and Inc. Fund	B	Int./Div.	J	T	Exempt				
9. American Funds Income Fund of America	B	Int./Div.	K	T	Exempt				
10. American Funds Capital World Bond Fund	A	Int./Div.	J	T	Exempt				
11. Lord Abbett Developing Growth Fund - class a	B	Int./Div.							
12. Sentinel Government Securities A Fund	A	Int./Div.							
13. Franklin Income Fund	A	Int./Div.							
14. Ivy Mid-Cap Growth Fund	B	Int./Div.							
15. PNC S&P 500 Index Fund	B	Int./Div.							
16. MFS International Value Fund	B	Int./Div.							
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 Marquez, Rosemary	Date of Report 1/6/2014

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

Sole asset of Marquez Investments, LLC is office building in Tucson, Arizona. The mortgage associated with this building is listed in Part VI.

Blackrock US Government Income Fund was erroneously included in the amended nomination report filed on or about January 3, 2013 covering the period 1/1/12 to 1/31/12.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Marquez, Rosemary	Date of Report 1/6/2014

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/ Rosemary Marquez

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		171	864	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		167	706	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		506	000
Real estate owned – see schedule	1	485	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		40	000				
Cash value-life insurance							
Other assets itemize:							
Biaggi & Kroese PLLC – capital account		70	000				
				Total liabilities		506	000
				Net Worth	1	428	570
Total Assets	1	934	570	Total liabilities and net worth	1	934	570
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Funds Capital Income Builder	27,612
American Funds Capital World Bond Fund	2,001
American Funds Capital World Growth & Income Fund	3,534
American Funds Growth Fund of America	33,888
American Funds Income Fund of America	26,425
American Funds New World Fund	74,246
Total Listed Securities	$167,706
Real Estate Owned	
Primary residence	$450,000
Second residence	300,000
Rental property	150,000
Office address (held by Marquez Investments)	585,000
Total Real Estate Owned	$1,485,000
Real Estate Mortgages Payable	
Primary residence	$230,000
Office address (held by Marquez Investments)	276,000
Total Real Estate Mortgages Payable	$506,000

MARQUEZ LAW FIRM, P.L.L.C.
55 West Franklin Street
Tucson, Arizona 85701
Telephone (520) 624-0755
Facsimile (520) 624-0743

January 3, 2012

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on June 23, 2011 for the position on the United States District Court for the District of Arizona. Incorporating the additional information below, I certify that the information contained in that document is, to the best of my knowledge, true and accurate.

- My service as a board member on the Pima County Bar Association ended in May of 2012 (Question 9).

- My service as a steering committee member of the Arizona Women Lawyers Association ended in December 2011 (Question 9).

- In my capacity as board member of The Beacon Group, I serve as Treasurer and also Chairperson of the Finance Committee (Question 11a).

- I have tried 36 cases before a jury (Question 16d).

- Since I filed my Senate Questionnaire in July 2011, I have handled many important cases, including the following argument before the Ninth Circuit Court of Appeals that I would consider one of the ten most significant matters that I have personally handled (Question 17):

  United States v. Aguilar-Balbuena, CA 08-10503, 475 Fed. Appx. 222 (9th Cir. 2012)
  I prepared the briefs and argued the case before the Ninth Circuit Court of Appeals. Appellant, Aguilar-Balbuena appealed a 30-month sentence following his guilty-plea conviction for illegal re-entry after deportation. The first issue was whether Mr. Aguilar-Balbuena's waiver of appellate rights was enforceable. The second issue was whether his prior burglary conviction qualified as a "crime of violence" justifying the trial court's enhanced sentence. The Ninth Circuit held that Mr. Aguilar-Balbuena did not knowingly waive his right to appeal and further found that his burglary conviction was not categorically a "crime of violence." As a result, the Ninth Circuit vacated the sentence

and remanded the matter to the district court. I continued to represent Mr. Aguilar-Balbuena at the re-sentencing phase. District Court Judge David C. Bury, amended Mr. Aguilar-Balbuena's sentence to the eight months incarceration that he had already served, with no term of supervised release imposed.

Opposing Appellate Counsel: Bruce M. Ferg
Assistant United States Attorney
405 West Congress, Suite 4800
Tucson, Arizona 85701
(520) 620-7300

Opposing Trial Counsel: Angela W. Woolridge
Assistant United States Attorney
405 West Congress Street, Suite 4800
Tucson, Arizona 85701
(520) 620-7300

Additionally, I am forwarding an updated Net Worth Statement and Financial Disclosure Report, as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Rosemary Márquez

cc: The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

AO 10
Rev. 1/2012

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Marquez, Rosemary	District of Arizona	1/3/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination Date 01/03/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	01/01/2012 to 12/31/2012
7. Chambers or Office Address		
Marquez Law Firm PLLC 55 W. Franklin Tucson, AZ 85701		

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Member	Marquez Law Firm, PLLC
2.	Member	Marquez Investments, LLC
3.	Board Member	The Beacon Group
4.	Board Member	Pima County Bar Association
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Marquez, Rosemary	Date of Report 1/3/2013

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.	2012	Marquez Law Firm, PLLC	$140,000.00
2.	2011	Marquez Law Firm, PLLC	$43,859.00
3.			
4.			

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2012	Self-employed, lawyer
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	Exempt	Exempt	Exempt	Exempt
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Marquez, Rosemary	Date of Report 1/3/2013

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	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. Bank of Arizona	Commercial Loan -- office building	N
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 4 of 6	**Name of Person Reporting** **Marquez, Rosemary**	**Date of Report** 1/3/2013

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
1. Wells Fargo Accounts	B	Interest	L	T	Exempt				
2. Capital Account -- Biaggi & Kroese PLLC	A	Interest	K	T	Exempt				
3. Rental Property #1, Tucson, Arizona	A	Rent	M	W	Exempt				
4. Marquez Investments LLC, Tucson, Arizona	B	Rent	O	W	Exempt				
5. Alliance Bernstein Int'l Value Fund A	A	Int./Div.	J	T	Exempt				
6. American Funds Capital Inc. Builder	B	Int./Div.	K	T	Exempt				
7. Amercian Funds Growth Fund of America	D	Int./Div.	K	T	Exempt				
8. Amercian Funds Income Fund of America R3	D	Int./Div.	K	T	Exempt				
9. American Funds New World Fund	A	Int./Div.	L	T	Exempt				
10. Black Rock Government Income Inv Fund A	B	Int./Div.	K	T	Exempt				
11. Franklin Income Fund A	B	Int./Div.	K	T	Exempt				
12. Ivy MidCap Growth Y Fund	A	Int./Div.	K	T	Exempt				
13. PNC S&P 500 Index Fund A	B	Int./Div.	K	T	Exempt				
14. Putnam Small Cap Growth Fund A	A	Int./Div.	K	T	Exempt				
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 Marquez, Rosemary	Date of Report 1/3/2013

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

Sole asset of Marquez Investments, LLC is office building in Tucson, Arizona

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Marquez, Rosemary	Date of Report 1/3/2013

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/ Rosemary Marquez**

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		90	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		240	568	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		540	230
Real estate owned – see schedule	1	485	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		40	000				
Cash value-life insurance							
Other assets itemize:							
Biaggi & Kroese PLLC – capital account		40	000				
				Total liabilities		540	230
				Net Worth	1	355	338
Total Assets	1	895	568	Total liabilities and net worth	1	895	568
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Alliance Bernstein International Value Fund A	$6,050
American Funds Capital Income Builder	24,363
American Funds Growth Fund of America	32,253
American Funds Income Fund of America R3	20,853
American Funds New World Fund	68,010
Black Rock Government Income Inv Fund A	15,703
Franklin Income Fund A	18,778
Ivy MidCap Growth Y Fund	21,930
PNC S&P 500 Index Fund A	17,376
Putnam Small Cap Growth Fund A	15,252
Total Listed Securities	$240,568

Real Estate Owned	
Primary residence	$450,000
Second residence	300,000
Rental property	150,000
Office address (held by Marquez Investments)	585,000
Total Real Estate Owned	$1,485,000

Real Estate Mortgages Payable	
Primary residence	$245,230
Office address (held by Marquez Investments)	295,000
Total Real Estate Mortgages Payable	$540,230

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Douglas Leroy Rayes

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

   United States District Court Judge for the District of Arizona

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.

   Maricopa County Superior Court
   201 West Jefferson, Suite 704
   Phoenix, Arizona 85003

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

   1952; Globe, Arizona

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

   1975 – 1978, Arizona State University College of Law; J.D. (*cum laude*), 1978

   1970 – 1975, Arizona State University; BSE (*summa cum laude*), 1975

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

   2000 – present
   Maricopa County Superior Court
   201 West Jefferson
   Phoenix, Arizona 85003

Judge, Complex Civil (January, 2013 - present)
Presiding Criminal Judge (2010 – January, 2013)
Associate Presiding Civil Judge / Complex Civil (2008 – 2010)
Judge, Civil Special Assignment (2005 – 2008)
Judge, Criminal (2002 – 2005)
Judge, Family (2000 – 2002)

1989 – 2000
Tryon, Heller & Rayes
(Firm Defunct)
6611 North Scottsdale Road
Scottsdale, Arizona 85250
Partner

1986 – 1989
McGroder, Tryon, Heller & Rayes
(Firm Defunct)
3020 East Camelback Road
Phoenix, Arizona 85016
Partner

1984 – 1986
McGroder, Tryon, Heller, Rayes & Berch
(Firm Defunct)
3020 East Camelback Road
Phoenix, Arizona 85016
Partner

1982 – 1984
McGroder, Pearlstein, Peppler & Tryon
(Firm Defunct)
3020 East Camelback Road
Phoenix, Arizona 85016
Associate

1979 – 1982
U.S. Army JAGC
Third Armored Division
Hanau, FRG
Captain
Judge Advocate General

October – December 1978
McGroder & Tryon
(Firm Defunct)
111 South Third Street

Phoenix, Arizona 85007
Attorney

April – September 1978
McGroder & Tryon
(Firm Defunct)
111 South Third Street
Phoenix, Arizona 85007
Law Clerk

Summer 1977
Arizona State Attorney General's Office
1275 West Washington
Phoenix, Arizona 85007
Law Clerk, Contractor

1976
United States Forest Service
Tonto National Forest, Roosevelt Lake Ranger Station
Tonto Basin, Arizona
2324 East McDowell Road
Phoenix, Arizona 85004
Patrol Fireman

1975
United States Forest Service
Tonto National Forest, Globe Ranger Station
Globe, Arizona
2324 East McDowell Road
Phoenix, Arizona 85004
Tanker Crew Fireman

Other affiliations (uncompensated)

2011 – present
Sandra Day O'Connor College of Law
Arizona State University
1100 South McAllister Avenue
Tempe, Arizona 852871
Adjunct Professor of Law

2002 – 2003, 1989 – 1991
Prince of Peace Lutheran Church
3641 North 56th Street
Phoenix, Arizona 85018

Church Council, Vice President (2002 – 2003)
Church Council, Member (1989 – 1991)

1995 – present
Calle Tuberia Trust
(no physical address)
Trustee

1995 – present
Charlottesville Trust
(no physical address)
Trustee

1995 – present
KJET Limited Partnership
(no physical address)
Manager

1982 – present
Rayes Properties Inc.
477 West Baseline Spur
Globe, Arizona 85001
Secretary/Vice President

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

   1970 – 1974: Army ROTC, Arizona State University
   1975: Commissioned Second Lieutenant, U.S. Army
   1979 – 1982: Army JAG Corps
   1982 – 1985: Army Reserve
   Honorable Discharge/Captain

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.

   Judge of the Year, American Board of Trial Advocates, Phoenix Chapter (2011)
   Army Commendation Medal, United States Army, Europe, (1982)
   Distinguished Graduate, Army JAGC Basic Class (1979)
   Distinguished Military Graduate, Arizona State University (1975)
   Tau Beta Pi, Engineering Honors Fraternity, Arizona State University (1974)

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

American Bar Association (approximately 1988 – 2000)
Arizona Commission on Judicial Performance Review (2013 – present)
Arizona State Bar, Civil Practice and Procedure Committee (1994 – 1997)
Arizona Supreme Court Judicial College (2004 – 2006)
Arizona Trial Lawyers Association (1990 – 2000)
ASTAR Resources Judge Scientific Evidence Program (2010 – present)
Capital Case Oversight Committee of the Arizona Supreme Court (2010 – 2012)
Court Leadership Institute of Arizona (2011 – present)
City of Phoenix, Judicial Selection Advisory Board (2008 – present)
Vice Chairman (2012 – present)
General Jurisdiction New Judge Orientation Committee of the Arizona Supreme Court (2004 – 2010)
Co-Chairperson (2007 – 2010)
Instructor and mentor (2004 – present)
Gila County Bar Association (approximately 1987 – 2000)
Town of El Mirage Judicial Selection Advisory Board (2006 – 2013)
Chairman (2006 – 2012)
Maricopa County Superior Court Mental Health Committee
Chairman (2001 – 2012)
Maricopa County Bar Association (Approximately 2002 – 2008) (2013)
State Bar of Arizona, Continuing Legal Education Presenter (2001 –present)
Veterans' Court Committee, Maricopa County (2010 – 2012)
Co-Chairperson (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.

Arizona, 1978

There have been no lapses in membership.

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

United States District Court for the District of Arizona, 1982

United States Military Courts, certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice, 1979

There have been no lapses in membership.

11. **Memberships**:

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

Arcadia Little League (1990 – 2001)
Managed, coached and umpired Boys' T-Ball, Farm, Minor and Major league teams (1990 – 2001)
Arcadia Girls' Little League (1996 – 1998)
Managed and coached girls' softball teams (1996 – 1998)
Arizona Supreme Court Commission on Victims in the Courts member (2010 – 2013)
Maricopa County Superior Court Security Committee, member (2002-2005)
Weapons and Exhibits Subcommittee, chairman (2003 – 2005)
Arizona Supreme Court's General Jurisdiction New Judge Orientation Committee
Co-Chair (2006-2010)
Prince of Peace Lutheran Church (1984 – 2011)
Member, Church Council (1989 – 1991)
Vice President, Church Council (2002 – 2003)
Nominating Committee member (2002 – 2003)
Task Force to update constitution and bylaws (2004-2005)
KJET Limited Partnership (1995 – present)
Manager (1995 – present)
Rayes Properties Inc. (1982 – present)
Secretary/Vice President (1982 – present)

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

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

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

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

The Mayor of the Courthouse is Retiring, The Judicial Branch News, Jan. 2013. Copy supplied.

Probation, Parole, and Community Supervision Week, The Chronicle, Newsletter of the Maricopa County Adult Probation Department, July, 2012. Copy supplied.

Letter to the Editor. *Soundoff. Noteworthy Lawyering in Historic Cases,* Arizona Attorney, April 2012. Copy supplied.

With Robert L. Gottsfield and Patricia Starr, *A Court's Remarkable Recovery From a Capital Case Crisis,* Arizona Attorney, Nov. 2011. Copy supplied.

Celebrating and Honoring Probation Employees, The Chronicle, Newsletter of the Maricopa County Adult Probation Department, July, 2011. Copy supplied.

Packing Heat in Arizona, Arizona Republic, May 31, 2010. Copy supplied.

Globe Boy Changes the Law of the Land, The Judicial Branch News, Nov. 2009. 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.

Five Year Strategic Plan for the Criminal Department, Superior Court of Arizona in Maricopa County, October 7, 2010. Copy supplied.

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

I addressed the Maricopa County Commission on Trial Court Appointments, recommending a Court Commissioner be considered by the Commission for referral to Governor Brewer as a candidate for Superior Court Judge on July 22, 2013 and March 27, 2013. Minutes supplied.

As a member of the Court Leadership Institute of Arizona, since 2011, I have provided meeting minutes of meetings in which I participated where available.

I was interviewed by the Commission on Appellate Court Appointments, regarding my application to fill a vacancy on the Arizona Supreme Court on August 20, 2012. Video listed under the "Archived '2012' Videos" menu available at: http://www.azcourts.gov/AZSupremeCourt/LiveArchivedVideo.aspx.

As a member of the Arizona Supreme Court's Capital Case Oversight Committee, I participated in public meetings involving the oversight of the capital cases in Superior Court. I reported on the progress the court was making in resolving a capital case crisis, the numbers of pending and resolved capital cases, what the court was doing to facilitate resolution, the issues that were developing in timely resolution of pending cases and the developing backlog of petitions for post-conviction relief. I participated in public meetings on the following dates:

September 24, 2012, Meeting. Minutes supplied.

February 29, 2012, Meeting. Minutes supplied.

October 5, 2011, Meeting. Minutes supplied.

May 16, 2011, Meeting. Minutes supplied.

January 18, 2011, Meeting. Minutes supplied.

September 23, 2010, Meeting. Minutes supplied.

August 30, 2010, Meeting. Minutes supplied.

April 28, 2010, Meeting. Minutes supplied.

As a member of the Commission on Victims in the Courts, I made a presentation at a public meeting to the Commission on the innovative features of the new Criminal Court Tower that were specifically designed to facilitate victims when they came to the courthouse on January 20, 2012. Minutes supplied.

I made an oral report to the Maricopa County Superior Court Executive Committee on the five year strategic plan for the criminal department in October 2010. Copy of the written plan is supplied in response to 12b.

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

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

October 11, 2013: Panelist, "Bench Bar Conference" Maricopa County Bar Association, Phoenix, Arizona. As a panel member I discussed oral arguments on motions. I discussed what is effective and what is ineffective. I have no notes, transcripts or recording. The address of the Maricopa County Bar Association is Maricopa County Bar Association, 303 East Palm Lane, Phoenix, Arizona 85004.

October 4, 2013: Panelist, "The Civil Procedure Game," Arizona State Bar, 4201 North 24th Street, Suite 100, Phoenix, Arizona 85015. PowerPoint supplied.

July 30 – August 2, 2013, July 31 – August 1, 2012 and August 2 – 3, 2011: Panelist "Arizona College of Trial Advocacy" Arizona State Bar, Phoenix, Arizona. This was an intense week of trial training limited to 48 lawyers. A civil case is worked up by the students starting from discovery through trial, under the direction and tutelage of experienced trial lawyers and judges. I worked all three years with the students on cross examination of expert witnesses and opening statements. I have no notes, transcripts or recording. The address of the Arizona State Bar's Continuing Legal Education program is, Arizona State Bar, Continuing Legal Education, 4201 North 24th Street, Suite 100, Phoenix, Arizona 85015.

April 12, 2013: Guest Lecturer, Mock Trial Program, Seventh Grade Social Studies Class, Ingleside Middle School. The presentation described the trial process, the important legal issues the students faced in their mock trial scenario and responded to questions from the class. I have no notes, transcript, or recording. The address is Ingleside Middle School is 5402 East Osborn Road, Phoenix, Arizona 85018.

March 5, 2013: Speaker, Presentation for New Judges, "Case Management," General Jurisdiction, New Judge Orientation, Arizona Supreme Court Judicial

Education Center, Phoenix, Arizona. PowerPoint supplied.

December 13, 2012: Panelist, "Civil Procedure and Pretrial Discovery," Arizona State Bar, Phoenix. Outline supplied.

November 15, 2012: Speaker, Mesa Community College class on Corrections Functions. The presentation discussed interesting criminal cases and sentencing laws and responded to questions from the class. I have no notes, transcripts or recordings. The address of Mesa Community College is 1833 West Southern Avenue, Mesa, Arizona 85202.

November 2, 2012: Panelist, "Putting the Evidence Rules to Work for You," Arizona State Bar, Phoenix, Arizona. PowerPoint supplied.

October 10, 2012: Speaker, "Bench and Bar Luncheon." The presentation, by the presiding judges of Maricopa County Superior Court, described and explained the new programs of their departments. The luncheon was presented by the Arizona State Bar. I discussed the programs I oversaw in the criminal department including the creation of the Veterans' Court, the development of a quality assurance program for indigent defense counsel, the reduction in capital cases and the training program implemented to train judge pro tems in the criminal department. I have no notes, transcripts or recording. The address of the Arizona State Bar's Continuing Legal Education program is, Arizona State Bar, Continuing Legal Education, 4201 North 24th Street, Suite 100, Phoenix, Arizona 85015.

October 5, 2012: Panelist, "Capital Case Training for Judges," Criminal Department, Maricopa County Superior Court, Phoenix, Arizona. The nuts and bolts of managing a capital trial were taught, including pre-trial motions and jury selection. I have no notes, transcripts or recording. The address of the Maricopa County Superior Court is 175 West Madison, Phoenix, Arizona, 85003.

September 15, 2012: Speaker, discussion of my background growing up in Globe and my interest on serving on the Arizona Supreme Court, Gila County Republican Party. I have no notes, transcripts or recording. The address of the Gila County Republican Party Globe Headquarters is 424 Broad Street, Globe, Arizona 85501.

September 4, 2012: Speaker, "Adult Probation Officer Class Graduation Ceremonies," Maricopa County Adult Probation Department, Phoenix, Arizona. From June 2010 through September 2012, approximately three times per year, I addressed the new employees and their families who had successfully completed the Maricopa County Adult Probation department training. I congratulated them for being selected for the job and enduring the rigorous training program. I reminded them of the importance of their job to the community and to the judges who rely on them. I have no notes, transcripts or recording. The address of the

Maricopa County Adult Probation Department, 620 West Jackson Street, Phoenix, Arizona 85003.

April 17, 2012; November 10, 2009; and February 22, 2006: Panelist, "Arizona State Bar Attorney Professionalism Course," Phoenix, Arizona. This is a mandatory continuing legal education course. The section my panel covered was "Criminal Litigation, Small Firm." The State Bar has a prepared course curriculum which includes hypotheticals. My co-panelists presented the course material and I responded to questions, from a judicial perspective, about attorney behavior in the hypothetical situations of lawyers acting badly toward one another and toward other third parties. I have no notes, transcripts or recording. The address of the Arizona State Bar's Continuing Legal Education program is, Arizona State Bar, Continuing Legal Education, 4201 North 24th Street, Suite 100, Phoenix, Arizona 85015.

April 16, 2012: Speaker, "Veterans' Court Celebration of Progress," Maricopa County Superior Court, Phoenix, Arizona. Maricopa County Superior Court publicly celebrated the first anniversary of the Veterans' Court with a presentation of the successes. I was one of the speakers to discuss the plight of the veterans and how our Veterans' Court successfully addresses issues of veterans with mental health and/or substance abuse issues. Video available at: http://www.youtube.com/watch?v=KirGQmNl0ik

April 13, 2012: Panelist, "Sandra Day O'Connor College of Law, Arizona State University, Sentencing Workshop," Tempe, Arizona. Law students and Superior Court judges were provided with the information a sentencing judge had available before imposing sentence. Professor Popko moderated a discussion between the students and judges about the legal requirements and the considerations that are made when a sentence is handed down. My remarks focused on the statutory factors a judge must consider when imposing a sentence. I have no notes, transcripts or recording. The address for Sandra Day O'Connor College of Law is 1100 South McAllister Avenue, Tempe, Arizona 85287.

April 12, 2012 and February 24, 2011: Guest Lecturer, "Death Penalty in America," Arizona State University Justice Studies Program class, Tempe, Arizona. . I described the process of a death penalty case working its way through the courts, gave a description of the death protocol at the prison and responded to questions from the students. I have no notes, transcripts or recording. The class was taught at Arizona State University, Tempe Arizona, 85287.

February 22, 2012: Speaker, "Legal Competency and Restoration Training for Mental Health Professionals," Arizona Supreme Court, Phoenix, Arizona. This is training that is required by the Arizona Supreme Court for mental health professionals to be qualified for court appointment to evaluate and or restore

criminal defendants. I gave a presentation on the overview of our competency rules and the cases interpreting them. PowerPoint and handout supplied.

January 20, 2012: Speaker, Commission on Victims in the Court, "Courthouse Design with Victims in Mind," Phoenix, Arizona. PowerPoint supplied.

January 18, 2012: Speaker, American Academy of Professional Coders on "Medical Malpractice Suits and How to Avoid Them," Mesa, Arizona. PowerPoint supplied.

December 8, 2011 and December 2, 2010: Speaker, "Death Penalty Annual Conference" Maricopa County Public Defender, Legal Defender, Legal Advocate and Federal Public Defender-Capital Habeas Unit, Phoenix, Arizona. I, along with the County Attorney, was asked to speak on "Different Perspectives." I discussed the expectations I had about the level of competency of indigent defense counsel in capital cases and statistics on the capital cases in Maricopa County's recent past. I have no notes, transcripts or recording. The address of the Maricopa County Public Defender is 620 West Jackson Street, Phoenix, Arizona 85003.

Approximately October, 2011: Panelist at a meeting of Parents of Murdered Children, Phoenix, Arizona. This was an opportunity for parents of murdered to children to describe their court experiences and to make suggestions about how judges could help parent victims understand the criminal process in court. I have no notes, transcript, or recording. The address of the president of the organization is PO Box 39603, Phoenix, Arizona 85069.

September 9, 2011: Panelist, "Nuts and Bolts of Trial Practice" seminar presented by the Arizona State Bar. The moderator discussed trial issues and tactics using the panelists, two trial lawyers and me, a trial judge, to explain how they actually play out in the courtroom. I discussed trial techniques that I have seen work in the courtroom and some that have failed. PowerPoint supplied.

March 30, 2011: Panelist, "Criminal Implications of Prop 203 (Medical Marijuana)" Maricopa County Bar Association, Phoenix, Arizona. As a panel member I discussed the recently enacted medical marijuana law and the potential legal pitfalls that lay ahead for medical marijuana users and dispensaries. I have no notes, transcripts or recording. The address of the Maricopa County Bar Association is Maricopa County Bar Association, 303 East Palm Lane, Phoenix, Arizona 85004.

January 19, 2011: Panelist, statewide webcast for Arizona Courts "Proposition 203: Arizona Medical Marijuana Act," Arizona Supreme Court, Phoenix, Arizona. I was on a panel that presented an overview of recently enacted medical marijuana laws. This was a presentation for the Arizona Supreme court.

PowerPoint supplied and video available at: http://www.azcourts.gov/educationservices/COJETClassroom/VideoCenter/Broadcasts.aspx#BC_P203.

September 9, 2010: Panelist, "Bench and Bar, Updates and Views from the Bench," Arizona State Bar, Phoenix, Arizona. I was one of the presiding judges that spoke on the new programs and developments in our departments. I discussed our recent undertaking regarding juveniles who were on adult probation, our highest risk re-offenders, modeled after a successful program in Hawaii that provided for swift and constant penalties for probation violations. I have no notes, transcripts or recording. The address of the Arizona State Bar's Continuing Legal Education program is, Arizona State Bar, Continuing Legal Education, 4201 North 24th Street, Suite 100, Phoenix, Arizona 85015.

June 3, 2010: Panelist, "Complex Civil Litigation," Arizona State Bar, Phoenix, Arizona. This was a program to introduce attorneys to the Supreme Court's pilot project in Maricopa County. We discussed how cases are designated complex, what that means to the case process, introduced the three judges assigned to that calendar and discussed how the calendars differ from regular civil calendars. I have no notes, transcripts or recording. The address of the Arizona State Bar's Continuing Legal Education program is, Arizona State Bar, Continuing Legal Education, 4201 North 24th Street, Suite 100, Phoenix, Arizona 85015.

April 23, 2010: Panelist, "What Civil Judges Want You to Know," National Business Institute, Tucson, Arizona. This seminar included seven judges from across the state on civil calendars. It covered a wide range of issues in civil litigation. We discussed discovery, pre-trial conferences, scheduling orders, motions, technology in the courtroom, voir dire, opening statements and closing arguments. I have no notes, transcripts or recording. This seminar was put on by the National Business Institute, P.O. Box 3067 Eau Claire, Wisconsin 54702.

October 28, 2009: Speaker "Condemnation Summit VI," Phoenix, Arizona. This was an annual all day seminar put on by a group of attorneys who practice in the area of condemnation. PowerPoint supplied.

October 16, 2009: Panelist, "The Evidence Game: Rules and Trial Objections," Arizona State Bar, Phoenix, Arizona. The moderator showed short clips from movies and gave other trial hypotheticals covering nearly all of the rules of evidence in a game format. I addressed objections and rulings on some of the hypotheticals. I have no notes, transcripts or recording. The address is Arizona State Bar, Continuing Legal Education, 4201 North 24th Street, Suite 100, Phoenix, Arizona 85015.

March 20, 2009: Panelist, "Civil Court Judicial Forum: Practice Tips, Evidence and Expert Testimony," National Business Institute, Phoenix, Arizona. I was one of six judges on the panel. The discussion included using expert depositions at trial, impeachment, objections and side bars. I have no notes, transcripts or

recording. The address of the National Business Institute is National Business Institute, P.O. Box 3067 Eau Claire, Wisconsin 54702.

December 17, 2008: Panelist, "View From the Bench: Complex Civil Litigation," Maricopa County Bar Association, Phoenix, Arizona. This program introduced attorneys to the Supreme Court's pilot project in Maricopa County. We discussed how cases are designated complex, what that means to the case process, introduced the three judges assigned to that calendar and discussed how the calendars differ from regular civil calendars. I have no notes, transcripts or recording. The address of the Maricopa County Bar Association is Maricopa County Bar Association, 303 East Palm Lane, Phoenix, Arizona 85004.

January 11, 2002: Moderator and Panelist, "Mental Health Providers Annual Training Family Court Department," Maricopa County Superior Court, Phoenix, Arizona. This was an annual training put on by the Maricopa County Superior Court Family Department. I gave the opening remarks and introduced the speakers. I have no notes, transcripts or recording. The address of the Maricopa County Superior Court is Maricopa County Superior Court, 201 West Jefferson Phoenix, Arizona 85003.

November 19, 1999: Speaker, "Damages: Understand Them Prove Them and Maximize Them," Arizona Trial Lawyers Association, Phoenix, Arizona. I spoke on proving general damages in personal injury cases. I have no notes, transcripts or recording. The address of the Arizona Trial Lawyers Association is Arizona Trial Lawyers Association, 1661 East Camelback, Suite 204, Phoenix, Arizona 85016.

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.

SuperiorCourtAZ, *An Introduction to Veterans' Court*, Maricopa County Superior Court, Feb. 3, 2012. Video available at: http://www.youtube.com/watch?v=X2r05iMW34I&list=PLh-xFB5ObJz4AmZ87tdQlN9LH3N4UMGtQ&index=1

Veterans Court: Arizona StandDown, Judicial Branch News, Feb. 2012. Copy supplied.

Office of Victims of Crimes of the Office of Justice Program, Maricopa County Probation Department's Financial Compliance Program (FINCOM), Crime Victims Financial Restoration Award, 2012. The link to the video created by the Office of Justice Program is below. Go to Award Year and click on 2012 and then click on the group photo that will show "Maricopa County Adult Probation Department Financial Compliance Unit" and then click on the video: https://ovcncvrw.ncjrs.gov/Awards/AwardGallery/gallerysearch.html.

Blog, ABOTA Names Douglas Rayes Judge of the Year, Arizona Attorney Magazine, Dec. 9, 2011. Copy supplied.

Judicial Officers Volunteer for Arizona StandDown, Judicial Branch of Arizona, Maricopa County, Jan. 27, 2011. Copy supplied.

Glen Creno, *Court program helps veterans get back on their feet*, The Arizona Republic, Jan. 24, 2011. Copy supplied.

Angie Hollsworth, *Valley Veterans Get Help from New Court Program*, ABC 15 News, Jan. 20, 2011. Copy supplied.

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

Since 2000, I have served as a judge on the Maricopa County Superior Court.

I was appointed by the Governor through a merit selection process. A nonpartisan Trial Court Commission screened the applications and sent the finalists to the governor who made the final selection. I have been retained in the required periodic, nonpartisan retention elections in 2002, 2006 and 2010. The Maricopa County Superior Court is a court of general jurisdiction with jurisdiction over cases and proceedings in which exclusive jurisdiction is not vested by law in another court. It has jurisdiction over civil cases involving disputes of more than $10,000, equity cases that involve title of possession of real property; the legality of any tax, assessment, toll or municipal ordinance; criminal cases amounting to a felony, forcible entry and detainer actions; actions to prevent or stop nuisances; matters of probate and dissolution of marriages. It also acts as an appellate court for justice and municipal courts.

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

I have presided over thousands of cases that have gone to judgment by settlement, plea agreement, summary judgment or dismissal. I have presided over approximately 250 cases that have gone to verdict through a trial. I have estimated the relative percentages of the cases that went to verdict through trial below.

i. Of these, approximately what percent were:

jury trials:	60%
bench trials:	40%
civil proceedings:	30%
criminal proceedings:	70%

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

As a trial judge I make tens of rulings per week ranging from motions to extend time for service to summary judgments in multi-million dollar cases. Most of the rulings are two pages or less but some are lengthy. These rulings are found in the individual case files within the Maricopa County Superior Court and therefore are not readily searchable. On occasion I have sat as a judge pro tempore on the Arizona Court of Appeals and in that capacity I authored one opinion, *Collette v. Tolleson Unified School District, No. 214*, 203 Ariz. 359, 54 P.3d 828 (App. 2002).

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

1. *State v. Lemke*, No. CR 2002-019002 (Maricopa County Superior Court, April 10, 2006), *aff'd sub nom. Lemke v. Rayes*, 141 P.3d 407 (2006). Decision supplied.

This was a capital murder trial stemming from the death of a television auto-glass mogul. The defendant was charged with, among other things, felony murder. The predicate offense for the felony murder charge was a charge of armed robbery. The jury hung on the felony murder charge but convicted the defendant of theft, a lesser offense of the armed robbery charge. Because under Arizona law a felony murder charge cannot rest on a predicate offense of theft, the defense moved to dismiss the murder charge. I denied the motion ruling that double jeopardy did not bar a retrial of the murder charge. My ruling was affirmed.

State's Counsel:
Sam Myers
Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003
602-372-2940

Defendant's Counsel:
Bruce Peterson
Timothy Agan
Office of Legal Advocate
3800 North Central Avenue, Suite 1500
Phoenix, Arizona 85012
602-506-4611

2. *State v. Al-Tarrah*, No. CR2005-129547 (Maricopa County Superior Court, trial to the court, August 21, 2006 – August 23, 2006).

This case involved a foreign college student charged with leaving the scene of vehicular accident involving a death. She was ordered by the trial judge to surrender her passport to her attorney, David Cantor, and he was ordered to file an affidavit of her compliance with the court. The defendant did not surrender her passport to Cantor. The defendant left the country before trial and a criminal contempt action was brought against Cantor. I was specially assigned to try the contempt charges. I was required to weigh the evidence of Cantor's willfulness and clarity of the order. After three days of trial I found Cantor not guilty.

State's Counsel:
Ed Noyes, Jr., specially assigned to try the contempt charge against Cantor. (Formerly Assistant Attorney General, Arizona Attorney General's Office, but I am unable to locate current contact information on him.)

Cantor's Counsel:
Larry Hammond
Osborn Maledon, PA
2929 North Central Avenue Suite 2100
Phoenix, Arizona 85012
602-640-9361

Mark Harrison
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2929 North Central Avenue Suite 2100
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602-640 9324

3. *Home Builders Association of Central Arizona v. City of Mesa*, No. LC2007-000559 (Maricopa County Superior Court, July 15, 2009), *aff'd* 226 Ariz. 7, 243 P.3d 610 (App. 2010). Decision supplied.

This case came to me as a special action. The Home Builders Association of Central Arizona brought suit to challenge the lawfulness of the City of Mesa's cultural facilities development fee. I found the City's cultural facilities development facilities to be "necessary" public services within the meaning of the applicable statute and granted summary judgment for the City of Mesa. The ruling was affirmed on appeal.

Plaintiffs' Counsel:
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602-462-5000

Defendant's Counsel:
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Mariscal Weeks McIntyre & Friedlander PA
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602-285-5000

4. *State v. Vega*, No. CR2004-134908 (Maricopa County Superior Court, jury trial, January 4, 2006 – January 26, 2006), *aff'd* 2008 WL 3845456 (Ariz. App. 2008).

In this case the defendant was charged with murder. As the defendant, a gang member, stood near his vehicle holding an AK-47, a number of rival gang members stood nearby. Both sets of gangs had been at a birthday celebration. One of the rival gang members, unarmed, walked toward the defendant with his hands in the air daring the defendant to shoot him. Both rounds went into the victim's chest. Despite the defendant's claim of self-defense, he was found guilty by a jury of manslaughter. I sentenced him to fifteen years in prison. The conviction and sentence were affirmed.

State's Counsel:
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602-506-5780

Defendant's Counsel:
John Napper
Napper Law Firm
141 South McCormick, Suite 211
Prescott, Arizona 86303
928-778-5554

5. *State v. Mohamad,* No. CR 2004-015083 (Maricopa County Superior Court, jury trial December 5, 2005 - December 15, 2005), *aff'd* 2008 WL 3855851(Ariz. App.).

The defendant was a clerk at a convenience store who had repeatedly been the victim of armed robberies and had observed his brother shot to death in an armed robbery. Despite his experience and despite being diagnosed and treated for post-traumatic stress, he continued to work as a store clerk. On the evening in question he observed a person take beer without paying for it. He chased the culprit down and after a confrontation, shot him as he drove away with the beer. The victim died. The defendant was found guilty by the jury of manslaughter and I sentenced

him to a mitigated sentence of seven years. The verdict and sentence were affirmed.

State's Counsel:
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201 West Jefferson
Phoenix, Arizona 85003
602-372-2940

Defendant's Counsel:
Andrew Alex
Richard Gaxiola
Alex & Gaxiola
1717 East Bell Road, Suite One
Phoenix, Arizona 85022
602-971-1775

6. *Martinez v. Desert Sky Esplanade*, No. CV2006-014888 (Maricopa County Superior Court, jury trial January 28, 2009 – February 4, 2009), *aff'd* 2010 WL 3597255 (Ariz. App.)

This was a wrongful death trial. Plaintiffs' decedent, their teenage daughter, a back seat passenger, was killed when the vehicle lost control after hitting a speed bump. Plaintiffs brought suit against the owner of the roadway claiming defendants were negligent for the roadway design and maintenance. The jury returned a verdict for plaintiffs in the amount of $2.5 million, finding the defendants 50% at fault and the non-party driver 50% at fault. The verdict was affirmed on appeal.

Plaintiffs' Counsel:
Charles Slack-Mendez
Slack-Mendez and Garcia
2710 South Rural Road
Tempe, Arizona 85282
480-829-1166

Defendants' Counsel:
Steven Bartell (Unable to locate contact information)

7. *Fushek v. State of Arizona*, No. LC2006-000371 (Maricopa County Superior Court, August 16, 2006), rev'd 215 Ariz. 274, 159 P.3d 584 (App. 2007), *aff'd* 218 Ariz. 285, 183 P.3d 536 (2008). Decision supplied.

This was a special action brought by the defendant, a Catholic priest charged with misdemeanor sex offenses, to challenge the justice court's denial of a jury trial. I found that sex registration is an "additional, direct, uniformly applied statutory

consequence that reflects the legislature's judgment that the offense is serious." I ruled that because of that, the Arizona Constitution guarantees the defendant a jury trial. My ruling was reversed by the Court of Appeals, but affirmed by the Supreme Court.

State's Counsel:
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602-962-8002

Defendant's Counsel:
Thomas Hoidal
Law offices of Thomas Hoidal PLC
7227 North 16th Street
Phoenix, Arizona 85020
602-254-0202

8. *Arizona Together v. Brewer*, No. CV2006-010505 (Maricopa County Superior Court, August 11, 2006), *aff'd* 214 Ariz. 118, 149 P.3d 742 (2007). Decision supplied.

This was an election law case that required me to consider whether a constitutional amendment proposed by voter initiative to define marriage complied with the separate amendment rule of the Arizona Constitution. After a hearing I found that the proposition constituted a single amendment pursuant to the test established by prior decisions of the Arizona Supreme Court. I ruled that the proposition would be placed on the ballot. My ruling was affirmed by the Arizona Supreme Court.

Plaintiffs' Counsel:
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602-256-4462

Defendants' Counsel:
Diana Varela
United States Attorney's Office
Two Renaissance Square
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602-514-7743

9. *Cuppy et al. v. Gray et al.*, No. CV 2003-019984 (Maricopa County Superior Court, jury trials March 2, 2006 – March 22, 2006, and May 11, 2009 – May 28, 2009). *aff'd* 2008 WL 4061071 (Ariz. App.).

This was a medical negligence, wrongful death trial. It involved claims that a surgeon caused and then ignored internal bleeding that resulted in the death of a high school teacher survived by a wife and five children. The case involved many thorny legal and medical issues. The jury found for the defendant. I granted plaintiffs' motion for mistrial on the grounds that I had erred in allowing in certain evidence and for not granting plaintiffs' motion for judgment as a matter of law on Dr. Gray's claim that the hospital was a non-party at fault. The jury found in favor of the defendant in the second trial.

Plaintiffs' Counsel:
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602-261-7770

Defendants' Counsel:
James Broening
Broening Oberg Woods & Wilson PC
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602-271-7700

10. *Solimeno et al. v. Dickson*, No. CV 2004 005593 (Maricopa County Superior Court, jury trial April 20, 2009 – May 4, 2009).

This was a medical negligence wrongful death trial. The decedent, a 42 year old woman died of a pulmonary embolism while under the care of the defendants. Plaintiffs claimed that the defendants fell below the standard of care in their treatment of the decedent by failing to take appropriate medical action to prevent the blood clot from traveling to her lungs. The case involved complex medical and legal issues and was tried by two lawyers experienced in medical negligence. The jury found in favor of the defendant.

Plaintiffs' Counsel:
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602-230-8777

Defendants' Counsel:
Stephen A. Bullington
Jones Skelton & Hochuli PLC
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602-263-1700

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 trial judge I technically do not write opinions, other than when I sit on the Court of Appeals as a Judge pro tempore. As a trial judge I have made thousands of rulings. Most of my rulings contain an explanation for the legal basis of my ruling.

1. *Collette v. Tolleson Unified School District, No. 214*, 203 Ariz. 359, 54 P.3d 828 (App. 2002).

Appellants' Counsel:
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Phoenix, Arizona 85016
602 530-8377

Appellees' Counsel:
Steven Leach
Jones Skelton & Hochuli
2901 North Central Avenue
Phoenix, Arizona 85012
602 235-7189

2. *Fushek v. State of Arizona*, No. LC2006-000371 (Maricopa County Superior Court, Aug. 14, 2006), rev'd 215 Ariz. 274, 159 P.3d 584 (App. 2007), *aff'd* 218 Ariz. 285, 183 P.3d 536 (2008). Decision supplied in response to 13c.

State's Counsel:
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Defendant's Counsel:
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602-254-0202

3. *M.S. Carriers, et al. v. Ernst & Young, et al.*, No. CV 2003-013993 (Maricopa County Superior Court, Aug.13, 2009). Decision supplied.

Plaintiffs' Counsel:
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Defendants' Counsel:
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Andrew K. Polovin
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4. *Sell v. Sewell, et al.*, No. CV 2007-005734 (Maricopa County Superior Court, Nov. 3, 2009). Decision supplied.

Plaintiffs' Counsel:
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Robert Hackett
David Garbarino
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602-240-3000

Defendants' Counsel:
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Phoenix, Arizona 85001
602-351-8000

5. *Chompies Best at University, Inc. v. Roy S. Ludlow Investment Co.*, No. CV 2008-017142 (Maricopa County Superior Court, Dec. 21, 2009), *aff'd* 2012 WL 3760968 (Ariz. App.). Decision supplied.

Plaintiff's Counsel:
Joseph A. Schenk
Aiken Schenk Hawkins & Ricciardi PC
2390 East Camelback Road Suite 400
Phoenix, Arizona 85016
602-248-8203

Defendant's Counsel:
Donnelly A. Dybus
Office of the Attorney General
400 West Congress Street Suite S-315
Tucson, Arizona 85701
520-628-6504

6. *Harding, et al. v. Hayes, et al.* No. CV 2007-018547 (Maricopa County Superior Court, June 1, 2009). Decision supplied.

Plaintiffs' Counsel:
Charles D. Onofry
Schneider & Onofry PC
3101 North Central Avenue Suite 600
Phoenix, Arizona 85012
602-200-1280

Defendants' Counsel:
Lloyd J. Andrews
Swenson Storer Andrews & Frazelle PC
2800 North Central Avenue Suite 1000
Phoenix, Arizona 85004
602-776-5688

Garvey Biggers
Penilla Metzger
3550 North Central Avenue Suite 1800
Phoenix, Arizona 85012
602-264-4500

7. *State v. Springer*, No. CR 2006-173781 (Maricopa County Superior Court, May 9, 2011). Decision supplied.

State's Counsel:
Diane Meloche
Maricopa County Attorney's Office Appeals Bureau
3131 West Durango, Second Floor
Phoenix, Arizona 85009
602-506-7422

Defendant's Counsel:
Kenneth Countryman
Kenneth Countryman, PC
Two Renaissance Square
40 North Central Avenue
Phoenix, Arizona 85004
602-258-2928

8. *State v. White*, No. CR 2010-113971 (Maricopa County Superior Court, June 22, 2012). Decision supplied.

State's Counsel:
Patricia Stevens
Maricopa County Attorney
301 West Jefferson Fourth Floor
Phoenix, Arizona 85003
602-506-5780

Defendant's Counsel:
Jabron L. Whiteside
Office of the Legal Advocate
3800 North Central Avenue, Suite 1500
Phoenix, Arizona 85012
602-506-4111

9. *Arizona Together v. Brewer*, No. CV 2006-010505 (Maricopa County Superior Court, Aug. 10, 2006), *aff'd* 214 Ariz. 118, 149 P.3d 742 (2007). Decision supplied in 13c.

Plaintiffs' Counsel:
Lisa Hauser
Gammage & Burnham
Two North Central 15th Floor
Phoenix, Arizona 85004
602-256-4462

Defendants' Counsel:
Diana Varela
United States Attorney's Office

Two Renaissance Square
40 North Central Avenue Suite 1200
Phoenix, Arizona 85004
602-514-7743

10. *Home Builders Association of Central Arizona v. City of Mesa*, No. LC2007-000559 (Maricopa County Superior Court, July 13, 2009), *aff'd* 226 Ariz. 7, 243 P.3d 610 (App. 2010). Decision supplied.

Plaintiffs' Counsel:
Clint Bolick
Goldwater Institute
500 East Coronado Road
Phoenix, Arizona 85004
602-462-5000

Defendants' Counsel:
Gary Birnbaum
Mariscal Weeks McIntyre & Friedlander PA
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012
602-285-5000

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

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

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

State of Arizona v. Falth, No. CR 2003-012660 (Maricopa County Superior Court June 23, 2003), *rev'd sub nom. Romley v. Rayes,* 206 Ariz. 58, 75 P.3d 148 (App. 2003). I found that an amendment to the Arizona constitution denying the defendant bail, which was adopted after the date of the offenses for which defendant was charged, was a violation of the ex post facto doctrine. The Arizona Court of Appeals reversed finding that the constitutional change allowing the denial of bail to certain classes of offenses when "the proof is evident and the presumption great" merely procedural. Decision supplied.

State of Arizona v. Reynaga, No. CR 2004-012417 and CR 2005-119508 (Maricopa County Superior Court, 12/07/2005), *rev'd sub nom. Andrew Thomas v. Rayes*, 214 Ariz. 411, 153 P.2d 1040 (2007). In this case the State's plea offer was not communicated to the defendant before it expired. The defense attorney was unaware of

the offer because the office staffed had mishandled the offer. I found that counsel did not have actual knowledge of the offer and had no reason to know the plea offer was in her file. I did not find counsel ineffective but rather classified her conduct as excusable neglect. Because defendant had not been informed of the offer and never had the opportunity to choose to accept it, I ordered the state to re-open the offer. The Arizona Supreme Court reversed, holding that "a defendant may bring ineffective assistance of counsel claims only in a Rule 32 post-conviction proceeding - not before trial." Decision supplied.

State v. Levens, No. CR 2005-108790 (Maricopa County Superior Court Aug. 15, 2005), *rev'd* 214 Ariz. 339, 152 P.3d 1222 (App. 2007). Pursuant to the conditions of his probation, the defendant, a sex offender, was required to submit to a polygraph. During the pre-test of a polygraph examination ordered by his probation officer, the defendant admitted to having firearms in his home. A petition was filed to revoke his probation. I granted a motion to suppress the evidence found in the defendant's home, finding the statement to the polygraph examiner to be involuntary. The Arizona Court of Appeals reversed finding that his statements were not compelled. Decision supplied.

Neal v. Brown, No. CV 2006-001526 (Maricopa County Superior Court, Aug. 16, 2006), *rev'd* 219 Ariz. 14, 191 P.3d 1030 (App. 2008). Pursuant to the Small Tract Act, 43 U.S.C. Section 682a (repealed 1976), defendant's property was patented by the federal government to defendant's predecessors in interest in 1959. The patent included the reservation that it was subject to a 33 foot right-of-way for roadway along the east and south boundaries. Plaintiffs brought suit to require defendant to remove a fence she had erected blocking access to the right-of-way. I granted plaintiffs' motion for summary judgment. The Arizona Court of Appeals reversed in a two-to-one decision, holding that because plaintiffs had other access to their property they were not entitled to enforce the right-of-way over defendant's property. The dissent pointed out that the majority created a new rule governing express easements reserved in federal land patents that changes the settled law. Decision supplied.

Fushek v. State of Arizona, No. LC2006-000371 (Maricopa County Superior Court, Aug. 14, 2006), *rev'd* 215 Ariz. 274, 159 P.3d 584 (App. 2007), *aff'd* 218 Ariz. 285, 183 P.3d 536 (2008). This was a special action brought by the defendant, a Catholic priest charged with misdemeanor sex offenses, to challenge the justice court's denial of a jury trial. I found that sex registration is an "additional, direct, uniformly applied statutory consequence that reflects the legislature's judgment that the offense is serious." I ruled that because of that, the Arizona Constitution guarantees the defendant a jury trial. My ruling was reversed by the Court of Appeals, but affirmed by the Supreme Court. Decision supplied in response to 13c.

Royal Palm Neighborhood Council v. City of Phoenix, No. LC 2006-000725 (Maricopa County Superior Court April 5, 2007), *rev'd* 2008 WL 2842072 (Ariz. App. July 17, 2008). This was a special action brought by a neighborhood to challenge the actions of the City Zoning Administrator and the City Board of Adjustment concerning the subdivision's option requirements. I denied the petitioners' request for special action

relief, finding among other things that petitioners lacked standing and had failed to exhaust their administrative remedies. The Court of Appeals reversed finding that the assertions of the homeowners of particularized harm was sufficient to support their standing. The Court of Appeals further found that the petitioners had not been given adequate notice of the administrative decision and therefore did not have an opportunity to exhaust their administrative remedies. The matter was remanded to me for further proceedings. Decision supplied.

Carter v. Sun Health Corp., No. CV 2008-070031(Maricopa County Superior Court October 27,2008) *rev'd sub nom. Jilly v. Rayes,* 221 Ariz. 40, 209 P.3d 176 (2009). Plaintiffs, in a medical negligence case, challenged the constitutionality of the recently enacted statute as infringing on the Arizona Supreme Court's rulemaking authority. I ruled that the statute created requirements for preliminary disclosure of experts that were in direct conflict with rules enacted by the Arizona Supreme Court regarding expert disclosure in medical negligence. The Court of Appeals reversed holding that because the expert disclosure required by the statute was preliminary, the statute could be harmonized with the Supreme Court's rule and was therefore constitutional. Decision supplied.

Volpe v. Yavapai County, No. CV 2007-0392 (Yavapai County Superior Court Sep. 24. 2007 and Nov. 29, 2007), *rev'd* 2008 WL 4814362 (Ariz. App. October 23, 2008). This was an administrative appeal of employment termination brought by a deputy of the Yavapai Sheriff's Office. After briefing and oral argument by the parties and after reviewing the record, I found there was no substantial evidence to uphold the termination. After considering additional briefing I denied the defendant's motion for reconsideration. The Court of Appeals disagreed and reversed. Decision supplied.

State v. Moore, No. CR 1999-016742 (Maricopa County Superior Court June 7, 2012) *rev'd sub nom. State v. Rayes* 2012 WL 2929436 (Ariz. App. July 19, 2012) . In this capital Petition for Post-Conviction Relief (PCR), defendant sought to investigate possible juror misconduct. The state moved to prohibit defense contact with trial jurors. I ruled that such conduct could occur through a written questionnaire which required court approval before being sent. The Court of Appeals reversed ruling that until the PCR was filed, there is no right to seek discovery. In making its ruling the Court of Appeals noted that "neither party focused on *Canion* when arguing to the superior court. Accordingly, the superior court did not have the benefit of the parties' views on an opinion we find dispositive." Decision supplied.

State v. Chappell, No. CR 2004-037319 (Maricopa County Superior Court June 6, 2012) *reversed sub nom.* State v. Rayes, 2012 WL 2929434 (Ariz. App. July 19, 2012). As the presiding criminal judge I carried a calendar of approximately thirty capital case PCR proceedings which I managed through the briefing stage. The special action in this matter was brought by the State at the same time as the case above. The Court of Appeals ruled on these two cases on the same day. I granted the defense motion for the release of juror contact information, limiting initial defense contact to a letter attached to my order. The Court of Appeals reversed ruling that until the PCR was filed, there is

no right to seek discovery. In making its ruling the Court of Appeals noted that "neither party appears to have cited *Canion* to the superior court. Accordingly, the superior court did not have the benefit of the opinion we find dispositive." Decision supplied.

T.P. Racing v. Simms, No. CV2010-022308 (Maricopa County Superior Court 04/04/2013) special action relief was granted by the Arizona Court of Appeals, No. 1 CA-SA 13-0123, *sub nom. Simms v. Rayes*, in an order dated June 7, 2013, with a comment that a written decision will follow. I had found that defendants' counsel had a conflict in interest in asserting derivative claims on behalf of an LLP against one of the limited partners while at the same time asserting individual claims against the LLP and defending the LLP's claims against the defendant. The Court of Appeals' written decision has not been released as of the date of this questionnaire. Decision supplied.

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

When I sit as a Superior Court Judge, 100% of the decisions I issue are unpublished. They are stored in the individual files for the Maricopa County Superior Court Clerk's docket and therefore are not readily available.

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

I routinely rule on federal or state or constitutional issues, especially in criminal cases. I estimate I have ruled on over 200 cases where constitutional issues were raised including the right to counsel, the right to be free from unreasonable searches and seizures, the right against self-incrimination, the right to due process and the right not to be placed in jeopardy twice for the same crime.

Cases where I have ruled on state constitutional issues include the following:

State v. Vitasek, No. CR 2005-030514 (Maricopa County Superior Court, 09/24/2010). Decision supplied.

Hall v. Elected Officials Retirement Plan, No. CV 2011-021234 (Maricopa County Superior Court, 03/21/2013). Decision supplied.

Arizona Together v. Brewer, No. CV 2006-010505 (Maricopa County Superior Court, 08/10/2006), *aff'd* 214 Ariz. 118, 149 P.3d 742 (2007). Decision supplied in 13c.

Cases where I have ruled on federal constitutional issues include the following:

State v. Lemke, No. CR 2002-019002 (Maricopa County Superior Court, April 10, 2006), *aff'd sub nom. Lemke v. Rayes*, 213 Ariz. 232, 141 P.3d 407 (2006). Decision supplied in 13c.

Fushek v. State of Arizona, No. LC2006-000371 (Maricopa County Superior Court, Aug. 14, 2006), *rev'd* 215 Ariz. 274, 159 P,3d 584 (App. 2007), *aff'd* 218 Ariz. 285, 183 P.3d 536 (2008). Decision supplied in 13c.

State v. Moss, No. CR 2003-017379 (Maricopa County Superior Court, Feb. 5, 2005), *aff'd*, 215 Ariz. 385, 160 P.3d 1143 (App. 2007), *depublished by*, 217 Ariz. 320, 173 P.3d. 1021 (2007). Decision supplied.

State v. Quinn, No. CR 2005-007496 (Maricopa County Superior Court, Sep. 19, 2005), *aff'd* 218 Ariz.66, 178 P.3d 1190 (App. 2008). Decision supplied.

State v. Springer, No. CR 2006-173781 (Maricopa County Superior Court, May 9, 2011). Decision supplied.

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

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

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

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

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

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

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

The Maricopa County Superior Court employs an automatic recusal system that compares a recusal list provided by each judge to the captions and appearances of counsel on the briefs. If a judge has listed a person or entity involved in a case on

his or her recusal list, the court administrator automatically eliminates that judge from that case. I do not keep a record of my recusals. The recusals occur automatically but occasionally when an attorney on my recusal list was overlooked by the court administrator I recused myself. I recuse myself if either (1) my relationship with any person involved in the case would affect my ability to be impartial or (2) if there could be a perception or appearance that my relationship with any person involved in the case would affect my ability to be impartial. As to the first factor, if I feel that my association with that person would be relevant or if I feel that I would have any hesitancy or discomfort ruling in favor or against the person, I recuse. As to the second factor, if I feel that any attorney or party in the case would have a concern that the relationship would affect my impartiality, I recuse, even if I believe the relationship would not actually affect my impartiality. When I discover grounds for recusal after assignment, I return the case to the court administrator who re-assigns it to a different judge. I did so in June 2013, in the case of *Mary Rose Wilcox v. William Montgomery*. I did so because the defendant, Mr. Montgomery, was a member of the panel of attorneys Senator McCain had assembled to review applicants for the district court and I was one of the parties interviewed by that panel. To the best of my memory, I can recall recusing myself from two other cases that were not on my automatic recusal list. One case involved the divorce of my dentist and the other the divorce of my neighbor's daughter. To the best of my memory, no party or litigant has asked that I recuse myself or filed a motion to have me removed for cause. However, the Arizona Rules of Civil Procedure and the Rules of Criminal Procedure provide both sides one opportunity to strike a judge for no cause. There have been occasions where I have been struck under those rules.

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

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

I have never held public office other than judicial office. I have had no unsuccessful candidacies for public office or unsuccessful nominations for appointed office.

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

I have never held an office in or rendered services to any political party or election committee. I have never played a role in a political campaign nor have I volunteered for a political campaign.

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

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

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

I never served as clerk to a judge.

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

I never practiced alone.

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

October – December 1978
McGroder & Tryon
(Firm Defunct)
111 South Third Street
Phoenix, Arizona 85007
Associate

1979 - 1982
US Army Judge Advocate General Corps
Third Armored Division,
Hanau, Federal Republic of Germany
APO 09091
New York, New York 09091
Trial counsel/trial defense counsel

1982 – 1984
McGroder Pearlstein Peppler & Tryon
(Firm Defunct)
3020 East Camelback Road
Phoenix, Arizona 85016
Associate

1984 – 1986
McGroder Tryon Heller Rayes & Berch

(Firm Defunct)
3020 East Camelback Road
Phoenix, Arizona 85016
Partner

1986 – 1989
McGroder Tryon Heller & Rayes
(Firm Defunct)
3020 East Camelback Road
Phoenix, Arizona 85016
Partner

1989 – 2000
Tryon Heller & Rayes
(Firm Defunct)
6611 North Scottsdale Road
Scottsdale, Arizona 85250
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.

Maricopa County has mandatory arbitration for cases where the amount in dispute is less than $50,000. I was appointed as an arbitrator one time that I can recall, but I have no memory of the case and no means of locating it. I was selected on a few occasions as an arbitrator by attorneys pursuant to the uninsured or underinsured arbitration provisions of the insurance contract. Those occurred in the 1980's and 1990's. These were personal injury cases. I have no memory and no file to allow me to describe the cases with any more detail.

b. Describe:

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

During my three years in the Army JAG Corps I prosecuted and later defended soldiers charged with felony offenses in military court martials.

During my private practice years, I practiced primarily in the fields of personal injury and medical malpractice. I represented both plaintiffs and defendants. I also represented police officers for disciplinary matters in administrative hearings. I had a wide range of jury trials including car accidents, slip and falls, medical malpractice, road design and helicopter

crash cases. I tried police discipline and retirement cases before several administrative bodies.

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

During my JAG Corps years I represented the United States in the prosecution of felonies, and later represented soldiers in the defense of felony offenses. I also represented soldiers who were contesting administrative discharges before military administrative boards.

During my private practice the plaintiffs I represented were often seriously injured individuals with no previous contact with attorneys or the legal system and who were often economically stressed due to their injuries, medical expenses and loss of income. My insurance defense clients were typically businesses, corporations and insurance companies. My clients in administrative matters were police officers appealing disciplinary actions for violating departmental rules or officers seeking medical retirements.

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

Almost 100% of my practice was in litigation. In the Army JAG Corps, trials to a military court martial panel (the military's version of jury trials) were usually one day trials. Because of the military's sentencing system, even cases where there was a guilty plea could be a jury trial on sentencing. It was not unusual to try at least one case per month. In private practice I appeared in court regularly. I argued motions to dismiss, discovery motions, motions in limine, motions on jury instructions, motions for summary judgment and post-trial motions. Most of my trials were to a jury. I was first chair in most of my trials.

i. Indicate the percentage of your practice in:
   1. federal courts: 0%
   2. state courts of record: 85%
   3. other courts: 5%
   4. administrative agencies: 10%

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

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

To the best of my recollection, I tried approximate 30 courts martials to verdict before military panels as sole or lead counsel. After the military, to the best of my memory, I tried 20 civil cases to verdict. In approximately 15 of those cases, I was sole or lead counsel; in the others I was associate counsel.

i. What percentage of these trials were:
   1. jury: 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 never appeared before the Supreme Court of the United States.

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

a. the date of representation;

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

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

Pursuant to my former law firms' document retention policy, my practice files have been destroyed. The following list of litigation matters is based on a search of available data bases and my best recollection. Accordingly, this list is not exhaustive and some requested information is not available.

1. *McGarvey v. State of Arizona*, No. CV 303542 (Pima County Superior Court, Judge Raner C. Collins).

I was counsel for plaintiffs, the three adult children of a 55 year old truck driver killed in a single vehicle accident. I was significantly involved in the case, with my partner David Heller, from the assessment of whether the firm should accept it on a contingent fee basis, through discovery, settlement negotiations, pre-trial motions, jury instructions, trial and post-trial motions. The jury trial occurred in 1998. The jury found that the state had negligently designed a detour in a road

construction project causing the truck operated by my clients' father to crash into a barrier, resulting in his death. The jury awarded each of the three surviving children $890,550 in compensatory damages for a total of $2,671,650, reduced by the decedent's fault of 19%.

Plaintiffs' Counsel:
David Heller, co-counsel
Law Offices of David Heller
3420 East Shea Boulevard, Suite 200
Phoenix, Arizona 85028
602-765-2106

Defendants' Counsel:
Honorable David Bury
U.S. District Court of Arizona
405 West Congress Street, Suite 6170
Tucson, Arizona 85071
520-205-4560

2. *Escobedo v. Southwest Helicopters*, No. CV 94- 165/CV 95-236(consolidated) (Gila County Superior Court, Judge *Pro Tem*, Stanley Goodfarb)

I was counsel for the mother of a game and fish officer. He was killed when the helicopter in which he was a passenger during an animal count, hit transmission wires and crashed in the rugged hills of Central Arizona. I was significantly involved in the case, with an associate in my firm, Michael Gaughn, from the assessment of whether the firm should accept it on a contingent fee basis, through discovery, settlement negotiations, pre-trial motions, jury instructions, trial and post-trial motions. The jury trial occurred in 1997. The jury found that the accident occurred as the result of pilot error and declined to assess fault to the United States for not marking the wires. Damages were awarded in the amount of $800,000.

Plaintiff Escobedo's Counsel:
Michael Gaughn, co-counsel
Office of the Attorney General
1275 West Washington
Phoenix, Arizona 85007
602-542-8057

Plaintiff Cooper's Counsel:
Patrick McGroder III
Gallagher & Kennedy
2575 East Camelback Road
Phoenix, Arizona 85016-9225
602-530-8181

Defendants' Counsel:
Robert Greer
Baird Williams & Greer
6225 North 24th Street Suite 125
Phoenix, Arizona 85016
602-256-9400

3. *Digirolamo v. Westfield*, No. 31802 (Mohave Superior Court, Judge Leonard Langford).

I represented the plaintiffs in this malpractice trial. The jury trial occurred in 1991. Plaintiff, a 75-year-old man had been treated by his family doctor (Mastakas) and an ophthalmologist (Westfield) for headaches. The doctors failed to correctly diagnosis his underlying condition and he went blind. I was significantly involved in the case, with my partner, David Heller, from the assessment of whether the firm should accept it on a contingent fee basis, through discovery, settlement negotiations, pre-trial motions, jury instructions, trial and post-trial motions. After a three week trial, the jury awarded plaintiff $1,250,000 accessing Westfield 63% at fault, Mastakas 24% at fault and plaintiff 13% at fault.

Plaintiffs' Counsel:
David Heller, co-counsel
Law Offices of David Heller
3420 East Shea Boulevard, Suite 200
Phoenix, Arizona 85028
602-765-2106

Defendant Mastakas' Counsel:
Duane Olson
7243 North 16th Street
Phoenix, Arizona 85020
602-861-2705

Defendant Westfield's Counsel:
John Westover, deceased.

4. *Fletcher, Talamante et al. v. Cobre Valley Hospital et al.*, No. CV 98-0054 (Gila County Superior Court 1998).

This was a medical malpractice action stemming from a premature birth. I was significantly involved in the case, with my partner, David Heller, from the assessment of whether the firm should accept it on a contingent fee basis, through discovery, pre-trial motions, and settlement negotiations. After lengthy litigation

and discovery the case settled through a confidential settlement agreement in 1998.

Plaintiffs' Counsel:
David Heller, co-counsel
Law Offices of David Heller
3420 East Shea Boulevard, Suite 200
Phoenix, Arizona 85028
602-765-2106

Defendant Cobre Valley Hospital's Counsel:
J. Gregory Osborne
Tolman Osborne & Keenan
1920 East Southern Avenue Suite 104
Tempe, Arizona 85282
480-897-1020

Defendant Pineras' Counsel:
Winn L. Sammons
Sanders and Parks,
3030 North Third Street, Suite 1300
Phoenix, Arizona 85012
602-532-5786

5. *Beal et al. v. Capek et al.*, No. 87-018544 (Maricopa County Superior Court, Judge Mark Armstrong)

This was a motor vehicle personal injury case where the plaintiff claimed serious injury resulting from a rear-end collision when the defendants' vehicle collided with hers at a traffic intersection. I represented the defendant and was significantly involved in the case from the filing of an answer through discovery, settlement negotiations, pre-trial motions, jury instructions, trial and post-trial motions. I tried the case with my partner Patrick McGroder III. After a ten day jury trial in in 1989, in which plaintiff's counsel asked the jury to award $1,200,000, the jury unanimously found for the defendant and awarded no damages. On plaintiffs' appeal, I prepared the appellate brief and argued in the Arizona Court of Appeals. The verdict was affirmed.

Plaintiffs' Counsel:
William E. Morga, deceased.

Defendants' Counsel:
Patrick J. McGroder III, co-counsel
Gallagher & Kennedy
2575 East Camelback Road

Phoenix, Arizona 85016
602-530-8181

6. *Amsted Associates dba Alta Vista Plaza, Ltd, and Wasau Insurance Company and Exchange Insurance Company v. Insulation Specialists Company, Inc.* No. CV 91-016050 (Maricopa County Superior Court, Judge Daniel E. Nastro)

This was an insurance subrogation case stemming from a fire in a shopping center. I represented the plaintiff, Exchange Insurance Company. I was significantly involved in the case through discovery, settlement negotiations, pre-trial motions, jury instructions, and trial. The case was tried as a binding four day summary jury trial in 1994. The jury found defendant to be 100% at fault and awarded my client its full damages of $176,000.

Plaintiff Wasau Insurance's Counsel:
George Mitchell
The Cavanaugh Law Firm
1850 North Central Suite 2400
Phoenix, Arizona 85004
602-322-4033

Defendant's Counsel:
Kevin Sweeney
(retired)

7. *McFarland v. The Town of Paradise Valley*, Maricopa County Superior Court Cause number and presiding judge is unknown and cannot be located.

Officer McFarland had been terminated for falling asleep while operating a city vehicle on the freeway causing a serious injury accident and for a separate incident when he drove his police vehicle into a flooded wash causing the vehicle to be damaged. I represented Officer McFarland in approximately 1985 through 1986 in an administrative hearing, on appeal to Superior Court and at a second administrative hearing. At the first administrative hearing the termination was sustained. On appeal to Superior Court the parties agreed to settle by having a second administrative hearing before a new administrative body. At the second hearing, the personal board overturned the termination and reinstated Officer McFarland.

Defendant's Counsel:
Honorable Robert Oberbillig
Maricopa County Superior Court
125 West Washington
Phoenix, Arizona 85003
602-506-2194

8. *Beltram v. Smith's Food & Drug Centers*, No. CV 93-0693 (Yavapai Superior Court, Judge Robert Brutinel).

This was a personal injury case where plaintiff fell in the defendant's grocery store. I was retained by the plaintiff, at the request of her counsel to complete discovery, attempt settlement and if necessary try the case. With my partner, David Heller, the case was tried to a jury in 1994. The jury found plaintiff's damages to be $142,640 and defendant to be 85% at fault.

Plaintiff's Counsel:
David Heller, co-counsel
Law Offices of David Heller
3420 East Shea Boulevard, Suite 200
Phoenix, Arizona 85028-
602-765-2106

Defendant's Counsel:
Paul McGoldrick
Shorall McGoldrick Brinkmann
1232 East Missouri Avenue
Phoenix, Arizona 85014
602-230-5400

9. *Didio v. Orchard Partners Limited, et al.*, No. CV 018008, (Maricopa Superior Court, Judge Paul Katz).

This was a personal injury trial where plaintiff, a K-9 officer with the Phoenix Police Department, stepped into a hole, tearing his knee while walking the perimeter of defendant's building with his police dog in response to a silent alarm. I was significantly involved in the case, with my partner, David Heller, from the assessment of whether the firm should accept it on a contingent fee basis, through discovery, settlement negotiations, pre-trial motions, jury instructions, trial and post-trial motions. After a four day trial in 1994, the jury awarded plaintiff $250,000 and found defendants to be 90% at fault.

Plaintiff's Counsel:
David Heller, co-counsel
Law Offices of David Heller
3420 East Shea Boulevard, Suite 200
Phoenix, Arizona 85028
602-765-2106

Defendants' Counsel:
Don Stevens
Shughart Thompson & Kilroy
3636 North Central Avenue, Suite 1200

Phoenix, Arizona 85012
602-650-2089

10. *U.S. v. Balance,* General Court Martial Convening Order #119, April 13, 1981, HQ, 3rd Armored Division, APO New York 09039, Major General Ulmer, Convening Authority. (Judge LTC Joe L. Woodward, US Army Legal Services Agency).

In this case my client was charged with aggravated assault and first degree murder. He stabbed a barracks roommate in the face and in the chest with a switch blade in a dispute over the volume of the decedent's stereo. I and co-counsel, Captain Larry McPherson, were involved in the case from the initial charges, the Rule 32 investigation and the trial. The case was tried to a military panel (the military's equivalent of a jury) in Frankfurt, Germany in 1981. The military judge granted the defense motion to enter a judgment of acquittal on the aggravated assault charge at the close of the prosecution's case. The military panel found the defendant not guilty of murder.

Government's Counsel:
Captain John Jones (address unknown)

Defendant's Counsel:
Larry G. McPherson, Jr., co-counsel
3980 Grove Park Drive
Tallahassee, Florida 32311
850-877-3801

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

I litigated many matters in state courts involving civil disputes that were resolved before trial. Examples of my cases include medical malpractice actions, motor vehicle accidents, dram shop actions, insurance subrogation claims, negligent road design actions, aircraft accidents, legal malpractice and construction defect claims. As a judge I have held leadership positions and have been active in the training of judges and creation of innovative processes in the court. I was co-chair of the Veterans' Court Committee that created the Veterans' Court in Maricopa County. I was responsible for the creation of a program in the criminal department called "Settlement Conference on Demand" which received a National Association of Counties Achievement Award. I created formal procedures for quality assurance review of attorneys hired to defend major felonies and capital murder cases. I have been active in the New Judge Orientation program,

mandatory two-week training for all Arizona judges in the first year of their appointment or election. As the co-chairman of that program, I helped create the curriculum, recruit presenters and mentors. I have taught classes and been a mentor at the New Judge Orientation training. I currently serve on the Phoenix Municipal Court Judicial Selection Advisory Board, one of the ten largest municipal courts in the country, averaging over 300,000 case filings per year. I was instrumental in developing the first electronic applications for search warrants program in Arizona. I submitted a proposal to the Arizona Supreme Court, through my presiding judge, which resulted in a Supreme Court Administrative Order for the electronic search warrant program on a trial basis, which has substantially decreased processing times. I have recently been appointed to serve on the Arizona Commission on Judicial Performance Review. This commission reviews the election year performance evaluations of the judges in the state who are appointed by the governor and makes recommendations that appear on the Secretary of State's Voter Publicity Pamphlets on which judges should be retained. I sit on the Arizona Supreme Court Judicial Leadership Council.

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.

    Summer 2005: Professor, Sandra Day O'Connor College of Law, class entitled "Lawyering Theory and Practice." I taught the class on how to prepare and try a civil case. The school provided a written scenario of facts and actors that allowed the class to role play. During the course of the semester the class experienced the entire litigation process: meeting the client, drafting a complaint, drafting written discovery, taking depositions and trying the case with a mock judge and jury. I am unable to locate a syllabus.

    Fall semester 2011 and 2012: Professor, Sandra Day O'Connor College of Law, class entitled, "Professional Liability Litigation." I co-teach a law school class on litigating negligence cases against professionals such as doctors, lawyers and engineers. Syllabus is supplied.

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

    As the result of a structured personal injury settlement in approximately 1986, when I was in private practice, I have an annuity with Aviva Insurance that began paying $3100 monthly on my 60th birthday.

    I became vested in the Arizona Elected Officials Retirement plan after five years of

service. Therefore, I will receive a pension upon retirement that will be calculated based on my years of service and the average of my three highest years of salary.

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

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

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       I am not aware of any family members or parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest.

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

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

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

I arranged for volunteer judges and court staff to set up Maricopa County Superior Court mobile court rooms at the Homeless Veterans Stand-Down in 2011 and 2012. I worked as a volunteer judicial officer and oversaw the operation of courts at the 2011 and 2012 Homeless Veterans Stand-Down.

I have also served the community in a non-legal capacity. I assisted boy scouts in the completion of their eagle projects. I teach courses on professional negligence at the Sandra Day O'Connor College of Law without compensation. I guest-speak in courses on the death penalty and criminal justice at Arizona State University and Mesa Community College without compensation. I have served on City of Phoenix, Judicial Selection Advisory Board since 2008. I served as the chairman of the Town of El Mirage Judicial Selection Advisory Board from 2006 through 2012. These two boards make recommendations to the City Council after screening applicants for Municipal Court judgeships and reviewing judges whose terms are up for renewal.

26. **Selection Process**:

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

In April 2013, I submitted an application to the Federal Judicial Evaluation Committee established by Senator John McCain. On June 8, 2013, I was interviewed by the Committee in Phoenix, Arizona. On approximately June 24, 2013, I was notified by one of the members of the Committee that Senator McCain was recommending me to the White House for consideration. Since June 30, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 6, 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
Rayes, Douglas L.	U.S. District Court - District of Arizona	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**
US 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		
201 West Jefferson Phoenix, AZ 85003		

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.	Vice President	Rayes Properties Inc.
2.	Trust	Trust #1
3.	Managing Partner	KJET Limited Partnership
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2000	Arizona Elected Officials Retirement Plan; No control.
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 12	Name of Person Reporting Rayes, Douglas L.	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.	2011	Maricopa County, Salary	$126,184.00
2.	2012	Maricopa County, Salary	$123,240.00
3.	2013	Maricopa County, Salary	$81,136.00
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	State of Arizona, Salary
2.	2013	State of Arizona, 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 12	Name of Person Reporting Rayes, Douglas L.	Date of Report 09/20/2013

V. GIFTS. *(Includes those to sponse 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 sponse and dependent children; see pp. 32-33 of filing instructions.)*

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			None
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Rayes, Douglas L.	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. ABB LTD ADR FSPONORED ADR STOCK	B	Dividend			Exempt				
2. A S M L HOLDING NV XXX77 FOR 100 REVER Stock	A	Dividend							
3. Apple Inc.	A	Dividend	K	T					
4. Abbott Laboratories Stock	A	Dividend							
5. Anglo Amern PLC ADS Stock Funsponsored ADR (AAUKY)	A	Dividend							
6. American Express Company (AXP) Stock	A	Dividend	L	T					
7. Banco Bradesco New ADR Fsponsored ADR (BBD) Stock	A	Dividend							
8. Boeing Co (BA) Stock	A	Dividend							
9. BMO Lloyd George EMRG MKTS EQ fund		None	M	T					
10. BMO Mid Cap Value Fund		None	K	T					
11. Chevron Corporation Stock	A	Dividend	K	T					
12. Cohen & Steers INSTL RLTY SCH		None	J	T					
13. Cia De Bebidas PFD ADR Fsponsored ADR (ABV) Stock	A	Dividend							
14. Cisco Systems Inc (CSCO) Stock	A	Dividend	K	T					
15. Disney Walt Co (DIS) Stock	A	Dividend	K	T					
16. Dodge & Cox Stock Fund #145		None	M	T					
17. Dover Corporation	A	Dividend							

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

A =$1,000 or less
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
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Name of Person Reporting	Date of Report
Rayes, Douglas L.	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. Freeport McMoran Copper (FCX) Stock	A	Dividend							
19. Gateway Fund Y		None	L	T					
20. General Electric Stock	A	Dividend	K	T					
21. Glaxosmithkline PLC (GSK) Stock	B	Dividend	K	T					
22. Honeywell International (HON) Stock	A	Dividend							
23. Honda Motor Co LTD ADR Fsponsored ADR (HMC) Stock	A	Dividend							
24. Intel Corporation (INTC) Stock	A	Dividend	K	T					
25. Las Vegas Sands Corp (LVS) Stock	A	Dividend							
26. JP Morgan Chase & Co (JPM) Stock	A	Dividend							
27. Medtronic inc (MDT) Stock	A	Dividend							
28. McDonalds Corp (MCD)	A	Dividend	K	T					
29. Microsoft Corp (MSFT)	A	Dividend	K	T					
30. National Oilwell Varco (NOV) Stock	A	Dividend							
31. Novartis AG Spon ADR B Div (NVS) Stock	B	Dividend	K	T					
32. Nestle SA Reg B ADR (NSRGY) Stock	B	Dividend	K	T					
33. Novo-Nordisk A-S ADR F (NVO) Stock	B	Dividend	K	T					
34. Occidental Pete Corp (OXY) Stock	A	Dividend							

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Rayes, Douglas L.	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. PIMCO Commodaty RR		None	J	T					
36. Oakmark International Fund		None	K	T					
37. Rio Tinto PLC Spon ADR Fsponsored ADR Stock	B	Dividend							
38. Royal BK CDA Montreal (RY) Stock	A	Dividend	K	T					
39. Royal Dutch Shell (RDSA) Stock	A	Dividend							
40. Starbucks Corp (SBUX) Stock	A	Dividend							
41. S A P AG ADR F (Sap) Stock	B	Dividend	K	T					
42. Schlumberger LD (SLB) Stock	A	Dividend	K	T					
43. Siemens A G ADR Repl ORD (SI) Stock	B	Dividend							
44. Templeton INST Foreign SM Fund		None	K	T					
45. Toyota Stock		None	K	T					
46. Tweedy Browne FD Global Value		None	K	T					
47. Unilever N V NY SHS NEWFN Y Registry SHA (UN) Stock	A	Dividend							
48. Union Pacific Corp (UNP) Stock	A	Dividend							
49. Visa (V) Stock	A	Dividend	K	T					
50. Wal-Mart Stores Inc. (WMT) Stock	A	Dividend							
51. Wells Fargo & Co (WFC) Stock	A	Dividend	L	T					

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
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Name of Person Reporting	Date of Report
Rayes, Douglas L.	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)
52. Ishares TR MSCI EAFE FD (EFA) Stock	B	Dividend							
53. SANOFI (SNY) Stock	B	Dividend	K	T					
54. EXXON (XOM)	A	Dividend	K	T					
55. HSBC Holding PLC ADR New F (HBC) Stock	B	Dividend							
56. Comcast Corp (CMCSA) Stock		None	K	T					
57. SPDRS & P500 ETFTR Expiring 01/22/18 (SPY) Stock	B	Dividend							
58. Allergan Inc (AGN) Stock	A	Dividend							
59. American Movil SAB L ADRF (AMX) Stock	A	Dividend							
60. Andarko Petroleum	A	Dividend							
61. Banco Santander SA ADR F (STD) Stock	A	Dividend							
62. Bank of America (BAC) Stock	A	Dividend							
63. Basf SE ADR (BASFY) Stock	A	Dividend							
64. Billiton Ltd. ADRF (BHP) Stock	B	Dividend							
65. Franklin Resources Inc. (BEN) Stock	A	Dividend							
66. Caterpillar Inc (CAT) Stock	A	Dividend							
67. China Mobile LTC ADR (CHL) Stock	A	Dividend							
68. Cenevus Energy Inc. (CVE) Stock	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)

3. Value Method Codes (See Column C2)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
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U =Book Value
V =Other
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FINANCIAL DISCLOSURE REPORT Page 8 of 12	Name of Person Reporting Rayes, Douglas L.	Date of Report 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)
69. Cnooc Limited ADRF (CEO) Stock	A	Dividend							
70. Deere & Co (DE) Stock	A	Dividend							
71. Exxon Mobil (XOM) Stock	A	Dividend							
72. Hitachi Ltd (HTHIY) Stock	A	Dividend							
73. Home Depot Inc. (HD) Stock	A	Dividend							
74. IBM Stock	A	Dividend							
75. Johnson & Johnson (JNJ) Stock	B	Dividend							
76. Coca Cola (KO) Stock	A	Dividend							
77. Loreal (LRLCY)	A	Dividend							
78. LVMH MOET New ADR F (LVMUY) Stock	B	Dividend							
79. Mosaiac Co (MOS) Stock	A	Dividend							
80. Nike Inc.(NKE) Stock	A	Dividend							
81. Oracle Corp (ORCL)	A	Dividend							
82. PPG Industries Inc. (PPG) Stock	A	Dividend							
83. Pepsico Inc. (PEP) Stock	B	Dividend							
84. Pfizer Inc. (PFE) Stock	B	Dividend							
85. PNC FINIL Services (PNC) Stock	A	Dividend							

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

FINANCIAL DISCLOSURE REPORT Page 9 of 12	Name of Person Reporting Rayes, Douglas L.	Date of Report 09/20/2013

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)
86. Proctor & Gamble (PG) Stock	A	Dividend							
87. Qualcomm Inc. (QCOM) Stock	A	Dividend							
88. State Streety Equity 500 Index Fund		None	K	T					
89. Time Warner Cable (TWC) Stock	A	Dividend							
90. Time Warner Inc. New (TWX) Stock	A	Dividend							
91. United Technologies Corp (UTX) Stock	A	Dividend							
92. Vanguard INSTL Index Fund		None	N	T					
93. Vodafone Group New ADR (VOD) Stock	A	Dividend							
94. Schwab SNP 500 Index Fund		None	J	T					
95. Nationwide Destination 2050 Fund		None	K	T					
96. Fidelity Contra Fund		None	J	T					
97. American Funds Capitol INCOME BUILDER		None	J	T					
98. American Funds Euro Pacific Growth Fund		None	L	T					
99. Dodge and Cox balance Fund		None	K	T					
100. Dodge and Cox Internantional Fund		None	K	T					
101. Rayes Properties Inc Stock		None	J	W					
102. Bank of America Checking / Savings Accounts		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4) A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000; I =$5,001 - $15,000; J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3) R =Cost (Real Estate Only); S =Assessment; T =Cash Market; V =Other; W =Estimated

3. Value Method Codes (See Column C2) Q =Appraisal; U =Book Value

FINANCIAL DISCLOSURE REPORT
Page 10 of 12

Name of Person Reporting	Date of Report
Rayes, Douglas L.	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)
103. BMO Private Bank Money Market Funds MT		None	M	T					
104. US Savings Bonds Series EE		None	J	T					
105. American Funds - The Growth Fund of America		None	K	T					
106. Wasatch Core Growth Fund		None	K	T					
107. AVIVA Annuity	E	Distribution							

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 11 of 12	Name of Person Reporting Rayes, Douglas L.	Date of Report 09/20/2013

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

Part I
Trust #1 Family Trust - No reportable assets
KJET Limited Partnership - Managing Partner - The assets held in KJET limited partnership are included in the list of assets in Part VII.

FINANCIAL DISCLOSURE REPORT Page 12 of 12	Name of Person Reporting Rayes, Douglas L.	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/ **Douglas L. Rayes**

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		225	621	Notes payable to banks-secured			
U.S. Government securities–Series EE bonds		3	000	Notes payable to banks-unsecured			
Listed securities – see schedule	2	082	133	Notes payable to relatives			
Unlisted securities – see schedule		2	750	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – see schedule		706	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		65	000				
Cash value-life insurance							
Other assets itemize:							
Arizona Elected Officials Retirement Plan		239	568				
				Total liabilities			0
				Net Worth	3	324	072
Total Assets	3	324	072	Total liabilities and net worth	3	324	072
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 The Growth Fund of America	$ 24,340
Wasatch Core Growth Fund	25,771
KJET Limited Partnership Holdings	
American Express stock	58,305
Apple stock	19,006
BMO Lloyd George Emerging Markets Equity Fund	62,851
BMO Mid-Cap Value Fund	10,460
Chevron stock	28,702
Cisco Systems stock	21,623
Cohen & Steers Realty Shares Fund	5,234
Comcast stock	34,260
Disney stock	34,587
Dodge & Cox Stock Fund	85,566
Exxon stock	26,718
Gateway Fund	18,296
GE stock	20,714
GlaxoSmithKline stock	38,627
Intel stock	25,085
McDonalds stock	35,308
Microsoft stock	36,424
Nestle stock	42,960
Novartis AG (ADR)	28,644
Novo Nordisk stock	28,716
Oakmark International Fund	20,790
PIMCO CommodityRealReturn Strategy Fund	4,888
Royal Bank of Canada Montreal stock	38,009
Sanofi stock	46,846
SAP AG (ADR)	29,156
Schlumberger stock	21,145
Toyota stock	39,617
Templeton Institutional Foreign Smaller Companies Fund	9,981
Tweedy Browne Global Value Fund	20,398
Visa stock	42,482
Wells Fargo stock	51,765
Retirement Holdings	
American Funds Capital Income Builder Fund	9,341
American Funds EuroPacific Growth Fund	55,964
BMO Lloyd George Emerging Markets Equity Fund	126,566
BMO Mid-Cap Value Fund	36,054
Cohen & Steers Realty Shares Fund	6210
Dodge & Cox Stock Fund	152,381
Dodge & Cox Balanced Fund	36,742

Dodge & Cox International Stock Fund	25,074
Fidelity Contrafund	3,202
Gateway Fund	55,552
Nationwide Destination 2050 Fund	35,740
Oakmark International Fund	23,848
PIMCO CommodityRealReturn Strategy Fund	5,949
Schwab S&P 500 Index Fund	8,254
State Street Equity 500 Index Fund	38,545
Templeton Institutional Foreign Smaller Companies Fund	36,986
Tweedy Browne Global Value Fund	24,475
T. Rowe Price Mid Cap Growth Fund	49,726
Vanguard Institutional Index Fund	314,250
Total Listed Securities	$ 2,082,133

Unlisted Securities	
Alpha Holdings LLC/Tama Ethanol, LLC	$ 0
Rayes Properties Inc.	2,750
Total Unlisted Securities	$2,750

Real Estate Owned	
Personal residence	$ 636,000
Undeveloped land	25,000
Vacation property	45,000
Total Real Estate Owned	$ 706,000

AFFIDAVIT

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

October 9, 2013
(DATE)

(NAME)

OFFICIAL SEAL
JOHN MARSHALL
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Comm. Expires August 25, 2017

(NOTARY)

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

January 6, 2014

Dear Mr. Chairman:

I have reviewed the questionnaire I submitted to the Senate Judiciary Committee on October 22, 2013, in connection with my nomination to the United States District Court for the District of Arizona. Incorporating the additional information listed below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Q. 12(c)

As a member of the Arizona Commission on Judicial Performance review, I participated in a public meeting on November 22, 2013. I have no notes, transcripts or recording.

Q. 12(d)

Since my previously-submitted questionnaire, I have given the following presentations:

December 10, 2013: Panelist in a discussion for a group of approximately 30 people who were interested in the judicial selection process. A moderator led the panel of five active and retired judges and three attorneys in a general discussion of the merit selection and application procedures for the Arizona Superior Court, Arizona Supreme Court and the Federal District Court. I have no notes, transcripts or recording. The address of the sponsoring organization is Spirit of the Senses, Post Office Box 44273 Phoenix, Arizona 85064.

December 6, 2013: Guest speaker for the introduction of Judge Craig Blakey, the 2013 American Board of Trial Advocates' (ABOTA) Judge of the Year, at ABOTA's dinner to honor the Judge of the Year. I have no notes, transcripts or recording. The address of the Phoenix Chapter of the American Board of Trial Advocates is c/o Thomas K. Slack, Beale, Michaels & Slack PC, 7012 North 18th Street, Phoenix, Arizona 85020.

November 19, 2013: Moderator at a joint meeting of the Sandra Day O'Connor, Horace Rumpole and Thurgood Marshall Inns of Court using movie scene re-enactments from A Few Good Men to identify and discuss ethical issues. Outline supplied.

Q. 13(a)

I have presided over one civil bench trial that went to judgment and one civil jury trial that went to trial.

Q. 13(f)

Brimet II, L.L.C. v. Destiny Homes Marketing, L.L.C., No. CV2009-015587 Maricopa County Superior Court, Oct. 4, 2013), *rev'd sub nom. Brimet II, L.L.C. v. Rayes*, (mandate has not issued). Decision and Court of Appeals opinion supplied.

In this case, a developer, with a loan from First Horizon Loan Corporation (First Horizon) purchased land for a construction project using an acquisition loan. After the acquisition loan was recorded, an Option contract involving Destiny Holdings II ("Destiny") was recorded. First Horizon later made a second loan on the project. From the second loan, the acquisition loan was paid off. Later, a new lender, Northern Trust (Northern) made a third loan from which the First Horizon was paid off entirely. Ultimately, Northern foreclosed and purchased the property at a trustee's sale. Northern filed a quiet title suit , seeking a ruling that Destiny's Option was extinguished when the property was foreclosed and purchased by Northern. While the quiet title action was pending, Northern sold the property to Brimet II, LLC (Brimet). The original trial court judge granted Brimet's motion for summary judgment, finding that the Option had been extinguished. The Court of Appeals reversed and remanded the case to the trial court with instructions "that summary judgment be entered in favor of Destiny." After the original trial court judge retired, the case was assigned to me. Destiny's counsel submitted a form of judgment, and, after objection and briefing by the parties, I found that the proposed form of judgment complied with the Court of Appeals' order and entered summary judgment in favor of Destiny. Brimet then brought a special action. The Court of Appeals granted relief, stating that in reversing the original trial court judge, it had not addressed the enforceability of the Option and that although Destiny's Option is an encumbrance, Destiny cannot maintain an action for quiet title. As a result, the Court of Appeals deleted paragraphs 2(a) and 2(f) from the judgment that I had entered.

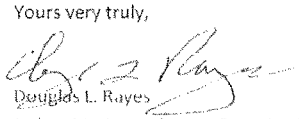
T.P. Racing v. Simms, No. CV2010-022308 (Maricopa County Superior Court 04/04/2013) special action relief was granted by the Arizona Court of Appeals, No. 1 CA-SA 13-0123, *sub nom.*

Simms v. Rayes. Court of Appeals opinion supplied.

Since I filed my questionnaire, the Court of Appeals has issued its opinion explaining the basis for its ruling, finding that no conflict of interests exists with defendants' counsel by bringing a derivative action on behalf of the minority shareholder.

I am also forwarding an updated net worth statement and financial disclosure report as requested in the questionnaire. I thank the Committee for its consideration of my nomination.

Yours very truly,



Douglas L. Rayes
Judge, Maricopa County Superior Court

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

A Few Good Men

1. Being former JAG, movie is dear to my heart.
2. Got some things right and some things wrong.
3. Got wrong:
    a. Defense attorney with no trial experience. In military, must prosecute first before defend.
    b. No such crime as conduct unbecoming Marine.
    c. "Just following orders" is no defense to an assault or murder charge.
    d. No Military trial attorney would treat a colonel the way this attorney did.
4. Got right:
    a. Military court procedures, military panel and judge.
    b. Tension between commanders and defense attorneys.
5. My experience in JAG with a hostile commander.
6. Ethical issues:
    a. One attorney team representing codefendants. Inherent conflict.
    b. Misleading court, military panel and witness about what other witnesses will testify to.
    c. After critical witness who gave defense attorney important information commits suicide, attorney decided to prove the missing facts by cross-examination of a hostile witness. Consider whether he should have discussed with his client and a more experienced attorney whether to withdraw from case and be a potential witness.

FILED
Oct. 4 2013 2:20 pm
MICHAEL K. JEANES, Clerk
By T. Springston, Deputy

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Attorneys for Destiny Homes Marketing, LLC

IN THE SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

BRIMET II, LLC; ME 12, LLC, Plaintiff, v. DESTINY HOMES MARKETING, LLC, Defendants.	No. CV2009-015587 **AMENDED FORM OF JUDGMENT** (Assigned to the Honorable Douglas Rayes)

This matter comes before the Court on remand from the Arizona Court of Appeals, the Court of Appeals having issued its mandate on June 17, 2013. Pursuant to that mandate, and having considered Brimet II, LLC and ME 12, LLC's Objection to Amended Form of Judgment,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the Judgment dated September 9, 2011 and entered on September 12, 2011 is vacated;

2. That judgment shall enter in this action, as follows:

(a) That title in the real property further described on **Exhibit A** attached hereto, also known as Lot Nos. 1, 4-10 and 13-16 of Mountainside Estates, located at the Northwest corner of 19th Street and East Dobbins Road, Phoenix, Arizona ("Property"), is hereby quieted in favor of Destiny Homes Marketing, LLC ("Destiny");

(b) That the Option Agreement entered into between Destiny and Destiny Holdings II, LLC, with an effective date of November 10, 2004 and evidenced by a Memorandum of Option Agreement duly recorded with the Maricopa County Recorder on November 12, 2004 as instrument number 2004-1322080 ("Option"), is a valid interest in, and encumbrance upon, the Property and each lot therein;

(c) That foreclosure of the mortgage and deed of trust held by Northern Trust, N.A. ("Northern") and the resulting trustee's sale of the Property to Northern on February 17, 2009, did not extinguish or otherwise invalidate the Option;

(d) That Northern purchased the Property at the trustee's sale subject to the Option, which has been and remains superior to all other interests in the Property since November 12, 2004;

(e) That all subsequent purchasers of the Property, or any lot therein, purchased such Property and/or lot(s) subject to the Option, including, but not limited to, Brimet II, LLC and ME12, LLC.

(f) That the Option is valid and enforceable according to its terms against all current owners of the Property or lot(s) therein, and their successors and assigns;

3. The parties shall record this Judgment with the Maricopa County Recorder pursuant to A.R.S. § 33-414, which, upon such recording, shall relate back to and be effective *nunc pro tunc* to November 12, 2004.

DONE IN OPEN COURT this 2 day of Oct, 2013.

The Honorable Douglas Rayes
Superior Court of Maricopa County, Arizona

NOTICE: NOT FOR PUBLICATION.
THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED. ARIZ. R. SUP. CT. 111(c).

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

BRIMET II, L.L.C.; ME 12, L.L.C., *Petitioners,*

v.

THE HONORABLE DOUGLAS RAYES, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, *Respondent Judge,*

DESTINY HOMES MARKETING, L.L.C., *Real Party in Interest.*

No. 1 CA-SA 13-0297
FILED 12-23-2013

Petition for Special Action from the Superior Court in Maricopa County
No. CV2009-015587
The Honorable Douglas L. Rayes, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Gust Rosenfeld, P.L.C., Phoenix
By Charles W. Wirken, Scott A. Malm

Counsel for Petitioners

Stinson Morrison Hecker, LLP, Phoenix
By Michael C. Manning, James E. Holland, Jr., Sharon W. Ng

Foster, Graham, Milstein & Calisher, LLP, Denver, CO
By Daniel K. Calisher, Chip G. Schoneberger

Counsel for Real Party in Interest

DECISION ORDER

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kenton D. Jones joined.

N O R R I S, Judge:

¶1 This special action challenges provisions of a judgment entered by the superior court on remand that Petitioners, Brimet II, L.L.C. and ME 12, L.L.C. (collectively, "Brimet"), argue exceeded the instructions and mandate issued by this court in *Brimet II, L.L.C. v. Destiny Homes Marketing, L.L.C.*, 231 Ariz. 457, 296 P.3d 993 (App. 2013) ("*Brimet II*"). Because the appropriate method of seeking review of a superior court judgment on remand entered pursuant to specific instructions by an appellant court is through special action, *Scates v. Ariz. Corp. Comm'n*, 124 Ariz. 73, 76, 601 P.2d 1357, 1360 (App. 1979) (citation omitted), the court accepts special action jurisdiction and grants relief.

¶2 As explained in *Brimet II*, Northern Bank, N.A., as Brimet's predecessor in interest, filed a quiet title action against the real party in interest, Destiny Homes Marketing, L.L.C. ("Destiny") to obtain "judicial confirmation" that a trustee's sale of certain real property ("Property") had extinguished an option contact ("Option") granted to Destiny by Destiny Holdings II, L.L.C. ("Borrower"). 231 Ariz. at 458-59, ¶¶ 2-6, 296 P.3d at 994-95. Brimet moved for summary judgment and, pursuant to the doctrines of replacement and equitable subrogation, argued Destiny's Option had been "wiped out" through the foreclosure. *Id.* at 459, ¶ 6, 296 P.3d at 995. In response, Destiny cross-moved for partial summary judgment. In its cross-motion, Destiny asserted the Option was senior to the interest acquired by Brimet and had not been extinguished by the trustee's sale. Notably, Destiny did not seek summary judgment on its counterclaims in which it had requested a declaration that the Option remained a "valid, senior interest in the Property enforceable as against Brimet and all subsequent transferees of the Property . . . pursuant to . . . the Option's express terms," and an order "[e]stablishing [its] interests in the Property under the Option."

¶3 The superior court denied Destiny's motion and granted Brimet's motion for summary judgment, ruling "the doctrines of replacement and equitable subrogation apply here and collectively have

the legal effect of wiping out Destiny's option upon Northern Trust's foreclosure of its priority lien position."

¶4 Destiny appealed. We reversed and held Northern's foreclosure had not extinguished the Option:

> Destiny's Option was not extinguished when Northern foreclosed on its deed of trust and purchased the property at the trustee's sale. Therefore, Brimet did not acquire title to the property free and clear of the Option and the Option remains as a senior encumbrance on the property.

Brimet II, 231 Ariz. at 461, ¶ 21, 296 P.3d at 997. We remanded the matter to the superior court "with instructions that summary judgment be entered in favor of Destiny." *Id.* at ¶ 23.

¶5 On remand, over Brimet's objection, the superior court entered a judgment ("remand judgment") that, as relevant here, stated in paragraphs 2(a) and 2(f) the following:

> (a) That title in the real property further described on **Exhibit A** attached hereto, also known as Lot Nos. 1, 4-10 and 13-16 of Mountainside Estates, located at the Northwest corner of 19th Street and East Dobbins Road, Phoenix, Arizona ("Property"), is hereby quieted in favor of Destiny Homes Marketing LLC ("Destiny");
>
> (f) That the Option is valid and enforceable according to its terms against all current owners of the Property or lot(s) therein, and their successors and assigns.

¶6 Addressing paragraphs 2(a) and 2(f) in reverse order, we hold these provisions exceeded our instructions on remand. *See Rainey v. Ditsworth*, 227 Ariz. 552, 555, ¶ 6, 261 P.3d 436, 439 (App. 2011) (superior court does not have authority to transgress upon obvious intent of appellate court by contravening on remand decision and mandate previously issued; appellate mandate, along with decision it seeks to

implement, is binding on superior court and enforceable according to its true intent and meaning).

¶7 First, the issue resolved by the superior court on summary judgment was whether the trustee's sale extinguished the Option or whether the Option remained as a senior encumbrance on the Property. Accordingly, that was the only issue we addressed and decided in *Brimet II*. When we instructed that summary judgment be entered in favor of Destiny, the true intent and meaning of our instruction was to direct the superior court to enter a judgment that confirmed the Option remained a senior encumbrance on the Property and that Brimet had not acquired title to the Property free and clear of the Option.[1] We did not address or decide the enforceability of the Option. Accordingly, paragraph 2(f) of the judgment that stated the Option was "valid and enforceable according to its terms against all current owners of the Property or lot(s) therein, and their successors and assigns" exceeded our instructions on remand.

¶8 Paragraph 2(a) of the remand judgment purported to quiet title in the Property in favor of Destiny. Although, as we explained in *Brimet II*, the Option remained a senior encumbrance on the Property, we did not direct the court to quiet title to the property in Destiny. A quiet title action provides a mechanism to determine and quiet title to real property and may be brought by anyone having or claiming an interest therein. *See generally* Ariz. Rev. Stat. ("A.R.S.") § 12-1101 (2003). The interest must be in the title, not merely in the land. *Saxman v. Christmann*, 52 Ariz. 149, 154, 79 P.2d 520, 522 (1938) (criticized on other grounds by *Rundle v. Republic Cement Corp.*, 86 Ariz. 96, 97, 101, 341 P.2d 226, 227, 229 (1959)). A quiet title action may not be brought by a person who does not claim title to or in the property. *Id.* An option, until and unless validly exercised, does not convey title. *Wilson v. Metheny*, 72 Ariz. 339, 344, 236 P.2d 34, 37-38 (1951). Thus, as we recognized in *Brimet II*, the Option is an encumbrance, and an optionee, as Destiny is here, may not bring an action

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[1]The remand judgment recited that the Option "is a valid interest in, and encumbrance upon, the Property and each lot therein;" the foreclosure sale "did not extinguish or otherwise invalidate the Option;" the Option "has been and remains superior to all other interests in the Property since November 12, 2004;" and "all subsequent purchasers of the Property, or any lot therein, purchased such Property and/or lot(s) subject to the Option." Brimet has not challenged these provisions of the remand judgment and has conceded they fall within our remand instructions.

to quiet title. *Saxman*, 52 Ariz. at 154, 79 P.2d at 522 ("encumbrancers cannot maintain an action to quiet title, for they have no title"). Although in *Brimet II* we held Destiny's Option remained a senior encumbrance on the property, as a matter of law, Destiny was not entitled to assert a claim to quiet title in the Property, and paragraph 2(a) which purported to quiet title to the property in Destiny was improper.

¶9 For the foregoing reasons, we delete paragraphs 2(a) and 2(f) from the remand judgment. We express no opinion on the enforceability of the Option against all current owners of the Property or lot(s) therein and their successors and assigns. We also deny Brimet's motion to consolidate this special action with its appeal from the remand judgment and the "Notice and Stipulation re: Motion to Consolidate Special Action and Appeal" as moot.



Ruth A. Willingham - Clerk of the Court
FILED: gsh

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

RONALD A. SIMMS and VICTORIA SIMMS, individually and on behalf of their marital community; RONALD A. SIMMS, a married man dealing with his sole and separate property; RONALD A. SIMMS AS TRUSTEE OF RONALD A. SIMMS PERPETUAL ASSET SHIELD TRUST; RONALD A. SIMMS AS TRUSTEE OF RAS TRUST; and RASCD, INC., a California corporation, *Petitioners*,

v.

THE HONORABLE DOUGLAS RAYES, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, *Respondent Judge*,

TP RACING, LLLP, an Arizona limited liability partnership; JEREMY ELLIS SIMMS, in his individual capacity; JEREMY and SERENA SIMMS, husband and wife; J&R RACING LLC, an Arizona corporation; and J. SIMMS ENTERPRISES LLC, an Arizona limited liability company, *Real Parties in Interest*.

No. 1 CA-SA 13-0123

FILED 1-2-2014

Petition for Special Action from the Superior Court in Maricopa County
No. CV2010-022308
The Honorable Douglas Rayes, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Greenberg Traurig, LLP, Phoenix
By E. Jeffrey Walsh, Nicole M. Goodwin

Counsel for Petitioners

Stinson Morrison Hecker, LLP Phoenix
By Michael C. Manning, James M. Torre

Counsel for Real Parties in Interest

OPINION

Judge Randall M. Howe delivered the opinion of the Court, in which Presiding Judge Peter B. Swann and Judge John C. Gemmill joined.

H O W E, Judge:

¶1 This special action arises from the trial court's disqualification of Petitioners' counsel, Greenberg Traurig, LLP ("GT"), from representing Petitioners in pursuing derivative claims against TP Racing, LLLP. We accept jurisdiction because Petitioners have no adequate remedy by appeal and raise a legal issue that may recur. *Sec. Gen. Life Ins. Co. v. Helm*, 149 Ariz. 332, 333, 718 P.2d 985, 986 (1986) (holding that disqualification order was not appealable and special action jurisdiction was therefore appropriate); *State ex rel. Romley v. Superior Court (Flores)*, 181 Ariz. 378, 380, 891 P.2d 246, 248 (App. 1995) (same). We grant relief because the trial court erred in disqualifying GT as Petitioners' counsel.

FACTS AND PROCEDURAL HISTORY

¶2 Brothers Ron and Jerry Simms are the principal owners of TP Racing, a limited partnership that owns Turf Paradise Racetrack. Ron individually owns an 18 percent interest in TP Racing and his trust owns a 14 percent interest. Jerry owns a 55 percent interest in TP Racing. J&R Racing, LLC, is the general partner and manager of TP Racing. Jerry and

RASCD, Inc.—a corporation of which Ron is the sole shareholder—each have a 50 percent interest in J&R Racing. Jerry serves as J&R Racing's manager and makes the day-to-day decisions, but other management decisions require RASCD's consent.

¶3 In July 2010, TP Racing separately sued Ron and one of Ron's corporations, and the trial court consolidated these actions. Ron answered the complaints and counterclaimed[1] against TP Racing,[2] alleging, among other things, breaches of contract and breaches of fiduciary duty. GT was Ron's counsel in this litigation.

¶4 In August 2011, TP Racing moved to disqualify GT because the firm was representing Ron in his defense against TP Racing's claims and in his counterclaims brought against TP Racing. Ron, in turn, moved to disqualify TP Racing's counsel, alleging that Jerry and TP Racing were adverse to each other on some claims and that Jerry and TP Racing had hired their counsel without Ron's consent. After oral argument on the motions, the trial court denied TP Racing's motion because GT had never asserted that it represented TP Racing and was not seeking relief on TP Racing's behalf, and denied Ron's motion because Jerry and TP Racing were not adverse to each other.

¶5 In March 2012, TP Racing moved to dismiss Ron's counterclaims. TP Racing argued that Ron lacked standing to bring certain claims because they were derivative: they sought redress for harms Jerry allegedly caused TP Racing, not for harms caused to Ron personally. TP Racing also argued that the remaining counterclaims failed to state a claim upon which relief could be granted. The trial court agreed and dismissed the counterclaims without prejudice.

¶6 Before refiling certain counterclaims as derivative claims, Ron filed a "Motion for a Determination of No Conflict," asking the trial court to determine that GT could represent Ron on the derivative claims

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1 Included as counterclaimants are Ron's wife and several trusts and corporations in which Ron has an interest. For clarity and ease of reference, the court will refer to the counterclaimants as "Ron."

2 Included as counterdefendants are Jerry, Jerry's wife, and two other entities in which Jerry has an interest. For clarity and ease of reference, the court will refer to the counterdefendants as "TP Racing."

brought in TP Racing's name without creating a conflict of interest between GT and TP Racing. Ron argued that no conflict existed because no attorney-client relationship existed between GT and TP Racing. TP Racing opposed the motion and moved to disqualify GT, arguing that GT had a conflict of interest because it was representing Ron simultaneously in defending against claims by TP Racing, in pursuing claims against TP Racing, and in pursuing derivative claims on behalf of TP Racing.

¶7 The trial court denied Ron's motion and granted TP Racing's motion to disqualify GT for the reasons set forth in TP Racing's motion. Ron now seeks relief from that order with the present petition for special action.

DISCUSSION

¶8 This Court reviews a trial court's ruling on a motion to disqualify counsel for an abuse of discretion. *Smart Indus. Corp., Mfg. v. Bradshaw*, 179 Ariz. 141, 145, 876 P.2d 1176, 1180 (App. 1994). When the trial court's decision is not based on the resolution of disputed factual issues but the application of legal principles, however, we review the decision de novo as an issue of law. *See Tritschler v. Allstate Ins. Co.*, 213 Ariz. 505, 518 ¶ 41, 144 P.3d 519, 532 (App. 2006) ("A court abuses its discretion if it commits legal error in reaching a discretionary conclusion."); *Chih Teh Shen v. Miller*, 150 Cal. Rptr. 3d 783, 788 (Cal. Ct. App. 2012) ("[W]here there are no material disputed factual issues, the appellate court reviews the trial court's determination [on disqualification] as a question of law."). The nature of disqualification motions requires a "careful review" of the trial court's ruling. *Chih Teh Shen*, 150 Cal. Rptr. 3d at 788 (*quoting People ex rel. Dep't of Corps. v. SpeeDee Oil Change Sys., Inc.*, 980 P.2d 371, 377 (Cal. 1999)). Because disqualification interferes with a party's attorney-client relationship, disqualification motions are subject to "tactical abuse," *id.*, and are "view[ed] with suspicion," *Gomez v. Dawson*, 149 Ariz. 223, 226, 717 P.2d 902, 905 (1986). They should be granted "[o]nly in extreme circumstances," and the party seeking disqualification has the burden of proof. *Alexander v. D'Angelo*, 141 Ariz. 157, 161, 685 P.2d 1309, 1313 (1984).

¶9 The issue in this case is whether GT has a conflict of interest in representing Ron on his derivative claims on behalf of TP Racing because GT also represents Ron in his defense against claims by TP Racing. Ron argues that no conflict exists because GT's only attorney-client relationship is with him, and not with TP Racing. TP Racing argues that although GT has no attorney-client relationship with it, GT still owes

a fiduciary duty to it because the derivative claims are pursued *on behalf of* TP Racing, which impermissibly places GT as counsel on both sides of the litigation.

¶10 Conflict of interest disputes are resolved under Arizona Rules of Professional Conduct Ethical Rule ("ER") 1.7(a). That rule prohibits a lawyer from representing a client if (1) that representation will be directly adverse to another client or (2) a significant risk exists that the lawyer's responsibilities to another client, a former client, a third person, or to the lawyer's personal interest will materially limit the client's representation. The "threshold question" is whether an attorney-client relationship exists between the lawyer and an adverse party. *Gonzalez ex rel. Colonial Bank v. Chillura*, 892 So.2d 1075, 1077 (Fla. Dist. Ct. App. 2004).

¶11 As TP Racing concedes, no attorney-client relationship exists between GT and TP Racing. An attorney-client relationship exists when a person has manifested to a lawyer his intent that the lawyer provide him with legal services and the lawyer has manifested consent to do so. *Paradigm Ins. Co. v. Langerman*, 200 Ariz. 146, 149 ¶ 10, 24 P.3d 593, 596 (2001) (*quoting* Restatement (Third) of the Law Governing Lawyers § 14). Nothing in the record shows that TP Racing manifested to GT its intent that GT provide legal services to it or that GT manifested any consent to do so. GT's only attorney-client relationship is with Ron.

¶12 The fact that GT's client Ron—in his capacity as a minority partner of TP Racing— has filed derivative claims on behalf of TP Racing changes nothing. Although no Arizona appellate court has considered the issue, courts that have considered the issue have held that lawyers are not disqualified from representing clients who are simultaneously pursuing direct claims against a corporation and derivative claims on behalf of that corporation. *See Chih Teh Shen*, 150 Cal. Rptr. 3d at 789–91; *Gonzalez*, 892 So.2d at 1077–78 (applying Florida Rule of Professional Conduct 4-1.7, identically worded to ER 1.7); *see also In re Dayco Derivative Sec. Litig.*, 102 F.R.D. 624, 630 (S.D. Ohio 1984) ("the case law is virtually unanimous in holding that one counsel can represent a stockholder bringing both an individual and a derivative action") (footnote omitted). This is so because of the nature of derivative actions.

¶13 Derivative actions allow a minority shareholder to pursue a claim on behalf of a corporation when the management of the corporation has refused to pursue the claim itself. *Kamen v. Kemper Fin. Serv., Inc.*, 500 U.S. 90, 95 (1991). The corporation is merely a nominal party in a dispute between a minority shareholder and the management that controls the

corporation. *See Chih Teh Shen*, 150 Cal. Rptr. 3d at 790–91; *Gonzalez*, 892 So.2d at 1078; *see also Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 548 (1949) (noting that in a derivative action, the corporation is a nominal party). The corporation thus is not a "client" of the lawyer for the minority shareholder and the lawyer has no attorney-client relationship with it. If the filing of a derivative claim created an attorney-client relationship between the corporation and the lawyer for the minority shareholder, "there would be no way for the derivative plaintiff to ever have conflict-free counsel."*Gonzalez*, 892 So.2d at 1078. The corporation would then control who could represent the minority shareholder, "letting the fox guard the chicken coop." *Id.*

¶14 Because the lawyer in a derivative action has an attorney-client relationship only with the minority shareholder, nothing prevents the lawyer from also representing the minority shareholder on any direct claims against the corporation or its management that arise from the same set of facts. The shareholder may sue directly for harms the mismanagement of the corporation has caused him personally, and derivatively for harms the mismanagement has caused the corporation. *See Chih Teh Shen*, 150 Cal. Rptr. 3d at 795 ("Shen's individual and derivative claims revolve around the same nucleus of facts alleging misconduct by corporate mismanagement.") (internal quotation marks and citation omitted); *Dayco*, 102 F.R.D. at 631 ("The legal theory underlying the derivative suit and Lovorn's complaint in state court is parallel and entirely compatible."). The lawyer is not representing adverse interests in this situation.

¶15 The same analysis applies to Ron's claims involving TP Racing. Just as a shareholder has the right to pursue a derivative action on behalf of a corporation, a minority partner in a limited partnership has the right to pursue a derivative action on behalf of a partnership. A.R.S. § 29-356. Ron's direct claims are aligned with the derivative claims filed on behalf of and for the benefit of TP Racing. The direct claims are against TP Racing and Jerry for harm Jerry has caused Ron in his alleged mismanagement of TP Racing. These claims include breach of the partnership agreement, breach of the covenant of good faith and fair dealing, and breach of the duty of loyalty. The derivative claims similarly allege mismanagement of TP Racing by its manager, Jerry. These claims include breach of the fiduciary duties of loyalty and due care. Because Ron's interests in his direct claims and the interests of TP Racing in the

derivative claims are aligned, GT is not representing adverse interests and has no conflict of interest cognizable under ER 1.7(a).[3]

¶16 TP Racing argues, however, that the true issue is not whether GT can represent Ron on both his direct claims and his derivative claims, but whether GT can represent Ron on the derivative claims while defending Ron against claims filed by TP Racing. But the answer remains the same. GT has an attorney-client relationship with Ron, with all its attendant duties to Ron; GT has no relationship with or duty to TP Racing. The fact that the derivative claims are filed nominally in TP Racing's name and that the benefits of any successful prosecution will flow to TP Racing creates no duty on GT's part to TP Racing.

¶17 TP Racing nevertheless argues that even though no attorney-client relationship exists between GT and TP Racing, GT still has a conflict of interest under ER 1.7(a) because the derivative claims impose a fiduciary duty on GT to TP Racing that conflicts with GT's duty to Ron. Although a fiduciary duty does exist in a derivative action, it exists between the corporation or partnership and the minority shareholder or partner asserting the derivative claim. *See Chih Teh Shen*, 150 Cal. Rptr. 3d at 790; *South v. Baker*, 62 A.3d 1, 21 (Del. Ch. 2012). Thus, Ron, as the minority limited partner asserting the derivative claim, has a fiduciary duty to act in TP Racing's interest. GT is counsel for the person having the fiduciary duty to TP Racing; the firm itself has no separate fiduciary duty to TP Racing.

¶18 TP Racing relies on *In re Estate of Shano*, 177 Ariz. 550, 869 P.2d 1203 (App. 1993), to support its claim that GT has its own—or at least a derivative—fiduciary duty to TP Racing. The lawyer in *Shano* initially represented the beneficiary of a holographic will and moved the probate court to appoint the beneficiary as the special administrator for the decedent's estate. *Id.* at 552, 869 P.2d at 1205. The decedent's wife

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[3] TP Racing argues that Ron has his own conflict of interest in pursuing direct claims and derivative claims against TP Racing that should be imputed to GT, and cites several federal district court decisions that hold that a minority shareholder may not pursue derivative claims against a corporation while being a member of a class action against the corporation. Not only does TP Racing fail to present any authority for the proposition that a client's conflict of interest may be imputed to the client's lawyer, the question whether Ron has some conflict of interest that prevents him from presenting derivative claims is not before us.

subsequently submitted an earlier will for probate, which named her and her children as beneficiaries. *Id.* The probate court, upon the parties' stipulation, appointed a new third-party administrator of the estate because of the conflict between the original administrator—the beneficiary of the holographic will—and the decedent's wife. *Id.* The lawyer then ceased representing the beneficiary of the holographic will and associated as co-counsel with the lawyer representing the third-party administrator. *Id.* The decedent's wife then filed several claims against the estate, and the lawyer, acting as counsel for the third-party administrator, opposed the claims. *Id.* at 553-54, 869 P.2d at 1206-07. The decedent's wife moved to disqualify the lawyer because he had a conflict of interest, and the probate court granted the motion. *Id.* at 554, 869 P.2d at 1207.

¶19 On appeal, this Court affirmed the disqualification, ruling that the lawyer had represented conflicting interests. *Id.* We noted that the administrator had a fiduciary duty to the successor to the decedent's estate—the decedent's wife—and that the lawyer thus had a derivative fiduciary duty to the decedent's wife, which has been materially limited by his previous representation of the beneficiary of the holographic will. *Id.* at 554–55, 869 P.3d at 1207–08. We recognized that no authority had ever held that a *lawyer* for an administrator had a fiduciary duty to the successors to an estate, but held that the peculiar circumstances of estate administration justified the imposition of such a duty because the lawyer was compensated not by the administrator, but from the estate itself, and the lawyer, through his superior knowledge and position of trust, was able to influence the administrator in discharging its duties. *Id.* at 555, 869 P.3d at 1208.

¶20 *Shano* is distinguishable in two salient ways. First, the lawyer in *Shano* had a conflict of interest because he had represented one party in what developed into a will contest and then represented the administrator of the decedent's estate that had a neutral fiduciary duty to all of the will contestants. *See* ER 1.9 ("Duties to Former Clients"). Here, GT has represented only Ron in this litigation and had no prior relationship with or duty to TP Racing that would create a conflict. Second, none of the peculiar circumstances discussed in *Shano* are present here. Ron is responsible for paying GT's fees, not TP Racing, and this case has no neutral arbiter in the role of an administrator on which GT has special

influence. *Shamo* does not change the result here. GT has no fiduciary duty to TP Racing that constitutes a conflict of interest under ER 1.7(a).[4]

¶21 GT's representation of Ron on his derivative claims against Jerry on behalf of TP Racing does not create an attorney-client relationship with TP Racing or impose on GT a fiduciary duty to TP Racing. The trial court thus had no basis to find that GT had a conflict of interest because GT also represents Ron in defending against TP Racing's claims and in pursuing direct counterclaims against TP Racing. The trial court erred in granting TP Racing's motion to disqualify GT from representing Ron on the derivative claims.

CONCLUSION

¶22 We accept jurisdiction and grant relief. We reverse the trial court's order granting the motion to disqualify Greenberg Traurig from representing Petitioners on the derivative claims.

Ruth A. Willingham · Clerk of the Court
FILED: mjt

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[4] We do not mean to say that a litigant could never prove that because of the specific circumstances of a case, a limited partner's lawyer has an actual conflict of interest in representing the limited partner in pursuing derivative claims. *See Dayco*, 102 F.R.D. at 631 (although rejecting argument that the lawyer's representation of minority shareholder on direct claims against corporation and on derivative claims on behalf of corporation by itself created an "irreconcilable conflict of interest" warranting disqualification, nevertheless examining whether the particular facts of the case established an "actual" conflict of interest). But no such circumstances are present on this record.

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
Rayes, Douglas L.	U.S. District Court - District of Arizona	01/06/2014
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**
US District Judge	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/20/2013
7. Chambers or Office Address		
201 West Jefferson Phoenix, AZ 85003		

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.	Vice President	Rayes Properties Inc.
2.	Trust	Trust #1
3.	Managing Partner	KJET Limited Partnership
4.		
5.		

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

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2000	Arizona Elected Officials Retirement Plan; No control.
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 10	Name of Person Reporting Rayes, Douglas L.	Date of Report 01/06/2014

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

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2012	Maricopa County, Salary	$123,240.00
2.	2013	Maricopa County, Salary	$109,434.00
3.			
4.			

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2013	State of Arizona, Salary
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 10	Name of Person Reporting	Date of Report
	Reyes, Douglas L.	01/06/2014

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 10

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Apple Inc.	A	Dividend	K	T					
2. AT & T Inc., Stock	A	Dividend							
3. American Express Company (AXP) Stock	A	Dividend	L	T					
4. BMO Lloyd George EMRG MKTS EQ fund	B	Dividend	M	T					
5. BMO Mid Cap Value Fund	A	Dividend	K	T					
6. Chevron Corporation Stock	A	Dividend	K	T					
7. Cohen & Steers INSTL RLTY SCH	A	Dividend	J	T					
8. Cia De Bebidas PFD ADR Eponsored ADR (ABV) Stock	A	Dividend							
9. Cisco Systems Inc (CSCO) Stock	A	Dividend	K	T					
10. Disney Walt Co (DIS) Stock	A	Dividend	K	T					
11. Dodge & Cox Stock Fund #145	A	Dividend	N	T					
12. Golden Sacks Money Market	A	None	K	T					
13. Gateway Fund Y	A	Dividend	L	T					
14. General Electric Stock	A	Dividend	K	T					
15. Glaxosmithkline PLC (GSK) Stock	B	Dividend	K	T					
16. Intel Corporation (INTC) Stock	A	Dividend	K	T					
17. JP Morgan Chase & Co (JPM) Stock	A	Dividend							

1 Income Gain Codes (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2 Value Codes (See Columns C1 and D3)
I =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 10

Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

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.	McDonalds Corp (MCD)	A	Dividend	K	T					
19.	Microsoft Corp (MSFT)	A	Dividend	K	T					
20.	Novartis AG Spon ADR B Div (NVS) Stock	B	Dividend	K	T					
21.	Nestle SA Reg B ADR (NSRGY) Stock	B	Dividend	K	T					
22.	Novo-Nordisk A-S ADR F (NVO) Stock	B	Dividend	J	T					
23.	PIMCO Commodity RR	A	Dividend	J	T					
24.	Oakmark International Fund		None	K	T					
25.	Rio Tinto PLC Spon ADR Eponsored ADR Stock	B	Dividend							
26.	Royal BK CDA Montreal (RY) Stock	A	Dividend	K	T					
27.	S A P AG ADR F (Sap) Stock	B	Dividend	K	T					
28.	Schlumberger LD (SLB) Stock	A	Dividend	K	T					
29.	Templeton INST Foreign SM Fund		None	K	T					
30.	Toyota Stock	A	Distribution	K	T					
31.	Tweedy Browne FD Global Value		None	K	T					
32.	Visa (V) Stock	A	Dividend	L	T					
33.	Wells Fargo & Co (WFC) Stock	A	Dividend	K	T					
34.	SANOFI (SNY) Stock	B	Dividend	K	T					

1 Income Gain Codes (See Columns B1 and D4): A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000; J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000

2 Value Codes (See Columns C1 and D3): R =Cost (Real Estate Only); S =Assessment; T =Cash Market; Q =Appraisal; U =Book Value; V =Other; W =Estimated

3 Value Method Codes (See Column C2)

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

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. EXXON (XOM)	A	Dividend	K	T					
36. HSBC Holding PLC ADR New F (HBC) Stock	B	Dividend							
37. Comcast Corp (CMCSA) Stock	A	Dividend	K	T					
38. SPDRS & P500 ETFTR Expiring 01/22/18 (SPY) Stock	B	Dividend							
39. Bank of America (BAC) Stock	A	Dividend							
40. Basf SE ADR (BASFY) Stock	A	Dividend							
41. Billiton Ltd. ADRF (BHP) Stock	B	Dividend							
42. China Mobile LTC ADR (CHL) Stock	A	Dividend							
43. Home Depot Inc (HD) Stock	A	Dividend							
44. IBM Stock	A	Dividend							
45. Johnson & Johnson (JNJ) Stock	B	Dividend							
46. Coca Cola (KO) Stock	A	Dividend							
47. Loreal (LRLCY)	A	Dividend							
48. LVMH MOET New ADR F (LVMUY) Stock	B	Dividend							
49. Oracle Corp (ORCL)	A	Dividend							
50. Pepsico Inc. (PEP) Stock	B	Dividend							
51. Pfizer Inc. (PFE) Stock	B	Dividend							

1 Income Gain Codes (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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 D4)
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
Q =Appraisal
U =Book Value
V =Other
W =Estimated

3 Value Method Codes (See Column C2)

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Rayes, Douglas L.	01/06/2014

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.	Proctor & Gamble (PG) Stock	A	Dividend							
53.	Qualcomm Inc. (QCOM) Stock	A	Dividend							
54.	State Streety Equity 500 Index Fund		None	K	T					
55.	United Technologies Corp (UTX) Stock	A	Dividend							
56.	Vanguard INSTL Index Fund		None	N	T					
57.	Vodafone Group New ADR (VOD) Stock	A	Dividend							
58.	Nationwide Destination 2050 Fund		None	K	T					
59.	Fidelity Contra Fund		None	J	T					
60.	American Funds:Euro Pacific Growth Fund		None	L	T					
61.	T Rowe Price Mid-Cap Growth Fund		None	L	T					
62.	Dodge and Cox International Fund		None	K	T					
63.	Rayes Properties Inc Stock		None	J	W					
64.	Bank of America Checking / Savings Accounts		None	J	T					
65.	BMO Private Bank Money Market Funds MT		None	J	T					
66.	US Savings Bonds Series EE		None	J	T					
67.	American Funds - The Growth Fund of America		None	K	T					
68.	Wasatch Core Growth Fund		None	K	T					

1 Income Gain Codes (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2 Value Codes (See Columns C1 and D3)

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

FINANCIAL DISCLOSURE REPORT Page 8 of 10	Name of Person Reporting Rayes, Douglas L.	Date of Report 01/06/2014

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
69 AVIVA Annuity	E	Distribution							

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)

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

FINANCIAL DISCLOSURE REPORT Page 9 of 10	Name of Person Reporting Rayes, Douglas L.	Date of Report 01/06/2014

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

Part I
Trust #1 Family Trust - No reportable assets
KJET Limited Partnership - Managing Partner - The assets held in KJET limited partnership are included in the list of assets in Part VII
Asset listed in part VII, Line 2, was inadvertently omitted from the previous nomination report

FINANCIAL DISCLOSURE REPORT Page 10 of 10	Name of Person Reporting Rayes, Douglas L.	Date of Report 01/06/2014

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/ Douglas L. Rayes**

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

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		12	742	Notes payable to banks-secured			
U.S. Government securities–Series EE bonds		3	000	Notes payable to banks-unsecured			
Listed securities – see schedule	2	228	945	Notes payable to relatives			
Unlisted securities – see schedule		2	750	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – see schedule		706	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		62	000				
Cash value-life insurance							
Other assets itemize:							
Arizona Elected Officials Retirement Plan		243	058				
				Total liabilities			0
				Net Worth	3	258	495
Total Assets	3	258	495	Total liabilities and net worth	3	258	495
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 The Growth Fund of America	$ 26,876
Wasatch Core Growth Fund	27,683
KJET Limited Partnership Holdings	
American Express stock	63,755
Apple stock	23,309
BMO Lloyd George Emerging Markets Equity Fund	59,992
BMO Mid-Cap Value Fund	14,602
Chevron stock	27,072
Cisco Systems stock	17,677
Cohen & Steers Realty Shares Fund	4,877
Comcast stock	37,278
Disney stock	37,803
Dodge & Cox Stock Fund #145	93,444
Exxon stock	27,573
Gateway Fund	18,496
GE stock	22,975
GlaxoSmithKline stock	38,695
Intel stock	26,504
McDonalds stock	33,976
Microsoft stock	41,788
Nestle stock	45,516
Novartis AG (ADR)	30,676
Novo Nordisk stock	12,256
Oakmark International Stock Fund	30,631
PIMCO CommodityRealReturn Strategy Fund	4,776
Royal Bank of Canada Montreal stock	39,534
Sanofi stock	40,136
SAP AG (ADR)	32,640
Schlumberger stock	22,240
Toyota stock	38,554
Templeton Institutional Foreign Smaller Companies Fund	10,098
Tweedy Browne Global Value Fund	25,607
Visa stock	51,180
Wells Fargo stock	30,077
Retirement Holdings	
American Funds EuroPacific Growth Fund	32,595
BMO Lloyd George Emerging Markets Equity Fund	144,375
BMO Mid-Cap Value Fund	34,670
Cohen & Steers Realty Shares Fund	11,445
Dodge & Cox International Stock Fund	29,614
Dodge & Cox Stock Fund #145	174,804
Fidelity Contrafund	3,859

Gateway Fund	64,326
Goldman Sachs Financial Square Money Market Fund	31,784
Nationwide Destination 2050 Fund	43,035
Oakmark International Fund	35,671
PIMCO CommodityRealReturn Strategy Fund	11,645
State Street Equity 500 Index Fund	41,108
T. Rowe Price Mid Cap Growth Fund	53,312
Templeton Institutional Foreign Smaller Companies Fund	47,323
Tweedy Browne Global Value Fund	35,698
Vanguard Institutional Index Fund	375,385
Total Listed Securities	$ 2,228,945

Unlisted Securities	
Alpha Holdings LLC/Tama Ethanol, LLC	$ 0
Rayes Properties Inc.	2,750
Total Unlisted Securities	$2,750

Real Estate Owned	
Personal residence	$ 636,000
Vacation land and unfinished cabin	70,000
Total Real Estate Owned	$ 706,000

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   James Alan Soto

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

   United States District Court Judge for the District of Arizona

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.

   Santa Cruz County Superior Court
   2160 North Congress Drive
   Nogales, Arizona 85621

   Residence: Nogales, Arizona

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

   1950; Nogales, Arizona

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.

   1972 – 1975, Arizona State University College of Law; J.D., 1975

   1967 – 1971, Arizona State University; B.S., 1971

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
   Superior Court of Arizona, Santa Cruz County
   2160 North Congress Drive

Nogales, Arizona 85621
Superior Court Judge

1992 – 2001
Soto, Martin and Coogan, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder and President

1975 – 1993
Town of Patagonia
310 West McKeown Avenue
Patagonia, Arizona 85624
Part-time Town Attorney

1989 – 1992
Larson and Soto, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder

1985 – 1989
Larson, Soto and Arana, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder

1981 – 1984
Larson, Soto and Machado, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder

1975 – 1984
Office of the Nogales City Attorney
777 North Grand Avenue
Nogales, Arizona 85621
Part-time Deputy City Attorney

1979 – 1981
Larson and Soto, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder

September 1977 – May 1980
Pima Community College, Nogales branch
4905 East Broadway Boulevard
Tucson, Arizona 85709
Lecturer, Law-Related Courses

1976 – 1979
Law Offices of James A. Soto
477 North Grand Avenue
Nogales, Arizona 85621
Solo practitioner

March – June 1979
Santa Cruz County Attorney's Office
2150 North Congress Drive
Nogales, Arizona 85621
Part-time Deputy County Attorney

1971 – 1977
Arizona National Guard
Nogales, Arizona and Phoenix, Arizona
Specialist 4

1975 – 1976
Law Offices of Nasib Karam
North Grand Avenue
Nogales, Arizona 85621
Associate

June – September 1971
Soto's Western Auto Store
(no longer in operation)
Nogales, Arizona
Store Clerk

Other affiliations (uncompensated unless otherwise indicated):

2012 – present
SoBros, LLC
P.O. Box 25405
Tempe, Arizona 85285
Member (33% profit share)

1985 – 2012
L. & G. International Inc.
(no longer in operation)
Stock holder, director, officer (50% profit share)

1980 – present
Baffert-Soto Partnership
545 North Grand Avenue
Nogales, Arizona 85621
Partner (50% profit share)

1997 – present
Mariposa Community Health Center
1852 North Mastick Way
Nogales, Arizona 85621
Board of Directors

1983 – present
Efraim Canyon Properties, LLC
P.O. Box 627
Amado, Arizona 85645

2000 – 2006
825 North Grand Avenue
Nogales, Arizona 85621
Santa Cruz Community Foundation
Board of Directors

Approximately 1981 – 1987
Holy Cross Hospital
1171 West Target Range Road
Nogales, Arizona 85621
Board of Directors

1977 – 1978
Santa Cruz County Bar Association
571 North Grand Avenue
Nogales, Arizona 85621
President

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

1971 – 1977
Arizona National Guard
Honorable Discharge

I registered for the selective service upon turning 18.

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

Appreciation Award from Santa Cruz County Victim's Services Division (2013)

Appreciation Award from Mariposa Community Health Center (2012)

Appreciation Award from Arizona Supreme Court Leadership Conference (2012)

Appreciation Award from Nogales Boys and Girls Club (2012)

Appreciation Award from the City of Nogales (2011)

Appreciation Award from Nogales Boys and Girls Club (2009)

Appreciation Award from Fresh Produce Association of the Americas (2001)

Graduation with honors from Arizona State University (1971)

Academic scholarship to Arizona State University (1967 – 1971)

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.

Arizona Judicial Council (2006 – 2011)

Arizona Supreme Court Advisory Committee on Rules of Evidence (2012 – present)

Arizona Supreme Court Commission on Technology (2003 – 2005)

Arizona Supreme Court Committee on Superior Court (2003 – 2011)
Chairman (2006 – 2011)

International Dispute Study Committee (1992)

Santa Cruz County Bar Association (1975 – present)
President (1977 – 1978)

State Bar of Arizona (1975 – present)

Superior Court Presiding Judges Committee (2001 – 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.

Arizona, 1975

There has not been any lapse in membership.

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

United States District Court for the District of Arizona, 1976
Supreme Court of Arizona, 1975

There have been no lapses in membership.

11. **Memberships**:

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

Arizona Department of Transportation, State Transportation Board (1989 – 1995)
Chairman (1994 – 1995)

Arizona-Sonora Governors' Border Infrastructure Commission (approximately 1992)

Joint Legislative Review Committee on Transportation Between Sonora, Mexico and Arizona (approximately 1999)

Governor's Task Force for the CANAMEX Trade Corridor (1999 – 2001)

Carondolet Holy Cross Hospital
Board of Directors (approximately 1981 – 1987)

Mariposa Community Health Center
Board of Directors (1997 – present)

Santa Cruz Community Foundation
Board of Directors (2000 – 2006)

Elks Lodge No. 1387 (1976 – 1980)

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

During my period of membership in the Elks Lodge, from 1976 to 1980, membership was restricted to male citizens of at least 21 years of age who believed in a Supreme Being. Prior to my joining, membership was further restricted on the basis of race. To the best of my knowledge, none of the other organizations listed in response to 11a above currently discriminates or has ever previously discriminated on the basis of race, sex, religion, or national origin.

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

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

Celebrating Equality For All On Law Day, Nogales International, May 1, 2013. Copy supplied.

With Honorable Ruth V. McGregor, *Let's Keep Politics Out Of The Judiciary*, Nogales International, Oct. 24, 2012. 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 a member of the Arizona Superior Court Commission on Technology on Technology between 2003 and 2005, I voted to approve the 2005 – 2007

Information Strategic Plan and the 2006 –2008 Information Technology Strategic Plan. Copies supplied.

In my role as the presiding judge, I also participated in the creation of the 2013 – 2015 Santa Cruz Information Technology Strategic Plan. Copy supplied.

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

As the Presiding Judge in Santa Cruz County, I appear before the Santa Cruz County Board of Supervisors on occasion and introduce them to new court managers, recognize employees after numerous years of service, introduce visiting state court officials, and present major budgetary requests to the Board of Supervisors. Minutes supplied where available.

As a member of the Arizona Judicial Council between 2006 and 2011, I made statements and comments on a regular basis at the quarterly board meetings. Minutes supplied where available.

As a member of the Committee of the Superior Court between 2003 and 2011, I made statements and comments on a regular basis at the quarterly board meetings. Minutes supplied where available.

As a member of the Joint Legislative Review Committee on Transportation Between Sonora, Mexico and Arizona in 1999, I made statements and comments at committee meetings. Minutes supplied where available.

As a member of the Arizona State and Transportation Board from 1989 – 1995, I recall making statements and comments on a regular basis at the monthly board meetings. I have notes, transcripts, or recordings.

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.

January 2, 2013: I gave brief remarks and administration of oath of office at swearing-in ceremony for Santa Cruz County elected officials in Nogales,

Arizona. I have no notes, transcript, or recording. There was no sponsorship organization.

August 29, 2012: I gave the keynote speech at a Boys and Girls Club public awareness event in Nogales, Arizona. Outline supplied.

November 18, 2010: I provided the welcoming remarks made at a presentation to the Statewide Elder Abuse Task Force Conference in Rio Rico, Arizona. Outline supplied.

October 14, 2010: I provided remarks at a dedication ceremony for the new Santa Cruz County court and detention complex in Nogales, Arizona. Outline supplied.

May 26, 2010: I delivered a speech at the Wade Carpenter Middle School Transition Ceremony in Nogales, Arizona. Outline supplied.

October 26, 2009: I delivered the keynote speech at the Nogales Boys and Girls Club Annual Red Ribbon Ceremony, which was an event for drug education and prevention of drug abuse program in Nogales, Arizona. Outline supplied.

January 2, 2009: I gave brief remarks and administration of oath of office at swearing-in ceremony for Santa Cruz County elected officials in Nogales, Arizona. I have no notes, transcript, or recording. There was no sponsorship organization.

October 26, 2008: I gave a dedication speech at a ceremony naming a high school gymnasium in Nogales, Arizona, in honor of a deceased teacher and coach. Outline supplied.

May 21, 2008: I gave a commencement speech at the Rio Rico High School graduation ceremony. Outline supplied.

January 2, 2007: I gave brief remarks and administration of oath of office at swearing-in ceremony for Santa Cruz County elected officials in Nogales, Arizona. I have no notes, transcript, or recording. There was no sponsorship organization.

January 25, 2005: I delivered remarks concerning the state of the judiciary in Santa Cruz County at a presentation by the Santa Cruz County Judiciary to Santa Cruz County Board of Supervisors. Outline supplied.

January 2, 2005: I gave brief remarks and administration of oath of office at swearing-in ceremony for Santa Cruz County elected officials in Nogales, Arizona. I have no notes, transcript, or recording. There was no sponsorship organization.

January 4, 2002: I delivered remarks at my swearing-in ceremony as Superior Court Judge. 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.

Curt Prendergast, "Santa Cruz County Raises Property Taxes 60 Cents," *The Bulletin*, August 14, 2013. Copy supplied.

Jonathan Clark, "Nogales Woman Named One of State's 'Intriguing,'" *The Arizona Republic*, January 22, 2012. Copy supplied.

Manuel C. Coppola, "Santa Cruz County Leaders Addressing Budget Crisis," *Nogales International*, November 12, 2009. Copy supplied.

Manuel C. Coppola, "Judge Soto Still the Boss," *Nogales International*, September 25, 2008. Copy supplied.

Manuel C. Coppola, "Guzman Appointed the New Court Clerk," *Nogales International*, December 21, 2007. Copy available at https://groups.google.com/forum/#!msg/aavia/Ktz35zWTSAw/WcOu7RJAa_UJ.

Manuel C. Coppola, "Santa Cruz County Talks About Growing Pains," *Inside Tucson Business*, April 21, 2005. Copy supplied.

Jerry Smith, "Pete Drakulich's Legacy in His Work to Provide Scholarships Must Be Carried On," *Nogales International*, May 21, 2003. Copy supplied.

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

I have served as a Superior Court Judge for the Superior Court of Arizona, County of Santa Cruz from December 2001 to the present. I was initially appointed by Governor Jane Dee Hull in November 2001 to complete the remaining term of a retiring judge. In 2002, 2006, and 2010 I was elected and then re-elected without opposition as a Superior Court judge to new four-year terms. The Superior Court in Arizona is a general jurisdiction trial court handling criminal, civil, family, probate, juvenile, mental health, and other types of cases.

I was appointed as the Presiding Judge in Santa Cruz County in December 2001 by the Chief Justice of the Arizona Supreme Court and have been re-appointed to successive terms as Presiding Judge for Santa Cruz County in 2004, 2008, and 2013.

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

I have presided over approximately 1,152 cases, based upon estimated average of eight cases per month over an almost twelve-year period.

i. Of these, approximately what percent were:

jury trials:	5%
bench trials:	95%
civil proceedings:	70%
criminal proceedings:	30%

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

As a state court trial judge, I have not written or issued any published opinions. The written rulings and orders I have issued are available in individual case files and the more recent rulings and orders have been scanned to the court's case management system.

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. *Contreras v. Morgan and Cochise County*, Case No. CV-201200327 (Cochise Cty. Super Court); 2012. Decision supplied.

This case was assigned to me as a visiting judge. The complaint was filed by a Deputy Cochise County Attorney alleging invasion of privacy and sought injunctive relief to prevent the release of certain records in plaintiff's personnel files by Cochise County and the Cochise County Attorney's Office sought by an online publisher under a public records request. The plaintiff, who at the time was also a candidate for Superior Court judge in Cochise County, sought to prevent the release of certain written information in plaintiff's personnel file sent to the Cochise County Attorney by the plaintiff's ex-wife alleging wrongdoing by the plaintiff during his period of employment as a deputy county attorney. The issue before this court was whether all, some, or none of the records in question fell under the Arizona Public Records Act. I found that with one exception, the records in question fell under the Act and ordered the release of said records to the publisher.

Counsel for Plaintiff: Roger H. Contreras (representing himself)
Deputy Cochise County Attorney

Post Office Drawer CA
Bisbee, AZ 85603
(520) 432-8700

Counsel for Defendant: David M. Morgan
David M. Morgan d/b/a Cochise County Record,
112 North Seventh Street
Sierra Vista, AZ 85635
(520) 236-4051

Counsel for Defendant: Terry L. Bannon
Deputy Cochise County Attorney
Post Office Drawer CA
Bisbee, AZ 85603
(520) 432-8700

2. *State of Arizona v. Villa*, Case No. CR-11-044 (Santa Cruz Cty. Super. Ct.); 2012. Decisions supplied.

Villa was a criminal case in which the defendant was originally charged with first degree murder and ultimately pled guilty to second degree murder. He was sentenced to 22 years in prison. Numerous evidentiary issues concerning other acts under Rule 404(b) of the Arizona Rules of Evidence as well as the defendant's state of mind were presented in the case. Post-conviction relief proceedings are pending. There are no appellate decisions or citations to the case at the present time.

Counsel for Plaintiff: Charlene A. LaPlante
Kimberly J. Hunley
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Counsel for Defendant: Thomas L. Fink
825 North Grand Ave., Suite 200
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3. *State of Arizona v. Granados*, Case No. CR-10-209 (Santa Cruz Cty. Super. Ct.); 2013.

Granados was a criminal case in which the defendant was charged with and convicted by a jury of sexual assault, aggravated assault, burglary, kidnapping, and other related crimes. The defendant was sentenced to a series of prison terms totaling 20 years. This case is currently on appeal. Significant

issues as to the defendant's mental health, competency, possible malingering, disruptive behavior by the defendant during courtroom proceedings, and lack of cooperation with the court and his appointed counsel were presented during the course of the case.

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Counsel for Defendant: James F. Miller (counsel at trial)
1859 North Grand Avenue, Suite Five
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(520) 377-9936

Jose M. Lerma (counsel at trial)
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4. *State of Arizona v. Sexton*, Case No. CR-20100851-001 (Pima Cty Super. Ct.); 2010. Court of Appeals Opinion supplied.

This was a criminal case over which I presided as a visiting judge in which the defendant was charged with sexual conduct with a minor under 15, molestation of a child, and burglary. The defendant was convicted on all counts and was sentenced to a series of prison terms totaling over 50 years. His conviction was affirmed on appeal in an unreported Memorandum Decision. Numerous evidentiary issues arose during the course of the case and most were resolved by the court in pre-trial motions. The Court of Appeals affirmed.

Counsel for Plaintiff: Frances M. Kreamer Hope
Deputy Pima County Attorney
32 North Stone Avenue, Suite 1400
Tucson, AZ 85701
(520) 740-5600

Counsel for Defendant: John M. Sando
Pima County Public Defender's Office
33 North Stone Avenue
Tucson, AZ 85701
(520) 243-6886

5. *Ruiz v. Poggiali*, Case No. DR-09-109 (Santa Cruz Cty. Super. Ct.); 2010. Decision supplied.

   This was a family law case concerning child custody between a mother residing in Mexico and a father residing in Italy. At various times during their marriage the parties had lived in the United States, Italy, and Mexico. The case raised issues of jurisdiction, full faith and credit to orders from both Italy and Mexico, the Uniform Child Custody and Jurisdiction Act and the Hague Convention on the Civil Aspects of International Child Abduction. I ultimately gave full faith and credit to an order from an Italian court but retained jurisdiction in the case.

   Counsel for Petitioner (mother): Shannon Bradley
   Law Office of Shannon S. Bradley, L.L.C.
   2151 East Broadway Road, Suite 116
   Tempe, AZ 85282
   (480) 967-7311

   Counsel for Respondent (father): Craig Mehrens
   Mehrens & Wilemon, P.A.
   99 East Virginia Avenue, Suite 220
   Phoenix, AZ 85004
   (602) 258-5151

6. *State of Arizona v. Gillilland*, Case No.CR-05-276 (Santa Cruz Cty. Superior Ct.); 2011. Decisions and Court of Appeals opinion supplied.

   This criminal case involved a United States Customs Officer who was found guilty by a jury of 317 counts of sexual conduct with a minor, molestation of a child, sexual exploitation of a child, and child abuse. The victim was the defendant's then five-year-old daughter. I ultimately dismissed 33 of the counts. Based upon the nature of the offenses and Arizona's sentencing laws, I sentenced the defendant to prison terms totaling over 6,000 years. The most significant issues in the case dealt with the constitutionality of a series of search warrants issued by a federal magistrate and by this court, whether the evidence seized should have been suppressed, and the issue of whether the 317 counts in the charging Information were multiplicitous in nature. The Arizona Court of Appeals affirmed the defendant's convictions and review was denied by the Arizona Supreme Court.

   Counsel for Plaintiff: Thomas C. O'Sullivan
   Deputy Santa Cruz Count Attorney
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   (520) 375-7780

Counsel for Defendant: Charles N. Kendall Jr.
Kendall Law Firm, P.C.
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(520) 452-9022

7. *Desarrollo Immobiliario v. Kader Holding Co.*, Case No. CV-03-047 (Santa Cruz Cty. Super. Ct.); 2012. Decisions and Court of Appeals Opinion supplied.

This was a civil case involving a lease agreement, a guaranty agreement, and lease renewal agreements between a Mexican real estate corporation and a Hong Kong based multi-national corporation for a large commercial property located in Hermosillo, Sonora, Mexico. Among the numerous legal issues litigated were issues as to jurisdiction, choice of forum, choice of law, contract law, and guaranty law. The court found that it had jurisdiction, that Arizona law was controlling in the case, and that the defendant was liable as a guarantor of the lease obligations. The Arizona Court of Appeals, Division Two, affirmed in *Desarrollo Immobiliario v. Kader Holding Company*, 229 Ariz. 367, 276 P.3d 1 (App.). Review was denied by the Arizona Supreme Court.

Counsel for Plaintiff: James O. Ehinger
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(602) 262-5943

Counsel for Defendant: Ralph D. Harris
Burch & Cracchiolo, P.A.
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(602) 234-9924

Jeffrey Willis
Snell & Wilmer, L.L.P.
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(520) 882-1231

8. *White v. State of Arizona and Greater Arizona Bicycling Ass'n*, Case No. CV-02-235 (Santa Cruz Cty. Super. Ct.); 2007. Decisions supplied.

This civil case involved wrongful death claims filed by the wife and children of a bicyclist who was killed in a bicycle accident on the Arizona state highway system in a bicycle tour sponsored by the Greater Arizona Bicycling

Association ("GABA"). The plaintiffs and the State of Arizona settled plaintiffs' claims against the State of Arizona prior to trial and the case proceeded to a jury trial against GABA. At the conclusion of the trial, the jury apportioned comparative fault among the plaintiff and both defendants. The jury awarded damages to the surviving spouse but awarded no damages to the children. I ruled that it was within the province of the jury not to award damages to the children and denied plaintiffs' motions for additur or a new trial. The Arizona Court of Appeals, Division Two, in *White v. Greater Arizona Bicycling Association,* 216 Ariz. 133, 163 P.3d 1083 (App. 2007) reversed. The holding of the Court of Appeals has since been overruled by the Arizona Supreme Court in *Walsh v. Advanced Cardiac Specialists Chartered,* 229 Ariz. 193, 273 P. 3d 645 (2012).

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(520) 622-3344

Steven D. Copple
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(520) 884-7600

Counsel for Defendant: Scott Goering
William L. Rubin
Goering, Roberts, Rubin, Brogna, Enos & Treadwell-Rubin, P.C.
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(520) 577-9300

9. *State of Arizona v. Garcia*, Case No. CR-9302680 (Greenlee County Super. Court.); 2005. Decisions supplied.

This was a criminal case over which I presided as a visiting judge many years after the trial and conviction of the defendant. While the defendant was serving a 20-year-prison sentence imposed by a judge previously assigned to the case, he filed a series of Petitions for Post-Conviction Relief including a Petition For Post-Conviction Relief seeking DNA testing of certain items of evidence. I ordered DNA testing of the items in question. Ultimately, the test results did not exonerate the defendant.

Counsel for Plaintiff: Derek D. Rapier
Greenlee County Attorney

Post Office Box 1717
Clifton, AZ 85533
(928) 865-4108

Counsel for Defendant: Self-represented.

10. *State of Arizona v. Martinez-Villareal*, Case No. 4641-A (Santa Cruz Cty. Super. Ct.); 2005. Decision supplied.

Martinez-Villareal was a criminal case in which the defendant was convicted of various charges, including two counts of first degree murder. He was originally sentenced to death on the murder charges. His convictions were affirmed in both state and federal appeals. His case was eventually returned to the trial court for re-sentencing due to a finding of ineffective assistance of counsel at sentencing. It was at this point that the case was assigned to me after previously being handled by at least two judges over the span of many years. Prior to re-sentencing the defendant, the issue of the defendant's competency to be re-sentenced was raised. After numerous evaluations and an evidentiary hearing, I found that the defendant was not competent to be re-sentenced. The defendant remains at the Arizona State Hospital in Phoenix undergoing restoration to competency treatment. There are no appellate decisions or citations to the case since this case was assigned to me.

Counsel for Plaintiff: Joel Rudd
Assistant Arizona Attorney General
1275 West Washington Street
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(602) 542-8329

Counsel for Defendant: Denise I. Young
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Sean D. O'Brien
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(816) 235-6152

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.

Due to the nature of my caseload, I generally preside over juries, rule from the bench, or issue shorter written rulings, rather than issuing significant written

opinions. To respond to this question, I have reviewed my files and provided my written decisions in the following ten cases.

1. *State of Arizona v. Garcia,* Case No. CR-13-063 (Santa Cruz Cty. Super. Ct.); 2013. Decision supplied.

   Counsel for Plaintiff: Vanessa Cartwright
   Deputy Santa Cruz Count Attorney
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   Nogales, AZ 85621
   (520) 375-7780

   Counsel for Defendant: Matthew C. Davison
   1859 North Grand Avenue, Suite One
   Nogales, AZ 85621
   (520) 281-0433

2. *Contreras v. Morgan and Cochise County*, Case No. CV-201200327 (Cochise Cty. Super Court); 2012. Decision supplied in response to 13(c).

   Counsel for Plaintiff: Roger H. Contreras (representing himself)
   Deputy Cochise County Attorney
   Post Office Drawer CA
   Bisbee, AZ 85603
   (520) 432-8700

   Counsel for Defendant: David M. Morgan
   David M. Morgan d/b/a Cochise County Record,
   112 North Seventh Street
   Sierra Vista, AZ 85635
   (520) 236-4051

   Counsel for Defendant: Terry L. Bannon
   Deputy Cochise County Attorney
   Post Office Drawer CA
   Bisbee, AZ 85603
   (520) 432-8700

3. *State of Arizona v. Villa*, Case No. CR-11-044 (Santa Cruz Cty. Super. Ct.); 2012. Decision supplied in response to 13(c).

   Counsel for Plaintiff: Charlene A. LaPlante
   Kimberly J. Hunley
   Deputy Santa Cruz County Attorneys
   2150 North Congress Drive, Suite 201

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(520) 375-7780

Counsel for Defendant: Thomas L. Fink
825 North Grand Ave., Suite 200
Nogales, AZ 85621
(520) 281-1338

4. *Araujo v. Wal-Mart Stores, Inc.*, Case No. CV-10-857 (Santa Cruz County Super. Ct.); 2012. Decision supplied.

Counsel for Plaintiff: James W. Stuehringer
D. Michael Mandig
Waterfall, Economidis, Caldwell,
Hanshaw & Villamana, P.C.
Williams Center, Eighth Floor
5210 East Williams Circle
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(520) 745-7807

Counself for Defendant: Craig W. Phillips
Georgia L. Hamann
Lewis and Roca LLP
40 North Central Avenue, 19th Floor
Phoenix, AZ 85004
(602) 262-5345

5. *Umberger v. First American Title Insurance Company*, Case No. CV-08-572 (Super. Ct.); 2011. Decision supplied.

Counsel for Plaintiff: Gregory L. Droeger
274 West View Point Drive
Nogales, AZ 85621
(520) 281-1886

Counsel for Defendant: Andrew Abraham
R. Aaron Edens
Burch & Cracchiolo
702 East Osborn, Suite 200
P.O. Box 16882
Phoenix, AZ 85014
(602) 234-9917

6. *State of Arizona v. Gillilland*, Case No.CR-05-276 (Santa Cruz Cty. Superior Ct.); 2011. Decisions and Court of Appeals opinion supplied in response to 13(c).

Counsel for Plaintiff: Thomas C. O'Sullivan
Deputy Santa Cruz Count Attorney
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Counsel for Defendant: Charles N. Kendall Jr.
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1857 Paseo San Luis
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(520) 452-9022

7. *Desarrollo Immobiliario v. Kader Holding Co.*, Case No. CV-03-047 (Santa Cruz Cty. Super. Ct.); 2012. Decisions and Court of Appeals Opinion supplied in response to 13(c).

Counsel for Plaintiff: James O. Ehinger
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Counsel for Defendant: Ralph D. Harris
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Jeffrey Willis
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8. *White v. State of Arizona and Greater Arizona Bicycling Ass'n*, Case No. CV-02-235 (Santa Cruz Cty. Super. Ct.); 2007. Decisions supplied in response to 13(c).

Counsel for Plaintiff: Gary S. Grynkewich
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(520) 622-3344

Steven D. Copple
Copple and Copple, P.C.
300 North Main Avenue, Suite 104
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Counsel for Defendant: Scott Goering
William L. Rubin
Goering, Roberts, Rubin, Brogna, Enos & Treadwell-Rubin, P.C.
3567 East Sunrise Drive, Suite 101
Tucson, AZ 85718
(520) 577-9300

9. *State of Arizona v. Garcia*, Case No. CR-9302680 (Greenlee County Super. Court.); 2005. Decisions supplied in response to 13(c).

Counsel for Plaintiff: Derek D. Rapier
Greenlee County Attorney
Post Office Box 1717
Clifton, AZ 85533
(928) 865-4108

Counsel for Defendant: Self-represented.

10. *State of Arizona v. Martinez-Villareal,* Case No. 4641-A (Santa Cruz Cty. Super. Ct.); 2005. Decision supplied in response to 13(c).

Counsel for Plaintiff: Joel Rudd
Assistant Arizona Attorney General
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Counsel for Defendant: Denise I. Young
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e. Provide a list of all cases in which certiorari was requested or granted.

Certiorari has not been requested or granted in any of my cases.

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

No decisions issued by me have been reversed or criticized by the Arizona Supreme Court.

The following decisions, under advisement rulings, or orders issued by me were reversed by the Arizona Court of Appeals, Division Two:

Kelly v. Kino Springs Golf, L.L.C., Case No. CV-08-044 (Santa Cruz Cty Super. Ct.). Decision and opinion by Court of Appeals opinion supplied.

After a jury had returned a verdict in favor of plaintiffs and awarded damages in the amount of $2 million, I set aside the jury award of damages and ordered a new trial solely on the issue of damages. On appeal, the appellate court affirmed the granting of a new trial but expanded the scope of the new trial to also include the issue of liability. The appellate court found that the issues of liability and damages were so intertwined that a new trial on both issues was required. In addition, the appellate decision discussed the various elements of damages that could properly be considered at a new trial.

White v. State of Arizona and Greater Arizona Bicycling Ass'n, Case No. CV-02-235 (Santa Cruz Cty. Super. Ct.) Decisions supplied in response to 13(c).

The Arizona Court of Appeals, Division Two, in *White v. Greater Arizona Bicycling Association*, 216 Ariz. 133, 163 P.3d 1083 (App. 2007), in a two to one decision, reversed my ruling denying plaintiffs' motion for additur or in the alternative a new trial after a jury had awarded no damages to the children of the deceased bicyclist. The holding of the Court of Appeals in *White* has since been overruled by the Arizona Supreme Court in *Walsh v. Advanced Cardiac Specialists Chartered*, 229 Ariz. 193, 273 P.3d 645 (2012).

Miidas Greenhouses, L.L.C., et.al. v. Global Horticultural, Inc. Case No. CV-2005-323 (Santa Cruz Cty. Super. Ct.). Decision supplied.

I granted defendants' motions for summary judgment on all of plaintiffs' tort claims based upon application of the Arizona economic loss rule to the facts of the case as found by the court. The Arizona Court of Appeals, Division Two, in *Miidas Greenhouses v. Global Horticultural*, 226 Ariz. 142, 244 P.3d 579 (App. 2010) vacated the entry of summary judgment and remanded the case back to this

court finding that the plaintiffs' tort claims were not precluded under the economic loss rule.

Holm v. Lincoln & Continental Owners Club, Case No. CV-04-033 (Santa Cruz Cty. Super. Ct.). Decision and Court of Appeals opinions supplied.

In this civil case involving claims for defamation and invasion of privacy, I granted in part defendants' motion for summary judgment by dismissing claims against two of the defendants. The Arizona Court of Appeals, Division Two, in an unpublished Memorandum Decision reversed this court's ruling, finding that the two defendants at issue had a duty to use reasonable care to ensure that a published statement was not false and defamatory.

State of Arizona v. Nicholas Anthony Stemper and Susan Mae Stemper, Case No. CR-09-027 (Santa Cruz Cty. Super. Ct.). Decision and Court of Appeals opinion supplied.

This was a criminal case alleging child abuse. The defendants were the mother and stepfather of the minor victim. Counsel had been appointed for the minor victim. The minor victim's father, not a defendant in the case, petitioned the trial court to substitute new counsel for his minor daughter. This court denied the request for substitution of counsel, finding that due to the professional arrangement between the attorney proposed for substitution and counsel for defendant mother, it was inappropriate to appoint that particular attorney as new counsel for the minor victim. The attorneys shared office space, including reception areas, filing rooms and other facilities. In addition, the attorneys often covered cases for each other and served as co-counsel in cases. The Arizona Court of Appeals, Division Two, in a Memorandum Decision, found that this court had abused its discretion and directed this court to grant the request for substitution of counsel for the minor victim.

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

As a state court trial judge, my decisions are not published. I rule from the bench at the conclusion of a hearing or trial in approximately 60 to 70 percent of the cases that I preside over and estimate the number of decisions made from the bench to be 600 to 700. In those cases, the findings and orders of the court are reflected in a minute entry prepared and signed by a court clerk and found in the court file maintained by the clerk of the court. In the 30 to 40 percent of the other cases where I do not rule from the bench, the matter is taken under advisement and a written order, ruling, or under advisement ruling is issued and signed by the court. I estimate the number of those cases to be 400 to 500 cases. In those cases, the ruling is filed in the court file maintained by the clerk of the court. Under the current case management system, all documents are scanned and available for

viewing electronically by courts and court staff. Electronic access to court files by attorneys, parties, the media and the public is still being developed.

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 of Arizona v. Villa, Case No. CR-11-044 (Santa Cruz Cty. Super. Ct.); 2012. Decision supplied in response to 13(c).

State of Arizona v. Garcia, Case No.CR-13-063 (Santa Cruz Cty. Superior Ct.); 2013. Decision supplied in response to 13(d).

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

I have not sat by designation on a federal court of appeals.

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

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

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

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

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

I recuse myself from all cases where my former law partners are representing one or more of the parties in the case. Although I have not been their partner for almost twelve years, I socialize with them on a regular basis and have a financial interest with them in a parcel of real property. I also recuse myself from all cases where I formerly represented one of the parties in the case. In addition, I recuse myself from cases where one or more of the parties is a friend or acquaintance. In addition because Santa Cruz County is a small county, both in size and population, I recuse myself in any cases where I may have inadvertently heard

about the case or someone I may have had contact with has expressed an opinion about one of the parties to the case.

Under the Arizona Rules of Civil Procedure, the Arizona Rules of Criminal Procedure, and the Arizona Rules of Family Law Procedure each party to a case has the right to one peremptory challenge to a judge assigned to a case without showing cause. Based upon the automated case management system in our court, I estimate that a peremptory challenge to my presiding over a case assigned to me to be approximately 10 to 15 cases over the last 12 years, predominately in the area of family law. A list of cases where a party has exercised his or her right to a peremptory challenge to a judge is not maintained by the court.

In *State of Arizona v. Villa*, Santa Cruz County Superior Court case number CR-11-044, discussed in response to 13(c) above, defense counsel did not file a motion for recusal or exercise a peremptory challenge, but asked the court to consider recusing itself from the case due to the court's knowledge of the victim's father in a murder case. I reviewed the applicable canons under the Arizona Code of Judicial Conduct and found that recusal was not required.

In *Guzman-Velez v. Pesqueira-Tapia*, Santa Cruz County Superior Court case number DO-12-158, a family law case, the attorney for respondent asked that all judges in Santa Cruz County be disqualified from hearing the case based upon the fact that the attorney for petitioner was formerly a Superior Court judge in the county. The former judge had retired as a judge prior to my becoming a judge in 2001. The case was referred to the Presiding Judge in an adjoining county and in a written ruling by said judge, respondent's motion was denied.

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

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

I was appointed as Town Attorney for the Town of Patagonia in 1975 and served until approximately 1992. The position was part-time. I was appointed by Mayor V.J. Smith and confirmed by the Town Council of the Town of Patagonia.

I was appointed as Deputy City Attorney for the City of Nogales in 1975 and served until approximately 1983. The position was part-time. I was appointed by Mayor Arthur Doan and confirmed by the Nogales City Council.

I was appointed as a Deputy County Attorney for Santa Cruz County in 1979 and served for only a few months. The position was part-time. I was appointed by the Santa Cruz County Board of Supervisors.

I have never been an unsuccessful candidate for elected or 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 served as the Santa Cruz County Chairman for three candidates: Eddie Basha for Governor (1994); Ed Pastor for Congress (1992 and 1994); and Morris K. Udall for Congress (1980 and 1982). In this capacity, I organized and coordinated the candidates' visits and events in Santa Cruz County, including fund raising events.

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

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

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

I have never served as a law clerk.

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

1976 – 1979
Law Offices of James A. Soto
477 North Grand Avenue
Nogales, Arizona 85621

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.

1975 – 1976
Law Offices of Nasib Karam
North Grand Avenue
Nogales, Arizona 85621
Associate Attorney

March – June 1979
Santa Cruz County Attorney's Office
2150 North Congress Drive

Nogales, Arizona 85621
Part-time Deputy County Attorney

1976 – 1979
Law Offices of James A. Soto
477 North Grand Avenue
Nogales, Arizona 85621
Solo practitioner

1979 – 1981
Larson and Soto, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder

1975 – 1984
Office of the Nogales City Attorney
777 North Grand Avenue
Nogales, Arizona 85621
Part-time Deputy City Attorney

1981 – 1984
Larson, Soto and Machado, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder

1985 – 1989
Larson, Soto and Arana, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder

1989 – 1992
Larson and Soto, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder

1975 – 1993
Town of Patagonia
310 West McKeown Avenue
Patagonia, Arizona 85624
Part-time Town Attorney

1992 – 2001
Soto, Martin and Coogan, P.C.
441 North Grand Avenue, Suite 13
Nogales, Arizona 85621
Shareholder and President

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.

None.

b. Describe:

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

I practiced law from October 1975 to November 2001. Initially my practice focused on criminal defense, family law, and probate with frequent trial work. Over time, my practice evolved into a civil practice with a focus on representing local businesses and agricultural entities in both the United States and Mexico, although I continued to do frequent trial work in family law matters. The law firms I was associated with represented numerous Mexican growing entities that grew perishable commodities in Mexico and shipped their products to the United States for distribution and sales in Nogales, Arizona and McAllen, Texas. We also represented numerous U.S. based distributors of the produce who received and marketed the produce throughout the United States and Canada. I continued to represent clients in family law and probate cases with some limited estate planning.

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

I initially served as a court-appointed attorney for indigent criminal defendants, while at the same time developing a base of business clients who were located along the U.S.-Mexico border. Eventually my criminal practice ceased and I maintained a civil practice representing businesses located along the border who sold goods into Mexico or to Mexican customers who came across the border as well as U.S. based distributors of Mexican produce. Representative clients would be the Fresh Produce Association of the Americas, a local trade association representing over 100 produce distributors and affiliates, many U.S. and Mexican customhouse brokers who facilitate the flow of goods and commerce across the border, 30 to 40 produce distributors based in Santa Cruz County, and 20 to 30 local businesses located along the border focusing on

retail sales. As part of the representation of these business entities, I would provide legal services in the areas of family law, probate law, and estate planning.

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.

Early in my legal career, over 80% of my practice involved trial work. As my practice evolved, I appeared in court less frequently. Prior to becoming a judge in 2001, I estimate that my practice was 25% trial work and 75% non-trial legal services. The non-trial legal services included such services as drafting contracts and agreements, business planning documents, wills, trusts and other testamentary documents.

i. Indicate the percentage of your practice in:

1. federal courts:	10%
2. state courts of record:	80%
3. other courts:	0%
4. administrative agencies:	10%

ii. Indicate the percentage of your practice in:

1. civil proceedings:	90%
2. criminal proceedings:	10%

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

I estimate that I tried 250 to 300 cases that resulted in a judgment, decree, or final decision. In most cases I was sole counsel, although in larger more complex cases, I provided legal services in conjunction with one or more of my law partners or associates.

i. What percentage of these trials were:

1. jury:	10%
2. non-jury:	90%

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

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

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

    a. the date of representation;

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

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

    1. *Triple E Produce Corp. v. Soto, et al.*, Case No. 9881; Santa Cruz County Superior Court; Honorable J. Richard Hannah (deceased); 1980-1992.

    I served as co-counsel for the plaintiff in the case. The case involved a civil contract dispute between a United States produce distributor based in Florida with numerous offices throughout the United States, including Nogales, Arizona and two Mexican farmers in Sinaloa, Mexico. A second produce distributor in Nogales, Arizona was also named as a defendant because it received produce from the Mexican farmers in violation of the exclusive distribution agreement entered into between the plaintiff and the two growers. The legal issues involved jurisdiction, choice of law, choice of forum, contract law as well as other issues. Although the case was based in the Superior Court in Santa Cruz County, discovery was conducted in Arizona, California, and Mexico. Ultimately, plaintiff obtained a judgment against the defendant growers for over two million dollars. The plaintiff proceeded against the second distributor as defendant garnishee for damages as a result of improper disbursements of money to the Mexican growers in violation of Writs of Garnishment that has been served upon the second distributor. Judgment was obtained against the second distributor. The second distributor appealed the trial court's entry of judgment and the Arizona Court of Appeals, Division Two, in *Triple E Produce Corp. v. Valencia dba Engebretson-Grupe, Co.*, 170 Ariz. 375, 824 P.2d 771 (1991) affirmed the trial court's decision. My co-counsel and I both actively participated in the pre-trial discovery and other proceedings, the two trials conducted in the case, and the appeal.

Co-counsel for Plaintiff:	E. Leigh Larson (deceased)
Counsel for Defendant: (Defendants Castro and Perez)	Thomas A. Zlaket, Sr. 310 South Williams Boulevard Suite 170

Tucson, AZ 85711
(520) 750-0250

Counsel for Defendant: (Defendant Valencia) — Richard J. Dowdall (deceased)

2. *Babnew v. Linneman and Santa Cruz County Board of Supervisors*; Case No. 12486; Santa Cruz County Superior Court; Honorable Roberto C. Montiel; 1986 – 1987).

I served as lead counsel for plaintiff in an election contest for the position of Chief of the Rio Rico Fire District. The complaint challenged the accuracy of the tally of votes by the election board. Numerous election law issues were litigated including the propriety of including or excluding certain votes that were cast or attempted to be cast in the election contest as well as the legal effect of a recount that was conducted on the initial election results. The trial court ultimately adjusted the vote totals and found for the defendants. On appeal, the appellate court affirmed the decision of the trial court, but on other grounds, in *Babnew v. Linneman*, 154 Ariz. 90, 740 P.2d 511 (1987).

Co-counsel for Plaintiff: Robert C. Martin
825 North Grand Avenue, Suite 200
Nogales, AZ 85621
(520) 287-2110

Counsel for Defendant: (Linneman) — James F. Haythornewhite (deceased)

Counsel for Defendant: (Santa Cruz County) — Jose Luis Machado
215 North Court Avenue
Floor Two
Tucson, AZ 85701
(520) 320-1007

3. *Big Tower Produce v. Fontes, et.al.*, Case No. 13453, Santa Cruz County Superior Court; Honorable Jose L. Lerma; early 1990s – mid 1990s.

I served as lead counsel for plaintiff in a civil contract case between a United States produce distributor and a Mexican farmer. The Mexican farmer claimed that the distributor had failed to handle and market his produce properly and had violated his obligations to the grower under the Federal Perishable Agricultural Commodities Act ("PACA"), claiming millions of dollars in damages. The distributor denied the claim and alleged that at the conclusion of the applicable growing season, the grower owed a small balance to the distributor. Significant legal issues litigated included jurisdiction, choice of law, trade practices in the industry, PACA regulations promulgated

by the United States Department of Agriculture, and a series of contract law issues. After a lengthy bench trial, the trial court found in favor of our client and awarded damages.

Co-counsel for Plaintiff:	Robert C. Martin 825 North Grand Avenue, Suite 200 Nogales, AZ 85621 (520) 287-2110
Counsel for Defendant:	Mark L. Collins Gust Rosenfeld PLC One South Church Avenue Suite 1900 Tucson, AZ 85701 (520) 388-4780

4. *Hockersmith v. City of Patagonia*, Case No. 9179; Santa Cruz County Superior Court; Honorable Roberto C. Montiel; 1978-1980.

   I served as counsel for the Town of Patagonia, a municipal corporation. A former Deputy Town Marshall brought a civil action against the town alleging that he was due overtime wages for his "on call" time based upon a state statute that mandates overtime compensation under certain circumstances. The case had significant statewide implications for other law enforcement agencies in smaller jurisdictions. Because the plaintiff could not establish how many hours he actually worked in any particular week as opposed to merely being on call, the trial court found that under the statute he was not entitled to overtime compensation. The decision by the trial court was affirmed in *Hockersmith v. City of Patagonia*, 123 Ariz. 559, 601 P.2d 322 (1979).

   Counsel for Plaintiff: L. B. Solsberry (deceased)

5. *Ritclo Produce, Inc. v. Livacich Produce*, an administrative hearing before the United States Department of Agriculture. Because this case was litigated from approximately 1982 to 1984 all client files have been destroyed and I do not have the case number or name of the hearing officer who presided over the hearing.

   I served as sole counsel for the plaintiff in an administrative proceeding brought under the Federal Perishable Agricultural Commodities Act ("PACA") seeking to collect an amount due the plaintiff for a series of shipments of produce from a distributor in Nogales, Arizona to a purchaser of the produce in California. The defendant in the action had not directly purchased the produce but had agreed to guarantee the obligation of the purchaser by having the plaintiff directly invoice defendant for said produce.

Significant legal issues litigated in the action included the statute of frauds, contract and guaranty law, industry practices, and the applicability of PACA rules and regulations to the case. The hearing officer found in favor of the plaintiff in the case.

Counsel for Defendant:

Patricia Rynn
Rynn & Janowsky, LLP
4100 Newport Place Drive, Suite 700
Newport Beach, CA 92660
(949) 752-2911

6. *Cathey v. Cathey*, Case No. D82826; Pima County Superior Court; Honorable Bernardo Velasco; 1989 – 1991.

I served as counsel for the defendant in this case, a dissolution of marriage proceeding involving significant assets and a variety of legal issues, including spousal maintenance, equitable division of community assets and debts, separate property as opposed to community property issues, and business valuation issues. Because of the nature of the produce business, including great risk factors and sometimes extreme variation in annual income amounts, numerous expert witnesses were retained. During the first day of trial, the parties were able to arrive at a settlement of the matter.

Counsel for Plaintiff:

Honorable Deborah Pratte
Pima County Superior Court
110 West Congress Street
Tucson, AZ 85701
(520) 724-9376

7. *Clifton v. DeCillis, Santa Cruz County Board of Supervisors and Damon*, Case No. CV-96-129; Honorable Gilbert Veliz.

I served as lead counsel for Damon, a long time member of the Santa Cruz County Board of Supervisors in an election contest case in which the plaintiff sought to enjoin the clerk of the board from allowing the names of Damon and another candidate to appear on the ballot in a contested election. The parties litigated numerous issues including the propriety of signatures on the nominating petitions, the propriety of the actions by circulators of the petitions, and the legal sufficiency of the nominating petitions. After a hearing over a number of days, the court ruled in our client's favor, and he was successfully re-elected and served many years thereafter.

Co-counsel:

Robert C. Martin
Coogan & Martin, P.C.,
825 North Grand Avenue, Suite 200

Nogales, AZ 85621
(520) 287-2110

Counsel for Defendant: Santa Cruz County Attorney's Office
2150 North Congress Drive, Suite 201
Nogales, AZ 85621
(520) 375-7780

8. *Terpening v. Triad Transportation and Scarborough*, Case No. CV-91-V-427; Santa Cruz County Superior Court; Honorable Jose L. Lerma.

I served as co-counsel for the defendant in this case, which involved significant sums of money and a series of complex financing arrangements for commercial trucks and trailers purchased by the defendants from the plaintiff. Numerous contract issues were litigated, including the applicability of Arizona's version of the Uniform Commercial Code. After a lengthy civil bench trial, the plaintiff was successful in recovering most, but not all of the amounts being sought for damages.

Counsel for Plaintiff: Mark L. Collins
Gust Rosenfeld PLC
One South Church Avenue, Suite 1900
Tucson, AZ 85701
(520) 388-4780

Co-counsel for Defendant: Robert C. Martin
Coogan & Martin, P.C.
825 North Grand Avenue, Suite 200
Nogales, AZ 85621
(520) 287-2110

9. *Ramos Cabeiro v. Valencia*, Case No. CV-93-184; Santa Cruz County Superior Court; Honorable Jose L. Lerma.

I represented the defendant in a civil jury trial involving a contract dispute between a resident of southern Mexico and a resident of Arizona. Issues litigated included jurisdiction, choice of law, contract law, and a number of equitable defenses to the plaintiff's claims. Although the jury rendered a verdict in favor of plaintiff, the court ultimately granted a defense motion for judgment notwithstanding the verdict.

Counsel for Plaintiff: Jesus R. Romo Vejar
177 North Church Avenue, Suite 200
Tucson, AZ 85701
(520) 628-7777

10. *Ace Produce v. Loden Produce and Loden*, an administrative hearing before the United States Department of Agriculture under the Perishable Agricultural Commodities Act. These were two cases consolidated for hearing purposes that were litigated in approximately 1977. I do not have the case numbers or the name of the hearing officer who presided over the cases.

    I served as counsel for the plaintiff, a produce distributing company located in Nogales, Arizona that filed two cases against defendant brothers seeking to recover damages for a series of loads of produce sold to the defendants but shipped to another receiver. The applicability of the Uniform Commercial Code to the transactions was litigated as well as who bore the risk of loss when shipments did not arrive at destination on a timely basis due to delays by the railroad company in delivery of the produce in question to its destination. Ultimately, the hearing officer found in favor of the plaintiff against Morris Loden, but not against Lou Loden Produce.

    Counsel for Defendants: E. Leigh Larson (deceased)

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

    While a practicing attorney, I represented the Fresh Produce Association of the Americas, a local trade association of U.S.-based produce distributors and affiliated businesses. As counsel for the Association, our firm dealt with significant legal issues, both domestic and international, seeking to promote the free trade of produce across the U.S.-Mexico border. In addition, we represented the Association in dealing with federal, state, and local governmental regulatory agencies, both in the United States and in Mexico, in representing the interests of U.S. produce distributors and Mexican farming entities that shipped their produce to these distributors. I was not required to register as a lobbyist.

    We also practiced law in both federal and state courts, as well as before the United States Department of Agriculture regulatory offices, in representing produce clients seeking to collect on amounts owed to them for produce sold by produce client, in defending produce clients against claims for defective produce, and related issues.

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

Between approximately 1977 and 1980, I taught law related classes in the evenings at the Nogales branch of Pima Community College, which is based in Tucson, Arizona. I taught substantive criminal law, criminal procedure, immigration law, and business law. No syllabuses for the courses are 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.

    None.

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

    If confirmed, I 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.

        I do not anticipate any potential conflicts of interest if I am confirmed as a United States District Court Judge. If any family member, friend, business associate, or former client were to have a case that might come before me, I would make full disclosure and immediately recuse myself from any case or possible case that might be assigned to me.

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

If confirmed, I would refer to the appropriate legal authorities, including 28 U.S.C. §144 and 455a, as well as the Code of Conduct for United States Judges, and make appropriate disclosures to the parties and, if appropriate, recuse myself from presiding over a case.

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

During the twenty-six years that I practiced law, I represented a number of civic organizations in the community as their attorney. My policy, and that of the law firms that I was a member of or partner in, was never to charge the client a fee for any legal services performed on their behalf. This would include formation of legal entities for non-profit groups, assuring that all of the legal reporting requirements were complied with, referring them to other professionals such as accountants and financial advisors who we would recruit and who would also not charge for their services, assisting them in resolving personnel or other legal matters, and in general looking out for their legal interests.

A representative organization would be the Santa Cruz Training Programs, Inc. This organization provides job training, educational opportunities, health services, and housing assistance to both adults and children who are developmentally disabled. Another representative organization would be the Nogales Boys & Girls Club, which provides educational and recreational opportunities for hundreds of young people in our community.

In addition, because there is no legal aid office or other legal assistance organization in the community, my law office and its members would regularly provide *pro bono* legal assistance to persons unable to pay for those services, including drafting wills, probating estates, seeking to obtain child support orders or collect on previously issued child support orders, establishing guardianships and conservatorships, and initiating divorce proceedings or enforcing provisions of an existing divorce decree. From time to time, at the request of local judges, we would also provide legal services without charge in especially difficult cases where the welfare of a child, elderly adult, or other person was at risk.

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 June 2013, a Senate Judiciary Committee staff person for Senator Jeff Flake called me to discuss a vacant position in the United State District Court for Arizona in Tucson. Since late September 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 4, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On December 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. 1/2012

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Soto, James A.	U. S. District Court, Arizona	12/22/2013
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 Court Judge	☑ Nomination Date 12/19/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 12/19/2013
7. Chambers or Office Address		
Santa Cruz County Court Complex 2160 North Congress Drive Nogales, Arizona 85621		

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Baffert-Soto Partnership
2.	Member	Efraim Canyon Properties, LLC
3.	Member	SoBros, LLC
4.	Director	Mariposa Community Health Center
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 Soto, James A.	Date of Report 12/22/2013

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	State of Arizona, Superior Court Judge Salary	$69,479.00
2. 2013	Santa Cruz County, Superior Court Judge Salary	$69,479.00
3. 2012	State of Arizona, Superior Court Judge Salary	$72,500.00
4. 2012	Santa Cruz County, Superior Court Judge Salary	$72,500.00
5. 2011	State of Arizona, Sujperior Court Judge Salary	$72,500.00
6. 2011	Santa Cruz County, Supeerior Court Judge Salary	$72,500.00

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	Arizona State Retirement System, Pension
2. 2012	Arizona State Retirement System, Pension
3.	
4.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Soto, James A.	Date of Report 12/22/2013

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Soto, James A.	12/22/2013

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. Baffert-Soto Partnership	E	Rent	N	W					
2. Efraim Canyon Properties, LLC	D	Rent	M	W					
3. SoBros, LLC	D	Interest	L	W					
4. American Century Growth Fund (IRA)	A	Dividend	K	T					
5. American Funds Fundamental Investors Fund	A	Dividend	J	T					
6. American Funds Capital World Growth & Income Fund	A	Dividend	J	T					
7. Fidelity Magellan Fund (IRA)	B	Dividend	M	T					
8. Janus Fund (IRA)	A	Dividend	K	T					
9. Nationwide Destination Moderately Aggressive Fund	A	Dividend	K	T					
10. Prudential Jennison Fund (IRA)	A	Dividend	L	T					
11. FSGBank (CD)	A	Interest	K	T					
12. MidFirst Bank Oklahoma City (CD)	A	Interest	J	T					
13. Goldman Sachs CD	A	Interest	K	T					
14. American Funds Growth Fund of America	A	Dividend	J	T					
15. American Funds Small Cap World	A	Dividend	J	T					
16. American Funds New World Fund	A	Dividend	J	T					
17. American Funds Washington Mutual Investors Fund (IRA)	A	Dividend	J	T					

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

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$15,000 or less
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 Soto, James A.	Date of Report 12/22/2013

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. Source Capital, Inc. (OR)	A	Dividend	J	T					
19. Chase Bank Cash Accounts	A	Interest	K	T					
20. Bank of America Cash Accounts	A	Interest	J	T					
21. Wells Fargo Bank Cash Accounts	A	Interest	K	T					
22.									

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Soto, James A.	Date of Report 12/22/2013

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Soto, James A.	Date of Report 12/22/2013

IX. CERTIFICATION.

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

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

Signature: **s/ James A. Soto**

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		113	114	Notes payable to banks-secured (auto)		17	902
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		320	801	Notes payable to relatives			
Unlisted securities – see schedule		530	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		18	485
Real estate owned-add schedule		325	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		36	387
				Net Worth	1	352	528
Total Assets	1	388	915	Total liabilities and net worth	1	388	915
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		25	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Century Growth Fund	$ 30,157
American Funds Capital World Growth & Income Fund	14,822
American Funds Fundamental Investors Fund	14,853
American Funds Growth Fund of America	14,592
American Funds New World Fund	5,506
American Funds Small Cap World	5,648
American Funds Washington Mutual Investors Fund	6,630
Fidelity Magellan Fund	101,077
Janus Fund	43,865
Nationwide Destinations Moderately Aggressive Fund	31,580
Prudential Jennison Blend Fund	50,787
Source Capital, Inc.	1,284
Total Listed Securities	$ 320,801
Unlisted Securities	
Baffert-Soto Partnership (50% interest)	$ 300,000
Efraim Canyon, LLC (12% interest)	150,000
SoBros, LLC (33% interest)	80,000
Total Unlisted Securities	$ 530,000
Real Estate Owned	
Personal residence	$ 175,000
Vacation property	150,000
Total Real Estate Owned	$ 325,000

AFFIDAVIT

I,James A. Soto, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

12-29-2013
(DATE)

JAMES A. SOTO

Official Seal
NOTARY PUBLIC
STATE OF ARIZONA
County of Santa Cruz
PATRICIA L. VALENZUELA
My Commission Expires June 2, 2015

Patricia L. Valenzuela
(NOTARY)

James A. Soto
P.O. Box 627
287 Paseo Contento Loop
Nogales, Arizona 85621

January 6, 2014

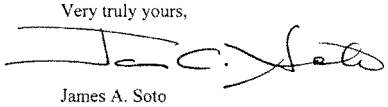
The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed on December 31, 2013, in connection with my nomination to be a United States District Court Judge for the District of Arizona. I certify that the information contained in that document is and remains, to the best of my knowledge, true and accurate.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Very truly yours,



James A. Soto

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

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
Soto, James A.	U. S. District Court, Arizona	01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U. S. District Court Judge	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/31/2013
7. Chambers or Office Address		
Santa Cruz County Court Complex 2160 North Congress Drive Nogales, Arizona 85621		

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	Baffert-Soto Partnership
2.	Member	Efraim Canyon Properties, LLC
3.	Member	SoBros, LLC
4.	Director	Mariposa Community Health Center
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 Soto, James A.	Date of Report 01/06/2014

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	State of Arizona, Superior Court Judge Salary	$72,500.00
2. 2013	Santa Cruz County, Superior Court Judge Salary	$72,500.00
3. 2012	State of Arizona, Superior Court Judge Salary	$72,500.00
4. 2012	Santa Cruz County, Superior Court Judge Salary	$72,500.00
5.		
6.		

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	Arizona State Retirement System, Pension
2.	
3.	
4.	

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Soto, James A.	Date of Report 01/06/2014

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

☐ NONE *(No reportable gifts.)*

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

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

☑ NONE *(No reportable liabilities.)*

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

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Soto, James A.	Date of Report 01/06/2014

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. Baffert-Soto Partnership	E	Rent	N	W					
2. Efraim Canyon Properties, LLC	D	Rent	M	W					
3. SoBros, LLC	D	Interest	L	W					
4. American Century Growth Fund (IRA)	B	Dividend	K	T					
5. American Funds Fundamental Investors Fund	A	Dividend	J	T					
6. American Funds Capital World Growth & Income Fund	A	Dividend	J	T					
7. Fidelity Magellan Fund (IRA)	D	Dividend	M	T					
8. Janus Fund (IRA)	A	Dividend	K	T					
9. Nationwide Destination Moderately Aggressive Fund	A	Dividend	K	T					
10. Prudential Jennison Fund (IRA)	A	Dividend	L	T					
11. FSGBank (CD)	A	Interest	K	T					
12. MidFirst Bank Oklahoma City (CD)	A	Interest	J	T					
13. Goldman Sachs CD	A	Interest	K	T					
14. American Funds Growth Fund of America	A	Dividend	J	T					
15. American Funds Small Cap World	A	Dividend	J	T					
16. American Funds New World Fund	A	Dividend	J	T					
17. American Funds Washington Mutual Investors Fund (IRA)	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT Page 5 of 7	Name of Person Reporting Soto, James A.	Date of Report 01/06/2014

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

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Source Capital, Inc. (OR)	A	Dividend	J	T					
19. Chase Bank Cash Accounts	A	Interest	K	T					
20. Bank of America Cash Accounts	A	Interest	J	T					
21. Wells Fargo Bank Cash Accounts	A	Interest	K	T					
22.									

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

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Soto, James A.	Date of Report 01/06/2014

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Soto, James A.	Date of Report 01/06/2014

IX. CERTIFICATION.

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

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

Signature: **s/ James A. Soto**

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		130	958	Notes payable to banks-secured (auto)		17	362
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		340	129	Notes payable to relatives			
Unlisted securities – see schedule		530	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		18	485
Real estate owned-add schedule		325	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		35	847
				Net Worth	1	390	240
Total Assets	1	426	087	Total liabilities and net worth	1	426	087
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		25	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
American Century Growth Fund	$ 33,433
American Funds Capital World Growth & Income Fund	15,202
American Funds Fundamental Investors Fund	15,036
American Funds Growth Fund of America	18,157
American Funds New World Fund	5,809
American Funds Washington Mutual Investors Fund	3,528
American Funds Small Cap World	5,877
Fidelity Magellen Fund	109,561
Janus Fund	47,599
Nationwide Destinations Moderately Aggressive Fund	35,097
Prudential Jennison Blend Fund	49,488
Source Capital, Inc.	1,342
Total Listed Securities	$ 340,129
Unlisted Securities	
Baffert-Soto Partnership (50% interest)	$ 300,000
Efraim Canyon, LLC (12% interest)	150,000
SoBros, LLC (33% interest)	80,000
Total Unlisted Securities	$ 530,000
Real Estate Owned	
Personal residence	$ 175,000
Vacation property	150,000
Total Real Estate Owned	$ 325,000

Senator Grassley
Questions for the Record

Steven Logan,
Nominee: U.S. District Judge for the District of Arizona

1. As a judge, what will your approach to legislative history be? When will you consult it and which types of legislative history will you consider?

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. 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?

Senator Grassley
Questions for the Record

John Tuchi,
Nominee: U.S. District Judge for the District of Arizona

1. As Criminal Chief in the U.S. Attorney's Office, you worked frequently with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Please describe your interactions with ATF Special Agent in Charge William Newell regarding the Hernandez case in 2007, in which ATF allegedly planned to have the Government of Mexico intercept firearms traffickers after ATF observed them cross the border with guns.

2. According to one memo from Mr. Newell:

> As for the involvement of the USAO, we have discussed the case with them since early on and most recently have had several discussions with John Tuchi, the Criminal Chief. As a matter of fact during a recent conversation with John Tuchi he agreed that if we could provide enough identifying information of [sic] the individuals receiving the firearms in Mexico that he would be willing to explore charging these individuals with conspiracy. It is no secret that we have had prosecution issues with the USAO in Arizona lately, however we are actively pursuing Federal prosecution of this case with them . . . .

Does this accurately summarize your interactions with Mr. Newell? Why or why not?

3. In February 2010, ATF Counsel in Phoenix, Thomas Karmgard, sent a memo to the U.S. Attorney's Office for the District of Arizona arguing that the office was imposing unnecessary requirements on gun trafficking cases by requiring ATF to have possession of a straw purchased firearm before permitting prosecution. Are you familiar with Mr. Karmgard's memo? Did you read it? If so, what was your response to the memo? Do you agree with Mr. Karmgard's analysis? Please explain why or why not.

4. The U.S. Attorney's Office position had apparently arisen in part due to a reading of *United States v. Lopez-Alvarez*, 970 F.2d 583 (9th Cir. 1992). How do you view this case as applying to this issue?

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 Grassley
Questions for the Record

Diane Humetewa,
Nominee: U.S. District Judge for the District of Arizona

1. If confirmed, how will you use the Sentencing Guidelines in your decision making?

   a. Do you intend to utilize the Report of the Native American Advisory Group for the U.S. Sentencing Commission, to which you contributed?

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. 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?

Senator Grassley
Questions for the Record

Rosemary Marquez,
Nominee: U.S. District Judge for the District of Arizona

1. In your hearing, you said that it was important to you that the parties walk away "feeling that they were respected in the courtroom and that their views were respected and that they were heard." What role should empathy play in a judge's decision making process?

2. You have worked in criminal defense. How will you transition from being an advocate for defendants to an impartial judge in criminal matters?

3. How will you use the Sentencing Guidelines in your decision making process?

4. What is your understanding of when federal law requires individuals before you to be deported?

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 Grassley
Questions for the Record

Douglas Rayes,
Nominee: U.S. District Judge for the District of Arizona

1. Your opinion in *Volpe v. Yavapai* was overruled. The appellate court held that there was, in fact, "substantial evidence in the record" of an offense whereas you found there was not sufficient evidence. You will not be bound by this court if confirmed as a federal judge. Do you agree with the appellate court's decision?

2. Your opinion in *State v. Levens* was overruled. The appellate court reversed held that the defendant's response to questions by police were not compelled whereas you ruled that the defendant's statements violated Miranda and should be excluded. You will not be bound by this court if confirmed as a federal judge. Do you agree with the appellate court's decision?

3. While serving as a judge, you wrote an article detailing the steps you and others took to reduce the capital case backlog in the Superior Court. Part of that process entailed educating victims' families on death penalty cases, including the time it took to litigate the case and execute the sentence, the possible appeals, and "an explanation of the high rate of reversals of the sentence as compared to almost no reversals from guilty pleas with a life sentence." In that article, you state: "Victims' families seeking justice and closure would often accept the information about the capital cases process more readily from a judge than from the attorneys litigating the case." "Although that was not the goal of the court, sometimes after such meetings, the victims advised the state that they did not object to a plea agreement where the death penalty was waived."

   a. Why do you think the families of victims accepted this information more readily from the court than the attorneys litigating the case?

   b. Given the court's role as the final arbiter in the case, do you have any concerns that the court's actions in advising victims' families about the negative aspects of seeking the death penalty had an undue influence on their decision or pressured them to accept a plea agreement?

4. You listed the case of *State v. Al-Tarrah* as one of your most significant, but did not provide a written opinion. According to press reports, the case involved a foreign college student from Kuwaiti (Al-Tarrah) who was charged with hit-and-run and DUI after her vehicle struck and killed a man riding a motorized skateboard. The student's blood alcohol was nearly twice the legal limit. At Al-Tarrah's arraignment, the Judge Talamante directed her to surrender her passport to her attorney, David Cantor. He told Cantor, "I am going to expect that you take possession of that passport and that that passport remain in your possession during the pendency of these hearings." The court order directed Cantor to "submit an affidavit to the court within 24-hours affirming that passport has been

surrendered." Cantor did not take possession of the passport and Al-Tarrah fled the country.

As a result, Judge Richard Gama held Cantor in contempt of court for failure to collect the passport and failure to file the affidavit with the court. You heard the case involving the contempt charges and found Cantor to be not guilty. According to press reports, you concluded Cantor could have interpreted Judge Talamante's order to mean he should file an affidavit within 24-hours of taking possession of the passport whenever he received it. The author of the article called this is a strained interpretation of the judges' order. The author stated: "If one is to assume that 'I am going to expect you to take ... that passport' means accepting it from young Al-Tarrah whenever she happened to fishtail into Cantor's parking lot, then you also have to wonder why the judge ordered Cantor to take the passport at all."

Please explain why you found Cantor not guilty of contempt of court and provide any supporting information if possible.

5. Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases? If so, how would you determine the original meaning?

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. If confirmed, how do you intend to manage your caseload?

16. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

17. 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.

18. 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.

19. Please describe with particularity the process by which these questions were answered.

20. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

James Soto,
Nominee: U.S. District Judge for the District of Arizona

1. What is the most important attribute of a judge, and do you possess it?

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

4. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

5. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

7. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

8. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

9. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

10. If confirmed, how do you intend to manage your caseload?

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

12. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

13. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

14. Please describe with particularity the process by which these questions were answered.

15. Do these answers reflect your true and personal views?

Questions for the Record
Senator Ted Cruz

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

Steven Paul Logan
Nominee: U.S. District Judge for the District of Arizona

1. **As a judge, what will your approach to legislative history be? When will you consult it and which types of legislative history will you consider?**

   Response: Adherence to precedent is what stabilizes our legal system. I would first start with the text of the statute. If the text is ambiguous, I would look to United States Supreme Court and Ninth Circuit Court of Appeals precedent to interpret the meaning of the text. If ambiguity remains, I would examine persuasive authority from other federal circuits that have addressed the issue and research statutory and legislative history. In this and all instances, if confirmed as a United States District Judge, I would continue to follow the precedent of the United States Supreme Court and the Ninth Circuit Court of Appeals.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe integrity is the most important attribute of a judge. A judge with integrity makes decisions in a fair and impartial manner with full transparency to ensure the judicial process is carried out with faithful application of the law. I believe my experience as a United States Military Judge, United States Immigration Judge and United States Magistrate Judge demonstrates that I possess this attribute. If confirmed as a United States District Judge, I would continue to conduct all court proceedings with utmost integrity.

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 patient and always conduct court proceedings in a dignified manner. It is very important to be respectful, patient and humble with all litigants, witnesses, and court staff. If confirmed as a United States District Judge, I will continue to meet the standards I have set during my judicial career.

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: The rule of law in the United States is dependent upon judges showing respect and following United States Supreme Court and Circuit Court precedent. If confirmed as a United States District Judge, I would continue to follow the precedent set by the United States Supreme Court and the Ninth Circuit Court of Appeals.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would review the plain language of the applicable statute and consider arguments raised by the parties. If the plain meaning of the statute is unclear, I would look to United States Supreme Court and Ninth Circuit Court of Appeals cases for analogous authority. I would examine the statutory history to resolve ambiguity by applying the established canons of statutory construction. Further, I would look for persuasive guidance in the decisions of other federal circuits.

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: Throughout my judicial career, I have followed controlling precedent. If confirmed as a United States District Judge, I would continue to apply the precedent of the United States Supreme Court and Ninth Circuit Court of Appeals, regardless of any personal views I may have.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A court should act only when presented by a justiciable case or controversy or if the statute violated a provision of the United States Constitution. Courts should not declare a statute unconstitutional unless it exceeds the authority of Congress.

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: A United States District Judge should only look to binding precedent when interpreting the Constitution. If confirmed as a United States District Judge, I would continue to apply the precedent of the United States Supreme Court and Ninth Circuit Court of Appeals.

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: The integrity of the United States legal system depends on lower court decisions supported by higher court precedent. If confirmed as a United States District Judge, I would continue to follow the precedent established by the United States Supreme Court and the Ninth Circuit Court of Appeals.

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: During my 8 years as a United States Military Judge, United States Immigration Judge and United States Magistrate Judge, I have demonstrated my commitment to treat each person who appears before me fairly and with respect. If confirmed as a United States District Judge, I will continue to treat all litigants fairly and respectfully, and issue decisions grounded in precedent established by the United States Supreme Court and Ninth Circuit Court of Appeals.

11. If confirmed, how do you intend to manage your caseload?

Response: As a United States Magistrate Judge, I am familiar with the caseloads for the District Judges in the District of Arizona. I have extensive experience managing a heavy docket. If confirmed as a United States District Judge, I would set strict deadlines for discovery and the filing of pretrial motions. I would make myself available for any disputes that might arise during the discovery phase. I would set firm dates for motion hearings and trials. I would ensure that the Speedy Trial Act is properly adhered to. I would also take advantage of all the current tools available in the District of Arizona to manage case progress. I would refer appropriate matters to our United States Magistrate Judges. I would also consult with District Judges to adopt new case management practices to address a more complex caseload maintained by United States District Judges in the District of Arizona.

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: I believe that judges have a role in controlling the pace and conduct of litigation. If confirmed as a United States District Judge, I would utilize the case management tools that would be available to me in the District of Arizona as well as implement the tools I described in my response to Question 11.

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 review the case record and conduct the necessary research that is required to apply the controlling law to the facts at issue in the case. I consult the applicable federal statutes, as well as United States Supreme Court and Ninth Circuit Court of Appeals binding precedent. If confirmed, I will continue to ensure that all of my decisions are well thought out and consistent with binding precedent.

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 read each question carefully and I prepared my responses to the questions. After I completed all of my responses, I forwarded my responses to the Department of Justice so that my responses would be submitted to the Senate Judiciary Committee.

16. Do these answers reflect your true and personal views?

Response: Yes.

Senator Ted Cruz
Questions for the Record

Steven Paul Logan
Nominee: U.S. District Judge for the District of Arizona

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: While applying binding precedent, a judge must always keep an open mind and carefully apply the law to the facts of the case. If confirmed as a United States District Judge, I will continue to meet the standards I have set during my judicial career by continuing to apply binding precedent of the United States Supreme Court and Ninth Circuit Court of Appeals. I have not compared or contrasted the judicial philosophy of any Supreme Court Justice to identify if I have a judicial philosophy analogous to a current or past Justice of the United States Supreme Court.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: In several cases, such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court employed originalism to interpret the United States Constitution. If confirmed as a United States District Judge, I will continue to follow all applicable United States Supreme Court and Ninth Circuit Court of Appeals precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If I am confirmed as a United States District Judge and a decision is controlling precedent, 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: I will continue to follow all United States Supreme Court precedent regardless of my personal views, including the binding precedent in *Garcia v. San Antonio Metro Transit Authority*, 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?

Response: The United States Supreme Court has held that Congress has the authority to regulate the use of the channels of interstate commerce, the instrumentalities of 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). If confirmed as a United States District Judge, I will continue to follow all binding United States Supreme Court and Ninth Circuit Court of Appeals precedent.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The United States Supreme Court in *Youngstown Sheet & Tube Company v. Sawyer*, 343 U.S. 579, 635-38 (1952), held that the President can take executive action or issue executive orders if the United States Constitution or the United States Congress grants the authority to do so. In a judiciable case or controversy, a federal judge can enforce that limitation if the President exceeds such authority.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The United States Supreme Court has held that only fundamental rights and liberties "which are 'deeply rooted in the Nation's history and tradition' and 'implicit in the concept of ordered liberty'" qualify for protection under the Due Process Clause. *Chavez v. Martinez*, 538 U.S. 760, 775 (2003) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997)). If confirmed as a United States District Judge, I will continue to follow binding United States Supreme Court and Ninth Circuit Court of Appeals precedent.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Heightened scrutiny under the Equal Protection Clause is appropriate when a classification burdens a fundamental right or when it is based on 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 as a United States District Judge, I will continue to follow binding United States Supreme Court and Ninth Circuit Court of Appeals precedent.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: I do not possess any expectations regarding any form of preferences for public higher education. If confirmed as a United States District Judge, I will continue to follow binding United States Supreme Court and Ninth Circuit Court of Appeals precedent.

Senator Grassley
Questions for the Record

John Tuchi,
Nominee: U.S. District Judge for the District of Arizona

1. **As Criminal Chief in the U.S. Attorney's Office, you worked frequently with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). Please describe your interactions with ATF Special Agent in Charge William Newell regarding the Hernandez case in 2007, in which ATF allegedly planned to have the Government of Mexico intercept firearms traffickers after ATF observed them cross the border with guns.**

   Response: I had no interactions with ATF SAC Newell or any other ATF personnel regarding the *Hernandez* matter. The Tucson Office of the United States Attorney, which has a separate Criminal Division supervisory structure with its own Criminal Chief, supported the investigation and prosecuted the matter. In 2007 I was Criminal Chief of the Phoenix Office, whose AUSAs were not involved in the *Hernandez* matter, so I was unaware of the case at the time.

2. **According to one memo from Mr. Newell:**

   > **As for the involvement of the USAO, we have discussed the case with them since early on and most recently have had several discussions with John Tuchi, the Criminal Chief. As a matter of fact during a recent conversation with John Tuchi he agreed that if we could provide enough identifying information of [sic] the individuals receiving the firearms in Mexico that he would be willing to explore charging these individuals with conspiracy. It is no secret that we have had prosecution issues with the USAO in Arizona lately, however we are actively pursuing Federal prosecution of this case with them . . . .**

   Does this accurately summarize your interactions with Mr. Newell? Why or why not?

   Response: No. I have never seen the memorandum referenced in this question so I am unable to put SAC Newell's statement in context to answer completely, but I can share my recollection of the one conversation I recall having with SAC Newell generally on this topic. I recall SAC Newell asking me, in or around mid-2009, for general information about what the Phoenix Office's evidentiary requirements were for charging recipients of trafficked firearms with conspiracy where the recipients were outside the United States. I recall outlining the kinds of evidence our prosecutors generally would require to charge a defendant so situated. SAC Newell never raised a specific case or investigation with me in our discussion, so I am unsure what case he might be referring to in the quoted excerpt above. To the extent the memorandum purports to tie my response to any specific case or any specific facts, it does not accurately summarize the interaction. I also do not recall more than one such conversation with SAC Newell about this issue. I do not know

whether SAC Newell had conversations with the Tucson Criminal Division on the same topic.

3. **In February 2010, ATF Counsel in Phoenix, Thomas Karmgard, sent a memo to the U.S. Attorney's Office for the District of Arizona arguing that the office was imposing unnecessary requirements on gun trafficking cases by requiring ATF to have possession of a straw purchased firearm before permitting prosecution. Are you familiar with Mr. Karmgard's memo? Did you read it? If so, what was your response to the memo? Do you agree with Mr. Karmgard's analysis? Please explain why or why not.**

Response: I am not familiar with Mr. Karmgard's memorandum and have not read it. At the time it was issued, I was outside the supervisory chain of the Criminal Division, working as the office's Tribal Liaison, and thus the memo would not have been shared with me. I therefore do not have a response to the memorandum or an opinion about its analysis.

4. **The U.S. Attorney's Office position had apparently arisen in part due to a reading of *United States v. Lopez-Alvarez*, 970 F.2d 583 (9th Cir. 1992). How do you view this case as applying to this issue?**

Response: The relevant portion of *Lopez-Alvarez* with respect to firearms trafficking cases is its holding on the *corpus delecti* rule, setting forth how much evidence independent of a defendant's admission is necessary to corroborate that admission. *Lopez-Alvarez* held that the test for what is sufficient corroboration of an admission is two-pronged: the government must introduce 1) sufficient evidence to establish that the core of the offense occurred; and 2) independent evidence tending to establish the trustworthiness of the statement, unless the confession is "by virtue of special circumstances, inherently reliable." *Id.* at 592. The test set forth by the Ninth Circuit in *Lopez-Alvarez* does not stand as a bar to bringing firearms trafficking cases involving defendant admissions. Whether the government will be able to meet the test in a given case will be determined by the specifics of the admission in that case and the other evidence gathered that relates to it. This is the current approach taken by the United States Attorney's Office in Arizona in assessing charges and because it remains binding Ninth Circuit precedent, if I am confirmed, it also would be my approach to evaluating admissions in criminal matters before me.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: I believe the most important attribute of a judge is a mindfulness that every matter before them is the most important matter they have. The parties in every matter depend on that judge to be fastidiously prepared, completely focused, possessed of patience, to exhibit fairness and impartiality, and to adhere to precedent and the rule of law. I am confident that I possess this mindfulness, and that if confirmed, I would demonstrate these underlying attributes.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A judge must remember he or she is there to serve and to get the job done right. From that realization flows the need for patience, respect and courtesy in dealing with all others, and for diligence and circumspection in addressing every decision. I believe my reputation among all quarters of my colleagues is for each of these qualities.

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: As a United States District Judge, if confirmed, it would be my duty to follow Supreme Court and Ninth Circuit precedent at all times. I am committed to do so because I am convinced that for our legal system to function appropriately and for litigants to maintain faith in it, courts must apply the law with consistency and predictability.

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: I would begin by looking to the text of the statutory or constitutional provision at issue, to determine whether that text's plain meaning would resolve the issue. If not, I would next look at whether the Supreme Court or the Ninth Circuit had decided an analogous issue. Finally, if necessary, I would also look to persuasive authority from other circuit courts.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply the precedent.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Congressional enactments are presumed Constitutional, and a court should only declare otherwise if, in a justiciable case or controversy, the enactment directly violates a provision of the Constitution and the enactment further cannot be read in any way that would be Constitutional.

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, unless specifically instructed to do so by binding precedent from a higher court.

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 the justice system depends on all participants to fulfill their duty in their respective roles without regard to any underlying motivation. For the past 16 years as a prosecutor I have met my duty to reach charging and case disposition decisions dispassionately, focusing on the applicable law and my ethical obligations as an attorney. Political ideology has had no place in performing those duties. Similarly, if confirmed to the district court, my duty would be to follow precedent and to ground decisions in the text of the law, and I would continue to fulfill this duty without regard for any ideology.

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: In a prior answer I identified fairness as a core attribute of a judge because without it, the judicial process would lack any integrity or meaning. If confirmed to the district court, I would strive to be fair and objective to every litigant, putting aside any personal views in favor of applying facts to law.

14. If confirmed, how do you intend to manage your caseload?

Response: If I am confirmed to the district court, active case management on both criminal and civil dockets will be necessary immediately in light of Arizona's very high caseload. Setting prompt trial dates, issuing standard pretrial scheduling orders, actively and timely addressing discovery issues, and promptly considering and ruling on dispositive motions will move matters assigned to me. I also would plan to adjust my approach to case management based on learning from the many successful district judges already sitting in Arizona and elsewhere.

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. Because the judge is ultimately responsible for the management of his or her calendar, and therefore the delivery of justice to those many litigants who are waiting on that calendar, the judge must have a role in controlling both pace and conduct of litigation. In consultation with counsel, the judge should set reasonable limits on preparation and trial time that move matters forward while observing every litigant's applicable rights to due process. If confirmed, I would focus on setting prompt and firm

trial dates with continuances only for good cause shown. I also would rely on regular status conferences to keep preparation by counsel on track and to timely identify those cases needing additional attention.

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: As a starting point, I would take care to decide only questions properly before the court that actually require decision for resolution of the matter. I would approach each question from a neutral perspective, seeking to resolve it consistent with applicable precedent and in a way that is faithful to the text of the law at issue. I would apply that law to the facts as presented by the parties. I believe the most difficult part of the transition if I am confirmed would be managing the mix of larger or more complex matters, which present issues requiring bigger blocks of time to resolve, and a high volume of smaller or more straightforward matters that nonetheless require hearing time and decisions on motion practice. Interspersing these types of matters in a way that moves them all efficiently toward resolution will be a balancing and learning experience.

17. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

    Response: No, 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, I am unaware of any such endorsements or promises.

18. **Please describe with particularity the process by which these questions were answered.**

Response: On the afternoon of February 4, I received these questions from the Department of Justice's Office of Legal Policy. I reviewed on-line the law and cases referenced in these questions and prepared my answers. I reviewed those answers with a member of the Office of Legal Policy and on February 10, I finalized them for submission.

19. Do these answers reflect your true and personal views?

Response: Yes, they do.

Response of John J. Tuchi
Nominee to be United States District Judge for the District of Arizona
to the Written Questions for the Record
of Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is one of restraint, to decide only those questions necessary for resolution of the matter and to do so through adherence to applicable precedent, remaining faithful to the text of the law to be applied. I would treat all participants in the process with respect, strive to be patient and always to listen, being mindful that no one has a monopoly on the right answers. I do not know enough about the judicial philosophies of the many justices who served on the Warren, Burger and Rehnquist Courts to identify which mine most closely follows.

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 held that the original public meaning of the Constitution at the founding should be used to interpret the Constitution. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570, 601 (2008). If confirmed I would follow *Heller* and other applicable precedents.

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 that precedent. The role of a United States District Judge is to follow all applicable precedent as handed down by the Supreme Court and the circuit court of which their district is a constituent.

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 Congress's extension of the Fair Labor Standards Act's protections to state employees under its Commerce Clause powers, rather than impose a "judicially created limitation" on its power. *See Garcia*, 469 U.S. at 551-56. If confirmed to the district court, I would be bound to follow the precedent of *Garcia* wherever it applied to the issues before me, and I would do so.

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 held that Congress may regulate under the Commerce Clause in three ways: it may 1) "regulate the use of the channels of interstate commerce"; 2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and 3) "regulate those activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558 (1995); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed to the district court, I would apply *Morrison*, *Lopez* and any other controlling precedent to questions involving Congress's power to regulate non-economic activity through 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 & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court held that the courts have the authority in a justiciable case or controversy to invalidate presidential actions that 1) violate the Constitution or a statute properly enacted by Congress; or 2) exceed the authority granted to the President by the Constitution or by statute.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Glucksberg*, 521 U.S. 702 (1997), the Supreme Court found fundamental rights to be those "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." *Id.* at 720-21 (internal citations omitted). If confirmed to the district court, I would apply *Glucksberg* and all other controlling precedent in analyzing substantive due process issues.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Courts will apply heightened scrutiny under an Equal Protection Clause analysis to any classification created by law that abridges a suspect class or a fundamental right. The Supreme Court has found that race, alienage and gender, among others, are classifications meriting some level of heightened scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (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 have an expectation either way. If confirmed and if facing a question involving race-conscious mechanisms in public higher education, I would identify and apply all controlling precedent.

Senator Grassley
Questions for the Record

Diane J. Humetewa
Nominee: U.S. District Judge for the District of Arizona

1. **If confirmed, how will you use the Sentencing Guidelines in your decision making?**

   Response: The U.S. Sentencing Guidelines provide structure and uniformity in the nation's federal sentencing scheme. If confirmed, I intend to apply the Sentencing Guidelines to determine the applicable sentencing range to the individual to be sentenced along with the sentencing factors in 18 U.S.C. 3553(a) to determine an appropriate sentence within the guideline range.

   a. **Do you intend to utilize the Report of the Native American Advisory Group for the U.S. Sentencing Commission, to which you contributed?**

      Response: No. The 2003 Report of the Native American Advisory Group does not have the force of law and therefore it would be inappropriate to use it in sentencing. Rather, it is a report of findings and recommendations to the U.S. Sentencing Commission based on the Group's review of limited sentencing data and the operation of the sentencing guidelines at the time.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: A judge must adhere to the principle of applying the law, including all relevant precedent, to arrive at a decision. My myriad of legal experiences has enabled me to develop and hone this attribute. As a federal and tribal prosecutor I objectively applied the law to investigations to determine whether or not the facts met the elements of a criminal statute. From my service as a judge in the Hopi Court, I have experience in objectively applying the law to the civil legal issues at bar.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: The appropriate temperament of a judge includes demonstrating patience and respect for the litigants and their lawyers, regardless of their skill level, while controlling the pace of litigation. I believe I possess these attributes.

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: If confirmed, I will faithfully apply the Supreme Court and Ninth Circuit precedent 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 faced with a case of first impression, I will apply the plain language of the statute, rule or regulation. If the language is vague, I would look to the full text of the statute, rule or regulation. If that does not resolve the issue, I would examine Supreme Court and Ninth Circuit precedent interpreting analogous language. If necessary, I would also examine precedent from other Circuits that might be persuasive.

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 will never substitute my personal opinion for that of Supreme Court and Ninth Circuit precedent.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Congressionally enacted statutes are presumed constitutional and federal district courts should only declare a statute unconstitutional if, in applying precedent, the Congress has exceeded its constitutional authority.

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: It is never appropriate for a federal judge to apply foreign law, world or community views when determining the meaning of the U.S. 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: If confirmed, I will adhere to the principle of applying the law and precedent to all matters that come before me. Throughout the course of my legal career, I have operated within the parameters of the law, whether I was a prosecutor, a civil litigator or appellate court judge, and I have never used the positions I've held to espouse political ideology or motivation. My reputation for adhering to the application of law should ensure the Committee that I will continue to adhere to that principle.

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: My reputation in the Arizona legal community, including the defense bar, is one of fairness, equity and objectivity, even in adversarial proceedings. If confirmed, I will continue to maintain that reputation as a district court judge.

11. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I will learn and apply the Arizona district court case management tools that are specifically designed for its high volume of cases. I will apply the Federal Civil and Criminal Rules of Procedure. I will also rely upon the Federal Civil and Criminal Rules of Procedure to conduct meet and confer conferences early in the case and rule on dispositive motions as efficiently as possible to allow the parties to evaluate the case for settlement or trial. I will make myself available to the parties to settle discovery disputes and work with them to narrow the issues.

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: District court judges play an integral role in controlling the pace and conduct of litigation, especially in districts like Arizona where the civil and criminal caseload is amongst the highest in the nation. In addition to using the methods described in the previous answer, I will also use the magistrate judges where necessary to move cases along.

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.

As an appellate court judge, I examined the briefs, the record of the lower court proceedings, and if necessary, narrowed the issues on appeal. I then researched and applied the applicable law and precedent, or in the absence of controlling law or precedent, I looked to state and federal law and analogous precedent to arrive at a decision. I endeavored to be clear in my oral and written opinions.

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 reviewed each question, drafted my answers to each question and provided them to the U.S. Department of Justice for review. I authorized the Department of Justice to provide my responses to the Committee on February 10, 2014.

16. Do these answers reflect your true and personal views?

Response: The answers to each of these questions reflect my true and personal views.

Senator Ted Cruz
Questions for the Record

Diane J. Humetewa
Nominee: U.S. District Judge for the District of Arizona

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, the judicial philosophy that I hope to embody is one of applying the law and precedent to each matter and by demonstrating respect and patience with the parties and all who appear in my court room. I have not studied the philosophies of individual Justices from the Warren, Burger or Rehnquist Courts so I am unable to comment on whether they have an analogous 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: Recently the Supreme Court analyzed the original public meaning of the Constitution in several cases, including in *District of Columbia v. Heller,* 554 U.S. 570 (2008), to determine whether or not a statute was unconstitutional. I will adhere to that precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: As a federal district court judge, it would be inappropriate for me to overrule Supreme Court or Ninth Circuit precedent and I would not do so under any circumstances.

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: I will apply the Supreme Court precedent, including the *Garcia,* case in analyzing questions of federal and state powers. I do not believe it would be appropriate for me to agree or disagree with any binding Supreme Court precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: If confirmed, I will apply the Supreme Court precedent, including *United States v. Lopez*, 514 U.S. 549 (1995), *United States v. Morrison*, 529 U.S. 598 (2000) and *Gonzales v. Raich* 545 U.S. 1 (2005), which analyze the Congress' Commerce Clause authority.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court's decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), provides precedent for determining the President's authority to issue executive orders or take executive action. The authority must derive from the Constitution or be authorized, expressly or impliedly, by Congress.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is fundamental for purposes of the substantive due process doctrine if that right is "deeply rooted in the Nation's history and traditions," and "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." *See Washington v. Glucksberg*, 521 U.S. 702, 721 (1997), citing *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *Palko v. Connecticut*, 302 U.S. 319, 325, 326 (1937).

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Heightened scrutiny under the Equal Protection Clause should be applied when a classification burdens a fundamental right or when it involves categories such as race, gender, national origin or alienage. See *City of Cleburne v. Cleburne Living Center Inc.*, 473 U.S. 432 (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 have any personal expectations regarding this issue. If confirmed, I will apply *Grutter, Fisher v. University of Texas at Austin,* 133 S.Ct. 2411 (2013), and other applicable Supreme Court precedent to issues involving racial preference in public higher education.

Senator Grassley
Questions for the Record

Rosemary Marquez,
Nominee: U.S. District Judge for the District of Arizona

1. **In your hearing, you said that it was important to you that the parties walk away "feeling that they were respected in the courtroom and that their views were respected and that they were heard." What role should empathy play in a judge's decision making process?**

   Response: It would be my goal in every case that the litigants would walk away from the courtroom with the confidence that I listened carefully and gave fair consideration to their arguments. However, a judge should never allow empathy (if defined as sympathy) to engender favor for one party over another. Empathy should not play a role in a judge's decision making process.

2. **You have worked in criminal defense. How will you transition from being an advocate for defendants to an impartial judge in criminal matters?**

   Response: Although the majority of my criminal work has been in the area of defense, I have also worked as a prosecutor. I do understand that the role of a judge is different from the role of an advocate, whether in the defense or prosecution of a case. In addition to my advocacy role, I have also served as a Merits System Commission Hearing Officer. In that capacity, I was a neutral arbiter and made fair and impartial decisions based only on the application of the law to the facts of the case. I found that although the role of a judge is different from the role of an advocate, the respect for the law as written and its impartial application were the same. I believe this experience has given me valuable preparation for the work of being a judge, and if confirmed, I commit that I would approach every case from a neutral position and apply the law to the facts in a fair and impartial manner.

3. **How will you use the Sentencing Guidelines in your decision making process?**

   Response: Although the Sentencing Guidelines are now advisory, I believe uniformity in sentencing is critical to our criminal justice system. Therefore, I would use them as the starting point in my sentencing decisions and give them substantial deference.

4. **What is your understanding of when federal law requires individuals before you to be deported?**

   Response: The Department of Justice, through the Executive Office of Immigration Review, makes deportation determinations pursuant to 8 U.S.C. §1227.

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 apply the law fairly and impartially to the facts of each case while exercising judicial restraint in deciding only those issues before the court. I believe I possess this attribute.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: The appropriate temperament of a judge is marked by respect. A judge should treat all who appear in court with dignity and respect. A judge should ensure that all litigants have a full and fair opportunity to be heard. A judge should demonstrate respect for each case by being prepared. A judge should have respect for the impartial application of the law. I believe these are the most important elements of judicial temperament, and that I meet this standard.

7. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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: The doctrine of *stare decisis* is fundamental to American jurisprudence. Court precedents and the legal analysis contained in them give the public notice and provide predictability and consistency. If confirmed, I would follow the precedents of higher courts faithfully and give them full force and effect regardless of whether I agreed or disagreed 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: If faced with a case of first impression, I would utilize the standard rules of statutory construction, beginning with the examination of the statute's plain language and its application. If the plain language is ambiguous, I would seek guidance from Supreme Court and Ninth Circuit precedent from related contexts in order to reach a decision. Where appropriate, I would consider non-binding, but persuasive decisions, from other United States Courts of Appeals or other United States District Courts.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: I would apply binding United States Supreme Court or Ninth Circuit Court of Appeals precedent regardless of whether I believe the court erred in its decision.

10. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Statutes enacted by Congress are presumed constitutional. A court should declare a statute enacted by Congress to be unconstitutional only where the statute violates an express provision of the United States Constitution or where Congress clearly has exceeded its authority to act under the United States Constitution.

11. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

Response: No. I am not aware of any instance in which I would be required to consider foreign law in interpreting 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?

Response: The rule of law depends on judges making decisions based on facts and precedent, not political ideology. I have never allowed any personal views I may hold to interfere with my advocacy on behalf of my clients. My primary strengths as an advocate have been my ability to think objectively about the law and my consistent respect for other parties and their arguments. If confirmed, I would never consider ideology in applying the law to the facts of the case before me.

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 have represented clients from different backgrounds with different views and opinions and I have zealously advocated for each of them without regard to my personal beliefs. If confirmed, the principle that the Constitution and the law apply to the facts of each case without bias or prejudice will guide me in every decision I make.

14. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, my policy would be to schedule case management conferences, work with counsel to develop efficient case management schedules and to monitor cases throughout the process to ensure the case is not unnecessarily delayed.

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, judges play an important role in controlling the pace and conduct of litigation. If confirmed, I will follow the steps I outlined in my response to question 14 and strive to resolve matters fairly, promptly and efficiently.

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: If confirmed, I will resolve legal issues by looking to relevant constitutional or statutory provisions and apply relevant Supreme Court and Ninth Circuit Court of Appeals precedent. If the case is in an area of law where I do not have familiarity, I will work diligently to read and learn all relevant law. I will also consult with other judges with experience in that area of the law. Although there will be a learning curve in some areas such as bankruptcy and patent infringement cases, I am confident I will be able to make this transition.

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 received these questions on February 4, 2014. I drafted my responses to the questions and reviewed my responses with Justice Department officials. I authorized the Justice Department to submit my responses on my behalf.

19. **Do these answers reflect your true and personal views?**

Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of Rosemary Marquez
Nominee, U.S. District Judge for the District of Arizona

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 treat all who enter the courthouse with courtesy and respect and to apply the law to the facts of each case fairly and impartially. I would respect precedent, and limit rulings to resolve only those issues properly before me. I have not studied in significant depth the Justices' judicial philosophies, so I am not able to say whose 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: The United States Supreme Court has used originalism to interpret constitutional provisions. One example of a binding decision where the Supreme Court has interpreted the Constitution using original public meaning is *District of Columbia v. Heller*, 554 U.S. 570 (2008). If confirmed as a federal district judge, I would apply all relevant precedents when deciding cases, including the United States Supreme Court's precedents that rely on original public meaning and those that rely on original intent.

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 the precedents of the United States Supreme Court or the United States Court of Appeals for the Ninth Circuit if I were confirmed as a federal 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: If I were confirmed as a federal district judge, I would apply *Garcia* and all other binding precedents of the United States Supreme Court regardless of my personal views, if any.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: The United States Supreme Court has, "identified three broad categories of activity that Congress may regulate under its commerce power." *United States v. Lopez*, 514 U.S. 549,

558 (1995). According to *Lopez*, the federal government first "may regulate the use of the channels of interstate commerce," second "may regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce" and third may "regulate those activities having a substantial relation to interstate commerce." *Id.* at 558-59. The Supreme Court highlighted the non-economic nature of the activity being regulated in both, *Lopez* and *United States v. Morrison*, 529 U.S. 598 (2000), when it struck down the statute at issue in those cases. If confirmed, I would follow the binding precedent of the United States Supreme Court.

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 and take executive actions is limited by the Constitution and federal statutes. "The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). Therefore, the judicially enforceable limits on the President's ability to issue executive orders or executive actions apply to those instances when the order or action is not authorized by Congress or the Constitution.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The United States Supreme Court has held that a right is "fundamental" for purposes of the substantive due process doctrine where "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 and quotations omitted). If confirmed as a federal district judge, I would follow all binding precedents of the United States Supreme Court and the Ninth Circuit Court of Appeals, including precedents regarding whether 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?

Response: According to Supreme Court precedent, a classification should be subjected to heightened scrutiny under the Equal Protection Clause when it differentiates based on race, alienage, national origin, gender or illegitimacy. The Supreme Court has also explained that heightened scrutiny should be applied when a classification burdens a right the Court has identified as fundamental.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I would abide by *Grutter* and *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411 (2013), and all other Supreme Court precedents regardless of any personal views or expectations.

Senator Chuck Grassley
Questions for the Record

Douglas L. Rayes
Nominee, U.S. District Judge for the District of Arizona

1. **Your opinion in Volpe v. Yavapai was overruled. The appellate court held that there was, in fact, "substantial evidence in the record" of an offense whereas you found there was not sufficient evidence. You will not be bound by this court if confirmed as a federal judge. Do you agree with the appellate court's decision?**

   Response: Yes, the opinion of the appellate court represents the final word in the case.

2. **Your opinion in State v. Levens was overruled. The appellate court reversed held that the defendant's response to questions by police were not compelled whereas you ruled that the defendant's statements violated Miranda and should be excluded. You will not be bound by this court if confirmed as a federal judge. Do you agree with the appellate court's decision?**

   Response: Yes, the opinion of the appellate court represents the final word in the case.

3. **While serving as a judge, you wrote an article detailing the steps you and others took to reduce the capital case backlog in the Superior Court. Part of that process entailed educating victims' families on death penalty cases, including the time it took to litigate the case and execute the sentence, the possible appeals, and "an explanation of the high rate of reversals of the sentence as compared to almost no reversals from guilty pleas with a life sentence." In that article, you state: "Victims' families seeking justice and closure would often accept the information about the capital cases process more readily from a judge than from the attorneys litigating the case." "Although that was not the goal of the court, sometimes after such meetings, the victims advised the state that they did not object to a plea agreement where the death penalty was waived."**

   a. **Why do you think the families of victims accepted this information more readily from the court than the attorneys litigating the case?**

      Response: I believe the families of the victims accepted this information more readily from the court because the judges conducting these conferences were some of the most experienced in capital cases, and unlike the attorneys, were not acting as advocates. The court's role in the case resolution conference included the role of educating and informing families about the process.

b. Given the court's role as the final arbiter in the case, do you have any concerns that the court's actions in advising victims' families about the negative aspects of seeking the death penalty had an undue influence on their decision or pressured them to accept a plea agreement?

Response: The court is very sensitive to the needs of victims and to the burdens brought on by their situation. Arizona has extensive and detailed victims' rights laws. In conducting the case resolution conference, the court followed the requirements of the Arizona Rules of Criminal Procedure, Rule 17.4, regarding plea negotiations and Rule 39 and A.R.S. Section 13-4401, *et. seq.* regarding victims' rights. Judges with capital trial experience, who had no other connection to the case, conducted these conferences. By having experienced judges, other than the trial judge, as required by Rule 17.4 of the Arizona Rules of Criminal Procedure, explain the unusual and unique procedures, time frames and consequences of a capital case to victims, I do not feel that victims were pressured into accepting a plea agreement. The judges helped victims better understand their rights, choices and the consequences to them of a capital murder trial. Victims often expressed gratitude for the time spent by the court educating them.

4. You listed the case of State v. Al-Tarrah as one of your most significant, but did not provide a written opinion. According to press reports, the case involved a foreign college student from Kuwaiti (Al-Tarrah) who was charged with hit-and-run and DUI after her vehicle struck and killed a man riding a motorized skateboard. The student's blood alcohol was nearly twice the legal limit. At Al-Tarrah's arraignment, the Judge Talamante directed her to surrender her passport to her attorney, David Cantor. He told Cantor, "I am going to expect that you take possession of that passport and that that passport remain in your possession during the pendency of these hearings." The court order directed Cantor to "submit an affidavit to the court within 24-hours affirming that passport has been surrendered." Cantor did not take possession of the passport and Al-Tarrah fled the country.

As a result, Judge Richard Gama held Cantor in contempt of court for failure to collect the passport and failure to file the affidavit with the court. You heard the case involving the contempt charges and found Cantor to be not guilty. According to press reports, you concluded Cantor could have interpreted Judge Talamante's order to mean he should file an affidavit within 24-hours of taking possession of the passport whenever he received it. The author of the article called this is a strained interpretation of the judges' order. The author stated: "If one is to assume that 'I am going to expect you to take ... that passport' means accepting it from young Al-Tarrah whenever she happened to fishtail into Cantor's parking lot, then you also have to wonder why the judge ordered Cantor to take the passport at all."

Please explain why you found Cantor not guilty of contempt of court and provide any supporting information if possible.

Response: This was a criminal contempt trial, which required proof beyond a reasonable doubt that Cantor had intentionally and deliberately violated a court order. There was no written opinion because I ruled from the bench. The contempt trial lasted three days and included the testimony of several witnesses including legal ethics experts presented by both sides. There was little, if any, dispute about the facts. The trial court's order was issued in October 2005 and the client fled in January 2006. During that time Cantor pursued an appeal of the trial court's order to the Court of Appeals and then to the Arizona Supreme Court. The Supreme Court declined jurisdiction of the appeal in January 2006 and Cantor's efforts to obtain his client's passport were unsuccessful. After the Supreme Court declined jurisdiction, Cantor scheduled a meeting with his client, but instead her father appeared to explain that she was sick. Sometime in the following two to three weeks, she fled. Cantor then moved to withdraw as her attorney.

The issue before me was whether Cantor had intentionally and deliberately violated the trial court's order. The expert witnesses were in agreement that the order was ambiguous and that Cantor's interpretation of the order was reasonable. Furthermore, the experts agreed that in the face of an ambiguous order, Cantor had an ethical obligation not to disclose his client's failure to surrender her passport. However, the state's expert faulted Cantor for not moving to withdraw sooner after she missed the January meeting. After considering this evidence I found that the state had not proved beyond a reasonable doubt that Cantor had intentionally and deliberately violated a court order. Even though he was unsuccessful in his efforts to obtain his client's passport, the evidence was that he had attempted to do so and that in light of the ambiguous order, his ethical duty of loyalty to his client prevented his reporting her non-compliance.

5. **Do you believe judges should look to the original meaning of the words and phrases in the Constitution when applying it to current cases? If so, how would you determine the original meaning?**

Response: An Arizona District Court Judge interpreting the Constitution should follow the methods of interpretation prescribed by the Supreme Court and the United States Court of Appeals for the Ninth Circuit. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the public understanding of the constitution at the time it was adopted was used as the method of interpretation by the Supreme Court in its analysis of the Second Amendment. If I am fortunate enough to be confirmed I would faithfully follow *Heller* and other binding precedent.

6. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is the ability to decide cases impartially, following statutory law and legal precedent while treating those who

appear in his courtroom with dignity and respect. As a state court judge for fourteen years, I have diligently adhered to those principles and applied 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: I believe that it is not enough for the judge to be fair and impartial. I feel it is just as important for the lawyers and litigants to feel that they were treated fairly and impartially. In my view a judge's temperament should be respectful and patient so that those appearing in his court understand that an open-minded judge is carefully considering their evidence and arguments before a decision is rendered. I believe I possess that temperament.

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 committed to following the precedents of higher courts faithfully and will give them full force and effect even if I 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?**

Response: As an Arizona State trial judge for fourteen years, the method I have employed when deciding cases of first impression has been to first determine the meaning of the applicable section of the statute. If the text of the statute is not ambiguous, then the inquiry ends there. If the meaning of the section of the statute in dispute is ambiguous, then I look to higher court precedence. I then try to determine the meaning from the statute as a whole, applying the rules of statutory construction established by the Arizona Supreme Court and the Arizona Court of Appeals. If from those efforts I am not satisfied that I have a correct interpretation I look for persuasive guidance from high court rulings from other states or federal courts on similar statutes.

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 disregard my opinion and follow the precedent of the Supreme Court or the Court of Appeals.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A judge should not reach the issue of the constitutionality of a statute if the case could be resolved without such a determination. If in a judiciable case or controversy the constitutional issue cannot be avoided, a judge should follow well-established case law that the court must start with the presumption that federal statutes are constitutional and declare a statute unconstitutional "only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000).

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. Our Constitution is uniquely American and the meaning is not going to be determined by foreign law or the views of the "world community".

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: My decisions have always been grounded in precedent and the text of the law. I have never let my political beliefs affect my decisions and I give the Committee my most solemn assurance that I will never 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: I have never let my personal views affect my decisions and I give the Committee my most solemn assurance that I will never do so. If confirmed, I give my most solemn assurance that I will be fair to all who appear before me.

15. If confirmed, how do you intend to manage your caseload?

Response: As a trial judge in Maricopa County, the fourth largest court in the country, I have spent fourteen years managing large caseloads. I have taught new judges at the Arizona Supreme Court's New Judge Orientation Program caseload management. I believe it is the court's responsibility to actively control the calendar and manage the cases. The court cannot let the attorneys control the court's calendar. If confirmed I would establish a reasonable case management schedule for each case, schedule status conferences to monitor compliance with deadlines, enforce deadlines, promptly rule on motions, and be available for telephonic resolution of discovery

disputes. I would set firm trial dates that are not continued without a showing of good cause and actively encourage alternative dispute resolution.

16. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I believe judges not only have a role, but also have a duty to control their caseload and the pace of resolution of cases. I would employ the methods set forth in my response to question 15 above.

17. **As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.**

Response: When ruling on dispositive motions, such as a motion for summary judgment, I start with the parties' briefs and their arguments. I review the key cases cited by the parties and perform my own research. I then apply the applicable statutory and case law to the undisputed facts to reach a decision on whether there is a material issue of fact trial. When I am in a trial to the court, I gain an understanding of the factual and legal issues to be litigated before trial by reviewing the pretrial statements and by researching applicable statutes or precedent. I hear the evidence at trial, listen to arguments of counsel and then apply the law to the facts to reach my ruling. The sources of information for guidance on legal issues are the applicable statutes and decisions of the Arizona Supreme Court and Court of Appeals.

18. **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.

19. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on February 4, 2014. After reviewing the questions I prepared my responses that day and the next day. I spoke with a Justice Department representative and authorized the submission of my answers to the Committee.

20. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Responses of Douglas L. Rayes
Nominee, United States District Court for the District of Arizona

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy has been to consider each case before me to be an important case, to treat those who come into my court with courtesy and respect, and to decide the narrow issue before me fairly, and consistent with the controlling legal precedent. My philosophy is that a judge needs to be a judge, interpreting the law and not making the law. Although I am familiar with decisions rendered by the Supreme Court while each of those Justices acted as Chief Justice, and have applied precedent created by those decisions, I have not compared my philosophy with any Justice's. Therefore, I am unable to state whether my judicial philosophy is analogous to any of the Justices above.

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: An Arizona District Court Judge interpreting the Constitution should follow the methods of interpretation prescribed by the Supreme Court and the Ninth Circuit. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the public understanding of the constitution at the time it was adopted, was used as the method of interpretation by the Supreme Court in its analysis of the Second Amendment. If I am fortunate enough to be confirmed, I would faithfully follow *Heller* and other binding precedent.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, as a district judge, there would never be a circumstance that 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: Because *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), is Supreme Court precedent, all district judges are bound by it and must follow it. If confirmed, I would follow *Garcia* and all other relevant precedents.

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 defined three broad categories of activity where Congress may use the Commerce Clause to regulate: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities that have a substantial effect on interstate commerce. See *United States v. Morrison*, 529 U.S. 598, 608-609 (2000), *United States v. Lopez*, 514 U.S. 549, 558-559 (1995). Those cases do not hold that the Commerce Clause authority could never be used to regulate non-economic activity. More recently in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia authored a concurring opinion where he indicated that Congress had the authority under the Commerce Clause to regulate non-economic activity "if that regulation is a necessary part of a more general regulation of interstate commerce." If confirmed, I would follow applicable Supreme Court and Ninth Circuit precedent.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court spoke on the President's authority to act in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) and in *Medellin v. Texas*, 552 U.S. 491, 524 (2008). The Supreme Court has determined that the President's authority to act must come from either an act of Congress or from the Constitution. In judicial cases and controversies those are judicially enforceable limits on the President's authority.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has decided that a right is "fundamental" for purposes of the Due Process Clause if it is "objectively, 'deeply rooted in this nation's history and tradition,' and implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citations omitted). If confirmed, I would follow Supreme Court and Ninth Circuit precedent when confronted with an issue of whether 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?

Response: The Supreme Court has decided that a classification should be subjected to heightened scrutiny under the Equal Protection Clause "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 (1976). The Supreme Court has stated that strict scrutiny applies when characteristics of a class, such as race, seldom provide a relevant basis for disparate treatment, *Fisher v. University of Texas at Austin*, 133 S.Ct. 2411, 2418 (2013), and that intermediate scrutiny applies to gender-based classifications. *United States v. Virginia*, 518 U.S. 515 (1996). If confirmed, I would follow Supreme Court and Ninth Circuit precedent when deciding any issue involving heighted 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: If confirmed, I will follow whatever Supreme Court and Ninth Circuit precedent exists at the time concerning the use of racial preferences in public higher education including *Grutter* and the Supreme Court's more recent holding in *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013).

Senator Grassley
Questions for the Record

James Soto,
Nominee: U.S. District Judge for the District of Arizona

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: A good judge must possess many important attributes. I believe that the most important attribute of a good judge is the ability to be fair and impartial and to decide a case based upon the applicable facts and law, setting aside any personal or outside considerations. I believe that my record as a trial court judge for over twelve years demonstrates that I possess that 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 good judge must be respectful, patient, and even-tempered. He must demonstrate to the parties that he has given their respective positions thoughtful consideration before he makes his decision. I believe that I have met that standard and that my record as a trial judge demonstrates that.

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 would be fully committed to following the legal precedents of the Supreme Court and the Ninth Circuit regardless of my personal opinions or whether or not I agree or disagree with such legal precedents.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

   Response: I would first consider the plain language of the statute or other provision in question. If the language was unambiguous, then I would apply the language as written. If the language was ambiguous at least as applied to the facts of the particular case before me, then I would apply the principles of statutory construction and look to precedents from the Supreme Court, the Ninth Circuit, and other circuit courts in analogous cases or issues in addressing the issues before me.

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 always follow the precedents of the Supreme Court and Court of Appeals, notwithstanding any personal opinion I may have.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A court should not address the constitutionality of a statute if the case can be decided on other grounds. A court should begin its legal analysis with the presumption that the statute is constitutional. A court should address the constitutionality of a federal statute only when it is absolutely necessary to decide the case before the court and applicable legal precedent clearly shows that addressing the constitutionality of a statute is required. A court should strike down a statute only when the court determines that a statute violates the Constitution or that Congress has exceeded its authority.

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.

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: A judge must put aside his personal beliefs and opinions and decide cases based upon legal precedent as it applies to the facts of any particular case. I believe that my record as a trial judge for over twelve years demonstrates that I strictly follow the applicable precedent and do not allow personal ideology or opinions to affect my rulings.

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: The legal system in our country depends in great part upon a fair and impartial judiciary that can set aside their personal views in deciding cases and apply legal precedent. If confirmed, I pledge to continue to set aside any personal views and to treat all parties who may appear before me with fairness, respect, and patience, as I have done as a trial judge for over twelve years. I consider the oath of office to be a solemn oath, which I pledge to follow without reservation.

10. **If confirmed, how do you intend to manage your caseload?**

Response: As a state court judge for over twelve years, I currently manage hundreds of active cases involving a wide variety of legal issues, including significant criminal and civil caseloads. I believe that early and active management of cases by the trial judge is essential to identifying and narrowing the issues in a case, avoiding unnecessary litigation and delays, and resolving cases in a fair and expeditious manner.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Absolutely. The parties should always have the opportunity to discuss with the trial court the appropriate pace and manner in which litigation should proceed. However, it is ultimately the court's obligation to ensure that a case proceeds in a fair and speedy manner, giving consideration to the cost to the litigants occasioned by unnecessary delays. Trial judges have a number of tools available to them to control the pace of litigation, including issuing appropriate scheduling orders and setting regular status conferences.

12. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: I must first determine the facts of a particular case, considering the testimony and evidence presented at trial and applying any relevant rules of evidence and rules of procedure. I then apply the relevant law to the facts of the case considering applicable constitutional and statutory provisions in arriving at a decision.

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 and read these questions on February 4, 2014. On February 5, 2014 I prepared my answers to the questions and forwarded them to an attorney in the Office of Legal Policy of the Department of Justice for review. When they were final, I authorized transmittal of the answers to the Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

James A. Soto
Nominee: U.S. District Court Judge for the District of Arizona

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is that a judge must always handle each case with an impartial and unbiased mind. A judge should treat all parties with respect and patience and be willing to give the legal arguments of all parties to a case serious legal consideration. A judge must apply the law as written and follow binding precedent. This is a cornerstone of our system of justice. I do not have sufficient information to state which Supreme Court justice on the Warren, Burger, or Rehnquist Courts has a judicial philosophy 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: My role as a judge in a case involving constitutional interpretation is to study the facts of the case before me and apply the applicable precedent to the case, including precedent which considers the original public meaning of the text, as the Supreme Court did in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or the original intent of the drafters.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, I would be bound by the precedent of the Supreme Court and the Ninth Circuit. 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: If confirmed to serve as a United States District Judge, I would be bound by the Supreme Court's decision in *Garcia* and subsequent decisions which identify constitutional limitations on congressional power. I would apply the holding in that case without regard to whether or not I personally agreed with the decision.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring), the Supreme Court held that Congress may regulate non-economic activity that has a substantial relation to interstate commerce, or when a "regulation is a necessary part of a more general regulation on interstate commerce." In *United States v. Lopez*, 514 U.S. 549, 558-559 (1995) and *United States v. Morrison*, 529 U.S. 598, 608-609 (2000), the Supreme Court struck down federal statutes where Congress lacked authority under the Commerce Clause. If confirmed, I would follow the precedent of the Supreme Court and Ninth Circuit in deciding issues 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: The authority of the President to act must stem from either an act of Congress or from the Constitution itself. *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted). The applicable analysis for a court to determine whether executive action exceeds presidential authority is set out in Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed, I would follow Supreme Court and Ninth Circuit precedent in deciding any challenges to executive action.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Gluckberg*, 521 U.S. 702, 720-721 (1997) (internal citations omitted), the Supreme Court held 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." If confirmed, I would follow Supreme Court and Ninth Circuit precedent in deciding issues concerning fundamental rights.

When should a classification be subjected 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. They include race, alienage, and national origin, which are subject to strict scrutiny; and gender and illegitimacy, which are subject to intermediate scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-441 (1985). If confirmed, I would faithfully follow Supreme Court and Ninth Circuit precedent in determining what classifications are subject to heightened scrutiny and how to apply such scrutiny to the facts of a particular case.

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 information or expertise to have any personal expectation on this issue, and in any event, my personal expectation would play no role in any judicial

decisions. If confirmed, I would follow the holding of *Grutter, Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any other subsequent precedent on the use of race in admissions to public institutions of higher education.

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AMERICAN BAR ASSOCIATION

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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 Magistrate Judge Steven P. Logan to the United States District Court for the District of Arizona***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Magistrate Judge Steven P. Logan who has been nominated for a position on the United States District Court for the District of Arizona. As a result of our investigation, the Committee is of the opinion that Magistrate Judge Logan is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Magistrate Judge Logan.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Steven P. Logan (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.

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AMERICAN BAR ASSOCIATION
Standing Committee on
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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 John Joseph Tuchi to the United States District Court for the District of Arizona***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of John Joseph Tuchi who has been nominated for a position on the United States District Court for the District of Arizona. As a result of our investigation, a substantial majority of the Committee is of the opinion that Mr. Tuchi is Well Qualified, and a minority of the Committee is of the opinion that Mr. Tuchi is Qualified for this position.

A copy of this letter has been provided to Mr. Tuchi.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: John Joseph Tuchi, Esq. (via email)
The Honorable Kathy Ruemmler (via email)
Michael Zubrensky, Esq. (via email)
ABA Standing Committee of 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.

Native American Bar Association of Arizona

Promoting the development of Indian attorneys while advancing and improving the practice of Indian law in Arizona.

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January 23, 2014

The Honorable Patrick J. Leahy
Chairman
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United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of John Tuchi to the U.S. District Court in Arizona

Dear Chairman Leahy and Ranking Member Grassley:

The Native American Bar Association of Arizona (NABA-AZ) supports the nomination of John Tuchi to the United States District Court for the District of Arizona. Mr. Tuchi is an honest, hard working advocate whose virtues are fitting of that of a federal judge.

NABA-AZ is a nonpartisan organization committed to promoting the development of Native American attorneys and to the development of the practice of Indian law. Before endorsing any individual for a judicial appointment, NABA-AZ carefully considers the individual's background and qualifications, judicial temperament, leadership, and ability to fairly evaluate case matters. Of particular importance to NABA-AZ is an individual's ability to understand and evaluate Indian law jurisdictional issues because over a quarter of the land within Arizona is Indian Country.

Tribes and Native American people desperately need federal district court judges who are proficient in federal Indian law. Legal issues of critical importance to tribes, including the health, safety, and welfare of the individual members, are most often addressed in federal district court. When judges are not competently educated in the principles of federal Indian law, the decisions can be disastrous. For these reasons, NABA-AZ recommends that the nominees for the District Court, particularly in the District of Arizona, be competent in federal Indian law.

Consistent with these critical needs, NABA-AZ supports John Tuchi's nomination for the District of Arizona. As a lawyer and as the Chief Assistant United States Attorney for the District of Arizona, John has demonstrated principled and thoughtful decisions. It is clear that John has the qualifications to serve as a federal district judge, and the ABA has rated him substantial majority well qualified, minority qualified. Beyond his experience and commitment to public service, NABA-AZ is impressed with John's command of federal Indian law, including a demonstrated ability to apply and analyze legal issues relating to federal Indian law in the criminal context. Further, NABA-AZ is confident that John is competent in federal Indian law.

For the reasons explained above, NABA-AZ strongly urges you to confirm John Tuchi to the U.S. District Court for the District of Arizona. Please do not hesitate to contact me if you need any additional information.

Sincerely,



Sonia Martinez, President

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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 Diane Joyce Humetewa to the United States District Court for the District of Arizona***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Diane Joyce Humetewa who has been nominated for a position on the United States District Court for the District of Arizona. As a result of our investigation, a substantial majority of the Committee is of the opinion that Ms. Humetewa is Qualified for this position, and a minority of the Committee is of the opinion that Ms. Humetewa is Well Qualified for this position.

A copy of this letter has been provided to Ms. Humetewa.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Diane Joyce Humetewa (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.

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January 23, 2014

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

Re: Nomination of Diane Humetewa for United States District Judge for the District of Arizona

Dear Senator Leahy:

I write in support of the President's nomination of Diane Humetewa for United States District Judge for the District of Arizona. By way of background, I am one of the former US Attorneys fired by then Attorney General Alberto Gonzales, and an admirer of yours for your efforts in the investigation that followed those firings.

I have known Diane Humetewa from our time together prosecuting cases when we were Assistant US Attorneys in Arizona. As Assistant US Attorneys in the early 90's I watched Diane try all manner of cases, from child sex abuse, to homicide. As an old prosecutor yourself, I know you would have appreciated and respected her skill in the courtroom.

More than that, I believe you would have found ample reason, as I did, to respect her for her keen sense of justice and profound understanding of the ethical responsibilities of a prosecutor. As you know, the qualities that make a good prosecutor are those that make a good judge. At all times she was, as the ethical rules require, a "Minister of Justice." She sought the truth in all of her cases, and in the words of Justice Jackson, tempered "zeal with human kindness." She carried these qualities through to her time as US Attorney, and insisted that the Assistant US Attorneys who worked under her leadership follow them.

A review of her resume proves that she is in every respect most qualified for this position. I would like to emphasize one other facet of Diane's background that in my mind makes her nomination not only appropriate, but right.

The federal court in Arizona has jurisdiction over all felony offenses that take place on Arizona's 21 Indian reservations. Those reservations cover one quarter of Arizona and include the nation's two largest tribes. That means that Native Americans must appear in Arizona's

federal court, seek justice before juries that rarely have members of their own tribe, and be prosecuted by the federal government.

Yet, since 1848 – the date our country acquired Arizona – to the present, no Arizona tribe has had one of its own on the federal bench. Diane is an enrolled member of the Hopi Tribe. The Hopi have lived here in the Southwest, and what is now Arizona, for over a thousand years. They are a people rich in history and faith.

Appointing Diane Humetewa would reflect two great achievements for our nation: a stellar judge would join an already outstanding bench; and a bench that would be enriched by a member who reflects the community it serves.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Sincerely yours,



Paul K. Charlton

PKC/pr

Native American Bar Association of Arizona

Promoting the development of Indian attorneys while advancing and improving the practice of Indian law in Arizona.

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January 23, 2014

The Honorable Patrick J. Leahy
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The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of Diane J. Humetewa to the U.S. District Court in Arizona

Dear Chairman Leahy and Ranking Member Grassley:

The Native American Bar Association of Arizona (NABA-AZ) supports the nomination of Diane J. Humetewa to the United States District Court for the District of Arizona. We write to encourage you to swiftly consider and confirm Diane to the U.S. District Court for the District of Arizona.

NABA-AZ is a nonpartisan organization committed to promoting the development of Native American attorney and to the development of the practice of Indian law. Before endorsing any individual for a judicial appointment, NABA-AZ carefully considers the individual's background and qualifications, judicial temperament, leadership, and ability to fairly evaluate case matters. Of particular importance to NABA-AZ is an individual's ability to understand and evaluate Indian law jurisdictional issues because over a quarter of the land within Arizona is Indian Country.

Diane is uniquely qualified to serve as an Arizona United States District Court Judge. She is an enrolled member of the Hopi Tribe and an Arizonan, who has spent the majority of her legal career working in the Department of Justice where she became the first Native American to serve as the United States Attorney for the State of Arizona. During her tenure as the United States Attorney for the State of Arizona, Diane worked closely with Arizona's Indian tribal governments in responding to law enforcement issues on Indian reservations. While in the United States Attorney's Office, Diane had extensive trial experience prosecuting a wide range of criminal cases from the simple to the complex, including homicides, child sex crimes and domestic violence offenses, archeological resource theft, gaming and political corruption schemes. Diane also has significant appellate experience arguing a number of cases before the Ninth Circuit Court of Appeals. In addition to her other responsibilities in the United States Attorney's Office, Diane has been called upon to provide congressional testimony on Indian Country Crimes and to testify before the United States Sentencing Commission. The ABA has also rated Diane substantial majority Qualified, minority Well Qualified.

Diane is a well-respected member of the State Bar of Arizona. She has received a number of honors and awards, including the Department of Justice's Director's Award in 1999 and the President's Award from the Women in Federal Law Enforcement Foundation in 2009. Diane has also served on numerous committees and organizations to improve the quality of legal services throughout Maricopa County and the state. She is an active member of the Indian Law Section of the Arizona Bar, where she has served on the Executive Council. She is a member of the Board of Directors of the Morris K. Udall Scholarship & Excellence in National Environmental Policy Foundation.

Diane has been a member of the Native American Ad Hoc Advisory Council to the U.S. Sentencing Commission. In addition, Diane was appointed as an Appellate Court Judge for the Hopi Nation's Tribal Court. Finally, she has been a longstanding member of the Sandra Day O'Connor College of Law's Indian Legal Program's Advisory Council. Diane is a nationally respected Indian law practitioner and highly-regarded for her talent, intellect, insight and judgment. In addition to her many other qualities, Diane's fair and balanced perspective make her an excellent candidate for appointment to the U.S. District Court for the District of Arizona. Appointing Diane to the U.S. District Court for the District of Arizona would mark another historic first; she would be the first Native American to serve on the federal bench in Arizona, the first Native American woman to serve on the federal bench, and be the only Native American currently serving on the federal bench.

For all these reasons, we strongly urge you to confirm Diane Humetewa to the U.S. District Court for the District of Arizona. Please do not hesitate to contact me if you need any additional information about Diane's qualifications to serve as a United States District Court judge.

Sincerely,

Sonia Martinez

Sonia Martinez, President

Native American Bar Association of Arizona

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January 26, 2014

VIA E-MAIL

The Honorable Patrick J. Leahy
Chairman
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United States Senate
224 Dirksen Senate Office Building
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The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of Diane J. Humetewa to the U.S. District Court in Arizona

Dear Chairman Leahy and Ranking Member Grassley:

The National Native American Bar Association has endorsed the historic nomination of Diane Humetewa to the U.S. District Court for the District of Arizona and strongly urges you to support her nomination. Ms. Humetewa is an attorney who has practiced law in Arizona for over fourteen years where her skills as a trial attorney are renowned. An enrolled member of the Hopi Tribe, she is both a native Arizonan and Native American. Ms. Humetewa is eminently qualified to be a federal district court judge. If confirmed, Ms. Humetewa will be the first Native American woman in the history of our nation to serve on the federal judiciary and will be the only current American Indian on the federal bench.

The National Native American Bar Association represents over 2,500 American Indian, Alaska Native and Hawaiian Native attorneys throughout the United States. There are currently no active federal judges who are American Indian. Of particular relevance, the State of Arizona has 22 Indian tribes within its borders, and yet there has never been an American Indian federal judge in the history of Arizona.

Ms. Humetewa has served in many positions in her career that have prepared her for elevation to the federal judiciary. From 2007 to 2009, after being nominated by President George W. Bush and confirmed by the U.S. Senate, Ms. Humetewa served as the U.S. Attorney for the District of Arizona. In this role, she was – and continues to be – the first and only American Indian woman U.S. Attorney in the

history of our country. Previously, she worked in the U.S. Attorney's Office in the District of Arizona from 1996 to 2009, serving as Senior Litigation Counsel from 2001 to 2007. During her tenure in the U.S. Attorney's Office, Ms. Humetewa also served as Counsel to the Deputy Attorney General from 1996 to 1998. From 1993 to 1996, she was Deputy Counsel for the U.S. Senate Committee on Indian Affairs, working for Arizona's senior Senator John McCain.

Ms. Humetewa, who attended the Arizona State University School of Law, has also worked in a variety of other positions, including her current position as Special Advisor to the President and Special Counsel in the Office of the General Counsel at Arizona State University. Additionally, she is a Professor of Practice at the Sandra Day O'Connor College of Law. Ms. Humetewa has also been a private practitioner and a judge on the Hopi Appellate Court. She is considered a national expert on American Indian legal issues. She also has served as an ad hoc member of the Native American Subcommittee of the U.S. Sentencing Commission. Previously, she was appointed by the U.S. District Court to serve three terms as the Chair of the U.S. Magistrate Selection Committee.

Ms. Humetewa is well respected by all who have worked with her whether as co-counsel, opposing counsel, or litigants before her as Hopi Appellate Judge. She maintains the demeanor expected of trial judges in reaching fair and equitable decisions. Her writing skills are excellent, and she presents logical and cogent explanations for the legal conclusions that she reaches. Her ethics are beyond reproach and her diligence to duty is outstanding.

Ms. Humetewa enjoys bipartisan support for her nomination, and the National Native American Bar Association urges the swift confirmation of Diane J. Humetewa because her legal skills meet and exceed those required to be a federal district court judge.

Sincerely,

Mary Smith

Mary Smith
President
National Native American Bar Association

Gregory Mendoza
Governor

Stephen Roe Lewis
Lieutenant Governor

GILA RIVER INDIAN COMMUNITY

Executive Office

"A New Generation of Leadership Serving the People"

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September 26, 2013

Hon. Patrick Leahy, Chairman
Hon. Chuck Grassley, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Support for the Nomination of Diane J. Humetewa for United States District Judge for the District of Arizona

Dear Chairman Leahy and Ranking Member Grassley:

The Gila River Indian Community supports President Obama's nomination of Diane J. Humetewa to serve as the United States District Judge for the District of Arizona and we urge you to confirm her nomination as swiftly as possible. We also applaud Senator McCain's leadership in recommending Ms. Humetewa, who upon confirmation would be the first American Indian woman in history to serve as a federal judge.

Ms. Humetewa's has a long and distinguished career of service. Most notably, Ms. Humetewa served as the United States Attorney for the District of Arizona from 2007 -2009, which is one of the largest U.S. Attorney Offices with one of the highest caseloads in the nation. In addition, when she served as an Assistant U.S. Attorney prosecuting an assortment of federal crimes, Ms. Humetewa also served as the office's Senior Litigation Counsel/Tribal Liason, supervised the U.S. Attorney's Victim Witness Program, and helped establish one of the first federal victim service programs in the nation. In addition, Ms. Humetewa served as counsel to the U.S. Senate Committee on Indian Affairs and counsel to the Deputy Attorney General for the U.S. Justice Department.

Ms. Humetewa, who has been nominated for important federal positions by both President Obama and President Bush, is highly qualified and will make an excellent judge. Further, her appointment is important given the many judicial vacancies in Arizona, a jurisdiction

with a large case load of federal prosecution of crimes that occur on American Indian reservations. We urge the Committee to confirm her nomination as soon as possible.

Thank you for your consideration.

Sincerely,

Gregory Mendoza, Governor

cc: Committee Members:
Hon. Richard Blumenthal
Hon. Christopher Coons
Hon. John Cornyn
Hon. Ted Cruz
Hon. Dick Durbin
Hon. Dianne Feinstein
Hon. Jeff Flake
Hon. Al Franken
Hon. Lindsey Graham
Hon. Orrin G. Hatch
Hon. Mazie Hirono
Hon. Amy Klobuchar
Hon. Michael S. Lee
Hon. Chuck Schumer
Hon. Jeff Sessions
Hon. Sheldon Whitehouse
Hon. John McCain

Tohono O'odham Nation Office of the
Chairman & Vice Chairwoman

COMPASSION FAITH TRADITION RESPECT

Ned Norris, Jr.
Chairman

Wavalene M. Romero
Vice Chairwoman

October 29, 2013

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

Dear Honorable Patrick Leahy:

I am writing to support the nomination of Diane J. Humetewa, a Native American and a native Arizonan, to fill the current Federal District Court Judicial vacancy in Phoenix, Arizona. Ms. Humetewa is an experienced practitioner of law, and being born and raised in Arizona, she understands its landscape and the importance of the federal court to its citizens.

As Chairman of the Tohono O'odham Nation, and previously, as Vice-Chairman, I worked closely with Ms. Humetewa while she served as Senior Litigation Counsel/Tribal Liaison and then United States Attorney. Due to our proximity to the border, the Tohono O'odham Nation often experiences the highest human smuggling, drug and firearms trafficking and violent crimes in Arizona. Ms. Humetewa worked closely with my Administration to ensure that federal resources were available to assist the Nation in combating these crimes and to ensure justice was done when perpetrators were caught. Importantly, she respected the sovereignty of the Nation and our interests in being full participants in these efforts. Ms. Humetewa took her role as a "public servant" to heart by operating transparently and fairly, with the Tohono O'odham Nation.

I first became acquainted with Ms. Humetewa when I served as the Chief Judge of the Tohono O'odham Nation. At that time, Ms. Humetewa was an Assistant U.S. Attorney. She was an active participant in training and outreach on behalf of the federal government to the Tohono O'odham Nation. She understood Indian Tribal governments and Tribal courts, and fostered their relationships with representative agencies of the federal government in Arizona. It is this type of unique understanding and experience that Ms. Humetewa will bring to the U.S. District Court.

P.O. Box 837, Sells, AZ 85634 (520)383-2028 Fax (520)383-3379

Beyond her "real world" experiences, Ms. Humetewa is an experienced lawyer who has prosecuted complex crimes including child sexual abuse cases, Native American Graves Protection and Repatriation Act cases, drug and homicide offenses. She has practiced in the civil and federal bankruptcy and the U.S. Magistrate courts, and importantly, as a Tribal Appellate Court Judge for the Hopi Tribe. Ms. Humetewa is well known and respected by the Arizona Tribal and Federal Court Judges. Indeed, she was appointed to three terms as chair of the U.S. Magistrate Judge Selection Committee by the Chief Judge of the Arizona District Court. Her nomination also has the support of both of Arizona's U.S. Senators, John McCain and Jeff Flake.

Ms. Humetewa's credentials and reputation alone warrant her confirmation. However, that she is a Native American from Arizona merits additional considerations. Currently, there are no sitting Native American judges on any federal bench in the Nation. Historically and currently, there has never been a Native American woman appointed to any federal court in Arizona or the Ninth Circuit. Indeed, all other ethnic groups are represented on the federal and state benches in Arizona.

Confirmation of Ms. Humetewa would bring hope to the twenty-two Arizona Indian Tribes and the Arizona Native American population that from now into the future, we have a chance for fair consideration in these important positions. For once in Arizona's history, we would see a Federal District Court that is truly representative of Arizona and the federal populations it serves.

Sincerely,

Dr. Ned Norris, Jr., Chairman
Tohono O'odham Nation

Tohono O'odham Nation Office of the
Chairman & Vice Chairwoman

COMPASSION FAITH TRADITION RESPECT

Ned Norris, Jr.
Chairman

Wavalene M. Romero
Vice Chairwoman

October 29, 2013

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Honorable Grassley:

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As Chairman of the Tohono O'odham Nation, and previously, as Vice-Chairman, I worked closely with Ms. Humetewa while she served as Senior Litigation Counsel/Tribal Liaison and then United States Attorney. Due to our proximity to the border, the Tohono O'odham Nation often experiences the highest human smuggling, drug and firearms trafficking and violent crimes in Arizona. Ms. Humetewa worked closely with my Administration to ensure that federal resources were available to assist the Nation in combating these crimes and to ensure justice was done when perpetrators were caught. Importantly, she respected the sovereignty of the Nation and our interests in being full participants in these efforts. Ms. Humetewa took her role as a "public servant" to heart by operating transparently and fairly, with the Tohono O'odham Nation.

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Sincerely,

Dr. Ned Norris, Jr., Chairman
Tohono O'odham Nation



INTER TRIBAL COUNCIL of ARIZONA

RECEIVED DEC 12 2013

December 11, 2013

MEMBER TRIBES
AK-CHIN INDIAN COMMUNITY
COCOPAH TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI NATION
FORT MOJAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB-PAIUTE TRIBE
PASCUA YAQUI TRIBE
PUEBLO OF ZUNI
QUECHAN TRIBE
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TOHONO O'ODHAM NATION
TONTO APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI APACHE NATION
YAVAPAI PRESCOTT INDIAN TRIBE

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United State Senate
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Diane J. Humetewa for Federal District Court for District of Arizona

Dear Chairman Leahy:

The 21 member tribes of the Inter Tribal Council of Arizona strongly urge you to confirm Diane J. Humetewa to be a United States District Court Judge for the District of Arizona. She has been an attorney practicing law in Arizona for over fourteen years, where her skills as a trial attorney are renowned. An enrolled member of the Hopi Tribe, she is both an American Indian and a native Arizonan.

Ms. Humetewa is uniquely qualified to serve on the federal bench in Arizona. As a Special Assistant U.S. Attorney, as an Assistant U.S Attorney, and, finally, as the U.S. Attorney for Arizona, where she managed four offices and over 300 employees, and serving as council on the U.S. Senate Committee on Indian Affairs and working as council to the Deputy Attorney General for the U.S. Department of Justice, the breath of her legal work makes her an exemplary candidate for the federal judiciary. Ms. Humetewa has handled a broad range of criminal cases, which included complex grand jury proceedings and evidentiary, competency, juvenile transfer, and sentencing hearings. As such, she has an intimate knowledge of federal law and procedure.

In short, we are confident that Ms. Humetewa possesses the experience, temperament, and high degree of professionalism required to succeed as the first female American Indian ever appointed to the federal bench.

Chairman Leahy, the ITCA appreciates your attention to this important and possible history making appointment. We ask that you strongly consider nomination of Ms. Humetewa as the United States District Court Judge for the District of Arizona. The 20 member Indian Tribes of the ITCA appreciate your consideration in this matter.

Sincerely,

Terry Rambler

Terry Rambler,
Chairman, San Carlos Apache Tribe
President, Inter Tribal Council of Arizona

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San Francisco, CA 94111-4158

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9155 South Dadeland Boulevard
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D.C. CIRCUIT
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FEDERAL CIRCUIT
Joseph M. Pizarro
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1100 11th Street, NW
Washington, DC 20005-4056

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STAFF COUNSEL
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cardmand@staff.abanet.org

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AMERICAN BAR ASSOCIATION

Defending Liberty
Pursuing Justice

Standing Committee on the Federal Judiciary
740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762

VIA EMAIL AND FIRST CLASS MAIL

June 24, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Rosemary Marquez
To the United States District Court
for the District of Arizona

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Rosemary Marquez who has been nominated for a position on the United States District Court for the District of Arizona. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Marquez is "Qualified" for the position.

A copy of this letter has been provided to Rosemary Marquez.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Rosemary Marquez
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on June 24, 2011.

Majority:

Hon. Patrick J. Leahy, Chairman
Hon Herbert Kohl
Hon. Dianne Feinstein
Hon. Charles E. Schumer
Hon. Richard J. Durbin
Hon. Sheldon Whitehouse
Hon. Amy Klobuchar
Hon. Al Franken
Hon. Christopher Coons
Hon. Richard Blumenthal

Minority:

Hon., Charles E. Grassley, Ranking Member
Hon. Orrin G. Hatch
Hon. Jeff Sessions
Hon. Jon Kyl
Hon. Lindsey O. Graham
Hon. John Cornyn
Hon. Mike Lee
Hon. Tom Coburn

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

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New York, NY 10019-6064

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1 Riverfront Plaza
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1037 Raymond Boulevard
Newark, NJ 07102-5423

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501 Eastowne Drive #130
Chapel Hill, NC 27514

FIFTH CIRCUIT
Wayne J. Lee
546 Carondelet Street
New Orleans, LA 70130

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1101 College Street
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SEVENTH CIRCUIT
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Suite 3600
211 N. Broadway
Saint Louis, MO 63102-2769

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Suite 1900
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
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Washington, DC 20004-2401

STAFF COUNSEL
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denise.cardman@americanbar.org

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

Please respond to:

Bettina B. Plevan, Esq.
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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 Judge Douglas Leroy Rayes to the United States District Court for the District of Arizona***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Douglas Leroy Rayes who has been nominated for a position on the United States District Court for the District of Arizona. As a result of our investigation, the Committee is of the opinion that Judge Rayes is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Judge Rayes.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Douglas Leroy Rayes (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
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11 Times Square
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New York, NY 10038-3526

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1037 Raymond Boulevard
Newark, NJ 07102-5423

FOURTH CIRCUIT
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Chapel Hill, NC 27514

FIFTH CIRCUIT
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SEVENTH CIRCUIT
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ELEVENTH CIRCUIT
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FEDERAL CIRCUIT
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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

Please respond to:

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Proskauer Rose LLP
11 Times Square
New York, New York 10036
Tel: (212) 969-3065
Fax: (212) 969-2900
E-Mail: bplevan@proskauer.com

VIA EMAIL AND FIRST-CLASS MAIL

December 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 James Alan Soto to the United States District Court for the District of Arizona***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of James Alan Soto who has been nominated for a position on the United States District Court for the District of Arizona. As a result of our investigation, the Committee is of the opinion that James Alan Soto is Unanimously Qualified for this position.

A copy of this letter has been provided to Judge Soto.

Sincerely,

Bettina B. Plevan
Chair

BBP:ds

cc: The Honorable James Alan Soto
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 December 20, 2013.

NOMINATIONS OF HON. ROBIN ROSENBAUM, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT; HON. BRUCE HENDRICKS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA; MARK MASTROIANNI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS; AND LESLIE CALDWELL, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

TUESDAY, FEBRUARY 11, 2014

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

The Committee met, pursuant to notice, at 9:01 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Richard Blumenthal, presiding.

Present: Senators Blumenthal, Grassley, and Graham.

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

Senator BLUMENTHAL. I am going to open the hearing, although we are missing some of our introducers. I want to welcome the nominees and their families to this very, very important occasion for you and for justice in our country. We are very proud and honored that you are here today and delighted that we will hear your testimony.

This occasion is a very serious and important step in the nomination process, and not all of our Members of the Judiciary Committee will be here this morning, as you know, but we will be reviewing the record, all of our Members will be reviewing the record, and I am going to ask Senator Graham of South Carolina to begin the introductions this morning. Senator Graham.

PRESENTATION OF HON. BRUCE HENDRICKS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, BY HON. LINDSEY GRAHAM, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator GRAHAM. Thank you, Mr. Chairman.

I think you are all in good hands today with Senator Blumenthal. It will be fairly painless, I hope.

Thank you, Mr. Chairman. It is my honor to introduce to the Committee our United States magistrate since 2002, Bruce Hendricks, and she is chosen wisely by the President to become a district court judge. She was ABA unanimously well qualified. She presided over the first pre-conviction drug program in the District of South Carolina, one of the first in the Nation.

Before becoming a magistrate, she worked as an Assistant U.S. Attorney in South Carolina for 11 years, very qualified to do the job she is being nominated for. A graduate of the College of Charleston and the University of South Carolina School of Law, married to her husband, Teddy, and one son and one daughter. And I can tell the Committee without any reservation she is highly respected by the bar and very much supported by Republicans and Democrats in South Carolina and will make an outstanding district court judge for our State.

I want to thank the Obama administration for making this nomination, and I look forward to supporting you in the Committee and on the floor.

Thank you very much, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Graham.

Senator Graham has completed his introduction, and we are going to hear now from the Ranking Member, Senator Grassley.

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

Senator GRASSLEY. Well, of course, we ought to congratulate the nominees and their families. They can be proud of this important milestone in their respective careers. We welcome all of you.

Before we turn to the nominees appearing before us today, I would like to say a word or two about the nominees pending on the Senate floor. Of course, over the last several weeks, I have heard some of my colleagues expressing frustration because the nominees on the floor have not yet been confirmed. I am somewhat surprised by that. As everyone knows, last year the majority of the Senate invoked what is called "the nuclear option." By voting to invoke the nuclear option, the majority stripped the minority of any ability to stop any nominee from being confirmed on the floor.

The bottom line is that the majority voted to cut the minority out of the process. As a result, under the precedent of that 52-vote majority, it established that the Majority Leader can bring up these nominations for a vote on the floor anytime he decides to do so. The minority simply has no ability to stop anyone from getting a vote. There is, in other words, no filibuster of a nominee anymore. And as anyone who watches the Senate proceedings can tell you, the Senate floor is not exactly working overtime. We certainly are not considering a lot of amendments to legislation. Instead, in most days very little is considered on the Senate floor, and we are rarely in session on Fridays. So there is really no reason why the leader of the Senate cannot bring these nominations up for a vote anytime that he decides to do it.

Finally, I would like to compare our progress so far this year compared to where we were at this point during the sixth year of

the previous President, in other words, meaning President Bush's sixth year. So in regard to the sixth year of President Obama, during the 113th Congress we had hearings for 66 judicial nominees. After today, during this year alone we have had hearings on 15 nominees. By comparison, in 2006 the Senate confirmed only 32 judicial nominees during the entire year. So as of today, we have already held hearings for almost half that number.

So I will conclude by saying that I applaud the Chairman for his work. He continues to keep us busy as he makes sure that the Committee moves at a brisk pace. That applies to you as well as to Chairman Leahy.

Once again, thank you all for your willingness to serve the public.

Senator BLUMENTHAL. Thank you. Thank you, Senator Grassley.

I am going to ask Senator Warren to introduce the nominee from Massachusetts.

PRESENTATION OF MARK MASTROIANNI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS, BY HON. ELIZABETH WARREN, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator WARREN. Thank you very much. Thank you, Mr. Chairman, and thank you, Ranking Member Grassley, for holding this hearing and for allowing me to be here today. I apologize that I will have to leave right after this. We have got another hearing as well over in HELP.

But I am very pleased today to have the opportunity to introduce Mark Mastroianni, who has been nominated to fill a judicial vacancy in western Massachusetts for the District Court of the District of Massachusetts. Mark came highly recommended by the Advisory Committee on Massachusetts Judicial Nominations. The advisory committee is comprised of distinguished members of the Massachusetts legal community, including prominent academics and litigators, and it is chaired by former district court judge Nancy Gertner. Their recommendation reflects the strong sense of Massachusetts' legal community and, in particular, the legal community in western Massachusetts that he will make an excellent district court judge.

Mark Mastroianni is a true son of western Massachusetts. He was born in Springfield, and he is a lifelong resident of Hampden County. He is currently serving as the elected district attorney for Hampden County, a position he has held since 2011. He graduated with honors from the American International College in Springfield, Massachusetts, and he went on to earn his law degree from Western New England College School of Law, also in Springfield, Massachusetts. And today he is here with his wife, Carolyn, and his daughters, Christine, Jennifer, and Lauren. I know they must all be immensely proud to attend this hearing and to provide their love and support on this extraordinary day.

DA Mastroianni began his career in the Hampden County District Attorney's Office. He served there as an assistant district attorney for over 5 years, gaining prosecutorial experience in a wide variety of district and superior court matters. He then moved into

private practice where he built a significant career as a defense attorney representing clients in civil and criminal matters.

Over the course of 16 years, he has represented clients in matters before the Massachusetts State trial courts and appeals courts as well as the district court to which he has been nominated. He frequently took on court-appointed defense cases in Massachusetts, reflecting his commitment to the integrity of our legal system and to the idea that everyone deserves representation.

In November 2010, Mark ran as an independent and was successfully elected to serve as the district attorney for Hampden County in the western part of Massachusetts, a position that returned him to lead the office where he began his career. As district attorney, he is responsible for managing the prosecution of all cases in the 23 cities and towns that make up Hampden County.

Aside from the impressive qualifications of this candidate, the fact of Mark's nomination is particularly important because the seat he has been nominated to fill has been vacant for too long. Since U.S. District Court Judge Ponsor took senior status in 2011, the vacancy has strained the Federal judicial system in western Massachusetts, causing cases to be postponed, forcing judges from Boston to travel to Springfield to hold hearings, and impeding the ability of citizens to get their day in court.

Filling this vacancy as quickly as possible has been a top priority for me since I arrived in the Senate last year, and DA Mastroianni's swift approval and confirmation is essential for ensuring the administration of justice for the people of Massachusetts.

I am proud to have recommended Mark Mastroianni to President Obama. He is an independent-minded district attorney whose diverse litigation experiences both as a top prosecutor and as a top defense attorney will enrich the Federal bench in Massachusetts. I look forward to his approval by this Committee and his swift confirmation by the full Senate.

Thank you.

Senator BLUMENTHAL. Thank you, Senator Warren.

Let me just briefly say at the outset of this hearing that I consider this hearing and others like it one of the most important things we do in the U.S. Senate. We confirm judges for life, and they become the voice and face of justice in this country. Particularly at the district court level but also at the court of Appeals, they are often the last stop for people. A lot of folks in America think of justice as the U.S. Supreme Court, but our district court judges and our circuit court judges are really the place in this Nation where Federal justice is dispensed. And I have been a lawyer for some time, practiced frequently in the Federal courts, so I know how important the quality of judging is not only to the lawyers but most especially to the men and women whose lives are dramatically and enduringly affected by what happens to them in those courts. Whether it is criminal or civil, their lives are changed, often forever, as a result.

So I want to thank the families of the judges who hopefully will be confirmed for their service as well because I know the kind of sacrifices that you will be making when your loved ones spend long hours, whether it is in the courtroom or doing their opinion writing

and reading at home or in the office. And I know that that sacrifice will consist of birthdays missed and family occasions, but it is for one of the best causes in the United States—the cause of justice and democracy. We are unique as a Nation among all the countries in the world in placing that kind of responsibility on our judges, and so we thank you, thank the nominees, and thank their families.

And one last point before I introduce Senator Scott for his introduction. This process really is and should be a bipartisan one. The process of appointing and confirming judges is one that should be done without considerations of politics or party. What we are doing here is something for the Nation. And I know that you will hear questions here and perhaps debate on the floor that sometimes reflects differences and contention. But at the end of the day, I think we come together as a Senate to confirm the best possible people for these judgeships because it is so critical to the Nation and the national interest that we do so.

Senator Scott.

PRESENTATION OF HON. BRUCE HENDRICKS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, BY HON. TIM SCOTT, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator SCOTT. Thank you, Mr. Chairman. It is my privilege to say some words on behalf of Judge Bruce Hendricks, a fantastic person, a level-headed person, who is a great judge already in her own right. I am looking forward to seeing her serve on the Federal level. Bruce is, in fact, an amazing person who happens to be a proud Charlestonian. Being from Charleston, it gives me great honor to nominate her to be a U.S. District Judge for the district of South Carolina.

I had the opportunity to sit down with Bruce recently and talk with her about the things that are important to her and get to know her a little better. She is as bright as the dickens. There is no doubt she has an amazing resume. I know Senator Graham has spoken about her resume and her scores as an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of South Carolina, an instructor at the College of Charleston, and a judge.

She is caring. Her pro bono work is the definition of community service. She has participated in many programs that have benefited the underprivileged, including unveiling an after-school program to provide food and tutoring for the Boys and Girls Club in Charleston. She has helped startup a marching band for a local high school and routinely hosts kids at the courtroom to introduce them to the judicial process and to the judicial system under positive circumstances and in a very positive way.

But the most important thing I have learned about you, Bruce, is that you are a College of Charleston basketball fan. Go, Cougars.

I believe the integrity of a judge is, in fact, the cornerstone of our judicial system. Her trial experience, her knowledge of the courtroom and the law, and her devotion to improving our communities leads me to believe she will be fair and devoted to justice.

I am proud to recommend Bruce to the Committee.

Senator BLUMENTHAL. Thank you, Senator Scott.

We are going to—and, by the way, both Senator Warren and Senator Scott probably have to leave for other engagements, as did Senator Graham. We have multiple hearings going on at the same time. So anytime you want to leave, Senator Scott, please feel free to do so, and we certainly do appreciate your being here.

Senator SCOTT. Thank you, sir.

Senator BLUMENTHAL. I am going to introduce first on the first panel—and we may be interrupted by Senator Rubio or Senator Nelson if they arrive and wish to make statements—Judge Robin Rosenbaum, who is President Obama's nominee to serve on the United States Court of Appeals for the Eleventh Circuit. Judge Rosenbaum is currently serving as a United States District Court Judge for the Southern District of Florida, a position she was confirmed for in 2002 by a 92–3 vote in the Senate. She previously served as a magistrate judge in the same district from 2007 to 2012 and a Federal prosecutor from 1998 to 2007, including 5 years as chief of the economic crimes section.

Judge Rosenbaum began her legal career as a trial attorney in the Civil Division of the United States Department of Justice for 4 years before serving as staff counsel in the Office of the Independent Counsel for the investigation of former United States Secretary of Commerce Ron Brown.

Judge Rosenbaum spent 2 years as an associate at Holland and Knight and clerked for Judge Stanley Marcus of the Eleventh Circuit Court of Appeals in 1998. She was born in Chapel Hill, North Carolina. She received her B.A. from Cornell University in 1988 and graduated magna cum laude from the University of Miami School of Law in 1991.

Judge Rosenbaum, would you please come forward?

Judge ROSENBAUM. Good morning.

Senator BLUMENTHAL. Good morning. We would first of all ask you to please stand and be sworn. Do you affirm that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Judge ROSENBAUM. I do.

Senator BLUMENTHAL. Thank you. If you wish to make an opening statement, we would be happy to hear it.

STATEMENT OF HON. ROBIN ROSENBAUM, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Judge ROSENBAUM. Thank you, Senator Blumenthal. I would like to thank the Committee for convening this hearing and Senator Blumenthal for presiding, Ranking Member Grassley for attending as well, and I would like to thank Senators Nelson and Rubio. I understand they may be here later this morning, and I very much appreciate that. And I would like to thank the President, President Obama, for nominating me for this position.

I would also like to, if it is all right with the Committee, briefly introduce my family.

Senator BLUMENTHAL. Sure, absolutely.

Judge ROSENBAUM. Thank you. My husband, Phil Rothschild; my daughters Evin and Rosie Rothschild; my mother, Hedy Rosenbaum; my father, Jerry Rosenbaum; my sister, Jodi Fiedler, and brother-in-law, Larry Fiedler, and their three sons, my nephew,

Ben, Ryan, and Zachary Fiedler; my sister, Marci Rosenthal, and her son, Jake Rosenthal; and I am very fortunate to have some good friends here as well.

So I just wanted to thank everybody for being here.

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

Senator BLUMENTHAL. Thank you, and I know they are very proud of you.

Judge ROSENBAUM. Thank you.

Senator BLUMENTHAL. Let me ask you at the beginning, what do you view as the greatest challenge you will have going from the district court to the circuit court?

Judge ROSENBAUM. Well, in the Eleventh Circuit, the Eleventh Circuit actually currently has the highest caseload per judge, so I think that the workload is challenging. But I feel fortunate that I have had an opportunity to get used to a heavy workload in the Southern District of Florida, where we routinely seem to have up at the top in the number of hours that we spend on the bench and also a huge caseload that we carry there. So I am hopeful and I expect that that should help to prepare me for a heavy caseload on the Eleventh Circuit if I am fortunate enough to be confirmed.

Senator BLUMENTHAL. You have had a lot of different experiences both in litigating and as a judicial officer. Is there an area of law or specialty that you think will be most attractive and interesting to you?

Judge ROSENBAUM. I really enjoy all of it. When there is an area that I have not had the opportunity to work in previously, I love the challenge of learning about a new area. I really enjoy digging more deeply into areas that I have had the opportunity to work on before. So I am really hopeful that I will have the opportunity to work on everything.

Senator BLUMENTHAL. Is there an area of law that you would prefer not to deal with?

Judge ROSENBAUM. Not really.

Senator BLUMENTHAL. And that is a good answer.

[Laughter.]

Senator BLUMENTHAL. Especially to your fellow future prospective judges, I am sure.

Is there something that you think ought to be done to either ease or alter the caseload in districts like the one where you are currently a trial judge to perhaps alleviate that caseload that you mentioned earlier?

Judge ROSENBAUM. I think that a lot of that will probably be addressed through time. I know recently there have been some vacancies, so we are looking at 4 down on a 12-judge court. So hopefully that will address itself eventually.

Senator BLUMENTHAL. Thank you. That is all the questions I have. Before turning to the Ranking Member, if he would agree, I would like to introduce Senator Rubio for his introductory statement.

PRESENTATION OF HON. ROBIN ROSENBAUM, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. MARCO RUBIO, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator RUBIO. Thank you very much, Mr. Chairman. I apologize for being a few minutes late, and I know Senator Nelson will also try to get here today. But I would like to thank the Chairman, Chairman Leahy, the Ranking Member, Senator Grassley, and Members of this Committee for holding this hearing and for the invitation to introduce my fellow Floridian, Judge Robin Rosenbaum.

She currently serves as the district judge in my home district, the Southern District of Florida. She has been honored by the President with the nomination to continue her service as a judge on the Eleventh Circuit Court of Appeals.

I am certain every Member of this Committee will agree that the Senate has few responsibilities more important than providing advice and consent on the President's judicial nominations. These are lifetime appointments, with great power, whose decisions directly impact the life, liberty, and the property of the parties who come before them.

The decisions of a circuit court judge can be particularly consequential. They impact people of several States, not just one district. And because the Supreme Court hears so few cases, circuit court rulings are often the final word on important matters.

For that reason, I take my duty to review nominations very seriously, as I know you do. The people of Florida and the people of the United States deserve the finest men and women we can find to occupy these judgeships. They deserve men and women of great character and unquestioned ability, people who understand the important but properly limited role of a judge, and a judge's job is simply to say what the law is without bias, without agenda. As passionately as a judge may feel about a particular issue, when she puts on that black robe, she must set aside her personal views.

The Judiciary Committee plays a critical role of diligently evaluating each nominee, and I know this Committee will thoroughly examine the record and the career of Judge Rosenbaum and ask her some questions today and perhaps in the followup. I trust and I know that she is up to the task. Judge Rosenbaum certainly comes before you prepared with an impressive background of public service. She graduated from my alma mater, the University of Miami Law School, in 1991, earning her degree magna cum laude—much better than me.

From there, she began an impressively good career focused on Government service. She served in the Federal Programs Branch of the Justice Department's Civil Division from 1991 to 1995 and in the Office of Independent Counsel in 1995 and 1996.

She returned to Florida in 1996 for a stint in private practice with the prestigious law firm of Holland and Knight. In 1998, she returned to public service when she served a clerkship with Judge Stanley Marcus, a legend in South Florida, on the Eleventh Circuit Court of Appeals. From 1998 to 2007, Judge Rosenbaum was a Federal prosecutor in the United States Attorney's Office for the Southern District, including several years as the chief of the economic crimes section.

In 2007, she became a Federal magistrate judge in the Southern District. In 2012, she was nominated by President Obama and was overwhelmingly confirmed by the Senate as a U.S. district court judge.

Through it all, she has remained active in the community and has many supporters in South Florida who I continue to hear from until moments ago and, of course, throughout the State. And I wish her and her family all the best throughout this process, and I am certain the Committee will give her nomination a full and fair consideration, and I thank you for this opportunity and the opportunity to speak to you today.

Thank you.

Senator BLUMENTHAL. Thank you, Senator Rubio, and thank you for being here. As I mentioned earlier, many of our Senators have other meetings and hearings, and you are excused if you have another.

Senator Grassley.

Senator GRASSLEY. Thank you.

Like the Chairman said, you have been a district court judge and have been there for about 2 years. I would like to get a better sense of what your approach to hearing appeals will be.

First, on the one hand, what characteristics have you seen in appellate court judges that you would hope to avoid, if confirmed? And, on the other hand, what characteristics would you hope to emulate?

Judge ROSENBAUM. Well, the ones that I think that an appellate judge should have would be patience, treating those who come before the court with dignity, and hard-working. It is very important for the judges to be hard-working and to be well prepared to understand the cases that come before them, whether they dispose of them on the papers or after oral argument, to be prepared for the oral argument if it is through oral argument; and I think to explain thoroughly the basis for the opinions that they issue. And those are the qualities that I would strive to emulate.

Senator GRASSLEY. Which ones have you seen either as a lawyer or as a judge that you would hope not to—or that you would not do because you considered those something a judge should not do?

Judge ROSENBAUM. Well, I would say that I have not really seen too much of that. I have been fortunate, because when I clerked on the Eleventh Circuit——

Senator GRASSLEY. Under what circumstances do you believe it is appropriate for a Federal court to declare a statute enacted by Congress unconstitutional?

Judge ROSENBAUM. In very rare circumstances, and only when there is no other way to dispose of the issue other than to rule on the constitutionality, and then only when the law clearly conflicts with a part of the Constitution.

Senator GRASSLEY. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? And what factors would you consider in reaching a decision to overturn such a precedent?

Judge ROSENBAUM. Well, of course, the circuit can overturn its own precedent only on an en banc hearing or, of course, when the Supreme Court has issued a ruling that is directly contrary to a

prior ruling of the circuit. And the court should sit en banc under Rule 35 of the Federal Rules of Appellate Procedure only when we are talking about a matter of great importance or when there are conflicting panel opinions. So in order to resolve a conflict in the circuit, if there were one, that would be reason to overturn circuit precedent. Or if, for example, it were a matter of great importance, that would be another reason.

Senator GRASSLEY. I am going to ask a philosophical question based upon a statement that Justice Scalia made in a speech in 2005, and I do not want you to worry about Justice Scalia. I am just asking you about this philosophy.

"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 is what it says, that is what it says."

Would you agree with that philosophy?

Judge ROSENBAUM. I am not familiar with the speech that it comes from, but, yes, I would.

Senator GRASSLEY. Okay. And then, second, and my last, do you believe a judge should consider his or her own values or policy preferences in determining what the law means? And if you thought that a judge should, under what circumstances?

Judge ROSENBAUM. I absolutely believe that a judge should not consider his or her own personal policy preferences and that they should play no role in interpreting the law.

Senator GRASSLEY. Thank you.

Senator BLUMENTHAL. Thank you, Judge Rosenbaum, and you are excused. Thank you.

Judge ROSENBAUM. Thank you very much.

Senator BLUMENTHAL. We are going to ask the next three nominees, Bruce Hendricks, Mark Mastroianni, and Leslie Caldwell, to please come forward.

Now that you have sat, would you please rise so we can swear you in? Do you affirm that the testimony you are about to give before the Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Judge HENDRICKS. I do.

Mr. MASTROIANNI. I do.

Ms. CALDWELL. I do.

Senator BLUMENTHAL. Thank you.

Ms. Caldwell, I am going to introduce you because no one has. You have heard abundant and very full introductions of the other two nominees, so let me just say we are very honored to have you here today. You have a lot of great experience in courts, and you have been nominated to be Assistant Attorney General of the Criminal Division at the Department of Justice. I understand you are currently a partner in the New York office of Morgan, Lewis and Bockius and focus on white-collar crime and regulatory matters.

Previously, Ms. Caldwell served as special assistant to the Assistant Attorney General in the Criminal Division at the Department of Justice where she led the Department of Justice Enron Task Force from 2002 to 2004. Prior to that she served as an Assistant United States Attorney for 11 years in the Eastern District

of New York and for 5 years in the Northern District of California. She began her legal career at two private law firms: Spengler, Carlson, Gubar and Brodsky, and then at Cadwalader, Wickersham and Taft. I understand you were born in Steubenville, Ohio, and earned your degree, your B.A. summa cum laude at Pennsylvania State University in 1979 and your J.D. cum laude from George Washington University School of Law in 1982. Welcome.

And let me ask each of the nominees, give you an opportunity to make a brief opening statement, if you wish, introducing your family, as Judge Rosenbaum did.

STATEMENT OF HON. BRUCE HENDRICKS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA

Judge HENDRICKS. Thank you, Senator Blumenthal. I would like to start by thanking Senators Graham and Scott for their very gracious remarks. Their roles in this process are difficult ones, and I am grateful for their confidence in me.

I would like to thank President Obama, most of all, and his administration for this nomination to the district court. It is a singular personal honor and experience for me.

To Senator Blumenthal, Chairman Leahy, and Ranking Member Grassley, my sincere thanks and appreciation for the invitation to appear here today.

I have family and many friends cheering me on. Today here with me is my husband, Teddy; my son; my daughter and her husband. I am particularly thrilled that my nieces Torrey Crawford and Sydney Howe are here.

Back home I have an anxious mother, siblings, and cousins watching along with other friends and colleagues in Charleston and in South Carolina. I am only here because of them.

My father has been deceased for some time now. He would be greatly pleased.

I look forward to answering any questions you may have.

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

Senator BLUMENTHAL. Thank you.

Mr. Mastroianni.

STATEMENT OF MARK MASTROIANNI, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS

Mr. MASTROIANNI. Thank you, Senator Blumenthal.

Senator Blumenthal, I would like to thank you and thank you, Senator Grassley, for your consideration and involvement in this process; also Senator Leahy for his participation in this Committee.

I would like to thank President Obama for the nomination and having the faith in me and my background that I could be considered to serve in this position.

And I would very much like to thank Senator Warren who established the committee to look for an appropriate candidate to fill this judgeship in our State. I thank her for the selection process and, again, for her faith in me and my coming out of that process.

I would like to thank Senator Markey as well for his support of my nomination as well.

Present with me today, I am very fortunate to have the most important people in my life here with me. My wife, Carolyn, is here. My daughter Christine, my daughter Jennifer, and my daughter Lauren are all here with me.

Also, very special to me, very close family members: my sister-in-law, Joan, is present with my niece and nephews. My nephews Steve, Mike, and John, and my niece Meghan, are also here. I thank them very much for being here.

Senators Blumenthal and Grassley, I would also like to note that here supporting me today, it is quite an honor that several of the other elected district attorneys from the State of Massachusetts are here to support me in this. I did not see all who came in, but I know District Attorneys Blodgett, Sullivan, Connelly, Cruz, and Morrisey are here in the room. So out of the 11 elected district attorneys in the State of Massachusetts, we are well represented in this room today, and I appreciate their support.

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

Senator BLUMENTHAL. Thank you very much.

Ms. Caldwell.

STATEMENT OF LESLIE CALDWELL, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Ms. CALDWELL. Mr. Chairman, Ranking Member Grassley, thank you. I am very honored to appear before you today as President Obama's nominee to be the Assistant Attorney General for the Criminal Division of the Justice Department.

Here with me are my partner, Michele Kohler, and her daughter, Hannah Ryan, who are sitting behind me. Also here is my niece, Megan Caldwell, who is sitting in the second row; my fantastic administrative assistant, Donna Weekes; and several other friends and colleagues. I thank them all for their support and for being here today.

I know that if they had made it to this day, my parents, Key and Caryl Caldwell, would have been so proud of seeing their daughter sit before this Committee. My father, Key, was a native of Lookout Mountain, Tennessee, who at the age of 19 joined the Army Air Corps in World War II. He became a B–24 bomber pilot, assigned to the 8th Air Force, based in England. After many successful missions over Germany, his plane was shot down. He managed to keep the plane airborne until he could leave German airspace and land in a field in Switzerland. All but one of his crew survived. He was detained by the Swiss but escaped, and with the help of the French Resistance, made his way to safety. My father went on to become a successful businessman in Pittsburgh, but he was also a very humble man. In fact, I never even knew the story that I just shared with you until I was well into adulthood and stumbled upon my father's war diary. When I asked him with amazement about his exploits, he said very matter of factly that all he had done was serve his country as best he could. And he never spoke of it again.

My mother, Caryl, was a remarkable woman who set an example for me every day of her life. She grew up in a single-parent home on the north side of Pittsburgh, which at the time was a very poor neighborhood. Though she was the valedictorian of her high school

class, there was no money for college. So she got a job as a secretary in the Legal Department at U.S. Steel and worked her way through the University of Pittsburgh at night. Around the time she was meeting my father and marrying him, she graduated from Pitt summa cum laude, Phi Beta Kappa. Though she never worked in a traditional job again, she raised three children, was in leadership roles in many community organizations, and volunteered countless hours as an adult literacy teacher. I like to think that if my mom had been 30 years later, she would have been the one sitting before this Committee today.

Our parents taught my brothers that the values that matter most in life are fairness, integrity, hard work, and humility. As I sit before this Committee, I am especially mindful of those values, and of the honor of public service, to which I have dedicated much of my career.

If I am fortunate enough to become head of the Criminal Division, I will do my best to ensure the vigorous enforcement of the criminal laws and to apply them with equal force whether the wrongdoing occurs in a boardroom, across a computer network, or on a street corner.

I thank you again for considering my nomination, and I am pleased to answer any questions you may have.

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

Senator BLUMENTHAL. Thank you, Ms. Caldwell.

Let me begin my questions with Judge Hendricks. What do you think are the two or three most important experiences that prepare you for this job?

Judge HENDRICKS. Thank you, Senator Blumenthal, for the question. My experience as an Assistant United States Attorney for the——

Senator BLUMENTHAL. I do not know whether your microphone is on.

Judge HENDRICKS. It looks like it is on. There it is.

Senator BLUMENTHAL. Thank you.

Judge HENDRICKS. Thank you, Senator Blumenthal. I think my experience as an Assistant United States Attorney for 11 years, trying cases before the district court, and handling investigations on behalf of the United States was a great experience in enabling me to be familiar with the district court and trial procedure, in particular the Rules of Evidence. Then transitioning into the role of United States magistrate judge I believe helps prepare me for the role of United States district judge as I am already working in the district court and handling cases there, some of which are under certain circumstances co-extensive with the Article III judges.

Senator BLUMENTHAL. That sort of anticipates my next question. In your district, do magistrates conduct trials? In the District of Connecticut they do, just as Federal judges, Article III judges, as you just mentioned.

Judge HENDRICKS. Yes, Senator. By consent of the parties and approval of the district judge, then a magistrate judge may conduct a trial, and I have had three jury trials in my career—well, two jury trials and one bench trial.

Senator BLUMENTHAL. Civil or criminal?

Judge HENDRICKS. Civil. We cannot handle full felony jury trials, although we can take felony guilty pleas, and I have done that. And I handle some of the preliminary felony criminal work.

Senator BLUMENTHAL. In your view, what is the most difficult matter you have had to handle as a magistrate judge?

Judge HENDRICKS. Thank you, Senator, for that question. Actually, every day, every case is important, and I give great pause before I issue a ruling or make a decision. I think in particular in the criminal law arena, decisions in regards to an individual's liberty are always tough decisions, and those would be my hardest decisions every day.

Senator BLUMENTHAL. Thank you.

Mr. Mastroianni, let me ask you the same question. What do you think are the two or three most important experiences that would affect your judging?

Mr. MASTROIANNI. In my professional career, I have had several experiences which I think prepare me for this consideration, and it started out being in private practice and learning about the business world and how to make it in the business world. Being a criminal defense attorney, starting from the ground up and working to doing criminal defense at the highest level, and doing the same thing as a prosecutor, starting as a prosecutor at the lowest level and working my way up to be handling the highest cases, and ultimately have the good fortune to be elected as district attorney and run an office—those experiences have taught me so much about the law, about the respect that should be had for each opposing side. Although it is an adversarial system, fairness and integrity in the system is the common goal. And my experience I think comes together, so I fully appreciate the dynamic of our system.

Senator BLUMENTHAL. As district attorney, what are the most difficult decisions you have to make?

Mr. MASTROIANNI. The most difficult decisions oftentimes deal with selecting charges and selecting what penalties we will seek to impose on particular cases. Where there are victims involved, it becomes much more complicated when there are vulnerable victims involved, children and elderly people who cannot necessarily speak for themselves. And that was a source of their victimization that becomes especially difficult. So putting forward cases where our case is weakened by the inherent vulnerability of someone who was victimized is a difficult task, and we have taken a lot of pains to put procedures in place that will appropriately handle those cases.

Senator BLUMENTHAL. So victims' advocates or special counsels to represent victims are something that you value highly?

Mr. MASTROIANNI. I do value them highly. We do have a special victim witness unit within our office who is in constant contact with victims of cases and let them know what the system means, because also part of the circle of victimization, if you will, is when a victim comes into a courthouse that they are not familiar with and they have never been involved in a proceeding and they find themselves there on a regular basis and it is very intimidating for them. And so our office does provide support for them in the role of their own special advocates.

Senator BLUMENTHAL. Thank you.

Ms. Caldwell, I should have said at the very outset, although I spoke mainly of the judges that we have as needs, that your position is really one of the most important in the whole Federal Government because your recommendations very often will be final as to the charges that are brought either by a United States Attorney—and I know because I served as one quite a few years ago—or by the Department of Justice itself. And so you will have in your hands the fates of many individuals whose lives will hang in the balance. And obviously the interests of society also will be at stake because those individuals may have committed very serious and significant crimes with ramifications on national security or other kinds of very important issues at stake.

And I was moved by your stories of your parents. Obviously they are a source of your dedication to public service. You served, I believe, about 17 years as a Government attorney, which, in my view, is one of the highest callings of any attorney. So I want to thank you for your dedication to public service and just ask you whether you go into this job with any priorities. You mentioned that they are all important, whether it is white-collar crime or organized crime or drug dealing, whether you see any priorities for the Criminal Division at this point.

Ms. CALDWELL. Thank you, Senator, and I appreciate your comments. I certainly do see that things are moving very fast in the world of cyber crime, in the world of international crime. Things are always moving fast in the world of narcotics and organized crime and gangs. And white-collar crime is also something that I think is a very important priority.

So as you said, Senator, I think you are correct, they are all priorities, and I believe, if I am fortunate enough to be confirmed, my first priority will be to understand what exactly is being done currently and try to align that with what the Department's priorities perhaps should be.

Senator BLUMENTHAL. Do you have a view as to what the division of responsibility should be between the United States Attorneys and the Department of Justice?

Ms. CALDWELL. I think that the United States Attorney—having been in both, I think that the United States Attorney's Offices are really the front lines of most Federal criminal prosecution. I think the Criminal Division has a very significant role in supporting those offices, particularly the smaller offices that may not have the resources to do certain kinds of cases. But the Criminal Division also has its own very important litigating role, as you know, Senator. The Fraud Section is a very large section that brings very sophisticated cases all over the country. The Computer Crime and Intellectual Property Section is probably the premier expert on computer crime in the country.

So I think that it is going to be very important to continue working together, the Criminal Division and the U.S. Attorney's Offices, if I am fortunate enough to be in that role.

Senator BLUMENTHAL. And do you think that there need to be enhanced training programs for the attorneys in either the Criminal Division or the Department of Justice generally?

Ms. CALDWELL. I am certainly not—I am not familiar with what the current training programs are, but I know that it is very im-

portant to train particularly young prosecutors to understand the importance of their role and the power that they have, to make sure that that power is used in an appropriate, fair, and judicious manner.

Senator BLUMENTHAL. And one last question. You know, we had testimony—in fact, it may have been at our last hearing—on the issue of data breaches, the kinds of hacking and theft of information that has occurred at stores like Target and Neiman Marcus where the stores could be viewed as a victim and are a victim of criminal activity, but at the same time need to be held accountable for increasing the protections that they have, protections for themselves against that kind of invasion, but also protections for their customers whose information is entrusted to them.

Do you have views as to what the stores ought to be doing or what other enterprises should be doing to protect themselves better against this kind of cyber attack?

Ms. CALDWELL. I appreciate that the cyber attack as well as intellectual property theft are both extremely important issues. I am not familiar with the specifics other than what I have read in the media of the data breach issues. But I think it is clearly very important. I think one of the areas in which criminals are moving very quickly is cyber attack, cyber breach, intellectual property theft, and that is something that I would look forward to learning a lot more about and being very aggressive in connection with that.

Senator BLUMENTHAL. Thank you, Ms. Caldwell.

Ms. CALDWELL. Thank you, Senator.

Senator BLUMENTHAL. Senator Grassley.

Senator GRASSLEY. Yes, I am going to start with Mr. Mastroianni and then Ms. Caldwell and then Judge Hendricks.

I am going to, first of all, talk about a gun prosecution you were involved in. Let me give some background before I ask a question.

In 2013, the Massachusetts Supreme Court upheld the State's gun storage law. The law mandated that gun owners keep their firearms in a locked container or equipped with a mechanical lock even inside their own homes. A defendant kept a loaded handgun in an unlocked drawer in his bedroom. Following an argument, the defendant's roommate took the firearm and threw it out the window where it was recovered by police. The defendant was charged with violating the storage law.

The defendant challenged the statute as an unconstitutional violation of the Second Amendment. The defendant argued that requiring firearms to be locked even within one's home effectively invalidated the right recognized by the Supreme Court in *Heller*, and the Massachusetts Supreme Court disagreed. You were district attorney at the time. I recognize that that was part of your job, to enforce State laws. However, you said in an interview that the court made the right decision in the case. In my view, the right to self-defense does not mean a whole lot if you cannot access your firearm in a real big hurry.

My question then: Would you explain why you believe the particular law does not violate the Second Amendment?

Mr. MASTROIANNI. Thank you, Senator. The Second Amendment is clear. Individuals do have rights to have firearms, and I respect that and recognize that as clearly the law of the land.

States have the authority to impose other regulations that affect the safety of their citizens, and the specific statute on which you are speaking went to the safety of citizens. Around the same time as that case came up, we were dealing with several other cases where firearms that were unlocked—one was in a private home. I believe both instances were in a private home. And access to those firearms was gotten by an individual who was drug-addicted and struggling with psychological issues in their life at that time, and there was an unlocked firearm, and that individual got a hold of that weapon and ended up using that weapon to end their life.

There have been other cases that have come into my office where unlocked firearms have fallen into the hands of unlicensed people and/or children, and there is rarely a good outcome when a youngster or teenager gets a hold of a gun, does not really know how to use it, and takes it out of the home. And that was the basis for the legislation in Massachusetts requiring those gun locks. It was in no shape or form meant to infringe upon the ultimate right given by the Supreme Court of an individual's constitutional right to have a properly licensed gun, but in Massachusetts we did prosecute those specific cases under the specific facts as were presented because they were violations of the Massachusetts law of the safety with how those guns were kept.

Senator GRASSLEY. I am going to stop and let Senator Nelson——

Senator BLUMENTHAL. I was going to ask you, Senator Grassley, whether you would be willing to pause for a moment, and I am going to ask Senator Nelson to please make his comments and remarks concerning Judge Rosenbaum.

PRESENTATION OF HON. ROBIN ROSENBAUM, NOMINEE TO BE CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT, BY HON. BILL NELSON, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON. Mr. Chairman, you all are so kind to extend the courtesy to your fellow Senators. To you, Mr. Chairman, to Chairman Leahy, to Senator Grassley, I am very appreciative and want to tell you of the bipartisan support for our nominee, Robin Rosenbaum.

Senator Rubio and I, as we have testified several times, we have a committee that we call a "judicial nominations committee," and the intent is to find the very best candidates without regard to partisanship for judicial vacancies.

In this particular case, Judge Rosenbaum was a selection to the Federal district court a couple—several years ago and has apparently performed in such an outstanding manner that the President wanted to select her then for the circuit. And so Senator Rubio and I, well knowing her, have not only rendered no objection, we affirmatively support Judge Rosenbaum. And she will join the Court of Appeals for the Eleventh Circuit, and, of course, that is in the southeastern United States.

She began her legal career in the U.S. Attorney General's Honors Program where she worked in the Federal Programs Branch of the Civil Division of the Department of Justice. She then worked in private practice in one of our very finest law firms—it is now a nationwide law firm—Holland and Knight. She worked as a clerk for

a Federal judge, Judge Marcus, United States Circuit Court Judge for the Eleventh Circuit, and as an Assistant USA for the Southern District. So you see the breadth of her experience.

She then became a magistrate, which is often the route that we find now for so many of our Federal judges, because the magistrates render such important Federal service. And then in 2012, we confirmed her to the U.S. district court.

Judge Rosenbaum also works to inspire the next generation of legal minds in her teaching position at the University of Miami, where she earned her law degree magna cum laude. She has an undergraduate degree from Cornell.

And she is joined and I have just met with her family, her husband, Phil Rothschild; their daughters Rosie and Evin; her mom and dad; and her two sisters and their families.

So it is with heartfelt and enthusiastic support that we bring this to the Committee, and I want to particularly thank Senator Grassley, because we have been through a number of nominees. We have a judicial emergency in two of our three districts in Florida, and Senator Grassley, where he had questions once on one nominee, unrelated to this, he had an open mind to go back and re-evaluate, and I want to say for the record, Senator Grassley, how much I appreciate that.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Nelson. We are honored and pleased you could join us today. We know that you and our colleagues are very busy, and we are glad also you had a chance to spend some time with Judge Rosenbaum. Thank you for coming.

Thank you.

Senator GRASSLEY. Thank you, Senator Nelson, for your kind words.

One more question for Mr. Mastroianni. In 2010, you were asked about decriminalizing possession of less than an ounce of marijuana. You said that doing so would be "a step in the right direction for trying to get rid of the backlog of cases in the court" and that "it was putting a strain on a lot of people's criminal records which really should not be there."

Since you made that statement, you have, in fact, served as district attorney. Has your opinion on this issue changed, or do you still believe possession of less than an ounce of marijuana should be decriminalized?

Mr. MASTROIANNI. Well, in Massachusetts, Massachusetts moved forward, and that is, in fact, the law now in Massachusetts relative to a very small amount. So consistent with what I said, that law does follow along with my opinion on the issue.

In developing the opinion on that issue and in developing the change in law of Massachusetts, the State and myself recognized and examined the time spent by law enforcement in investigation of certain offenses and the need for law enforcement to spend their time investigating other, perhaps arguably more serious offenses. So in reaching that determination, it is a balance of the resources that law enforcement and prosecution offices have in trying to recognize what may need the most minimal attention of each offices

in trying to allocate resources for the best way to serve public safety.

Senator GRASSLEY. Has your view been reinforced as a result of being district attorney?

Mr. MASTROIANNI. Well, in my experience as district attorney, we have seen—we have seen the number of cases coming into the court lessen, but there is still—we are still early enough in the process for there to be this transition period where both law enforcement and prosecutors are trying to deal with and understand the new law relative to decriminalization of marijuana, because it affects law enforcement and prosecutions on many levels, including levels like motion to suppress levels and when can police officers conduct a search of someone or a search of someone's car if there should be less than a criminal amount of marijuana in the vehicle.

So those are all legal issues that we continue to work on, so we have not reached a level where we say we have achieved something and we can tangibly look at that and say this was positive, because we are still in the implementation stages.

Senator GRASSLEY. Ms. Caldwell, I am going to start out with the enforcement of the Controlled Substances Act, and then I am going to move on to Dodd-Frank and whistleblowers so you know what is coming up.

One of the problems with the Department's policy of selective enforcement of the Controlled Substances Act in Colorado and Washington is that the Federal priorities identified by the Department are already being negatively impacted by the failure of these States to regulate medical marijuana. I will use as an example one of those Federal priorities is preventing the diversion of marijuana to neighboring States. Yet the percentage of marijuana interdicted by law enforcement in Iowa that can be traced to Colorado has risen from 10 percent in 2010 to 25 percent in 2011 to 36 percent in 2012.

So my question: Do you agree with me that the Department should establish clear metrics in determining if its policy in this area is adequately protecting Federal interests so that, if necessary, it can re-evaluate its decision not to challenge these State laws?

Ms. CALDWELL. Senator Grassley, I recognize the importance of this issue, and I very much appreciate the question.

Senator GRASSLEY. Thank you.

Ms. CALDWELL. I think that enforcement of the Controlled Substances Act is extremely important. I was a narcotics prosecutor for several years in New York and saw the havoc that drug abuse could have on communities and, frankly, the entire New York City was at an all-time high homicide rate when I was a prosecutor there. So I have seen this firsthand, and I think it is very important.

I think that—I am not privy to the Department's internal decisions about policy or about the priorities that you mentioned, Senator. I am generally familiar with the priorities, and I think that they represent—they seem to represent well the things that should be prosecuted and, as you know, one of those priorities is the diversion priority. Other priorities are to keep marijuana away from minors, keep it away from cartels, keep cartels from taking control of

distribution businesses in Colorado and Washington and any other State that may go in that direction.

So I think it is extremely important. I look forward to learning much more about the issue and about the internal thought process if I am fortunate enough to be confirmed to this position.

Senator GRASSLEY. I know that the policy was decided at, I assume, a level above what you will be doing, but since you are enforcing the laws, I hope that they listen to you; and if they say that they are going to make sure that Colorado and Washington enforce their laws in order to have this discretion of not prosecuting against the Federal law and they are not keeping the product within their State, I hope you will re-evaluate it, because I think my constituents in Iowa ought to be protected under Federal law.

Another question. I also understand that the Department may soon issue a guidance memorandum to make it easier for a marijuana business in those two States to use the banking system. Two questions, but I will ask one at a time—or, no, I have got three or four questions that maybe you can give me a short answer to, because I want to know that I am understanding Federal law. I just want to make sure about your view on Federal law in this area.

Distribution of marijuana is a Federal crime that is a predicate offenses for money-laundering prosecution. Is that correct?

Ms. CALDWELL. Correct, Senator.

Senator GRASSLEY. For example, if a business knowingly attempts to engage in a monetary transaction of $10,000 or more that are derived from distributing marijuana, that is a violation of Federal money-laundering laws. Is that correct?

Ms. CALDWELL. Yes, Your Honor—Senator.

[Laughter.]

Senator GRASSLEY. Okay.

Ms. CALDWELL. I am in the habit of saying "Your Honor." I apologize.

Senator GRASSLEY. That is okay.

Senator BLUMENTHAL. I think that is a mistake we commonly make.

Senator GRASSLEY. And if a business knowingly attempts to engage in a financial transaction of any amount of funds that are in the proceeds of distributing marijuana with the intent to promote the carrying on of the distribution of marijuana, that is also a violation. Would that be correct?

Ms. CALDWELL. Yes, Senator, that could be a violation.

Senator GRASSLEY. Okay. And then one more or two more short questions before I—well, then I am going to move on to Dodd-Frank—or whistleblowers. And the penalties for violating these Federal money-laundering laws can be up to 20 years in prison.

Ms. CALDWELL. I have to acknowledge that I have not looked recently at the current money-laundering penalties, but that sounds potentially correct, yes, sir.

Senator GRASSLEY. And then, finally, none of that will change unless Congress changes the Federal money-laundering laws, right?

Ms. CALDWELL. Certainly the laws as they are written will be enforced by the Criminal Division.

Senator GRASSLEY. I think you see what I am leading up to. I am afraid that there might be a decision made within the Department of these people using the banking system and somehow not be convicted of—or prosecuted for money laundering. Let us move on.

You probably—well, no, you would not know, but let me tell you, I very much believe whistleblowers are patriotic people, and that we would not be able to do our job of oversight or in your case prosecution if you did not have some of their information.

In a 2010 article that highlighted the whistleblower provisions of Dodd-Frank, you commented that these new whistleblower provisions "will have a huge impact" and would be, continuing the quote, "very significant." You also said, "There are some number of people in large corporations who learn about things that could be considered violations of securities laws. Now they have a huge motivation to move forward."

Based upon your extensive experience as a Federal prosecutor, how valuable are whistleblowers to Federal law enforcement and prosecution efforts?

Ms. CALDWELL. Senator, I appreciate the question. I also appreciate your leadership in the area of whistleblowers. I agree with you that whistleblowers are often very important sources of information. I know that the Dodd-Frank whistleblower program has led to very significant numbers of whistleblower reports to the Securities and Exchange Commission, some of which have turned into significant securities cases. I know that in the health care arena and a lot of other areas, there are whistleblowers who bring forward very significant information, and as a prosecutor, I recognize—when I was a prosecutor, I recognized that that information could sometimes have a lot of value in bringing a prosecution.

Senator GRASSLEY. Do you believe that providing financial incentives to whistleblowers assists in the enforcement of Federal laws?

Ms. CALDWELL. Certainly that is the status of the—from Dodd-Frank and the False Claims Act. There are financial incentives for whistleblowers, and I do think those financial incentives have contributed to whistleblowers coming forward.

Senator GRASSLEY. Yes. Now I am going to move closer to home where you will be home, the Department of Justice, and nothing you could have anything done with, but I have—I want to express to you that I have concerns about how the Department of Justice generally treats whistleblowers. I often feel that whistleblowers are kind of treated like skunks at a picnic, just as an example.

Will you commit as Assistant Attorney General that you will do everything in your power to ensure that these brave individuals who come forward, often at personal risk, will be treated fairly and that those who retaliate against whistleblowers will be held accountable?

Ms. CALDWELL. Senator, I am not familiar with the exact procedures of the Department of Justice with regard to whistleblowers, but I am confident that there are procedures in place, and I am confident that there is a recognition that whistleblowers should be protected and should not be retaliated against.

Senator GRASSLEY. Let me say to you that you are in a very good position where you are, since you know that whistleblowers are

very important to getting the job done, that I hope when you run into some of this you will be an advocate for them within the Department as well as people within corporations or elsewhere.

I am going to now move on to Judge Hendricks. Thank you very much, Ms. Caldwell.

Ms. CALDWELL. Thank you, Senator Grassley.

Senator GRASSLEY. You founded the Bridge Program in your home district of South Carolina. You are a pioneer when it comes to Federal drug courts. Bridge is among the first Federal drug courts in the Nation—at least that is my understanding. How do you see the role of drug courts in the Federal judiciary?

Judge HENDRICKS. Thank you, Senator Grassley. Yes, I was honored to be appointed the presiding judge for the district's first drug court program, and studies show and my experience has shown that for certain offenders, it is a very good thing. For those offenders whose criminal activity is fueled by addiction, for those offenders it has shown and I have seen that it improves their lives, it changes their lives, it reduces the cost of prosecution and incarceration. And by handling and dealing with their addiction, it also provides for community safety and a reduction of recidivism.

Senator GRASSLEY. As a Federal magistrate, where do you draw the line regarding who is admitted to drug court?

Judge HENDRICKS. Thank you. Thank you, Senator. Well, the line in our program is clear. We would not admit in the U.S. Attorney's Office—we work with the U.S. Attorney's Office in choosing offenders to participate, would not involve—offenders who would not be involved with any kind of violent crime or crime involving child abuse or pornography.

Senator GRASSLEY. Before I ask the last question of you, I should go back to Ms. Caldwell. It probably sounded like only the Justice Department has problems with whistleblowers. It is throughout Government, so I am not just accusing the Justice Department of mistreating whistleblowers. Too often they are mistreated by bureaucracy generally.

Back to Judge Hendricks. If confirmed as a district judge, would you work to expand the Bridge Program in South Carolina's Federal courts?

Judge HENDRICKS. Senator, if asked to do so and if the rest of the district court were so inclined, I would be happy to participate in establishing a drug court program in other areas of the district.

Senator GRASSLEY. My last three small questions deal with a speech on employment discrimination that you gave for the South Carolina Trial Lawyers Association in 2008. You said that, "Summary judgment has a serious hurdle in the Fourth Circuit." Could you explain what you meant by that statement?

Judge HENDRICKS. Thank you. Your Honor—I mean, Senator, the standard for summary judgment in the Fourth Circuit is a tough one for certain litigants. I think my practice is to grant summary judgment motions where the law and the facts are clear and support it. But as part of that, there is always a danger in dismissing a case too early, and so you try to balance both of those equities in approaching motions for summary judgment.

Senator GRASSLEY. Okay. And, last, do you believe that the standard for summary judgment should be different for employment discrimination cases?

Judge HENDRICKS. Senator, I am not sure about that. I think there are rights on both sides of the issue, and it would not be up to me to make those decisions.

Senator GRASSLEY. Thank you very much, and thank you for your tolerance while I took so much time.

Senator BLUMENTHAL. Thank you. Not at all, Senator Grassley. Thank you. By the way, I want to join in expressing my appreciation for the work that you do on whistleblowers, really a profoundly important cause.

And thank you to the nominees who have appeared this morning and their families. In my personal opinion—I do not speak for the Committee—we have the good fortune and honor of hearing from some very, very exceptionally qualified individuals who I will support, and I really appreciate your being here today. And we need you quickly because, as you know, we have judicial crises in many parts of our country due to the lack of sufficient person power on the bench. Judge Rosenbaum made reference to the very heavy workload and caseload in the Southern District of Florida. I suspect that is true in each of the judicial districts that you have been nominated to fill positions.

And I want to say, Ms. Caldwell, I know that your position has been vacant since March 2013. You have been nominated since September 2013. I certainly hope that your nomination will be expedited.

I just want to say to my colleague Senator Grassley that I think Ms. Caldwell was a little bit modest about her prosecutorial record on narcotics and substance abuse in the Eastern District of New York, was it not, where you were a prosecutor? You did a number of very profoundly significant prosecutions while you were there, including Lorenzo Nichols, the Chinatown prosecution that you did, a number of extremely sensitive and challenging narcotics cases. So nobody knows better the importance of both organized crime and narcotics along with white-collar crime, as you testified today.

And on the subject of whistleblowers, I am not sure whether I recollect correctly, but did the Enron case involve a whistleblower?

Ms. CALDWELL. Yes, it did, Senator, a whistleblower named Sherron Watkins.

Senator BLUMENTHAL. I thought so, and as you know, Ms. Caldwell was responsible for the Enron prosecution, so she is certainly aware and sensitive to the importance of whistleblowers in major prosecutions.

All of that said, many thanks for being here today. Your families should be proud of you, and we are proud that you are potentially and hopefully filling very, very important positions in our system of justice. Thank you very much.

I am going to close the hearing, and the record will remain open for 1 week. Thank you.

[Whereupon, at 10:17 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

"Nominations"

Tuesday, February 11, 2014
Dirksen Senate Office Building, Room 226
9:00 a.m.

Panel I

Robin Rosenbaum, to be a United States Circuit Judge for the Eleventh Circuit

Panel II

Bruce Hendricks, to be a United States District Judge for the District of South Carolina

Mark Mastroianni, to be a United States District Judge for the District of Massachusetts

Leslie Caldwell, to be Assistant Attorney General

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Robin Stacie Rosenbaum
   Robin Rothschild (Rothschild is my husband's last name)

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

   United States Circuit Judge for the Eleventh Circuit

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

   Office: United States Courthouse
   299 East Broward Boulevard
   Fort Lauderdale, Florida 33301

   Residence: Boca Raton, Florida

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

   1966; Chapel Hill, North Carolina

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

   1988 – 1991, University of Miami School of Law; J.D. (*magna cum laude*), 1991

   1984 – 1988, Cornell University; B.A., 1988

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

2012 – present
United States District Court for the Southern District of Florida
299 East Broward Boulevard
Fort Lauderdale, Florida 33301
United States District Judge

2007 – 2012
United States District Court for the Southern District of Florida
299 East Broward Boulevard
Fort Lauderdale, Florida 33301
United States Magistrate Judge

2009 – present
University of Miami School of Law
1311 Miller Drive
Coral Gables, Florida 33146
Adjunct Professor

1998 – 2007
United States Attorney's Office for the Southern District of Florida
500 East Broward Boulevard, Suite 700
Fort Lauderdale, Florida 33394
Assistant United States Attorney (1998 – 2007)
Chief, Economic Crimes Section, Fort Lauderdale (2002 – 2007)

1998
The Honorable Stanley Marcus, United States Circuit Judge
Eleventh Circuit Court of Appeals
99 Northeast Fourth Street, Room 1262
Miami, Florida 33132
Law Clerk

1996 – 1997
Holland & Knight LLP
515 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Associate

1995 – 1996
Office of the Independent Counsel
Independent Counsel Dan Pearson's Investigation of Former United States Secretary of Commerce Ronald H. Brown and Nolanda Hill
The office is no longer in existence.
Staff Counsel

1991 – 1995
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20001
Trial Attorney

Summer 1990
Wiley, Rein & Fielding (now known as Wiley Rein LLP)
1776 K Street, NW
Washington, DC 20006
Summer Associate

1988 – 1990
Dr. Jerry H. Rosenbaum
3037 East Commercial Boulevard
Fort Lauderdale, Florida 33308
Typist

Summer 1989, Summer 1988
Camp Three Pines
Dr. Johnson's Camps
(No longer in existence)
Assistant Director

Other Affiliations (uncompensated):

2002 – 2007
Federal Bar Association, Broward County Chapter
c/o Kimberly Gilmour
4179 Southwest 64th Avenue, Suite 101
Davie, Florida 33314
Board of Directors (2002 – 2007)
President (2006 – 2007)
President-Elect (2005 – 2006)
Vice President (2004 – 2005)

2002 – 2003, 2006 – 2007
University of Miami School of Law, Law Alumni Association
1311 Miller Drive
Coral Gables, Florida 33146
Board of Directors

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social

security number) and type of discharge received, and whether you have registered for selective service.

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

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

The American Law Institute, elected to membership (2013)
ORT American Jurisprudence Award (2010)
AV rating as an attorney, Martindale Hubbell
Top Government Lawyer, *South Florida Legal Guide* (2005, 2006)
FBI White Collar Sustained Prosecutorial Excellence Award (Firefighter's Hat Award) (2002)
Various plaques, letters of commendation, and other forms of recognition from several federal agencies in appreciation of efforts in furtherance of cases investigated by those agencies (FBI, Secret Service, Department of Homeland Security Inspector General's Office, Internal Revenue Service Criminal Investigation, Securities and Exchange Commission) (1999 – 2007)
United States Department of Justice Special Achievement Awards (1993, 1994)
Pine Crest Preparatory School Arete Alumni Service Honor Society (1990)
University of Miami School of Law
- Order of the Coif
- Order of the Barrister
- Iron Arrow Honor Society ("Highest Honor Attained")
- Roger Sorino Award to the Outstanding Graduating Law Student
- Phi Alpha Delta Outstanding Scholar Award
- University of Miami School of Law Advanced Moot Court Competition
  - Winner
  - Best Oral Advocate Award
  - Best Brief Award
- Bar and Gavel Service Honor Society
- Omicron Delta Kappa Service Honor Society
- Member, *University of Miami Law Review*
- Dean's List
- Scholarship for serving as the Student Bar Association President (1990 – 1991)
- Scholarship for serving as the Student Bar Association Treasurer (1989 – 1990)

Cornell University
- Quill and Dagger Service Honor Society
- Dean's List

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

American Bar Association
Broward County Bar Association
Federal Bar Association, Broward County Chapter
President (2006 – 2007)
President-Elect (2005 – 2006)
Vice President (2004 – 2005)
Board of Directors (2002 – 2007)
United States District Court for the Southern District of Florida
Bench and Bar Conference Committee (2008 – present)
Committee on the Fort Lauderdale Federal Courthouse (2009 – present)

10. **Bar and Court Admission**:

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

Florida, 1991

There has been no lapse in membership.

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

United States Court of Appeals for the Eleventh Circuit, 1997
United States District Court for the Southern District of Florida, 1997

There have been no lapses in membership.

11. **Memberships**:

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

The American Law Institute (2013 – present)
President's Council of Cornell Women (2013 – present)
Hispanic National Bar Association (2011 – present)
Cornell Alumni Admissions Ambassadors Network (2004 – present)
Iron Arrow Honor Society, University of Miami (1990 – present)
Mentors, Inc. (Washington, DC) (1992 – 1995)

Pine Crest Preparatory School Arete Alumni Service Honor Society (1990 - present)
Quill and Dagger Service Honor Society (1988 – present)
University of Miami School of Law Moot Court Board Alumni Board (2011)
University of Miami School of Law Alumni Association (2002 – 2003, 2006 – 2007)
Board of Directors

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

Before I was inducted in 1990, the University of Miami's Iron Arrow Honor Society limited membership to men. Iron Arrow has admitted women since 1985.

Membership in the Cornell University President's Council of Cornell Women is limited to women. Former Cornell University President Frank H.T. Rhodes established the group for the purpose of "advanc[ing] the involvement and leadership of women students, faculty, staff and alumnae within Cornell University and its many constituent communities, and to advise the President [of Cornell] on issues related to women." As a new member, I intend to propose that men who meet all of the membership criteria and who are interested in promoting the mission of the group be considered for membership.

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

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

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

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

In 2010, I signed the Sedona Conference's Cooperation Proclamation. Copy supplied.

On November 14, 1996, the Independent Counsel issued his Final Report on the investigation of Ronald H. Brown. I was staff counsel on the investigation and prepared the first draft of the report, which was edited and finalized by Judge Pearson, the Independent Counsel. Copy supplied.

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

On February 29, 2012, I testified at the Senate Judiciary Committee hearing regarding my nomination to serve as a United States district judge. A recording of my remarks is available through the "Webcast" link found at http://www.judiciary.senate.gov/hearings/hearing.cfm?id=8b30fa475a5089d793576cd9470685dc.

On July 25, 2011, I gave remarks before the Florida Federal Judicial Nominating Commission. I have no notes, transcript or recording of my presentation.

On July 14, 2009, I gave remarks before the Florida Federal Judicial Nominating Commission. I have no notes, transcript or recording of my presentation.

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

The list that follows represents my best efforts, through searches of my records, calendars, and Internet databases, to identify speeches and remarks that I have given. There may be, however, other speeches or remarks that I have been unable to recall or identify. Often, when I engage in public speaking, I do so without outlines or prepared remarks.

August 23, 2013: Panel member on judges' top-ten "pet peeves." I have no notes, transcript, or recording. The sponsor of the event was the American Board of Trial Advocates, Fort Lauderdale Chapter, William R. Clayton (president of chapter), Greenberg Traurig, P.A., 401 East Las Olas Boulevard, Suite 2000, Fort Lauderdale, Florida 33301.

April 25, 2013: Speaker, Dade County Bar Association luncheon. My best recollection is that I spoke about my likes and pet peeves as a judge. I have no notes, transcript, or recording. The event sponsor was the Dade County Bar Association, 123 Northwest First Avenue, Suite 214, Miami, Florida 33128.

March 28, 2013: Panel member for event organized for Women's History Month. I spoke about being a woman in the legal field. I have no notes, transcript, or recording. The sponsor of the event was United States Attorney's Office for the Southern District of Florida, 99 Northeast Fourth Street, Miami, Florida 33132.

March 15, 2013: Naturalization Ceremony at United States Courthouse, Fort Lauderdale, Florida. I presided over the proceedings. A copy of my notes is supplied.

March 8, 2013: Panel member, ethics panel. The panel was organized by the South Florida Chapter of the Federal Bar Association. I have no notes, transcript, or recording. My contact was Anni Martinez, United States Attorney's Office, 99 Northeast Fourth Street, Miami, Florida 33132.

March 1, 2013: Panel member, Palm Beach Bench and Bar Conference. I spoke on a criminal-law panel. I have no notes, transcript, or recording. The event sponsor was the Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, Florida 33406.

February 19, 2013: Panel Member, University of Miami School of Law Judicial Clerkship Season Panel Discussion. I spoke about clerking in the federal courts. I have no notes, transcript, or recording. The event sponsor was the University of Miami School of Law Career Development Office, University of Miami School of Law, Suite A112, 1311 Miller Drive, Coral Gables, Florida 33146.

December 13, 2012: My formal investiture as a United States District Judge. A recording of the event and a copy of my notes is supplied.

November 15, 2012: Naturalization Ceremony at United States Citizenship and Immigration Services Oakland Park Field Office, Oakland Park, Florida. I presided over the proceedings. A copy of my notes is supplied.

October 12, 2012: Panel member, American Inns of Court luncheon. I believe that I spoke about complex litigation. I have no notes, transcript, or recording.

The sponsor of the seminar was *The Daily Business Review*, One Southeast Third Avenue, Suite 900, Miami, Florida 33131.

September 15, 2012: Panel member, Florida National Employment Lawyers Association Conference, St. Petersburg, Florida. I believe that I spoke about issues in employment law. I have no notes, transcript, or recording. The sponsor of the event was the Florida National Employment Lawyers Association, Arthur Schofield (then president of the group), Arthur T. Schofield, P.A., Via Jardin, 330 Clematis Street, Suite 207, West Palm Beach, Florida 33401.

May 24, 2012: Speaker, Pine Crest Preparatory School, Boca Raton, Florida (question-and-answer session about being a lawyer and a judge). I have no notes, transcript, or recording. The sponsor of the event was Pine Crest School, 2700 Saint Andrews Boulevard, Boca Raton, Florida 33434

May 11, 2012: Speaker, Career Day at North Fork Elementary School (question-and-answer session about being a lawyer and a judge). I have no notes, transcript, or recording. I spoke at the school as a part of my involvement in the Florida Bar's Justice Teaching program. The sponsor of the event was North Fork Elementary School, 101 Northwest Fifteenth Avenue, Fort Lauderdale, Florida 33301.

April 27, 2012: Speaker, panel on health-care fraud, Federal Bench and Bar Conference. I have no notes, transcript, or recording. The sponsor of the conference was the United States District Court for the Southern District of Florida, 400 North Miami Avenue, Miami, Florida 33128.

April 11, 2012: Speaker, Florida Association of Women Lawyers luncheon. I spoke about being a woman in the legal field. I have no notes, transcript, or recording. My contact for this event was Adrienne Rabinowitz, United States Attorney's Office, 500 South Australian Avenue, Suite 400, West Palm Beach, Florida 33401.

February 17, 2012: Naturalization Ceremony at United States Courthouse, Fort Lauderdale, Florida. I presided over the proceedings. A copy of my notes is supplied.

November 18, 2011: Naturalization Ceremony at United States Citizenship and Immigration Services Oakland Park Field Office, Oakland Park, Florida. I presided over the proceedings. A copy of my notes is supplied.

August 19, 2011: Naturalization Ceremony at United States Courthouse, Fort Lauderdale, Florida. I presided over the proceedings. A copy of my notes is supplied.

August 9, 2011: Panel member, Judges' Panel at the United States District Court for the Southern District of Florida's Clerk's Office Retreat. I do not recall about what I spoke. I have no notes, transcript or recording. The event was organized by Clerk of Court Steve Larimore, 400 North Miami Avenue, Miami, Florida 33128.

July 28, 2011: Panel member, panel about consumer finance issues. I have no notes, transcript, or recording. The conference was sponsored by the American Conference Institute, 45 West 25th Street, Eleventh Floor, New York, New York 10010.

June 16, 2011: Speaker, University of Miami School of Law James Weldon Johnson Summer Institute (discussion and question-and-answer session about my career path and the responsibilities of a federal magistrate judge). I have no notes, transcript, or recording. The sponsor of the event was the University of Miami School of Law, 1311 Miller Drive, Coral Gables, Florida 33146.

June 3, 2011: Speaker, Career Day at North Fork Elementary School (question-and-answer session about being a lawyer and a judge). I have no notes, transcript, or recording. I spoke at the school as a part of my involvement in the Florida Bar's Justice Teaching program. The sponsor of the event was North Fork Elementary School, 101 Northwest Fifteenth Avenue, Fort Lauderdale, Florida 33301.

June 2, 2011: Panel Member, The Role of Clients in the Courtroom. A copy of my notes is supplied.

May 20, 2011: Panel member, seminar entitled "Emerging Issues in Discovery," Palm Beach County Bar Association and Federal Bar Association Palm Beach Chapter. I provided attendees with a hand-out of my notes. A copy of the hand-out and an audio recording of the presentation are supplied.

April 14, 2011: Panel member, seminar on electronic discovery. I have no notes, transcript, or recording. The panel was sponsored by the American Bar Association, 321 North Clark Street, Chicago, Illinois 60654.

October 21, 2010: Award recipient, ORT America Jurisprudence Awards Reception. A copy of my acceptance speech is supplied.

October 15, 2010: Naturalization Ceremony at United States Courthouse, Fort Lauderdale, Florida. I presided over the proceedings. A copy of my notes is supplied.

October 1, 2010: Panel member, seminar on trial practice. I have no notes, transcript, or recording. The sponsor of the seminar was *The Daily Business Review*, One Southeast Third Avenue, Suite 900, Miami, Florida 33131.

August 16, 2010: Speaker, Nova Southeastern University Law Center Professionalism Day. I believe that I spoke about being a lawyer. I have no notes, transcript, or recording. The sponsor of the event was Nova Southeastern University Law Center, 3305 College Avenue, Fort Lauderdale - Davie, Florida 33314.

June 14, 2010: Speaker, University of Miami School of Law James Weldon Johnson Summer Institute (discussion and question-and-answer session about my career path and the responsibilities of a federal magistrate judge). I have no notes, transcript, or recording. The sponsor of the event was the University of Miami School of Law, 1311 Miller Drive, Coral Gables, Florida 33146.

May 6, 2010: Speaker, Florida Association of Women Lawyers (discussion and question-and-answer session about my career path and the responsibilities of a federal magistrate judge). I have no notes, transcript, or recording. The sponsor of the event was the West Palm Beach Chapter of the Florida Association of Women Lawyers, which does not have a physical address.

April 30, 2010: Panel member, complex litigation panel. I have no notes, transcript, or recording. The sponsor was the United States District Court for the Southern District of Florida, 400 North Miami Avenue, Miami, Florida 33128.

January 8, 2010: Sun-vitational High School Debate Tournament. I spoke about the power of oral argument and the responsibility to use it wisely. I have no notes, recording, or transcript. The event was sponsored by the University School Debate Team, 3375 Southwest 75th Avenue, Sonken Building, Fort Lauderdale, Florida 33314.

October 23, 2009: Speaker, event for lawyers newly sworn in to practice in the Southern District of Florida (discussion of some of the rules and practices unique to federal court practice). I have no notes, transcript, or recording. The event sponsor was the Federal Bar Association, which can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

September 23, 2009: Panel member, panel about electronic discovery. I have no notes, transcript, or recording. The conference was sponsored by the American Conference Institute, 45 West 25th Street, Eleventh Floor, New York, New York 10010.

August 27, 2009: Speaker, luncheon (I believe that I spoke about *Brown v. Board of Education*). I have no notes, recording, or transcript, but press coverage is supplied. The event sponsor was the Federal Bar Association, which can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

June 1, 2009: Speaker, North Fork Elementary School (discussion about the five freedoms guaranteed by the First Amendment). I have no notes, transcript, or recording. I spoke at the school as a part of my involvement in the Florida Bar's Justice Teaching program. The School is located at 101 Northwest Fifteenth Avenue, Fort Lauderdale, Florida 33301.

October 10, 2008: Panelist, Southern District of Florida Orientation conference, Federal Bar Association Broward County Chapter. I do not recall the subject about which I spoke. I have no notes, transcript or recording, but press coverage is supplied. The Federal Bar Association can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

July 29, 2008: Speaker, brown-bag luncheon (question-and-answer session about my practices and procedures as a magistrate judge and the transition from practicing attorney to the bench). I have no notes, transcript, or recording. The event sponsor was the Federal Bar Association, which can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

February 27, 2008: Speaker, luncheon (speech and question-and-answer session about the role of a magistrate judge and the transition from practicing attorney to the bench). I have no notes, transcript, or recording. The event sponsor was the Federal Bar Association, which can be contacted through the current president, Kimberly Gilmour, 4179 Southwest 64th Avenue, Suite 101, Davie, Florida 33314.

December 7, 2007: My formal investiture as a United States Magistrate Judge. A copy of my remarks is supplied.

April 8, 2005: Panel member on panel entitled, "Internal Investigations: The Roles of In-House Counsel and Outside Counsel," Daily Business Review. Video recording supplied.

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

Responses to a Florida Bar questionnaire about courtroom practices (May 14, 2009; updated August 20, 2011). Copies supplied.

Catherine Wilson, *Doctor Recovering from Botulism Poisoning Faces Fraud Charges*, Associated Press, Mar. 1, 2005. Copy supplied.

John Fakler, *$4.4 Million Awarded at Jonson Restitution Hearing*, South Florida Business Journal, Apr. 30, 2004. Copy supplied.

Ellen van Wageningen, *Scammer Sentenced to 20 Years*, Windsor Star, Jan. 23, 2004 (re-printed in multiple outlets). Copy supplied.

John Fakler, *Former Link Broker Strikes Deal with SEC*, South Florida Business Journal, Sept. 27, 2002. Copy supplied.

John Fakler, *Lack of Defense Lawyer Delays Johnson Trial*, South Florida Business Journal, Apr. 19, 2002. Copy supplied.

John Fakler, *Pony Express Shares Gallop Downward*, South Florida Business Journal, Mar. 1, 2002. Copy supplied.

Dani Davies, *Man Faces Charges of Bilking Investors*, Palm Beach Post, Feb. 24, 2002. Copy supplied.

On one occasion probably in about 2000 or 2001, I stood in as the spokesperson for the United States Attorney's Office during a press conference on a case regarding Mark Thurman. I have done my best to locate any statements or interviews of that conference that may exist in electronic databases but have been unable to find any.

Jon Burstein, *Woman Pleads Guilty in Phony Check Scheme*, South Florida Sun-Sentinel, Oct. 13, 1999. Copy supplied.

Class of 1988 Notes, *Cornell Magazine*, January/February 1999. Copy supplied.

Michael Sniffen, *Justice Department to Take Over Remainder of Brown Investigation*, Associated Press, Apr. 19, 1996. Copy supplied.

Lourdes Fernandez, *'Professor' Brennan Gives UM Students Unique Legal Insight*, Miami Herald, Feb. 15, 1991. Copy supplied.

Lourdes Fernandez, *Retired Justice Brennan to Teach Law Course at UM*, Miami Herald, Jan. 19, 1991. Copy supplied.

Revised Campus Code Changes Will Go to Trustees on Dec. 5, Cornell Chronicle, Nov. 21, 1985. Copy supplied.

In either my junior or senior year of college at Cornell University, I gave an interview to the Cornell public relations newspaper regarding my service as the student-elected member of the Cornell Board of Trustees. I have been unable to locate a copy of the article.

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

United States District Judge, United States District Court for the Southern District of Florida, from June 27, 2012, to the present. I was nominated for the position by President Barack Obama and confirmed by the Senate. The jurisdiction of the United States District Court is general in nature and extends to all federal criminal cases and all civil cases in which federal subject-matter jurisdiction exists.

United States Magistrate Judge, United States District Court for the Southern District of Florida, from September 4, 2007, to the June 26, 2012. I was appointed by the district judges of the United States District Court for the Southern District of Florida. As a federal magistrate judge in the Southern District of Florida, I presided over civil jury and bench trials where the parties consented to magistrate-judge jurisdiction, I conducted evidentiary hearings that district judges referred to me, I held hearings and ruled on non-dispositive civil and criminal motions, and I held hearings on and made reports and recommendations regarding dispositive civil and criminal motions. In addition, I handled criminal duty, including issuing criminal complaints, search warrants, and arrest warrants and presiding over criminal duty court.

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

I have presided over twenty cases that have gone to verdict or judgment. I presided over a bench trial in a twenty-first case, but after the trial ended and before I issued my findings of fact and conclusions of law, the parties settled the case.

i. Of these, approximately what percent were:

jury trials:	85%
bench trials:	15%
civil proceedings:	55%
criminal proceedings:	45%

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

Please see attached list of opinions, which lists opinions in reverse chronological order.

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).

The cases below are presented in reverse chronological order of the dates of trial.

1. *Democratic Republic of the Congo v. Air Capital Grp., LLC*, Case No. 12-20607-CIV-ROSENBAUM (S.D. Fla.)

This case involved claims by the Democratic Republic of the Congo that the defendants had fraudulently induced the Democratic Republic of the Congo to enter into a contract for the refurbishment of an airplane owned by the country and that the defendants had thereafter breached the contract and defrauded the Democratic Republic of the Congo. The defendants counterclaimed, alleging that the Democratic Republic of the Congo had breached the contract by failing to make required payments for services rendered by the defendants under the contract. Trial in this case lasted for thirteen days. The jury found that the defendants had not fraudulently induced the Democratic Republic of the Congo to enter into a contract but that the defendants had breached the contract and had engaged in some fraud against the Democratic Republic of the Congo. In all, the jury awarded the Democratic Republic of the Congo approximately $2.2 million. As for the counterclaim, the jury concluded that the Democratic Republic of the Congo had not breached the contract. Trial began July 2, 2013, and finished August 1, 2013. Citations of significant opinions that I filed in this case include the following: *Democratic Republic of the Congo v. Air Capital Grp., LLC*, 2013 WL 3223686 (S.D. Fla. June 24, 2013); *Democratic Republic of the Congo v. Air Capital Grp., LLC*, 2013 WL 3223688 (S.D. Fla. June 24, 2013); *Democratic Republic of the Congo v. Air Capital Grp., LLC*, 2013 WL 2285542 (S.D. Fla. May 23, 2013).

Plaintiff Democratic Republic of the Congo

Richard Dunn
Raquel M. Fernandez
Cozen O'Connor
200 South Biscayne Boulevard, Suite 4410
Miami, Florida 33131
305-704-5943

Jermaine Lee
Hernandez Lee
200 South Biscayne Boulevard, Suite 4410
Miami, Florida 33131
305-842-2100

Defendants

Jay Gayoso
Law Offices of Jay A. Gayoso, P.A.
20801 Biscayne Boulevard, Suite 506
Aventura, Florida 33180
305-936-8844

Bobbi L. Meloro
Law Offices of Bobbi L. Meloro, P.A.
8551 West Sunrise Boulevard, Suite 300
Plantation, Florida 33322
954-577-1010

2. *United States v. Brown*, Case No. 11-60285-CR-ROSENBAUM (S.D. Fla.)

This case involved a series of attempted armored-car robberies, culminating in an armored-car robbery where the armored-car driver was shot and killed by one of the perpetrators. Although the Government charged six defendants, one (Madison) was not death-penalty eligible, so I tried his case separately while the Government determined whether it wished to pursue the death penalty against the remaining five defendants. Madison's trial started on July 31, 2012, and ended on August 13, 2012. Madison was found guilty of conspiracy to commit Hobbs Act robbery, one count of attempted Hobbs Act robbery, and one count of use of a firearm during and in relation to a crime of violence. After the Government declined to seek the death penalty against the remaining five defendants, I tried the case against them. That trial started May 24, 2013, and ended July 15, 2013. One defendant (Simmons) was acquitted; one defendant (Williams) was convicted of conspiracy to commit Hobbs Act robbery, one count of attempted Hobbs Act robbery, one count of possession of a firearm in furtherance of a crime of violence, and one count of being a felon in possession of a firearm; and the other three defendants (Brown, Johnson, and Davis) were found guilty of conspiracy to commit Hobbs Act robbery. The jury hung on the remaining counts. Citations of significant opinions that I filed in this case include the following: *United States v. Davis*, 2013 WL 2156659 (S.D. Fla. May 17, 2013); *United States v. Madison*, 2012 WL 3095357 (S.D. Fla. July 30, 2012).

Plaintiff United States

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United States Attorney's Office, Southern District of Florida
99 Northeast Fourth Street
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305-961-9015

Mark Dispoto
United States Attorney's Office, Southern District of Florida
500 East Broward Boulevard
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Fort Lauderdale, Florida 33301
954-660-5786

Jason Linder (original pretrial counsel)
United States Department of Justice
Criminal Division, Fraud Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
202-514-3740

Defendant Brown

Marshall Dore Louis
Sinclair Louis Heath Nussbaum & Zavertnik
Alfred I. DuPont Building
169 East Flagler Street, Suite 1125
Miami, Florida 33131
305-374-0544

Defendant Johnson

Gennaro Cariglio, Jr.
10800 Biscayne Boulevard, Suite 900
Miami, Florida 33161
305-899-0438

Defendant Davis

Martin L. Roth
Martin L. Roth, P.A.
101 Tower
101 Northeast Third Avenue, Suite 1430
Fort Lauderdale, Florida 33301
954-745-7697

Defendant Williams

Marc David Seitles
The Law Offices of Marc David Seitles, P.A.
Courthouse Center
40 Northwest Third Avenue
Penthouse One

Miami, Florida 33128
305-403-8210

Ashley Litwin
The Law Offices of Marc David Seitles, P.A.
Courthouse Center
40 Northwest Third Avenue
Penthouse One
Miami, Florida 33128
305-403-8210

Defendant Simmons

David Jonathon Joffe
David J. Joffe
One East Broward Boulevard, Suite 700
Fort Lauderdale, Florida 33301
954-723-0007

Defendant Madison

Randee J. Golder
Randee J. Golder, P.A.
Post Office Box 243756
Boynton Beach, Florida 33424
561-504-4398

3. *United States v. Handy*, Case No. 12-20771-CR-ROSENBAUM (S.D. Fla.)

In this criminal case, the plaintiff was charged with identity theft and access-device fraud relating to fraudulent tax returns that she had allegedly participated in filing. Trial began on April 10, 2013, and ended on April 12, 2013. The jury convicted the plaintiff of all counts in the indictment. The following is a citation of a significant opinion in this case: *United States v. Handy*, 2013 WL 163426 (S.D. Fla. Jan. 15, 2013).

Plaintiff United States

Alexandra Hui
United States Attorney's Office, Southern District of Florida
99 Northeast Fourth Street
Miami, Florida 33132
305-961-9066

Defendant Handy

Shlomi Presser
Presser Law Offices
524 South Andrews Avenue, Suite 203N
Fort Lauderdale, Florida 333301
954-764-1080

4. *Campbell v. Pirelli Tire, LLC*, Case No. 12-21153-CIV-ROSENBAUM (S.D. Fla.)

In this product-liability case, Plaintiffs D. Campbell and J. Campbell sued Defendant Pirelli Tire, LLC, for an alleged defect in Pirelli's motorcycle tire. While riding on their motorcycle, the Campbells experienced a tire blow-out and endured substantial injuries as a result. Trial in this matter started on April 3, 2013, and ended on April 10, 2013. The jury returned a verdict for Pirelli. I did not issue any significant written opinions in this case.

Plaintiffs D. and J. Campbell

Paul Byron
Overchuck & Byron, P.A.
20 North Orange Avenue, Suite 810
Orlando, Florida 32801
407-872-6222

Martin J. Jaffe
Morgan & Morgan, P.A.
20 North Orange Avenue, Suite 1600
Orlando, Florida 32801
407-418-2049

Defendants Pirelli Tire, LLC, and Pirelli Tire North America, Inc.

Peter Q. Ezzell
Law Office of Peter Ezzell, A.P.C.
164 Westwind Mall
Marina de Rey, California 90292
310-709-2125

Lee Teichner
Eleni Sevasti Kastrenakes
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
305-374-8500

5. *United States v. Barbary*, Case No. 12-60011-CR-ROSENBAUM (S.D. Fla.)

In this criminal case, nine defendants were charged with crimes arising out of their alleged involvement in a drug-trafficking ring from 2000 until 2012. Ultimately, four defendants pled guilty, and five went to trial. The trial began on October 23, 2012, and ended on November 14, 2012. All defendants who went to trial were convicted of at least one drug-trafficking conspiracy. Although I issued a number of opinions in this case, none of them were case-dispositive.

Plaintiff United States

David L. Goldberg
Tiffany H. Eggers
United States Attorney's Office, Northern District of Florida
21 East Garden Street, Suite 400
Pensacola, Florida 32502
850-444-4000

Defendant Barbary

Saam Zangeneh
Saam Zangeneh, P.A.
175 Southwest Seventh Street, Suite 2009
Miami, Florida 33130
305-441-2333

Defendant Barnes

Daryl Elliott Wilcox
Federal Public Defender's Office
One East Broward Boulevard, Suite 1100
Fort Lauderdale, Florida 33301
954-356-7436

Defendant Willie J. Hartfield

Lance Armstrong
4302 Hollywood Boulevard, Number 310
Hollywood, Florida 33021
305-547-2555

Defendant Holt, Jr.

Jonathan S. Friedman
One East Broward Boulevard, Suite 925

Fort Lauderdale, Florida 33301
954-713-2820

Defendant Lewis

Humberto Rolando Dominguez
800 Brickell Avenue, Suite PH-2
Miami, Florida 33131
305-373-6400

Defendant Carswell

Philip Robert Horowitz
9130 South Dadeland Boulevard
Two Datran Center, Suite 1910
Miami, Florida 33156
305-670-1915

Defendant Jackson

Bruce Harris Fleisher
1980 Coral Way
Miami, Florida 33145
305-859-7999

Defendant Jasper-Barbary

Scott Alan Srebnick
201 South Biscayne Boulevard, Suite 1380
Miami, Florida 33131
305-285-9019

Defendant Lespinasse

Jack Ross Blumenfeld
2655 LeJeune Road, Suite 700H
Coral Gables, Florida 33132
305-670-3311

6. *United States v. Thompson*, Case No. 12-20106-CR-ROSENBAUM (S.D. Fla.)

In this criminal case, twin brothers were charged with trafficking oxycodone. The alleged drug-trafficking operation involved both South Florida and Boston, Massachusetts. Trial began August 22, 2012, and ended September 5, 2012. The jury hung, and when the case was retried before another judge (due to scheduling

conflicts), the defendants were convicted. Although I issued written opinions in this case, I did not issue any case-dispositive ones.

Plaintiff United States

Michael Brian Nadler
United States Attorney's Office, Southern District of Florida
99 Northeast Fourth Street
Miami, Florida 33132
305-536-7213

Defendant S. Thompson

Ana Maria Jhones
Haley & Associates, P.A.
Atrium at Coral Gables
1500 San Remo Avenue, Suite 222
Coral Gables, Florida 33146
305-661-4637

Defendant M. Thompson

Douglas L. Williams
3191 Coral Way, Penthouse 200
Miami, Florida 33145
305-443-3911

7. *Shipco Transp., Inc. v. Abba Shipping Lines, Inc.*, Case No. 11-22055-CIV-ROSENBAUM (S.D. Fla.)

This case involved a dispute over the shipping of certain cargo from Nashville, Tennessee, to Tin Can Island, Nigeria. When the shipment arrived in Nigeria, the Nigerian government refused to allow it to be unloaded because no appropriate license had been obtained. Therefore, the shipment had to be returned to the United States. The parties disputed whether the shipping company or the shipper should pay for the freight charges associated with the ill-fated shipment. The bench trial was held on July 25, 2012, and August 17, 2012. I entered judgment for the plaintiff shipping company. The Findings of Fact and Conclusions of Law may be found at the following citation: *Shipco Transp., Inc. v. Abba Shipping Lines, Inc.*, 2012 WL 6725875 (S.D. Fla. Dec. 27, 2012).

Plaintiff Shipco Transport, Inc.

Thomas Vincent Halley
Halley & Halley, P.A.
200 Crandon Boulevard Suite 332

Key Biscayne, Florida 33149
305-365-1237

Defendant Ullico Casualty Company

Daniel DeSouza
Becker & Poliakoff, P.A.
Emerald Lake Corporate Park
3111 Stirling Road
Fort Lauderdale, Florida 33312
954-987-7550

8. *Lawson v. Plantation Gen. Hosp., L.P.*, Case No. 08-61826-CIV-ROSENBAUM (S.D. Fla.)

I presided over a jury trial in this employment discrimination case brought by a former hospital employee against the hospital that terminated her employment. The plaintiff, an executive secretary formerly employed by the defendant hospital, alleged discrimination based on her race, age, disability, national origin, and gender under Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act of 1990, and the Age Discrimination in Employment Act. The defendant hospital argued that it had ended the plaintiff's employment as the result of a reduction in force that resulted in the layoff of numerous employees. Trial began on May 13, 2010, and ended on May 20, 2010. The jury returned a verdict for the hospital. The order on the motion for summary judgment may be found at the following citation: *Lawson v. Plantation Gen. Hosp., L.P.*, 2010 WL 1258058 (S.D. Fla. Mar. 30, 2010).

Plaintiff Lawson

Dana Mason Gallup
The Law Offices of Dana M. Gallup, P.A.
4000 Hollywood Boulevard, Suite 265-S
Hollywood, Florida 33021
954-894-3035

Marcia L. Elliott
4137 Nicolet Drive
Green Bay, Wisconsin 54311
561-400-8759

Defendant Plantation General Hospital Limited Partnership

Alexander D. Del Russo
Carlton Fields, P.A.
Post Office Box 150

525 Okeechobee Boulevard, Suite 1200
West Palm Beach, Florida 33402
561-659-7070

Allison Oasis Kahn
Carlton Fields, P.A.
Post Office Box 150
525 Okeechobee Boulevard, Suite 1200
West Palm Beach, Florida 33402
561-659-7070

9. *SEC v. Huff*, Case No. 08-60315-CIV-ROSENBAUM (S.D. Fla.), *aff'd*, 455 F. App'x 882 (11th Cir. 2012)

This matter involved a United States Securities and Exchange Commission enforcement action against a defendant (Huff) and three relief defendants. The defendant was alleged to have used his companies to drain a publicly-traded company of approximately $130 million. I held a bench trial that began on February 16, 2010, and ended on February 25, 2010. Subsequently, I entered judgment for the SEC and against Huff and two of the three relief defendants and judgment for one of the three relief defendants and against the SEC. Under the judgment, Huff was required to disgorge approximately $10 million and was barred from serving as an officer and director of a publicly traded company. The Amended Findings of Fact and Conclusions of Law may be found at the following citation: *SEC v. Huff*, 758 F. Supp. 2d 1288 (S.D. Fla. 2010) (Amended Findings of Fact and Conclusions of Law), *aff'd*, 455 F. App'x 882 (11th Cir. 2012).

Plaintiff SEC

Christopher E. Martin
Linda S. Schmidt
Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
305-982-6300

Defendant Huff and Relief Defendants

Russell Cornelius Weigel, III
Russell C. Weigel, III, P.A.
5775 Blue Lagoon Drive, Suite 100
Miami, Florida 33126
786-888-4567

William H. Mooney
Lynch Cox Gilman & Goodman, PSC
500 West Jefferson Street, Suite 2100
Louisville, Kentucky 40202
502-589-4215

10. *Peters v. Peake*, Case No. 08-81162-CIV-ROSENBAUM (S.D. Fla.)

I presided over a jury trial in this case brought by a doctor against the Veterans Administration. The plaintiff, who worked as a physician in the Veterans Administration hospital, alleged that after she complained about a sexually hostile work environment, the Veterans Administration retaliated against her by placing her in an administrative position. The Veterans Administration denied that it had done so and instead argued that it had transferred her to another position to compensate for the fact that three other physicians had been called to active duty, and the plaintiff had requested the hours that they worked. Upon transferring to the new position, however, the Veterans Administration contended that the plaintiff had acted in an unprofessional manner and had failed to attend work shifts without excuse. Trial began on December 7, 2009, and ended on December 11, 2009. The jury returned a verdict for the Veterans Administration. The order on the motion for summary judgment may be found at the following citation: *Peters v. Peake*, 2009 WL 5214997 (S.D. Fla. Dec. 30, 2009).

Plaintiff Peters

Arthur Thomas Schofield
330 Clematis Street, Suite 207
West Palm Beach, Florida 33401
561-655-4211

Defendant Secretary of Veterans Affairs Peake

Steven R. Petri
United States Attorney's Office, Southern District of Florida
500 East Broward Boulevard, Seventh Floor
Fort Lauderdale, Florida 33301
954-356-7255

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. *Giglio Sub S.N.C. v. Carnival Corp.*, 2012 WL 4477504 (S.D. Fla. Sept. 26, 2012), *aff'd*, 2013 WL 3595708 (11th Cir. July 16, 2013)

Plaintiff Giglio Sub S.N.C.

Edward M. Ricci
Edward M. Ricci, P.A.
303 Banyan Boulevard, Suite 400
West Palm Beach, Florida 33401
561-842-2820

Ahmed Ibrahim
Eagan Avenatti, LLP
450 Newport Center Drive, Second Floor
Newport Beach, California 92660
949-706-7000

Filippo Marchino
The X-Law Group PC
11100 Santa Monica Boulevard, Suite 150
Los Angeles, California 90025
213-599-3380

Defendant Carnival Corp.

Alvin F. Lindsay
Hogan Lovells US LLP
200 South Biscayne Boulevard, Suite 400
Miami, Florida 33131
305-459-6633

Thad T. Dameris
Trevor R. Jefferies
Hogan Lovells US LLP
700 Louisiana Street, Suite 4300
Houston, Texas 77002
713-632-1400

David J. Weiner
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004
202-637-5600

John D. Kimball
Blank Rome LLP
Lexington Avenue
New York, New York 10174
212-885-5259

2. *Credit Bureau Servs., Inc. v. Experian Info. Solutions, Inc.*, 2012 WL 6102068 (S.D. Fla. Dec. 7, 2012)

Plaintiff Credit Bureau Services, Inc.

Jonathan Rubin
Rubin PLLC
1250 24th Street, NW
Suite 300
Washington, DC 20037
202-776-7763

Defendant Experian Information Solutions, Inc.

Mitchell Berger
Berger Singerman
Las Olas Centre II
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, Florida 33301
954-525-9900

Thomas Demitrack
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
216-586-3939

Defendant CoreLogic, Inc.

Robert S. Hackleman
Helaina Bardunias
Gunster, Yoakley & Stewart, P.A.
450 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, Florida 33301
954-462-2000

Lawrence R. Desideri
Winstron & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601
312-558-5600

3. *Chrystall v. Serden Techs.*, 913 F. Supp. 2d 1341 (S.D. Fla. 2012)

Plaintiff Chrystall

Maria Elena Abate
Colodny, Fass, Talenfeld, Karlinsky & Abate, P.A.
One Financial Plaza, 23rd Floor
100 Southeast Third Avenue
Fort Lauderdale, Florida 33394
954-492-4010

Michael K. Crossen
John J. McGivney
Rubin & Rudman LLP
50 Rowes Wharf
Boston, Massachusetts 02110
617-330-7000

Defendants Serden Technologies and Duthoit

Michael Stegawski
3535 Galt Ocean Drive, South Suite
Fort Lauderdale, Florida 33308
800-750-9861

Defendant Persystent Technology Corporation

Lawrence Hugh Kunin
Morris Manning & Martin
Atlanta Financial Center
3343 Peachtree Road Northeast
Suite 1600
Atlanta, Georgia 30326
404-233-7000

Defendant Avitis SAS

Robert W. Bivins
Kelly D. Haywood
Bivins & Hemenway, P.A.
10660 Bloomingdale Avenue
Valrico, Florida 33596
813-643-4900

4. *LaTele Television C.A. v. Telemundo Comm'ns Grp., LLC*, 2013 WL 1296314 (S.D. Fla. Mar. 27, 2013)

Plaintiff LaTele Television

James George Sammataro
Stroock & Stroock & Lavan, LLP
200 South Biscayne Boulevard, Suite 3100
Miami, Florida 33131
305-358-9900

Defendants

Jonathan Joseph Rodriguez
Greenberg Traurig
333 Southeast Second Avenue, Suite 4400
Miami, Florida 33131
786-897-3917

Lynn Diane Carillo
NBCUniversal
2290 West Eighth Avenue
Hialeah, Florida 33010
305-889-7972

Gregory W. Herbert
Greenberg Traurig
450 South Orange Avenue, Suite 650
Post Office Box 4923
Orlando, Florida 32801
407-420-1000

5. *United States v. Madison*, 2012 WL 3095357 (S.D. Fla. July 30, 2012)

Plaintiff United States

Michael E. Gilfarb
United States Attorney's Office, Southern District of Florida
99 Northeast Fourth Street
Miami, Florida 33132
305-961-9015

Mark Dispoto, Southern District of Florida
United States Attorney's Office
500 East Broward Boulevard
Seventh Floor

Fort Lauderdale, Florida 33301
954-660-5786

Jason Linder (original pretrial counsel)
United States Department of Justice
Criminal Division, Fraud Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
202-514-3740

Defendant Madison

Randee J. Golder
Randee J. Golder, P.A.
Post Office Box 243756
Boynton Beach, Florida 33424
561-504-4398

6. *Frank Haith Enters., Inc. v. Bank of America, N.A.*, Case No. 13-MC-21611-ROSENBAUM (S.D. Fla. May 9, 2013) (copy provided)

Plaintiffs

Michael Lamar Buckner
Michael L. Buckner Law Firm, P.A.
1000 West McNab Road
Pompano Beach, Florida 33069
954-941-1844

Defendants

None had yet appeared at the time of the order

7. *United States v. Perraud*, 672 F. Supp. 2d 1328 (S.D. Fla. 2009)

Plaintiff United States of America

Matthew A. Klecka
United States Attorney's Office, Southern District of Florida
99 Northeast Fourth Street
Miami, Florida 33132
202-307-1309

Jack B. Patrick
United States Department of Justice
Bond Building

1400 New York Avenue, NW
Washington, DC 20530
202-514-9482

Defendant Raffanello

Kendall Brindley Coffey
Coffey Burlington, P.L.
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Miami, Florida 33133
305-858-2900

Richard Alan Sharpstein
Janice Burton Sharpstein
Jorden Burt LLP
777 Brickell Avenue, Suite 500
Miami, Florida 33131
305-371-2600

Defendant Perraud

Edward Robert Shohat
Shohat, Loewy & Shohat
800 Brickell Avenue, Penthouse Two
Miami, Florida 33131
305-358-7000

8. *Christ Covenant Church v. Town of Sw. Ranches*, 2008 WL 2686860 (S.D. Fla. June 29, 2008)

Plaintiff Christ Covenant Church

Leon Fresco
United States Senate Judiciary Committee
305 Hart Senate Office Building
Washington, DC 20510
202-224-5606

Defendant Town of Southwest Ranches

Daniel Wallach
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, Florida 33312
954-987-7550

9. *Jones v. Jeld-Wen, Inc.*, 250 F.R.D. 554 (S.D. Fla. 2008)

Plaintiffs Jones, *et al.*

Joel Stephen Perwin
Suite 1422
Alfred I. Dupont Building
169 East Flagler Street
Miami, Florida 33131
305-779-6090

Manuel Leon Dobrinsky
Randy Rosenblum
Todd Omar Malone
Freidin, Dobrinsky, Brown & Rosenblum, P.A.
Two South Biscayne Boulevard, Suite 3100
Miami, Florida 33131
305-371-3666

Defendant Nebula Glasslam International, Inc.

Louis L. Williams
316 Banyan Boulevard
West Palm Beach, Florida 33401
561-659-3500

John David Heffling
433 Plaza Real, Suite 275
Boca Raton, Florida 33432
561-301-7500

Defendant Reichhold, Inc.

Amy Lane Hurwitz
Benjamine Reid
Carlton Fields, P.A.
Post Office Box 019101
Miami, Florida 33101
305-530-0050

Sanford ("Sandy") Bohrer
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
305-789-7678

Christina M. Schwing
Holland & Knight LLP
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
904-353-2000

10. *Bettis v. Toys R Us*, Case No. 06-80334-CIV-ZLOCH/Rosenbaum (S.D. Fla.)
Paul v. D & B Tile of Hialeah, Inc., Case No. 09-60259-CIV-ZLOCH/Rosenbaum (S.D. Fla.)
Gossard v. JP Morgan Chase & Co., Case No. 08-60565-CIV-ZLOCH/ Rosenbaum (S.D. Fla.)
Sabatier v. Suntrust Bank, Case No. 06-20418-CIV-ZLOCH/Rosenbaum (S.D. Fla.)

The citation for my report and recommendation, as adopted by the district court, is as follows: *Bettis v. Toys R Us*, 646 F. Supp. 2d 1273 (S.D. Fla. 2009). Other opinions that I wrote in this matter include the following: *Bettis v. Toys R Us*, 2009 WL 1812439 (S.D. Fla. June 23, 2009); *Bettis v. Toys R Us*, 2009 WL 1758731 (S.D. Fla. June 22, 2009).

Plaintiffs

Loring N. Spolter (representing himself in the proceedings before me)
Loring N. Spolter, P.A.
1301 East Broward Boulevard, Suite 330
Fort Lauderdale, Florida 33301
954-728-3494

Defendant Toys R Us

Christine Lynne Wilson (*Bettis v. Toys R Us*)
Pedro Jaime Torres-Diaz
Jackson Lewis LLP
2 South Biscayne Boulevard, Suite 3500
One Biscayne Tower
Miami, Florida 33131
305-577-7600

Defendant D & B Tile of Hialeah, Inc.

Dan Levine (*Paul v. D & B Tile of Hialeah, Inc.*)
Bernardo Levine, LLP
1860 Northwest Boca Raton Boulevard
Boca Raton, Florida 33432
561-392-8074

Robin I. Frank (*Paul v. D & B Tile of Hialeah, Inc.*)
Shapiro Blasi Wasserman & Gora, P.A.
7777 Glades Road, Suite 400
Boca Raton, Florida 33434
561-477-7800

Defendant JP Morgan Chase & Co.

Dawn Elizabeth Siler-Nixon (*Gossard v. JP Morgan Chase & Co.*)
Kelly Hagan Chanfrau
Ford & Harrison LLP
101 East Kennedy Boulevard, Suite 900
Tampa, Florida 33602
813-261-7800

Defendant SunTrust Bank

Jeffrey Elliot Mandel (*Sabatier v. SunTrust Bank*)
Fisher & Phillips, LLP
200 South Orange Avenue, Suite 1100
Orlando, Florida 32801
407-541-0888

Amicus United States of America

Anthony Erickson-Pogorzelski
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99 Northeast Fourth Street, Suite 335
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305-961-9296

Wendy A. Jacobus
United States Attorney's Office, Southern District of Florida
99 Northeast Fourth Street
Miami, Florida 33132
305-961-9301

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

I am aware of no cases in which I ruled where certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If

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

Creative Hospitality Ventures, Inc. v. U.S. Liability Ins. Co., 655 F. Supp. 2d 1316 (S.D. Fla. 2009), *rev'd in part*, 444 F. App'x 370 (11th Cir. 2011). In applying Florida law's canon of contract construction interpreting any ambiguous provisions against the drafter, I concluded in a report and recommendation that, under Florida law, insurance-policy language covering "[o]ral or written publication, in any manner" provided protection for an insured vendor who allegedly violated the Fair and Accurate Credit Transactions Act when it provided a customer with a credit card receipt that revealed more than five digits of that customer's credit card, even though no broader distribution of the information occurred. After I issued my decision, the Florida Supreme Court construed the term "publication" in a separate case as pertaining to only communication of information disseminated to the public. Ultimately, the district judge did not adopt the part of my report and recommendation that addressed the meaning of "publication" and later concluded that the insured vendor's conduct was not covered under the policy language because no "publication" had occurred. On appeal, the Eleventh Circuit agreed with the district court, in light of the Florida Supreme Court's ruling.

Grider v. Cook, Case No. 12-61429-CR-ROSENBAUM (S.D. Fla. Nov. 29, 2012), *aff'd in part, vacated and remanded in part*, 2013 WL 2981792 (11th Cir. June 17, 2013). In this case under 42 U.S.C. § 1983, I adopted the magistrate judge's report and recommendation recommending that the matter be dismissed for failure to state a cognizable claim. Although the Eleventh Circuit agreed that the case was properly dismissed, it noted that I should have provided the plaintiff with an opportunity to try to remedy the deficiencies by amending the complaint. Accordingly, the court remanded the matter with instructions to provide the plaintiff with the chance to amend his complaint.

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

In nearly all cases, I have issued unpublished opinions. I have submitted fewer than ten opinions for publication. Nevertheless, a number of my opinions have been published by Westlaw and LEXIS, even though I have not submitted them for publication. I have listed all opinions published by Westlaw and LEXIS in response to Section b of this question. Besides these opinions, I have issued numerous opinions that do not appear on Westlaw or LEXIS. They are stored on the Court's CM/ECF electronic filing system under each case number in which they are docketed.

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.

Cosac Foundation, Inc. v. City of Pembroke Pines, 2013 WL 5345817 (S.D. Fla. Sept. 21, 2013)

Bennett v. United States, 2013 WL 3821625 (S.D. Fla. July 23, 2013)

United States v. Handy, 2013 WL 163426 (S.D. Fla. Jan. 15, 2013)

United States v. Madison, 2012 WL 3095357 (S.D. Fla. July 30, 2012)

United States v. Wilson, 2010 WL 2991561 (S.D. Fla. July 27, 2010)

SEC v. Huff, 664 F. Supp. 2d 1288 (S.D. Fla. 2009)

Christ Covenant Church v. Town of S.W. Ranches, 2008 WL 2686860 (S.D. Fla. June 29, 2008)

The Set Enters., Inc. v. City of Hallandale Beach, Case No. 09-61405-CIV-ZLOCH (S.D. Fla. June 22, 2010) (opinion supplied)

The Set Enters., Inc. v. City of Hallandale Beach, Case No. 09-61405-CIV-ZLOCH (S.D. Fla. Dec. 30, 2010) (opinion supplied)

The Nat'l Youth Rights Ass'n of S.E. Fla., Inc. v. City of W. Palm Beach, Case No. 09-80944-CIV-ZLOCH (S.D. Fla. Feb. 5, 2010) (opinion supplied)

Dendy v. McNeil, Case No. 09-60025-CIV-COHN (S.D. Fla. July 20, 2009) (opinion supplied)

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

I have not sat by designation on any federal courts of appeals.

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

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

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

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

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

All of my recusals have been *sua sponte*, and I do not believe that I have ever been asked to recuse myself. The judges on our court can give the Clerk's Office a list of individuals and entities in whose case we would recuse. I have provided such a list to the Clerk's Office, which provides automated conflict/recusal checks by email to ensure that no cases are missed. Thus, in any case where I have submitted the name of an attorney or party for whom I would recuse myself, I receive notification by email from the Clerk's Office that that case involves a lawyer or a party with whom I might have a conflict. I then make a decision regarding whether I need to recuse myself. As a general matter, I recuse in cases where an objective, disinterested, and fully informed lay observer would entertain a significant doubt about my impartiality. *See* 28 U.S.C. §§ 145, 455.

I have recused *sua sponte* from the following cases:

(1) Cases involving the University of Miami, where I teach as an adjunct professor:

Edmond v. Univ. of Miami, Case No. 09-60946-CIV-ZLOCH (S.D. Fla.)

(2) United States Attorney's Office cases that I worked on, discussed with management in my role as a supervisor, or supervised while at the Office; for cases within one year of my resignation from the Office, those where an Assistant United States Attorney was a defendant and I knew or had worked with that attorney while at the Office; and civil cases involving some of the same parties who were targets or subjects of criminal investigations that I worked on, discussed with management in my role as a supervisor, or supervised while at the Office:

United States v. LeClercq, Case No. 07-80050-CR-MARRA (S.D. Fla.)

Affatati v. United States, Case No. 10-60030-CIV-ZLOCH (S.D. Fla.)

Faller v. McAdams, Case No. 07-80652-CIV-RYSKAMP (S.D. Fla.)

CFTC v. Valko, Case No. 06-60001-CIV-DIMITROULEAS (S.D. Fla.)

Isler v. Adelusola, Case No. 08-60257-CIV-SELTZER (S.D. Fla.)

(3) Cases where I had a strong, personal relationship with an attorney; someone related to me or my husband, or an individual with whom I had a strong, personal relationship, was a party or an important witness; or a party was the parent of one of my children's close friends. For the most part, the individuals in whose cases I recuse for any of the reasons in this category appear on a list that I have provided to the Clerk's Office for use with the CM/ECF conflict check system:

Dorvil v. Republic Servs. of Fla., L.P., Case No. 07-60395-CIV-DIMITROULEAS (S.D. Fla.)

Orthopeadic Ctr. of S. Fla., P.A. v. Stryker Corp., Case No. 08-60742-CIV-DIMITROULEAS (S.D. Fla.)

Goodwin v. Allstate Prop. & Cas. Ins. Co., Case No. 08-61474-CIV-DIMITROULEAS (S.D. Fla.)

SEC v. 3001 AD, LLC, Case No. 09-81453-CIV-ZLOCH (S.D. Fla.)

Smith v. Ruden, McClosky, Smith, Schuster & Russel, P.A., Case No. 10-80059-CIV-HURLEY (S.D. Fla.)

Swords v. Aetna Life Ins. Co., Case No. 10-80371-CIV-ZLOCH (S.D. Fla.)

Aspex Eyewear, Inc. v. Laczay, Case No. 09-61468-CIV-ZLOCH (S.D. Fla.)

Eugene M. Cummings, P.C. v. Nissim Corp., Case No. 10-81140-CIV-RYSKAMP (S.D. Fla.)

Soper v. Am. Traffic Solutions, Inc., Case No. 10-61950-CIV-ZLOCH (S.D. Fla.)

Choice v. Denny's, Inc., Case No. 10-61723-CIV-ZLOCH (S.D. Fla.)

Swords v. Aetna Life Ins. Co., Case No. 10-81113-CIV-ZLOCH (S.D. Fla.)

Ruderman v. Washington Nat'l Ins. Corp., Case No. 08-23401-CIV-COHN (S.D. Fla.)

AutoNation, Inc. v. Lampros, Case No. 11-62748-CIV-ZLOCH (S.D. Fla.)

Key v. Lanman & Kemp-Barclay & Co., 12-61309-CIV-WILLIAMS (S.D. Fla.)

Manfred v. Bennett Law, Case No. 12-61548-CIV-SEITZ (S.D. Fla.)

Correa v. Chipotle Mexican Grill, Inc., Case No. 13-60984-CIV-SCOLA (S.D. Fla.)

(4) Cases where a member of the Judicial Nominating Commission was an attorney in the matter at a time when I was applying for or was nominated for a district-judge vacancy and cases where I had discussed my district-judge application with an attorney in the case and I believed that that attorney actively supported my application for district judge, and cases filed within a year of a discussion I had had with an attorney who I believed actively supported my application for district judge:

Automated HealthCare Solutions, LLC v. Paduda, Case No. 10-61739-CIV-ZLOCH (S.D. Fla.)

C & C Int'l Computers & Consultants, Inc. v. Dell Mktg., L.P., Case No. 11-60734-CIV-ZLOCH (S.D. Fla.)

Stettin v. Gibraltar Private Bank & Trust Co., Case No. 11-60748-CIV-ZLOCH (S.D. Fla.)

Cooper v. DJSP Enters., Inc., Case No. 10-61261-CIV-ZLOCH (S.D. Fla.)

Libov v. Readix, Case No. 10-61755-CIV-ZLOCH (S.D. Fla.)

Aguiar v. Natbony, Case No. 11-61314-CIV-ZLOCH (S.D. Fla.)

Pembroke Pines Investors, LLC v. AD Pembroke Land Co., LLC, Case No. 11-61611-CIV-ZLOCH (S.D. Fla.)

Buchholz v. B.P.C. Bakery, Inc., Case No. 11-61602-CIV-ZLOCH (S.D. Fla.)

Amerisure Ins. Co. v. Walker, Case No. 11-61480-CIV-COHN (S.D. Fla.)

Stettin v. Thunder Cycle Designs, Inc., 11-62760-CIV-SCOLA (S.D. Fla.)

Michael I. Santucci, P.A. v. Lifelock, Inc., Case No. 12-60304-CIV-SCOLA (S.D. Fla.)

Satinover v. Fla. Dep't of Children and Families, Case No. 12-62544-CIV-COHN (S.D. Fla.)

(5) Cases where I believed that my impartiality might reasonably be questioned:

Heilbrunn v. Toyota Motor Corp., Case No. 10-80208-CIV-ZLOCH (S.D. Fla.): The plaintiff in this case was bringing a class action against Toyota for claims relating to alleged sudden acceleration problems of certain Toyota models.

Although the relevant class period slightly post-dated the purchase of my car, at the time of the lawsuit, I owned and daily drove one of the models that allegedly was experiencing the sudden acceleration problems.

USAA Life Ins. Co. v. Vincent, Case No. 08-60467-CIV-DIMITROULEAS (S.D. Fla.): At the time, I had my home, car, and property insurance with the plaintiff. In addition, the insurance company occasionally makes a monetary distribution to policy holders.

Am. Guarantee and Liab. Ins. Co. v. Christopher J. Gertz, P.A., Case No. 09-60946-CIV-ZLOCH (S.D. Fla.): I grew up with and attended middle and high school with a party who was representing himself, as well as with his two sisters, and our families had been friends for more than 35 years.

Chapman v. United States [Cent.] Gov., Case No. 11-61969-CIV-WILLIAMS (S.D. Fla.): At the time that *Chapman* was filed, I was a defendant in another case that Eye, one of the plaintiffs, had previously filed against me and others (*see* Category (6) below).

Ulbrich v. GMAC Mortgage, LLC, Case No. 11-62424-CIV-SCOLA (S.D. Fla.): When my husband decided to apply for employment with a law firm that represented one of the parties, I recused myself.

Fields v. Columbia Hosp. Corp. of S. Broward, Case No. 11-62277-CIV-ZLOCH (S.D. Fla.): When my husband decided to apply for employment with a law firm that represented one of the parties, I recused myself.

J.W. v. Sch. Bd. of Broward Cnty., Case No. 12-60335-CIV-SCOLA: When my husband decided to apply for employment with a law firm that represented one of the parties, I recused myself.

Brett v. White, Case No. 13-60530-CIV-MIDDLEBROOKS: The officer who served regularly as my court-security officer was a defendant in the case.

Eye v. Cohn, Case No. 11-61584-CIV-MOORE (S.D. Fla.): This case was assigned to me as the magistrate judge, and I recused because I am a defendant in the case. The plaintiff is a defendant who appeared before me in magistrate court on a criminal indictment against her. The United States Department of Justice represented me on the basis that all alleged acts were undertaken within the scope of my duties as a United States magistrate judge. The case was dismissed with prejudice on November 7, 2011.

(6) Cases where I or an immediate family member had a financial interest in a party:

Intel Corp. v. Ecointel Treasury, Case No. 06-61352-CIV-DIMITROULEAS (S.D. Fla.)

Spectrum Select, L.P. v. Tremont Grp. Holdings, Inc., Case No. 12-80962-CIV-MIDDLEBROOKS (S.D. Fla.)

(7) Cases in which one of the attorneys had been one of the two attorneys in a case on which I had done significant work while in private practice, and where my client had sought sanctions and had obtained a substantial judgment for those sanctions against those attorneys, and the matter was still on appeal:

Bryant v. Big T. East Coast, Case No. 06-61458-CIV-DIMITROULEAS (S.D. Fla.)

Fairclough v. Am. Express Travel Related Servs. Co., Inc., Case No. 08-61395-CIV-DIMITROULEAS (S.D. Fla.)

Calixte v. Motorola, Inc., Case No. 09-61607-CIV-ZLOCH (S.D. Fla.)

Testai v. Navix Imagining, Inc., Case No. 09-61997-CIV-ZLOCH (S.D. Fla.)

Bourne v. Sch. Bd. of Broward Cnty., Case No. 10-60942-CIV-ZLOCH (S.D. Fla.)

Johnson v. Publix Super Markets, Inc., Case No. 10-61100-CIV-ZLOCH (S.D. Fla.)

O'Brien v. Suncutter's Inc., Case No. 10-61534-CIV-ZLOCH (S.D. Fla.)

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

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

I have held no public office other than judicial office. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

I have never held office in or rendered services to any political party or election committee. I have never held a position or played a role in a political campaign.

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

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

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

From January to October 1998, I served as a law clerk to the Honorable Stanley Marcus on the United States Circuit Court for the Eleventh Circuit.

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

I have never practiced law alone.

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

1991 – 1995
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20001
Trial Attorney

1995 – 1996
Office of the Independent Counsel
Independent Counsel Dan Pearson's Investigation of Former United States Secretary of Commerce Ronald H. Brown and Nolanda Hill
The office is no longer in existence.
Staff Counsel

1996 – 1997
Holland & Knight LLP
515 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Associate

1998 – 2007
United States Attorney's Office for the Southern District of Florida
500 East Broward Boulevard, Suite 700

Fort Lauderdale, Florida 33394
Assistant United States Attorney (1998 – 2007)
Chief, Economic Crimes Section, Fort Lauderdale (2002 – 2007)

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

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

b. Describe:

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

I have spent nearly all of my twenty-two years as an attorney practicing almost exclusively in federal court. From 1991 to 1995, I served as a Trial Attorney at the Department of Justice. My practice was civil in nature, and I defended the constitutionality of numerous and varied federal statutes and the policies and procedures of the agencies that administered those statutes.

From 1995 to the beginning of 1996, I served as staff counsel to the Independent Counsel's Office on the investigation of former United States Secretary of Commerce Ronald Brown. This was a criminal investigation. As staff counsel, I participated in the criminal investigation and provided legal guidance to the other team members when they requested it.

In my capacity as an associate in private practice with Holland & Knight LLP, from 1996 to 1997, I engaged exclusively in civil practice. My cases had subject matters ranging from a simple replevin issue to contractual issues to a case involving charges of false and fraudulent advertising. While at Holland & Knight LLP, I also worked on several matters involving federal employment law.

At the United States Attorney's Office from 1998 to 2007, I served as a criminal prosecutor and specialized in matters involving complex frauds, becoming the chief of the Economic Crimes Section for the Central Division (Fort Lauderdale). As the chief, at various times, I supervised between eight and ten other Assistant United States Attorneys. Additionally, I continued to perform the functions of every other Assistant United States Attorney in the Economic Crimes Section, handling my own full caseload. As an Assistant United States Attorney, I investigated, developed, indicted, litigated, and tried criminal cases involving allegations of all types of economic crimes, such as securities fraud, bank

fraud, identity theft, tax fraud, telemarketing fraud, health care fraud, Internet fraud, computer crimes, and general mail and wire fraud. In this capacity, I practiced before the grand jury, prepared and filed numerous legal memoranda in support of the positions of the United States, argued various motions before the district court, and tried several cases.

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

As a Trial Attorney at the Department of Justice, my client was the United States. I specialized in federal motions practice, often involving matters of constitutional and administrative law.

As a member of the Independent Counsel's Office, my client was the United States.

My clients at Holland & Knight LLP included individuals, small companies, and large companies. I specialized in employment law.

As an Assistant United States Attorney, my client was the United States. I specialized in prosecuting complex economic crimes.

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

At the Civil Division of the Department of Justice, 100% of my practice involved federal litigation. I regularly argued motions in federal district courts, conducted two trials in federal district courts and one in a federal administrative court, and handled three appeals in federal circuit courts.

Before we could determine whether charges should be brought, the Independent Counsel's investigation of former United States Secretary Ronald Brown came to a premature end with the tragic death of Secretary Brown. Thus, other than grand jury work, which is noted in the public report of the Independent Counsel, I did not have any court appearances during this time.

At Holland & Knight LLP, 100% of my practice involved litigation. While there, I served as associate counsel on a week-long trial in state court. Other than that, my appearances in court during that period were few.

As an Assistant United States Attorney for nine years, 100% of my practice involved litigation. I regularly and frequently appeared in federal district court, handling duty court, grand jury, motions hearings, and trials.

i. Indicate the percentage of your practice in:
   1. federal courts: 94.9%
   2. state courts of record: 5%
   3. other courts:
   4. administrative agencies: 0.1%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings: 60%

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

To the best of my recollection, I have tried at least fourteen cases to verdict, judgment or final decision. In addition, defendants entered guilty pleas following the beginning of trial and prior to verdict in other cases not included in this number. At the Department of Justice, I participated in two trials as an associate member of a litigation team, handling several of my own witnesses. Additionally, I tried one case as sole counsel. While at Holland & Knight LLP, I acted as associate counsel on a two-attorney team in trying a case to verdict. In my capacity as an Assistant United States Attorney, I tried at least twelve cases, with at least ten of those going to verdict. In all but two of these cases, I served as sole counsel. With respect to these two cases, in a thirty trial-day (over nine weeks) securities fraud trial, I served as lead counsel, and in the other, I served as associate counsel.

i. What percentage of these trials were:
   1. jury: 80%
   2. non-jury: 20%

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

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

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

a. the date of representation;

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

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

The cases below are listed in chronological order.

1. *Adolph Coors Co. v. Bentsen* (D. Colo. 1992), *aff'd*, 2 F.3d 355 (10th Cir. 1993), *aff'd sub nom. Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995).

Coors sued the United States Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms ("ATF"), challenging the constitutionality of provisions of the Federal Alcohol Administration Act that precluded malt beverage producers from making numerical statements of alcohol content on the labels of and in the advertisements for malt beverages. As the junior member of a two-attorney team, I conducted extensive discovery, deposing numerous marketing executives at various malt beverage makers around the country, and finding and working with our expert. At trial, I presented and cross-examined some of the witnesses. The district court upheld the advertisement provision but declared the labeling aspect of the statute to be unconstitutional. Coors did not appeal, but ATF did. In a 9-0 decision (including one opinion concurring in the judgment), the United States Supreme Court affirmed the decision of the Tenth Circuit affirming the decision of the district court. I was not actively involved in the appeals. Trial in this matter lasted for three days, in approximately November 1992, before the Honorable Zita L. Weinshienk.

Co-Counsel: Patricia Russotto Coppolino (retired)

Opposing Counsel: K. Preston Oade
Holme Roberts & Owen LLP
1700 Lincoln Street, Suite 4100
Denver, Colorado 80203
303-866-0453

2. *Barnes v. Breeden*, 911 F. Supp. 1038 (S.D. Tex. 1996), *rev'd sub nom. Barnes v. Levitt*, 118 F.3d 404 (5th Cir. 1997).

Plaintiff Barnes was a staff attorney at the Houston Branch Office of the United States Securities and Exchange Commission ("SEC"). She filed suit against the SEC alleging violations of Title VII and the Equal Pay Act. I was a member of the trial team and presented and cross-examined witnesses at trial. Although the district court (the Honorable Kenneth Hoyt) ruled for the plaintiff following a month-long bench trial, the Fifth Circuit Court of Appeals reversed, granting

summary judgment for the defense and finding that Ms. Barnes had failed to exhaust her administrative remedies by refusing to participate in good faith in the administrative process for resolving her claims. I did not participate in the appeal.

Lead Counsel: Jennifer Ricketts (formerly Jennifer Rivera)
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
202-514-3671

Co-counsel: Gary Orseck
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP
1801 K Street, NW, Suite 411
Washington, DC 20006
202-775-4504

Patricia Arzuaga
Kaiser Permanente
1396 Piccard Drive
Rockville, Maryland 20850
301-548-5700

Opposing Counsel: Mary L. Sinderson
2200 Post Oak Boulevard, Suite 650
Compass Bank Building
Houston, Texas 77056
713-963-9100

Julius J. Larry, III
(Unknown contact information)

3. *Knobel v. Knobel*, Eleventh Circuit Court in and for Miami-Dade County.

In this case a wife sued her husband regarding administration and ownership of their vocational school, the National School of Technology. The husband counter-claimed. Approximately two weeks before the trial, I was asked to assist the newly-assigned lead attorney in this matter because the previously-assigned lead counsel had a conflict during the trial period and, therefore, could not try the case. During the ensuing two weeks, we simultaneously conducted discovery and prepared for trial. Following a week-long trial in May 1997 before the Honorable David L. Tobin, the jury returned a verdict in favor of our client and awarded him in excess of $800,000, as I recall.

Co-Counsel: Marty Steinberg
Bilzin Sumberg Baena Price & Axelrod LLP
1560 Brickell Avenue, Floor 23
Miami, Florida 33131
305-350-7310

Opposing Counsel: I cannot recall the name of opposing counsel.

4. *United States v. Garrahan*, Case No. 98-6204-CR-ROETTGER (S.D. Fla.).

Defendant Garrahan obtained building contracts for schools in Broward and Dade Counties after fraudulently procuring bonds making him eligible to receive the contracts. He failed to complete the school buildings and defaulted on the bonds. He was charged with mail and wire fraud and, following an eight-day trial before the Honorable Norman Roettger, the jury returned a verdict of guilty on all counts. Defendant Garrahan was sentenced to just over five years' imprisonment. The judgment was affirmed on appeal. I served as associate counsel in this trial and conducted some of the witness examinations and cross-examinations.

Lead Counsel: Roger Stefin
United States Attorney's Office
Southern District of Florida
500 South Australian Avenue, Suite 400
West Palm Beach, Florida 33401
561-820-8711

Opposing Counsel: Fred Haddad
One Financial Plaza, Suite 2612
Fort Lauderdale, Florida 33394
954-467-6767

5. *United States v. Miller*, Case No. 99-06115-CR-FERGUSON (S.D. Fla. 2000).

Defendant Miller had been convicted of multiple armed robberies. During the execution of an arrest warrant for Mr. Miller for yet another armed robbery, law enforcement found a stolen UZI sub-machine gun, along with a magazine and cartridges for the weapon. We charged Mr. Miller federally with being a convicted felon in possession of a firearm. As sole counsel for the United States, I handled all aspects of the prosecution, including the trial. Following a three-day trial in December 1999 before the Honorable Wilkie D. Ferguson, Jr., the jury returned a guilty verdict on both counts of the indictment. Judge Ferguson sentenced Mr. Miller to fifteen years' imprisonment.

Opposing Counsel: Stuart Adelstein
Adelstein & Matters, P.A.
2929 S.W. Third Avenue, Suite 410

Miami, Florida 33129
305-358-9222

6. *United States v. Thurman*, Case No. 01-6084-CR-FERGUSON (S.D. Fla.), *aff'd*, 54 F. App'x 491 (11th Cir. 2002).

This was one of a trio of cases brought against Defendant Thurman. The other two cases involved tax fraud and mail and wire fraud. The cases had to be brought separately because the subject matter of the violations alleged in each of the indictments was not interrelated. Consequently, in the interests of judicial economy, we proceeded by trying the two smaller cases before the largest of the three matters, which involved a massive Internet affinity fraud scheme. After Mr. Thurman was convicted in the first two cases tried, he pled guilty in the case involving the Internet affinity fraud scheme.

In this particular case, Mr. Thurman was charged with being a convicted felon in possession of firearms. While executing a search warrant that I had obtained in the fraud case, law enforcement found the firearms in a safe in Mr. Thurman's closet. During the course of the investigation, law enforcement discovered evidence that Mr. Thurman had, on occasion, threatened to use one of the firearms to commit suicide, including one incident where he had threatened to do so in a bank. As sole counsel assigned to the matter, I indicted and tried the case, making the opening statement and closing argument, as well as presenting all witnesses. Mr. Thurman was convicted and, as a result of this conviction, as well as the convictions in the two related cases I handled against him, he was sentenced to eight-and-one-half years in prison. This matter was tried over approximately three days in October 2001 before the Honorable Wilkie D. Ferguson.

Opposing Counsel: Irwin Lichter
321 N.E. 26th Street
Miami, Florida 33137
305-573-0551

7. *United States v. Thurman*, Case No. 01-06040-CR-HURLEY (S.D. Fla.).

This was another in the trio of *Thurman* cases brought by the United States Attorney's Office for the Southern District of Florida. In this particular case, Mr. Thurman was charged with filing false tax returns for himself and six other individuals who sought and, in several cases, received fraudulent tax refunds. As sole counsel, I indicted and tried this case. Following the trial, the jury convicted Mr. Thurman. As noted above, as a result of Mr. Thurman's convictions in this case and the other two cases I prosecuted against him, Mr. Thurman was sentenced to eight-and-one-half years' imprisonment. This matter was tried over approximately seven trial days, I believe in October and November 2001, before the Honorable Daniel T.K. Hurley.

Opposing Counsel: Irwin Lichter
321 N.E. 26th Street
Miami, Florida 33137
305-573-0551

8. *United States v. Johnson*, Case No. 02-60012-CR-MIDDLEBROOKS (S.D. Fla.), *aff'd in part and rev'd in part*, 440 F.3d 1286 (11th Cir. 2006).

In this securities fraud case, the lead defendant was alleged to have started a package delivery business, solicited approximately $20 million from investors, and caused the company to implode by systematically draining millions from the company for his own personal use and benefit. I served as lead counsel over thirty days of trial during a nine-week period in 2003 before the Honorable Donald M. Middlebrooks. I presented the opening statement and closing argument, as well as numerous witnesses in this matter. Mr. Johnson was convicted of every count in the indictment. A co-defendant was acquitted. On appeal, the Eleventh Circuit reversed a few of the money-laundering counts against Mr. Johnson, and he was ultimately sentenced on remand to sixteen years' imprisonment.

Associate Counsel: Chih-Pin Lu
Raymond James Financial, Inc./AMG
880 Carillon Parkway
Saint Petersburg, Florida 33716
727-567-5820

Opposing Counsel: David Joffe
Joffe & Joffe P.A.
One East Broward Boulevard, Suite 700
Fort Lauderdale, Florida 33301
954-723-0007

Robert Adler
Federal Public Defender's Office
450 Australian Avenue South, Suite 500
West Palm Beach, Florida 33401
561-833-6288

9. *United States v. Livdahl*, Case No. 05-60021-CR-COHN (S.D. Fla.) (criminal case); *United States v. Livdahl*, 356 F. Supp. 2d 1289 (S.D. Fla. 2005) (parallel civil case).

I litigated these related civil and criminal cases in tandem. The cases arose out of an incident at a local clinic where a doctor who attempted to create his own form of Botox using improperly diluted full-strength Botulinum Toxin Type A gave botulism to himself and three others to whom he administered his concoction.

Early in the investigation, we discovered that the doctor had apparently developed the idea of creating his own "Botox" when he appeared as a presenter at a seminar sponsored by two of the co-defendants, who owned a business that also created its own form of Botox. I spearheaded the investigation and the criminal litigation team. Shortly after initiating the investigation, I requested the assistance of the Civil Division of the United States Attorney's Office to help us to file a civil action seeking an injunction against the co-defendants precluding them from continuing to sell their non-FDA-approved fake "Botox" while we conducted the criminal investigation. In order to obtain the injunction, we participated in a lengthy preliminary injunction hearing where, among others, the co-defendants testified. I cross-examined the lead defendant and made closing argument to the court. Upon hearing the evidence in the case, the court entered a preliminary injunction. *See United States v. Livdahl, et al.*, 356 F. Supp. 2d 1289 (S.D. Fla. 2005). Once the preliminary injunction was in place, ensuring that no further fake "Botox" would be sold, we concentrated our efforts on the criminal aspects of the case.

Specifically, in the criminal case, we indicted four defendants, including the two who testified during the hearing on the preliminary injunction. The criminal case was vigorously defended and resulted in extensive motion practice. *See, e.g.*, *United States v. Livdahl*, 459 F. Supp. 2d 1255 (S.D. Fla. 2005). I served as lead counsel throughout the district-court litigation of this matter. Two defendants pled guilty well before the trial. Along with co-counsel, we thoroughly prepared for trial of the other two defendants, but on the eve of trial, we learned that the two remaining defendants wished to enter guilty pleas. The sentencing of the first doctor was hotly contested in an evidentiary hearing and spanned approximately nine hours. Co-counsel and I presented several witnesses, multiple exhibits, and argument before the Court imposed the maximum sentence on the doctor. The co-defendants were sentenced to terms of imprisonment of nine years and approximately six years, respectively. Additionally, as a result of this investigation, the FDA obtained the names of approximately 200 physicians throughout the United States who had purchased the fake "Botox" from the co-defendants. Numerous United States Attorney's Offices around the country consulted with our trial team and used the indictment I had prepared as a model to conduct prosecutions against those physicians who knowingly used fake "Botox" on their patients without the patients' knowledge. I handled this matter before the Honorable James I. Cohn and the Honorable Lurana S. Snow in the United States District Court for the Southern District of Florida.

Co-counsel: George Karavetsos
United States Attorney's Office
Southern District of Florida
99 Northeast Fourth Street
Miami, Florida 33132
305-961-9289

Opposing counsel: Bernie Pafunda
Pafunda Law Offices
175 East Main Street, Suite 600
Lexington, Kentucky 40507
859-259-0102

Jane Serene Raskin
Raskin & Raskin, P.A.
866 South Dixie Highway
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Jose M. Herrera
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954-414-6000

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Fort Lauderdale, Florida 33301
954-522-7000

Andrew Ittleman
Fuerst Ittleman David & Joseph
1001 Brickell Bay Drive, Floor 32
Miami, Florida 33131
305-350-5694

10. *United States v. Vanmoor*, Case No. 06-60064-CR-COOKE/BROWN (S.D. Fla.).

The defendant in this case was charged with a conspiracy to commit mail and wire fraud. He ran websites offering a purported guaranteed cure for cancer that would work within a six-week period. The websites discouraged customers who purchased the product from continuing their doctor-prescribed treatment courses, such as chemotherapy. During the course of the investigation, we obtained and executed search warrants on multiple locations.

Additionally, I enlisted the assistance of the Civil Division of the United States Attorney's Office to obtain an injunction shutting down the websites while we conducted the criminal investigation. During the course of the investigation, we

obtained multiple search warrants for Mr. Vanmoor's e-mail and other electronic accounts and interviewed the family and friends of victims of Mr. Vanmoor's scheme.

After indicting the lead defendant, I obtained his extradition from the Netherlands, his native country. He arrived back in the United States shortly before I left the United States Attorney's Office to become a United States magistrate judge, and another Assistant United States Attorney tried the case in a two-week trial before the Honorable Jose Gonzalez, resulting in the defendant's conviction (other defendants pled guilty). I served as lead counsel in the matter before leaving the office.

Succeeding Counsel: Jennifer Keene
United States Attorney's Office
500 East Broward Boulevard, Seventh Floor
Fort Lauderdale, Florida 33394
954-356-7255

Opposing Counsel: Sidney Fleischman
Fleischman & Fleischman, P.A.
800 East Broward Boulevard, Suite 310
Fort Lauderdale, Florida 33301
954-523-7223

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

While at the United States Department of Justice Civil Division, I handled the matter captioned, *Sarao v. NASA* (D.D.C. 1993). In this case, the plaintiff sued NASA, seeking disclosure of certain photographs of the shuttle debris recovered in the Atlantic Ocean from the *Challenger* accident, pursuant to the Freedom of Information Act. The National Air and Space Administration, which had already released several photographs of the recovered debris, opposed the plaintiff's complaint, concerned about the privacy interests of the astronauts' families. I represented NASA and conducted negotiations with the plaintiff. After ascertaining precisely the types of images for which he was searching, we were able to settle the case in a manner that was acceptable to both parties.

After leaving the Department of Justice, I worked on the Independent Counsel's Investigation of former United States Secretary of Commerce Ronald Brown and Nolanda Hill. Independent Counsel Dan Pearson was appointed by the Special Division of the United States Court of Appeals for the District of Columbia to conduct an

investigation into certain matters related to former Secretary Brown's finances. The order conferring jurisdiction on Judge Pearson also authorized him to investigate the finances and operations of an associate of Secretary Brown's, Nolanda Hill, and her "organizations." Judge Pearson put together a team consisting of six attorneys to assist him in conducting the investigation. I served in one of two staff-counsel positions. My duties included conducting research and preparing legal memoranda in furtherance of the investigation, as well as participating in the investigation itself. More specifically, I provided the other attorneys on the team with legal opinions concerning issues arising during the investigation. On April 3, 1996, Secretary Brown perished in an airplane crash while on a trade mission to Croatia. As a result, Judge Pearson referred to the Department of Justice the responsibility for continuing the investigation as it pertained to allegations involving Nolanda Hill and others who were not members of the administration. Additionally, Judge Pearson submitted a final report to the Special Division of the United States Court of Appeals for the District of Columbia. The report concluded ultimately, "The unfinished state of the investigation and considerations of fairness preclude our office from drawing conclusions about the allegations regarding possible criminal conduct by the Secretary. . . ." Final Report at 19.

As an Assistant United States Attorney, I occasionally acted as counsel to the United States Attorney's Office. For example, on one occasion I researched a group of federal regulations that appeared to be insufficient to address certain serious dangers that they were meant to prevent. At the request of the United States Attorney, I prepared a memorandum containing suggestions for improvements to the regulations, which was forwarded for consideration to the secretary of the agency in question. On another occasion, I was asked to research and prepare a proposed position memorandum regarding the advisability of the Office's prosecution of a group of cases, in view of the fact that prosecution of the cases (as opposed to dismissal of the federal employees allegedly involved) might conflict with a function of one of the federal agencies. Similarly, when the Office sought to prosecute crimes under relatively new statutes or under new theories of older statutes, I prepared model indictments. In at least two such matters, I drafted either the first or one of the first such indictments in the country.

As the chief of the Economic Crimes Section for the Central Division (Fort Lauderdale) of the United States Attorney's Office for the Southern District of Florida, I supervised between eight and ten other Assistant United States Attorneys. The position involved reviewing and editing indictments and other legal documents for clarity and correctness; consulting with and advising the Assistant United States Attorneys in my section; meeting with representatives of various law enforcement agencies regarding the intake, development, and progress of the respective law enforcement agencies' cases; and consulting with the management of the United States Attorney's Office regarding cases pending in my section. Each year while I served in this position, the Fort Lauderdale office significantly increased the number of indictments returned, as compared with the prior year – particularly within the Economic Crimes Section, even though the number of Assistant United States Attorneys in Fort Lauderdale had decreased.

As a practicing attorney, I was significantly involved in the Broward Chapter of the Federal Bar Association from approximately 2002 to 2007, having served on its board of directors and as the vice president, president-elect, and president. As the president, I presided over the chapter, which presented monthly speaker luncheons, brown-bag luncheons with federal judges, and other events designed to encourage a high level of practice among federal practitioners and to facilitate communications between the federal bar and bench in Broward County. As a judge, I continue to support the activities of the Federal Bar Association, attending nearly all of the Broward Chapter's functions and speaking regularly when asked.

I have not performed lobbying activities on behalf of any client(s) or organization(s).

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

    I have taught as an adjunct professor at the University of Miami School of Law since 2009. In the fall of 2009 through the spring of 2010, I taught the full-year, first-year course called "Legal Research and Writing." The course sought to teach first-year law students the basics of conducting legal research and preparing legal written work product. Students prepared two drafts each of a case brief, two internal memoranda regarding a case, and an appellate brief. In addition, they presented oral argument on the appellate brief.

    Since the summer of 2010, I have taught an upper-level legal writing class. The students learn about the federal court system and motions to dismiss. They prepare two drafts each of a memorandum in support of a motion to dismiss and an opposition to a motion to dismiss. In addition, they present oral argument on the motion to dismiss. On one occasion, during the spring of 2012, I taught an upper-level legal writing class on other federal motions, instead of the writing class on motions to dismiss. The students prepared two drafts of a discovery motion, two drafts of a motion to remand, and one draft of a motion for preliminary injunction.

    Copies of the most recent syllabi for all courses described in answer to this question are supplied.

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

    None.

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

    I currently serve as an adjunct professor and teach a legal writing course at the University of Miami School of Law, and I have committed to teaching again in the spring of 2014.

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

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

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

       If I am confirmed, I will continue recuse in all cases involving any of my family members. I will also recuse in any cases involving the University of Miami (where I teach), in cases involving Florida International University Law School (where my sister is employed as the director of legal research and writing), in cases involving Miami-Dade County (my brother-in-law is employed as an attorney with the County Attorney's Office), in cases where Holland and Knight LLP participates, in cases involving close friends as parties or witnesses, and, for two years following completion of their clerkships, in cases where my former law clerks are listed as counsel of record and have primary responsibility for litigating the matter. I would also recuse in any cases where a close friend served as counsel.

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

       If I am confirmed, I will apply the standards set forth in 28 U.S.C. §§ 144 and 455 to any scenario involving a potential conflict of interest or appearance of partiality.

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

As a judge, I am not allowed to practice law on behalf of others, so I have not engaged in any pro bono legal work since my confirmation in September of 2007. During most of my legal career, I have also been subject to limitations on my ability to engage in legal activities outside of my job because I have worked in government service for the vast majority of my legal career. Consequently, although I participated briefly in a program where attorneys assist victims of domestic abuse in court, I have mostly chosen to give back to the community in other ways. Among others, I participate in the Florida Bar's Justice Teaching program. The program aims to help educate every elementary, middle, and high school students about basic principles underlying our system of justice and our Constitution. I am paired with North Fork Elementary School.

Likewise, in the past, I have volunteered my time to assist with the Children's Ballet Theatre of Fort Lauderdale. The program allows children to put on a ballet such as *Cinderella, Sleeping Beauty,* or *Coppelia* at the Broward Center for the Performing Arts, under the directorship and leadership of dance teachers who volunteer their time for the program. In addition to directing children in the production of a professional-type production, the program aspires to foster an appreciation of dance in the community, particularly among children, by making tickets available at an affordable price and by providing inexpensive or free tickets to certain financially eligible children. My volunteer activities on behalf of the program have included assisting with costuming, addressing marketing materials, and backstage supervision of some of the younger participants during dress rehearsal and the show.

In addition, I volunteer from time to time at my children's school, and year-round, I regularly provide internship opportunities for law-school students in my chambers and speak at Bar and law-school functions when requested.

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 August 13, 2013, I spoke to an official from the White House Counsel's Office, who inquired if I would be interested in being considered for a possible vacancy on the Eleventh Circuit. Since that time, I have been in contact with officials from the White House Counsel's Office and from the Office of Legal Policy at the Department of Justice. On September 16, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On November 7, 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
Rosenbaum, Robin S.	Eleventh Circuit Court of Appeals	11/07/2013
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. Circuit Judge	☑ Nomination Date 11/07/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 10/21/2013
7. Chambers or Office Address		
299 E. Broward Blvd., Room 310-A Fort Lauderdale, Florida 33301		

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Trustee	Trust #1
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 11/07/2013

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 Miami School of Law (teaching legal writing course)	$10,000.00
2.	2012	University of Miami School of Law (teaching legal writing course)	$10,000.00
3.	2013	University of Miami School of Law (teaching legal writing course)	$5,000.00
4.			

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

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

	DATE	SOURCE AND TYPE
1.	2012	Holland & Knight -- salary
2.	2013	Holland & Knight -- salary
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 11/07/2013

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
Rosenbaum, Robin S.	11/07/2013

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

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Ameritrade Money Market	A	Interest	J	T	Exempt				
2. Astropower common		None	J	T					
3. Ballard Power Systems common		None	J	T					
4. Bank of America -- checking/savings	A	Interest	J	T					
5. Cisco Systems common	A	Dividend	J	T					
6. DiscoverBank Savings and Money Market Account	A	Interest	L	T					
7. Dodge & Cox Int'l Stock Fund	A	Int./Div.	J	T					
8. Domini Social Equity Fund	A	Int./Div.	J	T					
9. Eagle Small Cap Growth Fund	A	Int./Div.	J	T					
10. Ericsson L M Tel Co ADR	A	Dividend	J	T					
11. Emagin, Inc. common		None	J	T					
12. Fidelity Cash Reserves	A	Dividend	J	T					
13. Fidelity Contrafund	A	Int./Div.	J	T					
14. Fidelity Contrafund	A	Int./Div.	K	T					
15. Fidelity Low Priced Stock fund	A	Dividend	J	T					
16. Fidelity Municipal Money Market	A	Interest	J	T					
17. Fidelity Retirement Money Market	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4) A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000; 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 5 of 8

Name of Person Reporting	Date of Report
Rosenbaum, Robin S.	11/07/2013

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. Fidelity Unique NH 2015 Portfolio	A	Int./Div.	J	T					
19. Fidelity Unique NH 2018 Portfolio	A	Int./Div.	K	T					
20. Fidelity Unique NH Bank Deposit Portfolio	A	Int./Div.	M	T					
21. Intel Corp.	A	Dividend	J	T					
22. J2 Global Communications, Inc. common	A	Dividend							
23. Janus Twenty Fund	A	Dividend	J	T					
24. Janus Global Research Fund (previously Janus Worldwide Fund)	A	Dividend	J	T					
25. JDS Uniphase Corp. common		None	J	T					
26. MassMutual VUL: Oppenheimer Capital Appreciation Fund	A	Interest	J	T					
27. MassMutual Variable Universal Life: Oppenheimer Midcap Fund	A	Interest	J	T					
28. Parnassus Fund	A	Int./Div.	K	T					
29. PIM Total Return Instiutional Bond Fund--Holland& Knight401k	A	Int./Div.	J	T					
30. Rhythms Netconnections common		None	J	T					
31. T. Rowe Price College Savings Plan Portfolio 2018-529account	A	Int./Div.	L	T					
32. T. Rowe Price 529 College Plan Money Market Portfolio	A	Interest	M	T					
33. T. Rowe Price Blue Chip Growth Fund	A	Int./Div.	J	T					
34. TZ Limited common		None	J	T					

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Rosenbaum, Robin S.	11/07/2013

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. Universal Display Corp. (common)		None	J	T					
36. Vanguard Institutional Index Fund	A	Int./Div.	J	T					
37. Ameritrade Money Market	A	Interest	J	T					
38. ishares Silver Trust	A	Int./Div.							
39. Janus Twenty Fund	A	Int./Div.							
40. Molycorp		None							
41. Nortel Networks (common)		None	J	T					
42. Oracle (common)	A	Dividend							
43. Apple	A	Dividend	J	T					
44. Trust #1	A	Interest	M	T					
45. -MML VUL: MassMutual Life Blend (X)									
46. -MML VUL: Oppenheimer Main Street (X)									
47. -MML VUL: Janus Aspen Forty (X)									
48. -MML VUL: Oppenheimer Discovery Mid Cap Growth (X)									
49. -MML VUL: T. Rowe Price Mid-Cap Growth (X)									
50. -MML VUL: Oppenheimer Global (X)									

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 7 of 8	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 11/07/2013

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

A portion of Line 18 was transferred to Lines 19 and 20. No gain is reported as these three lines are part of the same 529 college savings account.
Lines 37 through 43 are or were held by my mother, but I am listed as joint tenant on her account. This has been the case for several years. I derive no income or other benefits from my mother's investments.

Lines 45 through 50 list the assets in Trust #1. I do not receive any income or other benefits from this trust or from serving as the trustee, nor am I a beneficiary of the trust. This asset was advertently described as not reportable in my 2013 Annual Report.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 11/07/2013

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/ **Robin S. Rosenbaum**

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		94	125	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		542	391	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – personal residence		817	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		43	000	Thrift Savings Plan loan		26	184
Cash value-life insurance		21	481				
Other assets itemize:							
Thrift Savings Plan		868	478				
				Total liabilities		26	184
				Net Worth	2	360	291
Total Assets	2	386	475	Total liabilities and net worth	2	386	475
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

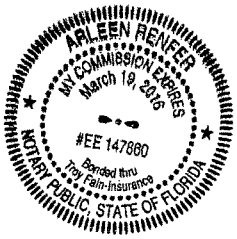
Listed Securities	
AstroPower stock	$ 0
Ballard Power Systems stock	221
Cisco Systems, Inc. stock	9,184
Dodge & Cox International Stock Fund	5,301
Domini Social Equity Fund	11,326
Eagle Small Cap Growth Fund	5,331
Emagin Corp. stock	209
Ericsson L.M. Tel. Co. ADR	79
Fidelity Cash Reserves Money Market	1,003
Fidelity Contrafund	57,993
Fidelity Low Priced Stock Fund	3,553
Fidelity Municipal Money Market	10,688
Fidelity Retirement Money Market	2,930
Fidelity Unique NH 529 Bank Deposit Portfolio	156,236
Fidelity Unique NH 529 Portfolio 2015	6,015
Fidelity Unique NH 529 Portfolio 2018	19,064
Intel Corp. stock	8,118
Janus Global Research Fund	8,893
Janus Twenty Fund	6,324
JDS Uniphase	140
Parnassus Fund	33,910
PIMCO Total Return Fund	4,262
Rhythms Netconnections stock	0
T. Rowe Price 529 College Plan Money Market	110,000
T. Rowe Price 529 College Plan Portfolio 2018	51,857
T. Rowe Price Blue Chip Growth Fund	12,148
TD Ameritrade Money Market	12
TZ Ltd. stock	226
Universal Display Corp. stock	13,982
Vanguard Institutional Index Fund	3,386
Total Listed Securities	$ 542,391

AFFIDAVIT

I, Robin S. Rosenbaum, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

11/7/13
(DATE)

Robin S. Rosenbaum
(NAME)



Arleen Renfer
(NOTARY)

January 6, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed my response to the Senate Questionnaire that I submitted on November 7, 2013, to the Senate Judiciary Committee, in connection with my nomination to serve as a United States Circuit Judge for the United States Court of Appeals for the Eleventh Circuit. Incorporating the additional information set forth below, I certify that the information contained in both the November 7, 2013, response and in this letter, is, to the best of my knowledge, true and accurate.

Question 13.a.

I have presided over another criminal trial that resulted in a verdict. In addition, I have presided over another civil trial that was settled mid-trial.

Question 13.b.

I have attached a list of opinions responsive to this question and issued since November 7, 2013.

Question 13.e.

Certiorari was requested and granted but later denied as improvidently granted in *Mulhall v. Unite Here Local 355*, Case No. 08-CIV-61766-RSR (S.D. Fla. Jan. 24, 2011), *reversed and remanded*, Case No. 11-10594, 667 F.3d 1211 (11th Cir. Jan. 18, 2012), *cert. granted*, ___ U.S. ___, 133 S. Ct. 2849 (June 24, 2013), *cert. dismissed as improvidently granted*, Case No. 12-99, ___ U.S. ___, ___ S. Ct. ___ 2013 WL 6410851 (Dec. 10, 2013). This case is not listed in response to Question 13.f. because the decision on appeal was issued by the judge presiding over the case before the matter was transferred to me.

Certiorari was requested but denied in *Marshall v. United States*, Case No. 10-CIV-20482-RSR (S.D. Fla. Aug. 14, 2012), *aff'd*, Case No. 12-13841, 514 F. App'x 936 (11th Cir. 2013), *cert. denied*, Case No. 12-9879, ___ U.S. ___, 133 S. Ct. 2749 (May 28, 2013). This denial of certiorari should have been included in my original response to the Senate Questionnaire for Judicial Nominees submitted on November 7, 2013. I regret that it was not. I was not aware of the denial at the time.

Question 14.

I have recused myself sua sponte in three cases since filing my November 7, 2013, response to the Senate Questionnaire for Judicial Nominees. First, in *Hamilton v. Suntrust Mortgage, Inc.*, Case No. 13-CIV-60749, the plaintiffs were represented by, among others, two attorneys who had supported my nominations to be a district judge and a circuit judge, one attorney who had served as my reference when I applied to become a magistrate judge, and one attorney whose daughter is my neighbor and whose granddaughter is friends with my daughter. Second, in *Wrubleski v. Blay*, Case No. 13-CIV-62403, the defendants included, among others, a courtroom deputy who has assisted me from time to time, another district judge in the same courthouse, the magistrate judge with whom I am paired, and the deputy United States Marshal who supervises operations at my courthouse. Finally, in *United States v. Handfield*, Case No. 13-CR-20840, counsel included a lawyer who had offered to support my nomination to serve as a circuit judge. In all three cases, I recused myself to avoid an appearance of impropriety.

Question 19.

With the approval of the Chief Judge of the Eleventh Circuit, in the spring of 2014, I am scheduled to teach an upper-level legal writing class on federal motions, such as motions to remand, discovery motions, and motions for preliminary injunction, at the University of Miami School of Law. This is the same course that I taught during the spring of 2012. I have attached a copy of the Spring 2014 syllabus for the class.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report, as requested by the Senate Questionnaire for Judicial Nominees. I thank the Committee for its consideration of my nomination.

Sincerely,

Robin S. Rosenbaum

Robin S. Rosenbaum

copies: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Question 13.b.

Nelson v. N. Broward Med. Ctr., 2013 WL 6842034 (S.D. Fla. Dec. 27, 2013)

Rojas v. Garda CL Se., Inc., ___ F.R.D. ___, 2013 WL 6834657 (S.D. Fla. Dec. 23, 2013)

Fuller v. Edward B. Stimpson Co., Inc., 2013 WL 6836554 (S.D. Fla. Dec. 23, 2013)

Guarantee Ins. Co. v. Brand Mgmt. Serv., Inc., 2013 WL 6728177 (S.D. Fla. Dec. 20, 2013)

Guarantee Ins. Co. v. Brand Mgmt. Serv., Inc., 2013 WL 6768641 (S.D. Fla. Dec. 20, 2013)

N.C. ex rel. Boston v. Alonso, 2013 WL 6564217 (S.D. Fla. Dec. 13, 2013)

Alumni Cruises, LLC v. Carnival Corp., ___ F. Supp. 2d ___, 2013 WL 6511737 (S.D. Fla. Dec. 12, 2013)

United States v. Williams, 2013 WL 6328488 (S.D. Fla. Dec. 5, 2013)

Gubanova v. Miami Beach Owner, LLC, 2013 WL 6229142 (S.D. Fla. Dec. 2, 2013)

Makozy v. Crawford, 2013 WL 6162823 (S.D. Fla. Nov. 25, 2013)

Cosac Found., Inc. v. City of Pembroke Pines, 2013 WL 6170619 (S.D Fla. Nov. 21, 2013)

Kluge v. Smukler Servs., Inc., 2013 WL 6169214 (S.D. Fla. Nov. 20, 2013)

Tajalli v. Wal-Mart Stores, Inc., 2013 WL 6081632 (S.D. Fla. Nov. 19, 2013)

Touzin v. Patriarca, 2013 WL 6051062 (S.D. Fla. Nov. 14, 2013)

Hudson v. City of Riviera Beach, ___ F. Supp. 2d ___, 2013 WL 6017282 (S.D. Fla. Nov. 13, 2013)

Finn v. Kent Sec. Servs., Inc., ___ F. Supp. 2d ___, 2013 WL 5954388 (S.D. Fla. Nov. 6, 2013)

BAC Fin. Servs., Inc. v. Multinational Life Ins. Co., 2013 WL 5929428 (S.D. Fla. Nov. 5, 2013)

Adidas AG v. 2013jeremyscottxadidas.com, 2013 U.S. Dist. LEXIS 171628 (S.D. Fla. Dec. 5, 2013)

Tiffany (NJ), LLC, v. Gu Jianfang, 2013 U.S. Dist. LEXIS 134857 (S.D. Fla. Sept. 20, 2013)

WINNING FEDERAL MOTION PRACTICE II **PROF. ROBIN ROSENBAUM**
Mondays, 7:30-9:20 p.m.

SYLLABUS

Please review this syllabus to assist you in your understanding of the objectives of this course and to help you in planning your work for this semester.

OBJECTIVES:

This course has four objectives. First, the course seeks to develop further your legal analysis skills by requiring you to analyze case law and apply it to our course problems.

Second, the course will teach you substantively about three types of motions that are frequently filed in federal court: (1) the motion to remand; (2) a discovery-related motion; and (3) the motion for preliminary injunction.

Third, the course provides an opportunity for you to improve your legal writing skills. In this class you will prepare memoranda in support of a motion to remand, a discovery motion, and a motion for preliminary injunction. These assignments will require you to reduce to writing your analysis of federal law and the application of the law to our case-study facts, and they will demand clear and precise thinking and writing. Towards the end of meeting these goals, we will study usage, style, and writing recommendations that other accomplished legal writers have suggested. You will prepare two drafts of each of the first two memoranda and one of the third.

Finally, the course will familiarize you with the realities of federal motion practice in the United States District Court for the Southern District of Florida. In furtherance of this objective, you will learn about the Local Rules of the Southern District of Florida, and you will apply them in all of your assignments.

EVALUATION:

Evaluating your work serves two purposes. First, it enables me to determine the extent to which you have achieved a certain level of competence in each of the objectives described above. Second, it allows you to recognize and correct problems, thereby improving and sharpening your legal writing skills.

COURSE TEXTS:[1]

Required:

The Bluebook: A Uniform System of Citation (19th ed.)

Deborah E. Bouchoux, *Aspen Handbook for Legal Writers: A Practical Reference* (3d ed.)

Local Rules of the Southern District of Florida (accessible at www.flsd.uscourts.gov under the link for "Local Rules")

Cases that will be assigned during class (you may obtain them from the library or from an online electronic research database (such as Westlaw or LEXIS))

Recommended:

William Strunk, Jr., & E.B. White, *The Elements of Style* (4th ed.)

Bryan A. Garner, *The Winning Brief* (2d ed.)

You may also find it helpful to have a copy of *Black's Law Dictionary*. Used copies are available through a variety of sources on the Internet and may sometimes be purchased at the campus book store. The law library also has a copy if you do not wish to buy the book.

CLASSES:

We will meet on Mondays from 7:30 p.m. to 9:20 p.m., except as otherwise noted in this syllabus or in class. ***Class attendance is mandatory*** and important to your understanding of the material offered in this class. If I must cancel a class for some reason, I will hold a make-up session.

With regard to classroom conduct, I do not permit cellular telephones to be used in my class. If you have one, you may bring it with you, but you must turn it off for class. Although I begin the semester by allowing students to use laptop computers in class, you may use your laptop computers for the sole purpose of assisting you in your preparation and understanding of class material. If laptop computers are used for personal or non-class-related activities, I will be unable to continue to permit their use in class. Of course, it should go without saying that I expect all students to treat each other and this class with respect and professionalism at all times. An important aspect of being a lawyer involves acting in a professional and courteous manner, and we will practice those principles in this class.

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[1]Some texts may be published in later editions than those listed here. You should purchase the latest edition, which is available at the book store.

CONTACT INFORMATION:

The best way to reach me is by e-mail, which I check regularly. If I think that I cannot sufficiently address your concerns by e-mail or by scheduling an appointment with you, I will call you in response to your e-mail. I will similarly call you if you request in an e-mail that I do so and you provide me with a telephone number where I can reach you. My contact information follows:

E-mail: ProfessorRosenbaum@bellsouth.net

Faculty Assistant: Gloria Lastres, G-477, 305-284-4438

In an emergency, you may contact my office by telephone at 954-769-5670. I am available for extra help after class and by appointment.

WRITTEN WORK:

All written assignments must conform to the specifications below:

All of your work must be typewritten. Your work must comply in all regards with the requirements of the Local Rules for the United States District Court for the Southern District of Florida. ***Always retain one copy of your work for your records and always back up your work while using the computer***.

I will evaluate and critique your first draft of each of the first two briefs, and I will grade your re-write. You must turn in all prior drafts with my comments along with the re-write, or you will not receive a grade. For the third brief, you will turn in a final draft only. Each assignment will be due at a specified time, date, and place. It is your responsibility to note that time, date, and place. Deadlines will be strictly enforced, and ***I will assess a half-grade penalty for each day (including any portion thereof) that an assignment is late***. Citations and other format matters must always be in compliance with the standards set forth in *The Bluebook: A Uniform System of Citation*, unless otherwise noted.

Please remember that you must return all of your marked drafts with your final work product.

GRADING AND CURVE:

I will weight your work in this class according to the following valuation system:

Each final draft of a brief:	30%
First drafts, effort, and participation:	10%

Class participation encompasses not only your oral participation in class periods, but also your overall attitude towards the class and your professionalism. In other words, I look for students to

put forth a good-faith effort to learn the material. Among other ways of demonstrating real effort, students should submit both quality first drafts and final drafts, and all students should complete all other homework employing their best efforts. I also find your reasonableness towards and cooperation with other students to be an important factor in evaluating class participation.

ETHICS:

Your reputation is everything in the legal profession. That reputation begins in law school. Please act at all times in accordance with the University of Miami School of Law Honor Code and the honorable ideals of our profession. As that relates to this class, students may not seek outside help with assignments. After I have graded your paper, however, you may obtain the assistance of the Writing Center. The point of these rules is to help you to learn how to become proficient in legal research and writing by doing the work yourself. Along these same lines, learning the material requires access to the material. Therefore, I expect you to cooperate with your classmates and act in an ethical, reasonable, and professional manner towards them, ensuring that you promptly return research materials to their correct locations so that everyone else can use them as well.

DISABILITIES AND EQUAL OPPORTUNITY:

The law school is committed to accommodating a variety of disabilities, including physical and learning disabilities. If you would like more information on this, please contact Iris Morera, the Disabilities Issues Coordinator, at 305-284-4551 or e-mail her at disabilityservices@law.miami.edu. Please also feel free to discuss this with me. I will keep our discussions confidential. Please seek accommodations for any disabilities as soon as possible.

Tentative Assignment Schedule

First Class

Jan. 27, 2014	Assignment: Please **review this syllabus and 28 U.S.C. §§ 1441 and 1446**. You may obtain a copy of these statutes either from the law school library or from an online research database such as Westlaw or LEXIS. In addition, you should review the **Local Rules of the Southern District of Florida**, which you may access at the website www.flsd.uscourts.gov. Please pay particular attention to Local Rules 7.1 and 26.1, as well as to the Discovery Handbook in Appendix A, S.D. Fla. L.R.
Feb. 3, 2014	**Carefully read and review the first case study. Please prepare a draft of the Motion to Remand.** The first draft of the assignment is due **Monday, February 10, 2014.**
Feb. 10, 2014	**First draft of Motion to Remand due.**
Feb. 17, 2014	Return of first draft of Motion to Remand. For Monday, February 24, 2014, **prepare final version of Motion to Remand. Final version due Monday, February 24, 2014.**
Feb. 24, 2014	**Final version of Motion to Remand due. Please prepare a first draft of the discovery motion. First draft due March 3, 2014.**
March 3, 2014	**First draft of discovery motion** due.
March 10, 2014	SPRING BREAK. NO CLASSES.
March 17, 2014	Return of first draft of discovery motion. For Monday, March 24, 2014, please **prepare final version of discovery motion. Final version due Monday, March 24, 2014.**
March 24, 2014	**Final version of discovery motion due**. For Monday, March 31, 2014, work on **Motion for Preliminary Injunction. I will not collect or review your first draft of this motion. The final version of the Motion for Preliminary Injunction is due Monday, April 23, 2014.**
March 31, 2014	No additional written assignment (other than *ICW* homework).
April 7, 2014	Continue working on **Motion for Preliminary Injunction**. During class, I will be happy to answer any questions that you may have regarding the Motion for Preliminary Injunction. **The final version of the Motion for Preliminary Injunction is due Monday, April 21, 2014.**

April 14, 2014	No additional written assignment (other than *ICW* homework).
April 21, 2014	**Motion for Preliminary Injunction** due.
April 23, 2014	Final day of class

Name:

Address:

Telephone number(s):

E-mail address(es):

Education (undergraduate/graduate school) (please also include degree and major):

Work experience, including any legal experience (please also include whether you, a family member, or a previous employer (while you were employed) have ever had a case before me):

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
Rosenbaum, Robin S	Eleventh Circuit Court of Appeals	01/06/2014
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. Circuit Judge	☑ Nomination Date 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/21/2013
7. Chambers or Office Address		
299 E. Broward Blvd., Room 310-A Fort Lauderdale, Florida 33301		

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

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

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Trustee	Trust #1
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 01/06/2014

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	University of Miami School of Law (teaching legal writing course)	$5,000.00
2.	2012	University of Miami School of Law (teaching legal writing course)	$10,000.00
3.			
4.			

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

(Dollar amount not required except for honoraria.)

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

	DATE	SOURCE AND TYPE
1.	2013	Holland & Knight -- salary
2.		
3.		
4.		

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

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

☐ NONE *(No reportable reimbursements.)*

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

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 01/06/2014

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
Rosenbaum, Robin S.	01/06/2014

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

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

A. Description of Assets (including trust assets). Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period: (1) Amount Code 1 (A-H)	B: (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period: (1) Value Code 2 (J-P)	C: (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, redemption)	D: (2) Date mm/dd/yy	D: (3) Value Code 2 (J-P)	D: (4) Gain Code 1 (A-H)	D: (5) Identity of buyer/seller (if private transaction)
1. Ameritrade Money Market	A	Interest	J	T	Exempt				
2. Astropower common		None	J	T					
3. Ballard Power Systems common		None	J	T					
4. Bank of America -- checking/savings	A	Interest	J	T					
5. Cisco Systems common	A	Dividend	J	T					
6. DiscoverBank Savings and Money Market Account	A	Interest	L	T					
7. Dodge & Cox Int'l Stock Fund	A	Int./Div.	J	T					
8. Domini Social Equity Fund	A	Int./Div.	J	T					
9. Eagle Small Cap Growth Fund	A	Int./Div.	J	T					
10. Ericsson L M Tel Co ADR	A	Dividend	J	T					
11. Emagin, Inc. common		None	J	T					
12. Fidelity Cash Reserves	A	Dividend	J	T					
13. Fidelity Contrafund	A	Int./Div.	J	T					
14. Fidelity Contrafund	A	Int./Div.	K	T					
15. Fidelity Low Priced Stock fund	A	Dividend	J	T					
16. Fidelity Municipal Money Market	A	Interest	J	T					
17. Fidelity Retirement Money Market	A	Dividend	J	T					

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

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Rosenbaum, Robin S.	01/06/2014

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Fidelity Unique NH 2015 Portfolio	A	Int./Div.	J	T					
19. Fidelity Unique NH 2018 Portfolio	A	Int./Div.	K	T					
20. Fidelity Unique NH Bank Deposit Portfolio	A	Int./Div.	M	T					
21. Intel Corp.	A	Dividend	J	T					
22. J2 Global Communications, Inc. common	A	Dividend							
23. Janus Twenty Fund	A	Dividend	J	T					
24. Janus Global Research Fund (previously Janus Worldwide Fund)	A	Dividend	J	T					
25. JDS Uniphase Corp. common		None	J	T					
26. MassMutual VUL: Oppenheimer Capital Appreciation Fund	A	Interest	J	T					
27. MassMutual Variable Universal Life: Oppenheimer Midcap Fund	A	Interest	J	T					
28. Parnassus Fund	A	Int./Div.	K	T					
29. PIM Total Return Institutional Bond Fund-Hollands Knight401k	A	Int./Div.	J	T					
30. Rhythms Netconnections common		None	J	T					
31. T. Rowe Price College Savings Plan Portfolio 2018-529account	A	Int./Div.	L	T					
32. T. Rowe Price 529 College Plan Money Market Portfolio	A	Interest	M	T					
33. T. Rowe Price Blue Chip Growth Fund	A	Int./Div.	J	T					
34. TZ Limited common		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)

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

FINANCIAL DISCLOSURE REPORT Page 6 of 8	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 01/06/2014

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. Universal Display Corp. (common)		None	J	T					
36. Vanguard Institutional Index Fund	A	Int./Div.	J	T					
37. Ameritrade Money Market	A	Interest	J	T					
38. Apple	A	Dividend	J	T					
39. Trust #1	A	Interest	M	T					
40. -MML VUL: MassMutual Life Blend (X)									
41. -MML VUL: Oppenheimer Main Street (X)									
42. -MML VUL: Janus Aspen Forty (X)									
43. -MML VUL: Oppenheimer Discovery Mid Cap Growth (X)									
44. -MML VUL: T. Rowe Price Mid-Cap Growth (X)									
45. -MML VUL: Oppenheimer Global (X)									

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 7 of 8	Name of Person Reporting	Date of Report
	Rosenbaum, Robin S.	01/06/2014

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

A portion of Line 18 was transferred to Lines 19 and 20. No gain is reported as these three lines are part of the same 529 college savings account.
Lines 37 through 38 are or were held by my mother, but I am listed as joint tenant on her account. This has been the case for several years. I derive no income or other benefits from my mother's investments.

Lines 39 through 45 list the assets in Trust #1. I do not receive any income or other benefits from this trust or from serving as the trustee, nor am I a beneficiary of the trust.

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Rosenbaum, Robin S.	Date of Report 01/06/2014

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/ Robin S. Rosenbaum**

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		87	303	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		531	476	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned – personal residence		812	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		40	000	Thrift Savings Plan loan		25	604
Cash value-life insurance		22	436				
Other assets itemize:							
Thrift Savings Plan		892	538				
				Total liabilities		25	604
				Net Worth	2	360	149
Total Assets	2	385	753	Total liabilities and net worth	2	385	753
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AstroPower stock	$ 0
Ballard Power Systems stock	243
Cisco Systems, Inc. stock	8,452
Dodge & Cox International Stock Fund	5,745
Domini Social Equity Fund	11,655
Eagle Small Cap Growth Fund	5,814
Emagin Corp. stock	180
Ericsson L.M. Tel. Co. ADR	60
Fidelity Unique NH 529 Bank Deposit Portfolio	156,236
Fidelity Unique NH 529 Portfolio 2015	6,470
Fidelity Unique NH 529 Portfolio 2018	19,162
Fidelity Cash Reserves Money Market	1,114
Fidelity Contrafund	57,369
Fidelity Low Priced Stock Fund	3,909
Fidelity Municipal Money Market	22
Fidelity Retirement Money Market	3,182
Intel Corp. stock	8,519
Janus Global Research Fund	8,914
Janus Twenty Fund	5,049
JDS Uniphase	112
Parnassus Fund	30,077
PIMCO Total Return Fund	4,623
Rhythms Netconnections stock	0
T. Rowe Price 529 College Plan Money Market	110,000
T. Rowe Price 529 College Plan Portfolio 2018	52,658
T. Rowe Price Blue Chip Growth Fund	12,687
TD Ameritrade Money Market	12
TZ Ltd. stock	199
Universal Display Corp. stock	15,264
Vanguard Institutional Index Fund	3,749
Total Listed Securities	$531,476

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Bruce Howe Hendricks
   Formerly Bruce McCaw Howe

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

   United States District Judge for the District of South Carolina

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

   United States District Court for the District of South Carolina
   Charleston Federal Courthouse
   85 Broad Street
   Charleston, South Carolina 29401

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

   1957; Charleston, South Carolina

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

   1987 – 1990, University of South Carolina School of Law; J.D., 1990

   1986 – 1987, Trident Technical College; no degree

   1979 – 1983, College of Charleston; B.A., 1983

   1977 – 1978, Sweet Briar College; no degree

   1976 – 1977, College of Charleston; 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.

2011 – present
United States District Court for the District of South Carolina
Charleston Federal Courthouse
85 Broad Street
Charleston, South Carolina 29401
United States Magistrate Judge

2002 – 2011
United States District Court for the District of South Carolina
Clement F. Haynsworth Federal Building and United States Courthouse
300 East Washington Street
Greenville, South Carolina 29601
United States Magistrate Judge

2000 – 2001
College of Charleston
66 George Street
Charleston, South Carolina 29464
Instructor (part-time)

1991 – 2002
United States Attorney's Office for the District of South Carolina
170 Meeting Street, Suite 300
Charleston, South Carolina 29401
Assistant United States Attorney

March 1991 – November 1991
Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith P.A
17 1/2 Broad Street
Charleston, South Carolina 29401
Law Clerk

September 1990 – November 1990
Michael A. Uricchio, Esquire
24 Broad Street
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Law Clerk

May 1989 – November 1989
United States Attorney's Office for the District of South Carolina
1441 Main Street, Suite 500
Columbia, South Carolina 29202
Law Clerk

1988 –1989
University of South Carolina School of Law
701 Main Street
Columbia, South Carolina 29208
Law Clerk

1986 – 1987
Holmes & Thompson Law Firm
(no longer exists)
Paralegal
Post Office Box 835
Charleston, South Carolina, 29402

Other Affiliations (uncompensated):

2008 – present
Federal Bar Association, South Carolina Chapter
President Sam Sammataro
Turner Padget Graham & Laney P.A.,
1901 Main Street, 17th Floor
Columbia, South Carolina 29201
Board Member

2010 – 2012
YMCA of Greenville, South Carolina
723 Cleveland Street
Greenville, South Carolina 29601
Board of Directors

2000 – 2001
College of Charleston Attorney Assistance Program
66 George Street
Charleston, South Carolina 29464
Advisory Board

2000 – 2001
College of Charleston, Lawyer Referral/Legal Assistance Program
66 George Street
Charleston, South Carolina 29464
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 am not required to register for selective service.

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

Certificate of Appreciation for Service and Leadership on the YMCA Board of Directors, 2012

Commendation for Service as United States Magistrate Judge, Greenville, South Carolina, from United States Attorney William Nettles, January 2010

Certificate of Appreciation from the South Carolina Chapter of the Federal Bar Association, 2010

Commendation for Diligent Support and Excellent Cooperation from the Drug Enforcement Agency Task Force, Charleston, South Carolina, 2002

Commendation for Support and Hard Work from the Bureau of Alcohol, Tobacco, and Firearms, Charleston, South Carolina Field Office, 2002

Commendation for Loyal Service to the Violent Crime Task Force from the Charleston Police Department, North Charleston Police Department, Charleston County Sheriff's Office, and the Federal Bureau of Investigation, 2002

Commendation for Loyal Service to the United States Attorney's Office, District of South Carolina, from United States Attorney J. Strom Thurmond, Jr., 2002

Certificate of Appreciation as Founding Member and Chair, Board of Directors, College of Charleston Attorney Assistance Program, 2001

Commendation for Outstanding Contribution to the Master's Program in Bilingual Legal Interpretation at the College of Charleston, 2001

United States Postal Service Award for Outstanding Performance in the Trial of *United States v. Carl Almon*, 1999

United States Attorney's Award for Outstanding Performance in the Church Burning Investigations, March 1997

Pi Sigma Alpha, National Political Science Honor Society, 1981

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

Charleston County Bar Association (1991 – 2001, 2010 – present)

Federal Bar Association, South Carolina Chapter (2004 – present)
Board Member (2008 – present)

Greenville County Bar Association (2001 – 2010)

James L. Petigru American Inn of Court (2012 – present)

South Carolina Bar Association (1991 – present)

South Carolina Women Lawyers Association (2001 – 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.

South Carolina, 1991

There have been no lapses in membership.

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

United States Court of Appeals for the Fourth Circuit, 1991
United States District Court for the District of South Carolina, 1991
South Carolina, all courts, 1991

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.

College of Charleston Alumni Association
Executive Board, Alumni Awards and Student Relations Committee
(2005 – 2009)

College of Charleston, Lawyer Referral/Legal Assistance Program (2000 – 2001)
Advisory Board

College of Charleston Master's Program in Bilingual Legal Interpreting (2001)
Advisory Board

YMCA of Greenville, South Carolina (2002 – 2007, 2008 – 2012)
Board of Directors (2010 – 2012)

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

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

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

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

None.

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

None.

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

None.

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

Based upon a review of my calendar, travel records, document database, and internet searches, I have identified the following speeches or talks that I delivered. I have included written remarks where they were available.

May 28, 2013: I spoke to the Rotary Club in Charleston, South Carolina, about the operation of the pilot drug court program. I have no notes, transcript or recording, but press coverage is supplied. The address of the Rotary Club is Post Office Box 21029, Charleston, South Carolina, 29413.

February 27, 2013: I spoke on substance abuse at two Bishop England High School assemblies in Charleston, South Carolina. Prepared remarks supplied.

February 26, 2013: I spoke at a Continuing Legal Education seminar sponsored by the South Carolina Federal Bar Association in Charleston, South Carolina, about the operation of the pilot federal drug court program. Prepared remarks supplied.

October 5, 2012: I participated as a panelist in a discussion entitled "Practice Pearls from the Big Girls" at the Law Practice Diversity seminar of the South Carolina Women Lawyers Association. The seminar took place in Charleston, South Carolina. Prepared remarks supplied.

September 6, 2012: I spoke on the ethics of Valmaer at the annual Continuing Legal Education seminar sponsored by the South Carolina Federal Bar Association in Greenville, South Carolina. Prepared remarks supplied.

January 18, 2012: I spoke at the Federal Correctional Institute in Williamsburg, South Carolina. I made brief remarks about the effectiveness of reentry drug court programs and expressed gratitude for the work of correctional facility personnel. I have no notes, transcript or recording, but press coverage is supplied. The address for the Federal Correctional Institute in Williamsburg is 8301 US 521, Salters, South Carolina, 29590.

September 15, 2011: I participated as a panelist in a discussion entitled "Everything You Need to Know About the State of the District of South Carolina & the Role of the United States Magistrate Judge" in Charleston, South Carolina, at the annual Continuing Legal Education seminar sponsored by the South Carolina Chapter of the Federal Bar Association. Prepared remarks supplied.

November 2010: I spoke at the United States Probation Office Guidelines seminar in Greenville, South Carolina. Prepared remarks supplied.

October 2010: I spoke at the Charleston County Bar Meeting in Charleston, South Carolina. Prepared remarks supplied.

August 2010: I spoke at the United States Probation Office Guidelines seminar in Charleston, South Carolina. Prepared remarks supplied.

January 20, 2010: I spoke at a luncheon for the South Carolina Women Lawyers Association in Greenville, South Carolina. I do not recall the topic, and I have no notes, transcript or recording. The address for the South Carolina Women Lawyers Association is Post Office Box 11910, Columbia, South Carolina, 29211.

November 11, 2009: I participated as a panelist in a discussion at a South Carolina Women Lawyers Association event in Greenville, South Carolina. The topic was women in the judiciary. I have no notes, transcript or recording. The address for the South Carolina Women Lawyers Association is Post Office Box 11910, Columbia, South Carolina, 29211.

September 17, 2009: I participated as a panelist in a discussion at the annual Continuing Legal Education Seminar for the Federal Bar Association in Greenville, South Carolina. The topic was practice in federal courts. I have no notes, transcript or recording. There is no physical address for the local chapter of the Federal Bar Association.

August 2009: I spoke at the United States Probation Guidelines seminar in Greenville, South Carolina. Prepared remarks supplied.

March 2009: I spoke at the Federal Bar meeting in Greenville, South Carolina, concerning consent cases before a United States Magistrate Judge. Prepared remarks supplied.

September 2008: I spoke in Greenville, South Carolina at a Continuing Legal Education seminar of the Federal Bar Association on ethical issues for Criminal Justice Act panel attorneys. Prepared remarks supplied.

August 2008: I spoke in Charleston, South Carolina at a Continuing Legal Education seminar on employment litigation before a magistrate judge. The CLE

was sponsored by the South Carolina Trial Lawyers Association. Prepared remarks supplied.

January 2008: I spoke at Pinewood Preparatory School in Summerville, South Carolina on civil rights. Prepared remarks and press coverage supplied.

November 1, 2005: I spoke at the Charleston School of Law in Charleston, South Carolina, on "'Howe' to Practice Law from a Family of Lawyers." Prepared remarks supplied.

September 16, 2005: I spoke at the Greenville County Bar Association Employment Law Seminar about "Tips From the Bench" in employment law cases. I have no notes, transcript or recording. The address for the Greenville County Bar Association is P. O. Box 10145, Greenville, South Carolina, 29603.

Spring 2005: I participated as a panelist in a discussion at the South Carolina School of Law on practice before United States Magistrate Judges. I have no notes, transcript or recording. The address for the South Carolina School of Law is 701 Main Street, Columbia, South Carolina, 29208.

September 2004: I served as a panelist at Wofford College in Spartanburg, South Carolina, for a Continuing Legal Education seminar. The theme of the seminar was Wofford and the law. I have no notes, transcript or recording. The address for Wofford College is 429 North Church Street, Spartanburg, South Carolina 29303.

February 2004: I participated in a question and answer session at Hughes Academy of Science and Technology in Greenville, South Carolina, on the federal justice system, hate crimes, civil rights, and civil procedure. I have no notes, transcript or recording, but press coverage is supplied. The address of the Hughes Academy of Science and Technology is 122 Deoyley Avenue, Greenville, South Carolina 29605.

January 2004: I spoke at the annual bar meeting of the South Carolina Bar in Charleston, South Carolina, on the attorney's oath and legal ethics. Prepared remarks supplied.

October 16, 2002: I spoke to members of Legal Staff Professionals of Greenville in Greenville, South Carolina. I do not recall the topic, and I have no notes, transcript or recording. The address for Legal Staff Professionals of South Carolina is Post Office Box 10208, Greenville, South Carolina, 29603.

I do not recall the date or the exact location, but while I was an Assistant United State Attorney, I spoke in Charleston, South Carolina, on binge drinking. I have no notes, transcript or recording.

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.

Wes Allison, *Judicial Notice*, CHARLESTON COUNTY BAR ASSOCIATION NEWSLETTER, Fall 2011. Copy supplied.

Bill Clarke, *A Fond Farewell for Judge Bruce E. Hendricks*, G-BAR NEWS, Jan. 2011. Copy supplied.

Fred Horlbeck, *U.S. Magistrate Set for Return to Her Charleston Roots*, SOUTH CAROLINA LAWYERS WEEKLY, July 19, 2010. Copy supplied.

Christine Gantt-Sorenson, *President's Article*, G-BAR NEWS, April 2010. Copy supplied.

Alicia Lutz, *The Mother of All Decisions*, COLLEGE OF CHARLESTON MAGAZINE, Spring 2009. Copy supplied.

Nicole D. Jordan, *Getting to Know 3 Local Judges*, GREENVILLE MAGAZINE, November 2007. Copy supplied.

Bruce Smith, *Former Klan Member Gets 15 Years in Church, Migrant Camp Burning*, AP NEWS ARCHIVE, August 15, 1997. Copy supplied.

Jesse J. Holland, *Informant in Burnings Sentenced to Minimum*, Charlotte Observer, December 31, 1996. Copy supplied.

Mike Soraghan, *Ex-Magistrate Gets Prison Term Lee Sentenced for Using Office to Exact Sexual Favors*, Myrtle Beach Sun News, August 6, 1996. Copy supplied.

Richard Green, Jr., *Kiawah Arson Suspect Dies After Being Jailed*, THE POST AND COURIER, May 3, 1996. Copy available at http://tinyurl.com/mfx9hpg.

Kathy Scruggs, *Ex-fugitive Kills Himself While in Atlanta Jail*, ATLANTA JOURNAL AND CONSTITUTION, May 2, 1996. Copy supplied.

FBI Nabs Charleston Couple Wanted on Fraud Charges, THE STATE, April 29, 1996. Copy supplied.

Fugitive Couple Caught in Marietta, ATLANTA JOURNAL AND CONSTITUTION, April 28, 1996. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed,

and a description of the jurisdiction of each such court.

I have been a United States Magistrate Judge since 2002, when I was appointed by the district court judges for the United States District for the District of South Carolina. United States Magistrate Judges are judges in the United States District Court System, as provided for in 28 U.S.C. § 631 *et seq*. As a magistrate judge, I lack statutory authority to issue binding final orders on dispositive matters or take to trial any civil matter not consented to by the litigants and, thereafter, referred by the district judge. *See* 28 U.S.C. § 636. Likewise, in criminal matters, I have jurisdiction over only misdemeanor and petty offenses and over preliminary felony criminal matters.

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

   As a United States Magistrate Judge, I have presided over 42 cases that have gone to verdict or judgment. Because I can only preside over civil matters by consent of the parties and over criminal trials involving misdemeanor and petty offenses, I have only presided over a small percentage of the thousands of cases I have handled.

   i. Of these, approximately what percent were:

jury trials:	1%
bench trials:	99%
civil proceedings:	88%
criminal proceedings:	12%

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

   See attached list.

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

   I have presided over a limited number of cases in the way that term is described in Question 13(a). Moreover, consent trials before a magistrate judge are not common in this District. For purposes of this question, however, I have taken a broader view of that phrase. Accordingly, for this question, I have described the three trials over which I actually presided as well as a substantial piece of complex mediation to which I was appointed mediator by the district court. I have also described six other written Orders or Reports and Recommendations that I issued in significant cases before me.

1. *Cantrell v. Target Corporation*, No. 6:06-cv-2723 (D.S.C. May 15, 2009). Order supplied.

Cantrell was a state-law defamation case. The plaintiff was wrongly accused of tendering a counterfeit $100 bill by employees of defendant Target. She left with the bill and had its authenticity confirmed at an area bank. In the interim, however, Target published, in unqualified terms, its accusations against the plaintiff to over 70 other retail establishments participating in a theft task-force program, including the department store Belk where the plaintiff was employed. On the strength of Target's representations, Belk called the Secret Service. Secret Service agents subsequently arrived at Belk unannounced, *Mirandized* the plaintiff, and interviewed her concerning the bill, eventually also confirming its legitimacy. The jury found in favor of the plaintiff on her sole claim of defamation. It awarded her $100,000 in actual damages and $3 million in punitive damages. My written post-trial order, affirming the award, attempted to balance deference for the verdict with respect for controlling constitutional precedent on the propriety of large punitive awards. The trial and post-trial arguments implicated a somewhat novel application of a defense in qualified privilege, which might have protected Target from publishing its beliefs about the plaintiff among entities whom shared a common interest. I ruled that evidence existed from which a jury might have reasonably concluded that the scope of the privilege had been exceeded and affirmed the award. The order was appealed but eventually settled before any disposition by the Fourth Circuit.

Counsel for the plaintiff:

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Kirsten Elena Small
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Counsel for the defendant: Knox L. Haynsworth, III
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2. *Reece v. Shealy*, No. 8:04-cv-120 (Sept. 18, 2006); *Shealy v. Reece*, No. 8:04-cv-374 (Sept. 18, 2006). Order supplied.

These companion cases involved a state-law contract dispute over a hunting lease. The lease included contradictory terms as to its duration. In one portion of the agreement, it stated that the duration of the lease was for 99 years. In another portion of the agreement, however, the lease stated that "the hunting lease is for a full term of one year from the date hereof." The matter was tried before me without a jury. I ruled that no meeting of the minds existed and, therefore, that under South Carolina law, the lease reverted to a month-to-month tenancy and was not for a 99-year duration. Judgment was entered in favor of Shealy in both cases. No appeal was filed.

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Valentine Henry Stieglitz, III
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Counsel for Shealy:

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Pope and Hudgens
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Newberry, SC 29108
803-276-2532

William Chad Jenkins
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Newberry, SC 29108
803-276-2532

3. *Henley v. Atkinson*, No. 8:06-2420-BHH (D.S.C. Oct. 1, 2006), *aff'd*, 326 Fed. App'x 201 (4th Cir. 2009).

Henley involved the alleged use of excessive force in the course of the plaintiff's arrest by the defendant state police officers. In the middle of the night, the defendant officer, along with another deputy, attempted to stop the plaintiff after observing him parked in the parking lot of a business. The deputies initiated their emergency equipment in an attempt to stop him, but the plaintiff continued in his vehicle. Eventually, the plaintiff exited his vehicle on foot and fled. The defendant officer released his K-9 unit service dog to effectuate the apprehension of the plaintiff. The plaintiff sustained bite wounds during the capture, including allegedly one to the groin, and was arrested for multiple criminal charges and then taken into custody. The plaintiff alleged that the defendant officer deployed the canine after he was restrained and handcuffed. The case was tried before a jury, which found in favor of the defendant. The verdict was affirmed on appeal.

Counsel for the plaintiff:

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803-799-2000

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Lee E. Dixon
Hedrick Gardner Kincheloe and Garofalo
Post Office Box 11267
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Paul T. Collins
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Stephen G. Morrison
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Robert David Garfield
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William Henry Davidson, II
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4. *Savannah Riverkeeper v. U.S. Army Corps of Engineers*, No. 9:12-cv-610 (Sept. 2012-May 2013).

Savannah Riverkeeper involved various challenges by private conservation groups and state agencies of South Carolina to the Savannah Harbor Expansion Project ("SHEP"), a nearly $700 million congressionally authorized plan to deepen the Savannah River. The plaintiffs argued that the Army Corps of

Engineers failed to obtain all necessary state permits from South Carolina for the project, as required by federal law. The Honorable Richard Gergel of the United States District Court for the District of South Carolina appointed Congressman John Spratt and me to preside over the mediation of this highly complex multi-state matter. The mediation took over seven months, four in-person mediation sessions, numerous teleconferences, and countless hours of preparation and effort to resolve. In addition to the unprecedented scope and scale of the project itself, all the various political and economic interests implicated, and the numerous parties with stake, the case posed a variety of novel legal issues under the Clean Water Act, National Environmental Policy Act, and state administrative law. Our efforts resulted in a global and court-approved settlement among three state agencies (between two states); the Army Corps of Engineers; and three private conservation groups.

Counsel for the plaintiff Conservation groups:	Christopher Kaltman DeScherer Southern Environmental Law Center 43 Broad Street Suite 300 Charleston, SC 29401 843-720-5270
	J. Blanding Holman, IV Southern Environmental Law Center 43 Broad Street Suite 300 Charleston, SC 29401 843-720-5270
	Frank S. Holleman, III Southern Environmental Law Center 601 West Rosemary Street Suite 220 Chapel Hill, NC 27516 919-967-1450
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Counsel for the Army Corps of Engineers:

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5. *Peter B. v. Sanford*, No. 6:10-cv-767, 2010 WL 5912259 (D.S.C. Nov. 24, 2010).

The plaintiffs brought an action against the Governor of South Carolina and various South Carolina state agencies seeking declaratory and injunctive relief for allegedly violating Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132; Section 504 of the Rehabilitation Act of 1973 (Section 54); and 42 U.S.C. § 1983. The district judge referred the plaintiffs' motion for injunctive relief to me. The plaintiffs asked the court to enjoin the defendants

from reducing or terminating certain medical and personal-care services, the absence of which would allegedly force the plaintiffs from their homes and communities into disability institutions and other like facilities. I held a hearing on the motion and recommended to the district court that the defendants should be temporarily enjoined and ordered to maintain or return services in the quality, kind, and volume previously enjoyed by the plaintiffs. The district court adopted that recommendation.

Counsel for the plaintiff:

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6. *Credell v. Bodison*, No. 8:10-cv-18, 2011 WL 573425 (D.S.C. Jan. 26, 2011).

The petitioner, a state prisoner, sought habeas relief pursuant to 28 U.S.C. § 2254. Among other less persuasive grounds, the petitioner argued that trial counsel was ineffective (1) for failing to object when the solicitor pitted his testimony against that of his mother; (2) in the handling of a witness's prior statements; and (3) in advising him not to testify. I recommended habeas relief on all three grounds. That recommendation was adopted by the district court. No appeal was taken.

The state, however, has indicated its intent to retry the petitioner.

Counsel for the petitioner: *pro se*

Counsel for the respondent: Brendan McDonald
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7. *Humphries v. Ozmint*, 8:02-cv-4276 (D.S.C. 2003). Report and Recommendation supplied.

Within months of my appointment as a United States Magistrate, I issued this recommendation denying habeas relief in a death penalty case. The district court adopted that recommendation. *See Humphries v. Ozmint*, 8:02-cv-4276 (D.S.C 2003). The petitioner appealed. The Fourth Circuit affirmed in a published decision. *See Humphries v. Ozmint*, 397 F.3d 206 (4th Cir. 2005).

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Counsel for the respondent: Donald John Zelenka
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8. *EEOC v. Cromer Food Services, Inc.*, No. 6:08-cv-3249 (D.S.C. Jan. 6, 2010), *rejected,* 691 F. Supp. 2d 646 (D.S.C. 2010), *vacated and rev'd,* 414 Fed. App'x 602 (4th Cir. 2011). Report and Recommendation supplied.

The plaintiff EEOC, on behalf of an individual complainant, pled claims for hostile work environment, on account of the complainant's sex, and for retaliation, pursuant to Title VII of the Civil Rights Act of 1964, as amended. I recommended denial of the defendant's motion for summary judgment as to all claims. The district court rejected the Report and Recommendation and dismissed the case. The reasoning of the Report and Recommendation was affirmed on appeal to the Fourth Circuit.

Counsel for the plaintiff:	Kara L. Haden Equal Employment Opportunity Commission 129 West Trade Street Suite 400 Charlotte, NC 28202 704-954-6469
	Nicholas Glen Walter Equal Employment Opportunity Commission 129 West Trade Street Suite 400 Charlotte, NC 28202 704-954-6472
	Stephanie Michelle Jones Equal Employment Opportunity Commission 129 West Trade Street Suite 400 Charlotte, NC 28202 704-954-6471
Counsel for the defendant:	Sarah Ganss Drawdy Drawdy Law Firm Regency Building 2315 North Main Street Suite 117 Anderson, SC 29621 864-261-3977

9. *Whitten v. Fred's*, No. 8:08-cv-218, 2009 WL 364162 (D.S.C. Jan. 13, 2009) *rejected*, 2009 WL 364077 (D.S.C. Feb. 11, 2009), *vacated and remanded*, 601 F.3d 231 (4th Cir. 2010).

The plaintiff alleged that an agent of the defendant, Fred's, Inc., sexually harassed her in violation of the South Carolina Human Affairs Law, S.C. Code § 1-13-30 *et seq*. The defendant moved to dismiss the plaintiff's claims for lack of subject matter jurisdiction, for untimeliness, for failure to exhaust, and for a want of

substantive merit. I recommended that the defendant's motions to dismiss and for summary judgment be denied. The district court rejected the Report and Recommendation. The reasoning of the Report and Recommendation was affirmed on appeal to the Fourth Circuit in a published decision.

Counsel for the plaintiff: Mary C. McCormac
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10. *Malik v. Ozmint*, No. 8:05-cv-3472, 2010 WL 1052708 (D.S.C. Feb. 16, 2010).

I recommended that the South Carolina Department of Corrections' policy requiring all inmates to keep their hair short and their faces shaven did not violate a Sunni Muslim inmate's rights under the Religious Land Use and Institutionalized Persons Act. The Fourth Circuit had approved a prior version of the policy, which applied to higher security inmates, but had not approved the policy in its amended form. The matter, therefore, was of some first impression. Although the inmate demonstrated that the policy substantially burdened his free exercise of religion, the policy furthered a compelling state interest and was the least restrictive means of furthering that interest. The district court adopted the recommendation.

Counsel for the plaintiff: *pro se*

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

1. *Peter B. v. Sanford*, No. 6:10-cv-767, 2010 WL 5912259 (D.S.C. Nov. 24, 2010).

Counsel for the plaintiff:

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2. *Credell v. Bodison*, No. 8:10-cv-18, 2011 WL 573425 (D.S.C. Jan. 26, 2011).

Counsel for the petitioner: *pro se*

Counsel for the respondent:

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3. *Humphries v. Ozmint*, 8:02-cv-4276. Report and Recommendation previously supplied in response to Question 13c.

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4. *Cantrell v. Target Corporation*, No. 6:06-cv-2723 (D.S.C. May 15, 2009). Order previously supplied in response to Question 13c.

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5. *EEOC v. Cromer Food Services, Inc.*, No. 6:08-cv-3249 (D.S.C. Jan. 6, 2010) (Report and Recommendation previously supplied in response to Question 13c), *rejected,* 691 F. Supp. 2d 646 (D.S.C. 2010), *vacated and rev'd,* 414 Fed. App'x 602 (4th Cir. 2011).

Counsel for the plaintiff:

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6. *Whitten v. Fred's*, No. 8:08-cv-218, 2009 WL 364162 (D.S.C. Jan. 13, 2009) *rejected*, 2009 WL 364077 (D.S.C. Feb. 11, 2009), *vacated and remanded*, 601 F.3d 231 (4th Cir. 2010).

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7. *Malik v. Ozmint*, No. 8:05-cv-3472, 2010 WL 1052708 (D.S.C. Feb. 16, 2010).

Counsel for the plaintiff: *pro se*

Counsel for the defendants: Andrew F. Lindemann
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8. *Carthens v. Lewis*, No. 8:08-cv-107 (D.S.C. Jan. 27, 2009). Report and Recommendation supplied.

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9. *Mortensen v. Astrue*, No. 8:07-547 (D.S.C. Apr. 23, 2008), *adopted by* 2008 WL 1826185 (D.S.C. Apr. 23, 2008). Report and Recommendation supplied.

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10. *Thompson v. Astrue*, No. 8:09-cv-1968, 2010 WL 3878729 (D.S.C. June 16, 2010), *adopted*, 2010 WL 3880047 (D.S.C Sept. 28, 2010), *aff'd*, 442 Fed. App'x 804 (4th Cir. 2011).

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

To the best of my knowledge, there are no such cases.

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

To the best of my knowledge, no final order of mine has been appealed to the district court or the United States Court of Appeals for the Fourth Circuit and reversed. However, the following Reports and Recommendations were not adopted, or were adopted only in part. Conservatively, I have issued over 1,200 Report and Recommendations. Every Report and Recommendation is subject to review by the District Court, and my recommendations have been adopted in approximately 96% of those cases.

Chambers v. Mueller, No. 2:12-cv-1372, 2013 WL 603349 (D.S.C. Jan. 11, 2013), *adopted in part, rejected in part*, 2013 WL 603348 (D.S.C. Feb. 19, 2013). The district court predominately adopted the Report and Recommendation but rejected the recommendation that the plaintiff's proposed amendment to the Complaint would sufficiently allege deliberate indifference.

Patterson-Womble v. Mabus, No. 2:11-cv-834 (D.S.C. Jan. 4, 2013). The district court adopted the Report and Recommendation as to the plaintiff's race discrimination claim but rejected it as to claims for pregnancy discrimination, hostile work environment, and retaliation. The Report and Recommendation found that the plaintiff had been replaced by a black female and, therefore, that she could not make out any *prima facie* case. The district court interpreted the plaintiff's sex based claim more broadly, as one in pregnancy discrimination, and found she had been replaced by a non-pregnant individual. (Report and Recommendation and Order attached.)

Thomas v. Kmart Corp., No. 9:11-cv-669, 2012 WL 7808898 (D.S.C. Nov. 15, 2012), *adopted in part, rejected in part*, 2013 WL 1282019 (D.S.C. Mar. 26, 2013). The district court predominately adopted the Report and Recommendation but rejected the recommendation that the "ulterior purpose" element of an abuse of process claim could not be established.

Smith v. InterSouth Properties, Inc., No. 2:11-cv-2177 (D.S.C. Mar. 15, 2012). The district court declined to adopt a recommendation that the defendant's motion for partial judgment on the pleadings should be granted as to the plaintiff's claim for wrongful termination in violation of public policy. The district court stated, without explanation, that at that early stage in litigation, the claim had been sufficiently pled. (Report and Recommendation and Order attached.)

Chappell v. Miles, No. 2:12-cv-303, 2012 WL 1570024 (D.S.C. Feb. 17, 2012), *rejected by* 2012 WL 1570020 (D.S.C. May 3, 2012). The district court rejected a portion of the Report and Recommendation recommending summary dismissal, which was made as a part of this district's initial review procedure for *pro se* complaints. The district court believed there was a facially sufficient allegation of excessive force and equal protection such that issuance and service of process should be made.

Singletary v. South Carolina Dept. of Educ., No. 3:11-cv-1449, 2012 WL 714972 (D.S.C. Feb. 3, 2012), *adopted in part, rejected in part,* 2012 WL 714796 (D.S.C. Feb. 29, 2012). The district court predominately adopted the Report and Recommendation but found that one defendant had not established qualified immunity. Amendment of the complaint was allowed.

Williams v. U.S. Services, Inc., No. 2:10-cv-1546, 2012 WL 590049 (D.S.C. Jan. 31, 2012), *adopted in part, rejected in part*, 2012 WL 601867 (D.S.C. Feb. 23, 2012). The district court predominately adopted the Report and Recommendation but found that issues of fact existed as to whether a reasonable disability accommodation had been made for one of multiple positions alleged. The Report and Recommendation was affirmed as to the other positions.

Drayton v. Cohen, No. 2:10-cv-03171, 2012 WL 666844 (D.S.C. Jan. 11, 2012), *adopted in part, rejected in part,* 2012 WL 666839 (D.S.C. Feb. 29, 2012), *aff'd*,

474 Fed. App'x 991 (4th Cir. 2012). The district court disagreed with the Report and Recommendation that the plaintiff prisoner had created issues of fact concerning his failure to protect claim. The district court found insufficient evidence related to whether the plaintiff had notified prison officials concerning specific threats against him. The district court adopted the remainder of the Report and Recommendation. The Fourth Circuit affirmed the district court order.

Stewart v. Astrue, No. 2:10-cv-822 (D.S.C. July 21, 2011). The district court rejected the finding that the Administrative Law Judge had properly considered evidence of certain impairments and remanded the case to the Social Security Administration for additional consideration. (Report and Recommendation and Order attached.)

Solesbee v. Astrue, No. 2:10-cv-1882, 2011 WL 3099738 (D.S.C. July 12, 2011), *rejected by* 2011 WL 5101531 (D.S.C. Oct. 25, 2011). The district court rejected the finding that the Administrative Law Judge had properly considered evidence of certain impairments and remanded to the Social Security Administration for additional consideration.

Carter v. Centura College, No. 2:10-cv-907, 2011 WL 7429447 (D.S.C. June 16, 2011), *adopted in part, rejected in part,* 2012 WL 638800 (D.S.C. Feb. 27, 2012). The district court adopted the Report and Recommendation as to the plaintiff's retaliation claim but rejected it as to the religious discrimination one.

Bates v. Astrue, No. 8:09-cv-3355, 2011 WL 1113778 (D.S.C. Jan. 21, 2011), *rejected by* 2011 WL 1113474 (D.S.C. Mar. 24, 2011). The district court remanded for an additional administrative hearing because the claimant's legal counsel did not fully develop the record. The district court acknowledged that the Report and Recommendation correctly noted that no ineffective assistance type claim was available.

Folkes v. Byrd, No. 8:10-cv-22, 2010 WL 4721572 (D.S.C. Oct. 21, 2010), *adopted in part, rejected in part*, 2010 WL 4721575 (D.S.C. Nov. 15, 2010). The district court modified the dismissal of certain unexhausted claims from "with prejudice" to "without."

Robinson v. Cannon, No. 8:10-cv-2236 (D.S.C. Sept. 8, 2010), *rejected by* 8:10-cv-2236 (D.S.C. Apr. 21, 2011). The district court rejected a portion of the Report and Recommendation recommending summary dismissal, which was made as a part of this district's initial Report and Recommendation review procedure for *pro se* complaints. The district court allowed issuance and service of process and the plaintiff an opportunity to identify the proper defendant. (Report and Recommendation and Order attached.)

Tinsley v. Wight, No. 7:09-cv-2455, 2010 WL 6422745 (D.S.C. Aug. 23, 2010), *adopted in part, rejected in part*, 2011 WL 1287910 (D.S.C. Mar. 31, 2011),

reconsidered in part, 2012 WL 5305980 (D.S.C. Mar. 28, 2012), *aff'd*, 478 Fed. App'x 15 (4th Cir. 2012). The district court stayed the case pending resolution of a state criminal prosecution instead of adopting the recommendation for summary dismissal.

Field v. McMaster, No. 6:09-cv-1949, 2010 WL 3257908 (D.S.C. June 30, 2010), *adopted in part, rejected in part*, 2010 WL 3257888 (D.S.C. Aug. 17, 2010), *aff'd*, 398 Fed. App'x 894 (4th Cir. 2010). The district court predominately adopted the Report and Recommendation but also granted summary judgment as to the plaintiff's claim for injunctive relief against certain defendants.

Panchura v. Astrue, No. 8:09-cv-01014, 2010 WL 3521718 (D.S.C. May 19, 2010), *adopted in part, rejected in part*, 2010 WL 3521719 (D.S.C. Sept. 7, 2010). The district court predominately adopted the Report and Recommendation but remanded to the Administrative Law Judge for additional consideration of the plaintiff's depression.

Hopkins v. Astrue, No. 8:09-cv-01014, 2010 WL 2219330 (D.S.C. Mar. 3, 2010), *adopted in part, rejected in part*, 2010 WL 2219328 (D.S.C. May 28, 2010). The district court predominately adopted the Report and Recommendation but remanded to the Social Security Administration for additional explanation of the Administrative Law Judge's finding that the plaintiff could perform medium work.

EEOC v. Cromer Food Services, Inc. No. 6:08-cv-3249 (D.S.C. Jan. 6, 2010). (Report and Recommendation previously supplied in response to Question 13c.) The district court rejected the Report and Recommendation. *See EEOC v. Cromer Food Services, Inc.*, 691 F. Supp. 2d 646 (D.S.C. 2010). The reasoning of the Report and Recommendation was affirmed on appeal to the Fourth Circuit. *See EEOC v. Cromer Food Services, Inc.*, 414 Fed. App'x 602 (4th Cir. 2011).

Lisenby v. Lear, No. 8:09-cv-410 (D.S.C. March 18, 2009). The district court agreed, in part, on a recommendation that the plaintiff's case could not be removed to federal court because the plaintiff had three previous cases dismissed as "strikes," for their frivolous or malicious nature, and, therefore, remanded the case to state court. *See Lisenby v. Lear*, No. 8:09-cv-410, 2010 WL 758677 (D.S.C. Feb. 26, 2010). On appeal, the Fourth Circuit concluded that the prior "strikes" did not prevent removal of the case by the defendants. *Lisenby v. Lear*, 674 F.3d 259 (4th Cir. 2012). (Report and Recommendation attached.)

Malpass v. Gibson, No. 8:08-cv-3243, 2009 WL 5868578 (D.S.C. Nov. 13, 2009), *rejected by* 685 F.Supp.2d 573 (D.S.C. Feb. 11, 2010). The district court declined to adopt the Report and Recommendation and concluded that issues of fact existed as to whether "extraordinary circumstances" were present concerning the plaintiff's excessive force claim even though the plaintiff suffered *de minimis* injury.

Peoples v. Rogers, No. 8:10-cv-1312, 2010 WL 424203 (D.S.C. Jan. 12, 2010), *rejected by* 2010 WL 424201 (D.S.C. Feb. 1, 2010). The district court rejected the Report and Recommendation recommending summary dismissal, which was made as a part of this district's initial review procedure for *pro se* complaints. The district court believed questions remained concerning the timeliness of the plaintiff's claims and the application of *res judicata* such that issuance and service of process should be made.

Kelly v. Yates, No. 8:08-cv-2147, 2009 WL 6323747 (D.S.C. Dec. 17, 2009), *adopted in part, rejected in part*, 2010 WL 1294109 (D.S.C. Mar. 29, 2010). The district court disagreed with the Report and Recommendation's recommendation that material facts existed as to the plaintiff's Fourth Amendment claim that his right against unreasonable seizure had been violated when he was removed from the scene of a traffic stop and taken to a motel.

Pellegrino v. United Parcel Service, Inc., No. 7:08-cv-180, 2009 WL 6325694 (D.S.C. Dec. 15, 2009), *adopted in part, rejected in part*, 2010 WL 1346415 (D.S.C. Mar. 30, 2010). The district court adopted the Report and Recommendation as to the plaintiff's Family and Medical Leave Act (FMLA) retaliation claim but rejected it as to the FMLA interference one.

Barnes v. Seymour, No. 8:09-cv-2616, 2009 WL 6547636 (D.S.C. Nov. 10, 2009). The district court agreed, in part, with a recommendation, made as a part of our district's initial review of *pro se* complaints, that a "strike" should be awarded to the plaintiff for filing a malicious or frivolous case. *Barnes v. Seymour*, No. 8:09-2166, 2010 WL 2293237 (D.S.C. Jun. 4, 2010). The Fourth Circuit concluded a strike could not be awarded where the case was dismissed "without prejudice." *Barnes v. Seymour*, 416 Fed. App'x 300 (4th Cir. 2011).

Landrum v. Bowens, No. 8:08-cv-2993, 2009 WL 3060359 (D.S.C. July 16, 2009), *adopted in part, rejected in part*, 2009 WL 3060356 (D.S.C. Sept. 24, 2009). The district court predominately adopted the Report and Recommendation but disallowed the case to proceed against an additional defendant for supervisory liability.

Wolfe v. Cooper, No. 8:08-cv-869, 2009 WL 2929442 (D.S.C. May 20, 2009), *rejected by* 2009 WL 2929438 (D.S.C. Sept. 2, 2009). The Report and Recommendation found that a credibility issue existed as to whether the plaintiff prisoner had been raped and forced to perform oral sex on prison guards. The district court found that there was no other evidence of the allegations and that the credibility dispute was insufficient to survive summary judgment.

Whitten v. Fred's, No. 8:08-cv-218 (D.S.C. Jan. 13, 2009). The district court rejected the Report and Recommendation. *See Whitten v. Fred's*, No. 8:08-CV-218, 2009 WL 364077 (D.S.C. Feb. 11, 2009). However, the reasoning of the Report and Recommendation was affirmed on appeal to the Fourth Circuit in a

published decision. *See Whitten v. Fred's*, 601 F.3d 231 (4th Cir. 2010). (Report and Recommendation previously supplied in response to Question 13c.)

Peoples v. Davis, No. 8:08-cv-251, 2009 WL 483805 (D.S.C. Jan. 23, 2009), *rejected by* 2009 WL 483798 (D.S.C. Feb. 24, 2009). The district court rejected the recommendation of the Report and Recommendation that a portion of the plaintiff's excessive force claim should survive summary judgment.

Lawrence v. Astrue, No. 8:07-cv-3732, 2008 WL 5785183 (D.S.C. Dec. 11, 2008), *rejected by* 2009 WL 890655 (D.S.C. Mar. 30, 2009). Contrary to the Report and Recommendation, the district court found that the ALJ did not have substantial evidence to reject a lower IQ score of the claimant and remanded the case to the Social Security Administration for further findings.

Blackwell v. Astrue, No. 8:07-cv-1084, 2008 WL 4200305 (D.S.C. May 22, 2008), *rejected by* 2008 WL 4200302 (Sept. 4, 2008). The district court concluded that the case should be remanded to the Social Security Administration and not simply dismissed, as recommended by the Report and Recommendation and requested by the Defendant Commissioner.

Peoples v. SCDC, No. 8:07-cv-1203, 2008 WL 4442586 (D.S.C. May 13, 2008), *rejected by* 2008 WL 4442583 (D.S.C. Sept. 25, 2008). The district court rejected the recommendation of the Report and Recommendation that the plaintiff prisoner's excessive force claim should be dismissed.

Bostick v. Warden of Broad River Correctional Inst., No. 8:07-cv-727. The district court adopted and incorporated by reference my Report and Recommendation regarding the grant of summary judgment concerning a petition for writ of habeas corpus, in part because the ineffective assistance of counsel claim had not been exhausted. *See Bostick v. Warden of Broad River Correctional Inst.*, No. 8:07-727, 2008 WL 474219 (D.S.C. Feb. 20, 2008). The Fourth Circuit reversed the district court's order and granted habeas relief, concluding that because the state exhaustion rule had been unevenly applied, it did not bar federal review of the claim. *See Bostick v. Warden of Broad River Correctional Inst.*, 589 F.3d 160 (4th Cir. 2009).

Frost v. Toney, No. 8:07-cv-108, 2007 WL 4924758 (D.S.C. Oct. 30, 2007), *rejected by* 2008 WL 426286 (D.S.C. Feb. 13, 2008). The district court found that issues of fact existed as to the use of force that caused the plaintiff prisoner to hit his head.

Sturkey v. Ozmint, No. 8:07-cv-1502, 2007 WL 4901401 (D.S.C. June 19, 2007), *adopted in part, rejected in part*, 2008 WL 373610 (D.S.C. Feb. 7, 2008). The district court rejected the Report and Recommendation recommending summary dismissal of the case, a determination which is made as a part of this district's initial review procedure for *pro se* complaints prior to service of process. On

objection to the district court, the district court believed there was a discernible equal protection claim in the complaint such that issuance and service of process should be made.

United States v. Clarkson, No. 8:05-cv-2734, 2007 WL 1988261 (D.S.C. May 14, 2007), *adopted in part, rejected in part*, 2007 WL 1988257 (D.S.C. Jul. 3, 2007). The district court predominately adopted the Report and Recommendation but found that both forms of requested injunctive relief concerning false tax statements made by the plaintiff should issue.

Ashe v. Smith, No. 8:07-cv-537, 2007 WL 1423745 (D.S.C. Mar. 1, 2007), *adopted in part, rejected in part*, 2007 WL 1423730 (D.S.C. May 10, 2007). The district court rejected the Report and Recommendation recommending summary dismissal, which was made as a part of this district's initial review procedure for *pro se* complaints. The district court found that although there was no allegation of physical injury, the plaintiff prisoner's request for injunctive relief was still colorable such that issuance and service of process should be made.

Chavis v. Barnhardt, No. 6:05-cv-1793, 2007 WL 1032302 (D.S.C. Feb. 8, 2007), *adopted in part, rejected in part*, 2007 WL 1032300 (D.S.C. Mar. 31, 2007). The district court adopted the Report and Recommendation as to the plaintiff's race discrimination claim but rejected it as to the age discrimination and retaliation ones.

Koon v. Rushton, No. 8:05-cv-2523, 2006 WL 4046219 (D.S.C. Aug. 24, 2006), *rejected by* 2007 WL 465515 (D.S.C. Feb. 6, 2007). The Report and Recommendation was rejected by the district court for recommending "dismissal without prejudice" of a "mixed-application" habeas petition, which included both exhausted and unexhausted claims. The district court concluded that the petitioner was entitled to proceed on the exhausted claims.

Nicholas v. Ozmint, No. 8:05-cv-3472 (D.S.C. July 25, 2006). The district court substantially adopted the Report and Recommendation but permitted the plaintiff prisoner's Grooming Policy claim to proceed. (Report and Recommendation and Order attached.)

Hucks v. Allstate Insurance Co., No. 8:04-cv-23336 (D.S.C. July 10, 2006). The district court substantially adopted the Report and Recommendation but, out of an abundance of caution, modified the dismissal from "with prejudice" to "without." (Report and Recommendation and Order attached.)

Nave v. Trans-Cor America, No. 8:06-cv-1065, 2006 WL 4681146 (D.S.C. May 16, 2006), *rejected by* 2007 WL 2156670 (D.S.C. Jul. 26, 2007). The district court rejected the Report and Recommendation recommending summary dismissal, which was made as a part of this district's initial review procedure for *pro se*

complaints. The district court disagreed that the complaint did not implicate the court's federal question jurisdiction.

Habeck v. Barnhart, No. 8:04-cv-1844 (D.S.C. June 28, 2005). The district court rejected the Report and Recommendation recommending remand to the Social Security Administration and concluded that the Commissioner's disability determination was based on substantial evidence. (Report and Recommendation and Order attached.)

Nicholas v. Ozmint, No. 8:05-cv-1011 (D.S.C. Apr. 18, 2005). The district court substantially adopted the Report and Recommendation but disagreed that a "strike" should be awarded to the plaintiff for filing a malicious or frivolous case. (Report and Recommendation and Order attached.)

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

As a United States Magistrate Judge all of my decisions are filed on the United States District Court for the District of South Carolina's Electronic Case Filing System (ECF). The vast majority of my decisions are unpublished nondispositive matters, such as motions to amend scheduling deadlines, motions to amend pleadings, and motions to compel or resolve discovery disputes. To my knowledge, there is not a reliable way of estimating the number of such decisions. Those matters include either written work product uploaded to ECF or text entries made directly in it. I have prepared thousands of such unpublished items.

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.

Fordham v. Moore, No. 2:12-974, 2012 WL 6947765 (D.S.C. Nov. 20, 2012), *adopted by* 2:12-974, 2012 WL 314476 (D.S.C. Jan. 28, 2013), *aff'd*, 2013 WL 1800528 (4th Cir. 2013).

Green v. Anderson, No. 2:10-cv-03080 (Jan. 18, 2012) *adopted by* No. 2:10-cv-03080, 2012 WL 602708 (Feb. 24, 2012). Report and Recommendation provided.

Williams v. Ozmint, No. 8:07-3723 (D.S.C. Aug. 14, 2009) *adopted by* 726 F. Supp. 2d 589 (D.S.C. June 2, 2010). Report and Recommendation provided.

Carthens v. Lewis, No. 8:08-cv-107, 2009 WL 3942299 (D.S.C. Jan. 27, 2009) *adopted by* No. 8:08-cv-107, 2009 WL 3942299 (D.S.C. Feb. 17, 2009).

Battle v. Metts, No. 8:07-cv-466, 2008 WL 2704870 (Feb. 16, 2007), *adopted by* 8:07-cv-466, 2008 WL 2704870 (July 8, 2008), *aff'd*, 308 Fed. App'x 686 (4th Cir. 2009).

Maness v. Ozmint, No. 3:06-382, 2007 WL 474181 (Dec. 15, 2006), *adopted by* No. 3:06-382, 2007 WL 474181 (Feb. 8, 2007).

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

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

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

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

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

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

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

The Clerk of Court for the District of South Carolina keeps a recusal list that is updated periodically. Judges are asked to review their self-identified recusal list on a regular basis. In addition to recusals made based on this list, I searched my records as well as the court's electronic docketing system. To the best of my knowledge, the following is a complete list of recusal requests:

Mr. Koon requested my recusal in *Koon v. Rushton et al.*, No. 8:05-cv-2523. This same individual also requested my recusal in *Koon v. Ozmint et al.*, 8:06-cv-1072, and *Koon v. Ozmint et al.*, 8:06-cv-2000. Mr. Koon contended that I was biased against him as a result of my rulings on various pretrial motions. In *Koon v. Rushton et al.* and *Koon v. Ozmint et al.*, 8:06-cv-2000, I denied the request for recusal because the only alleged bias pertained to my rulings. In *Koon v. Ozmint et al.*, 8:06-cv-1072, Judge Harwell denied Mr. Koon's motion for recusal as moot.

Mr. Peoples filed a motion seeking my recusal in *Peoples v. SCDC et al.*, 8:07-cv-01203. Mr. Peoples contended I was biased as a result of my rulings in his case. I

denied the motion because judicial rulings alone do not constitute a sufficient basis to warrant recusal.

In *Stepheny v. Social Security Administration*, 4:08-cv-03449, Mr. Stepheny filed a motion seeking my recusal. Mr. Stepheny sought my recusal because I denied his motion to appoint counsel. I denied Mr. Stepheny's motion for recusal because judicial rulings alone do not constitute a sufficient basis to warrant recusal.

Petitioner Weersing moved for my recusal in *Weersing v. Cartledge*, 8:09-cv-00088. Mr. Weersing contended that I was biased as a result of my rulings. I denied Mr. Weersing's motion because judicial rulings alone do not constitute a sufficient basis to warrant recusal.

Mr. Brown, Sr., moved for my recusal in *Brown v. Norton et al.*, 8:09-cv-01628, contending that I had a conflict of interest. Judge Duffy denied Mr. Brown's motion as moot.

In *Bell v. Cooks et al.*, 2:10-cv-03244, Mr. Bell, filed a motion for recusal wherein he contended that I was biased, presumably as a result of my rulings and recommendations in his case. I denied the Plaintiff's request because judicial rulings alone do not constitute a sufficient basis to warrant recusal.

Mr. Moore moved for my recusal in *Moore v. Padula et al.*, 5:11-cv-1033. In his motion, Mr. Moore contended that I was biased against him because of the court's rulings in a previous case, *Moore v. Padula*, 8:07-cv-01471. I denied his request because the only alleged bias pertained to my rulings in a previous case.

Mr. Rogers moved for my recusal in *Rogers v. Cartledge*, 2:12-cv-01858. Mr. Rogers contended I was biased as a result of my rulings in one of his previous cases, *Rogers v. May et al.*, No. 3:12-cv-00837. I denied Mr. Rogers' motion because the only alleged bias pertained to my rulings in a previous case.

Mr. McCrief filed a motion for recusal in *McCrief v. Wachovia Bank et al.*, 2:12-cv-00072. In his motion, Mr. McCrief asserted I should be recused due to a "prior history of biased misconducts." I denied the motion. Mr. McCrief appealed that ruling to Judge Seymour, who agreed that no recusal was warranted. Mr. McCrief also filed an interlocutory appeal; the United States Court of Appeals for the Fourth Circuit dismissed the appeal. Mr. McCrief's case remains pending in district 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 office other than my present judicial office. I have never had an unsuccessful candidacy for elective office or unsuccessful nomination for appointed office.

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

I have never held any office or rendered services to a political party or election committee. I have never held a position or played a role in a political campaign.

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

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

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

I have never served as a law clerk to a judge.

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

I have never practiced law alone.

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

1991 – 2002
United States Attorney's Office for the District of South Carolina
170 Meeting Street, Suite 300
Charleston, South Carolina 29401
Assistant United States Attorney

1991
Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith P.A
17 1/2 Broad Street
Charleston, South Carolina 29401
Law Clerk

1990
Michael A. Uricchio
24 Broad Street
Charleston, South Carolina 29401
Law Clerk

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 private practice.

b. Describe:

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

While studying for the South Carolina bar and during my time before joining the United States Attorney's Office, I clerked for Michael Uricchio and then for Uricchio, Howe, Krell, Jacobson, Toporek, Theos & Keith P.A. My responsibilities included general legal research and writing.

After admission to the South Carolina Bar, I began my legal career in earnest as an Assistant United States Attorney in 1991. I handled a wide variety of cases, including typical drug and firearms offenses, complex civil rights, and bank fraud conspiracies. I represented the United States in proceedings at all stages of litigation in federal court in South Carolina, and I also represented the United States on appeal before the United States Court of Appeals for the Fourth Circuit. I routinely evaluated evidence presented to me by law enforcement agencies to determine whether federal laws had been violated and, if so, whether to proceed with prosecution. I responded to and appeared for various and sundry pre-trial motions by defense counsel. If the case went to trial, I made all preparations necessary to present the Government's case in court. Preparation for trials included, but was not limited to, fully analyzing the facts and the applicable law, interviewing witnesses and agents, visiting the scene of the crime, preparing opening and closing statements, and preparing proposed jury instructions for submission to the trial judge. If the case proceeded to an appeal, I drafted briefs and argued before the United States Court of Appeals for the Fourth Circuit. In several cases, I was responsible for drafting the response to motions to vacate pursuant to 28 U.S.C. § 2255. I served as an Assistant United States Attorney from 1991 until I became a United States Magistrate Judge in 2002.

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

As an Assistant United States Attorney, I always represented the interests of the United States. My practice was devoted exclusively to criminal law.

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

The entirety of my practice was devoted to litigation. I appeared in court frequently.

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: 0%
   2. criminal proceedings: 100%

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

While an Assistant United States Attorney, I tried 21 cases to verdict. I was chief, or sole, counsel in 14 of those cases.

i. What percentage of these trials were:
   1. jury: 100%
   2. non-jury: 0%

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

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

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

a. the date of representation;

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

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

1. *United States v. Cobb*, 2:95-cr-591 (D.S.C. May 30, 1996), *aff'd*, 144 F.3d 319 (4th Cir. 1998), before the Honorable David C. Norton, United States District Court for the District of South Carolina.

On November 16, 1995, a federal grand jury sitting in the District of South Carolina indicted Cobb for carjacking, use of a firearm during a crime of violence, and bank fraud. I represented the United States throughout the investigation, trial, and appeal. Following a jury trial in May 1996, the defendant was convicted. The defendant appealed, and the United States Court of Appeals for the Fourth Circuit affirmed.

Co-counsel:

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843-579-7014

Counsel for the defendant:

Michael P. O'Connell
Stirling and O'Connell
109 Wappoo Creek Drive
Suite 2B
Charleston, SC 29412
843-577-9890

2. *United States v. Almon*, 9:98-cr-1194 (D.S.C. June 22, 1999), *aff'd*, 238 F.3d 415 (4th Cir. 2000) (unpublished table decision), before the Honorable Sol Blatt, Jr., United States District Court for the District of South Carolina.

On November 20, 1998, a federal grand jury sitting in the District of South Carolina indicted Almon for assault on a postmaster with intent to rob and for putting the life of the postmaster in jeopardy. I represented the United States

throughout the investigation, trial, and appeal. Following a jury trial in June 1999, the defendant was convicted. Almon appealed, and United States Court of Appeals for the Fourth Circuit affirmed.

Counsel for the defendant:

Eduardo Kelvin Curry
Curry Law Firm
Post Office Box 42270
North Charleston, SC 29423
843-767-5284

3. *United States v. Wildes and Cameron*, 2:94-cr-931 (D.S.C. Aug. 16, 1995), *aff'd*, 120 F.3d 468 (4th Cir. 1997), before the Honorable Sol Blatt, Jr., United States District Court for the District of South Carolina.

On November 10, 1994, a federal grand jury sitting in the District of South Carolina indicted the defendants for conspiring against civil rights, interfering by force or threat of force with the occupation of a dwelling because of race, and using fire to commit a federal felony. The defendants in this case burned a cross in the yard of an African American family in Georgetown, South Carolina. I represented the United States throughout the investigation and trial, from November 1994 through July 1996. Following a jury trial in August 1995, the defendants were convicted on all charges. Although I did not participate in the appeal on this case, the defendants' convictions were affirmed by the Fourth Circuit.

Co-counsel:

The Honorable Deval Patrick (formerly Assistant Attorney General for the Civil Rights Division)
Governor of Massachusetts
Office of the Governor
Room 280
Boston, MA 02133
617-725-4005

Lee H. Rubin
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650-331-2037

Counsel for Cameron:

Ann Briks Walsh
Federal Public Defender's Office
Post Office Box 876
Charleston, SC 29402
843-727-4148

Counsel for Wildes:

Lionel S. Lofton
Lofton and Lofton
225 Seven Farms Drive
Suite 109
Charleston, SC 29492
843-722-6372

4. *United States v. Diombera*, No. 2:99-cr-750, *aff'd*, 46 Fed. App'x 706 (4th Cir. 2002), before the Honorable Patrick Michael Duffy, United States District Court for the District of South Carolina.

On December 15, 1999, a federal grand jury sitting in the District of South Carolina indicted Diombera for conspiracy to possess with intent to distribute and for possession of heroin, marijuana, and cocaine. The indictment was superseded, such that Diombera was charged with conspiracy to possess with intent to distribute and to distribute heroin; simple possession of heroin, marijuana, and cocaine; and possession with intent to distribute heroin. Following a jury trial in December 2000, the defendant was acquitted on the charge of possession with intent to distribute heroin but was convicted on the charges of conspiracy to possess with intent to distribute and to distribute heroin as well as simple possession of heroin, marijuana, and cocaine. I represented the United States throughout the investigation and trial from December 1999 through December 2000. I did not represent the United States during the appellate process.

Counsel for the defendant:

Michael P. O'Connell
Stirling and O'Connell
109 Wappoo Creek Drive
Suite 2B
Charleston, SC 29412
843-577-9890

5. *United States v. Guerra,* No. 2:93-cr-387 (D.S.C Aug. 11, 1994), *aff'd*, 60 F.3d 826 (4th Cir. 1995), before the Honorable Sol Blatt, Jr., United States District Court for the District of South Carolina.

The defendants in this case were indicted on October 12, 1993, for various charges arising out of an escape attempt and jailhouse drug distribution that occurred at the Georgetown County Detention Center. Following a jury trial in April 1994, D. Guerra was convicted of conspiring to escape, attempting to escape, and obstructing justice. A. Guerra was found guilty of those same charges, as well as conspiring to distribute crack cocaine and possessing crack cocaine with intent to distribute. Canteen was convicted of conspiring to escape, conspiring to distribute crack cocaine, aiding in the escape of a federal prisoner, and obstructing justice. Johnson was convicted of conspiring to escape, aiding in the escape of a federal prisoner, obstructing justice, and possessing marijuana. The defendants appealed, and the United States Court of Appeals for the Fourth Circuit affirmed. *See United States v. Guerra*, 60 F.3d 826 (4th Cir. 1995) (unpublished table decision). On motions to vacate pursuant to 28 U.S.C. § 2255, the sentences of A. and D. Guerra were subsequently reduced. *See Guerra v. United States*, No. 2:97-cv-1194-SB; *Guerra v. United States*, No. 2:97-cv-1193-SB. I represented the United States throughout the investigation, trial, appeal, and motions to vacate.

Co-counsel:

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843-720-3184

Counsel for the defendant Don Guerra:

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843-571-3515

Counsel for the defendant Ashberth Guerra:

John Robert Haley
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843-727-4148

Counsel for the defendant Canteen:

Peter Dominick DeLuca, Jr.
DeLuca and Maucher

Post Office Box Nine
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843-572-1711

Counsel for the defendant Johnson:

Lawrence J. Rosintoski
Trident Technical College
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Charleston, SC 29423
843-720-5617

6. *United States v. Sexton*, 2:97-cr-361 (Jan. 25, 2001), *aff'd*, 30 Fed. App'x 295 (4th Cir. 2002), before the Honorable David C. Norton, United States District Court for the District of South Carolina.

On January 9, 1997, a federal grand jury sitting in the District of South Carolina indicted Sexton for various firearms offenses, possession of cocaine with intent to distribute, and money laundering. Following a jury trial in November 2000, the defendant was convicted on all charges and was sentenced to life in prison. The defendant appealed, and the United States Court of Appeals for the Fourth Circuit affirmed. I represented the United States throughout the investigation and trial, from April 1997 through January 2001. I did not represent the United States on appeal.

Co-counsel:

Sean Kittrell
United States Attorney's Office for the District of South Carolina
Post Office Box 876
Charleston, SC 29402
843-727-4381

Counsel for the defendant:

J. Joseph Condon, Jr.
3842 C Leeds Avenue
North Charleston, SC 29405
843-554-1000

7. *United States v. Duggins*, 2:00-cr-710 (D.S.C. Mar. 27, 2001), before the Honorable C. Weston Houck, United States District Court for the District of South Carolina.

On September 13, 2000, a federal grand jury sitting in the District of South Carolina indicted Duggins for conspiracy to obstruct interstate commerce by

armed robbery, obstruction of interstate commerce by armed robbery, using and carrying a firearm during a crime of violence, two counts of being a felon in possession of a firearm, conspiracy to commit armed bank robbery, armed bank robbery, and using and carrying a firearm during a crime of violence. Following a jury trial in November 2000, the defendant was convicted of conspiracy to commit armed bank robbery, armed bank robbery, using and carrying a firearm during a crime of violence, and one count of being a felon in possession of a firearm. All other counts were dismissed on the motion of the United States. I represented the United States throughout the investigation and trial, from September 2000 through March 2001.

Counsel for the defendant:

Diedreich P. Von Lehe, III
Diedreich P. Von Lehe III Law Office
Post Office Box 1140
Charleston, SC 29402
843-853-0011

8. *United States v. Coker*, 9:00-cr-997 (D.S.C. Feb. 20, 2002), *aff'd*, 39 Fed. App'x 939 (4th Cir. 2002), before the Honorable Sol Blatt, Jr., United States District Court for the District of South Carolina.

On December 13, 2000, a federal grand jury sitting in the District of South Carolina indicted Coker for carjacking and for use of a firearm in the commission of a crime of violence. Following a jury trial in September 2001, the defendant was convicted on those counts. Coker appealed, and the United States Court of Appeals for the Fourth Circuit affirmed. I represented the United States throughout the investigation and trial, from December 2000 through October 2001. I did not represent the United States during Coker's sentencing or his appeal.

Co-counsel:

M. Rhett DeHart
United States Attorney's Office for the District of South Carolina
Post Office Box 876
Charleston, SC 29402
843-727-4381

Counsel for the defendant:

John Robert Haley
Federal Public Defender's Office
Post Office Box 876

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843-727-4148

9. *United States v. Eubanks*, No. 2:97-cr-110 (D.S.C. Jan. 12, 1998), before the Honorable David C. Norton, United States District Court for the District of South Carolina. In an unpublished table decision, the United States Court of Appeals for the Fourth Circuit vacated his sentences and remanded for resentencing. *See Unites States v. Eubanks*, 166 F.3d 335 (4th Cir. 1998) (unpublished table decision). On appeal after resentencing, the Fourth Circuit affirmed. *See United States v. Eubanks*, 191 F.3d 449 (4th Cir. 1999) (unpublished table decision).

On January 15, 1997, a federal grand jury sitting in the District of South Carolina indicted Eubanks for armed bank robbery and possession of a firearm during a crime of violence. A superseding indictment was returned, charging the defendant with armed bank robbery, possession of a firearm during a crime of violence, and possession of a weapon by a convicted felon. Following a jury trial in August 1997, Eubanks was convicted of all three charges. The defendant appealed, and in an unpublished opinion, the Fourth Circuit affirmed the convictions but vacated Eubanks' sentences and remanded for resentencing. Eubanks was resentenced, and he again appealed. The Fourth Circuit affirmed. Eubanks was one of the first defendants in the District of South Carolina to be sentenced pursuant to the "three strikes" rule set forth in 18 U.S.C. § 3559. I represented the United States throughout the investigation, trial, and both appeals.

Co-counsel:

The Honorable Terry L. Wooten (formerly Assistant United States Attorney for the District of South Carolina)
Chief United States District Judge
United States District Court
901 Richland Street
Columbia, SC 29201
803-253-6427

Counsel for the defendant:

Dale Thomas Cobb, Jr.
Belk Cobb Infinger and Goldstein
Post Office Box 71121
Charleston, SC 29415
843-554-4291

10. *United States v. Williams et al.*, No. 2:01-cr-388 (D.S.C. Sept. 3, 2003), before the Honorable Patrick Michael Duffy, United States District Court for the District of South Carolina.

In April 2001, a federal grand jury sitting in the District of South Carolina indicted 14 individuals on various drug charges. Before the case was completed, a total of 48 defendants were indicted in this case. All of the defendants ultimately pled guilty. I represented the United States throughout the investigation and through guilty pleas, from April 2001 until I became a United States Magistrate Judge.

Co-counsel:

Miller W. Shealy, Jr.
Charleston School of Law
Post Office Box 535
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843-329-1000

Counsel for the lead defendant Adolpho Williams:

David Paul McCann
McCann Law Office
Post Office Box 116
Charleston, SC 29402
843-722-6204

Nancy A. Chiles
Nancy A. Chiles Law Office
102 Wappoo Creek Drive
Suite 1
Charleston, SC 29412
843-577-3173

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 my role as a United States Magistrate Judge, I was appointed as presiding and supervisory judge over our District's first drug court program on November 1, 2010. The program identifies criminal defendants whose presence in the prosecutorial system is principally a function of substance abuse or addiction as opposed to independently motivated criminal behavior. In conjunction with the United States Attorney for the District of South Carolina, the United States Probation Office for the State of South Carolina, and the Federal Public Defender's Office, my chambers developed the program over a six-month period, including all governing and enabling documentation and

processes. The above-described program team visited various other similar programs in federal and state jurisdictions, participated in training with a national drug court institute, and worked cooperatively to its completion. The drug court is an intensive rehabilitation process that relies on the existing probation infrastructure for drug screening and monitoring and the volunteerism of community businesses and organizations to provide substance abuse training and mentoring, vocational placement, and wellness education. The program is a substantial commitment by my chambers above and beyond my regular duties, on a weekly—even daily—basis. I preside over biweekly staffing meetings and in-court hearings with the program participants, who must account to me for their progress. Since its inception, the program has saved court resources and taxpayer dollars and produced numerous successful graduates.

I have worked as a board member for the Federal Bar Association. My participation has included planning and contribution to Continuing Legal Education programming. I have hosted various groups at the courthouse on behalf of the Federal Bar Association, including student groups and summer law clerks. I have also participated in the organization's charitable work.

I have never been involved in lobbying activities or registered as a lobbyist.

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

In the spring of 2000, I served as an Adjunct Professor at the College of Charleston and taught a course entitled "Law and the Legal System in the United States." This course focused on the three branches of government, the structure of the federal court system, the structure of the state court system, the differences between federal and state court, and the role of the various participants in the legal system. I do not have a copy of the syllabus.

In the spring of 2001, I again served as an Adjunct Professor at the College of Charleston and taught a course entitled "Civil Processes and Procedures." This course explained the rules and standards that courts use when adjudicating civil lawsuits. Major topics taught included the filing of a civil action, pleadings and motions, service of process, discovery, and the trial and appellate processes. I do not have a copy of the syllabus.

In the spring and fall of 2001, I taught another College of Charleston course, entitled "Criminal Justice," also in an adjunct capacity. This course provided an overview of the criminal justice system, including its history and philosophy. Major topics taught included constitutional issues arising under the Fourth, Fifth, and Sixth Amendments; theories of crime causation; and goals of corrections. I do not have a copy of the syllabus.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all

anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

My only source of deferred income arises from my participation in the Thrift Savings Plan (TSP).

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.

       The only potential conflicts of interest for me involve those individuals currently on my recusal list maintained by the Clerk of Court. More generally, 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. Specifically, I would recuse myself from any case that I worked on, supervised, or on which I was consulted as an Assistant United States Attorney. Furthermore, as in the past, 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 and invite their view and concern, if any.

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 potential conflicts of interest, I would consult the Code of Conduct for United States Judges 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.

While serving as an Assistant United States Attorney, I was a founding member and past Chairman and Advisory Committee Member of the Lawyer Referral/Legal Assistance Program at the College of Charleston. The program, which was available to students, staff, and faculty, was a volunteer service project that was designed to offer the College of Charleston community access to legal assistance at a reduced fee or on a *pro bono* basis from members of the legal profession who are alumni or friends of the College of Charleston. I also participated in the Department of Justice's "Weed and Seed" program, which actively supported community service and community efforts in areas where our local office was also attempting to remove, through prosecution, the destructive criminal element. I also participated in a related federal program called "Project Jump Shot." In addition, I was active in several organizations that aid the disadvantaged, including the Boys & Girls Club in Charleston, South Carolina. I collaborated with the City of Charleston and the College of Charleston to launch an after-school program for the Boys & Girls Club. I devoted numerous hours to developing the program, which provided food and tutoring for disadvantaged children.

As a United States Magistrate Judge, I am precluded from the practice of law and ethically unable to personally accept any *pro bono* assignments. However, I still stay active in community charitable concerns. I have served on the Board of Directors for the YMCA and the Alumni Board of the College of Charleston. In Greenville, South Carolina, I remained an active contributor to the area Boys & Girls Club, participated in the development of a marching band for an area high school, and have collaborated with Coaches 4 Character. I have served as a judge for numerous moot court and mock trial competitions and, with regularity, hosted elementary and high school groups, summer law clerks, and bar groups at the courthouse and in chambers to share with them about the judicial system.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so,

please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In January 2013, I met briefly with Congressman James E. Clyburn in Columbia, South Carolina, to discuss my interest in the anticipated vacancies on our federal bench. I was later informed by Congressman Clyburn's office that my name was submitted to the White House for consideration. Since April 9, 2013, I have been in contact with officials at the Office of Legal Policy at the Department of Justice. On May 13, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 26, 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
Hendricks, Bruce H.	United States District Court, District of South Carolina	06/26/2013
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Judge, Active Status	**5a. Report Type (check appropriate type)** ☑ Nomination Date 6/26/2013 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 1/1/2012 to 6/26/2013
7. Chambers or Office Address P.O. Box 835 Charleston, SC 29402		

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.	Member of Board of Directors	Federal Bar Association, South Carolina Chapter
2.	Member of Board of Directors	YMCA of Greenville, South Carolina
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Hendricks, Bruce H.	Date of Report 06/26/2013

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.	2013	self-employed in real estate
2.	2012	self-employed in real estate
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 Hendricks, Bruce H.	Date of Report 06/26/2013

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.	First Federal of Charleston	Mortgage on Rental Property #3 (See Section VII)	M
2.	First Federal of Charleston	Mortgage on Rental Property #2 (See Section VII)	M
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Hendricks, Bruce H.	Date of Report 06/26/2013

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. Rental Property #1, Charleston, SC	D	Rent	M	W	Exempt				
2. Rental Property #2, Charleston, SC	E	Rent	M	W					
3. Rental Property, #3, Charleston, SC	E	Rent	N	W					
4. Bank of America Checking Account		None	J	W					
5. Federated Kaufmann Fund	A	Int./Div.	J	W					
6. First Federal Checking Account		None	J	W					
7. United Missouri Bank Checking Account		None	J	W					
8. Trust #1	A	Distribution	K	W					
9. -Aviva USA Whole Life Policy									
10. -Wells Fargo Cash Account									
11. Phoenix Variable Life: Virtus Capital Growth		None	J	W					
12. Wells Fargo Checking Account		None	J	W					
13.									
14.									
15.									
16.									
17.									

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

A =$1,000 or less
F =$50,001 - $100,000
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 5 of 6	Name of Person Reporting Hendricks, Bruce H.	Date of Report 06/26/2013

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Hendricks, Bruce H.	Date of Report 06/26/2013

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/ **Bruce H. Hendricks**

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		13	500	Notes payable to banks-secured (auto)		20	565
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		1	500	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		46	779	Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		96	954
Real estate owned – see schedule		960	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		63	000	Education loans		48	170
Cash value-life insurance		3	317				
Other assets itemize:							
Thrift Savings Plan		115	559				
				Total liabilities		165	689
				Net Worth	1	037	966
Total Assets	1	203	655	Total liabilities and net worth	1	203	655
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

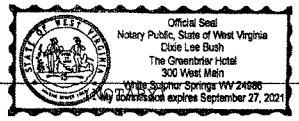
Listed Securities	
Federated Kaufmann Fund	$ 1,500
Total Listed Securities	$ 1,500
Real Estate Owned	
Rental property #1	$ 80,000
Rental property #2	260,000
Rental property #3	620,000
Total Real Estate Owned	$ 960,000
Real Estate Mortgages Payable	
Rental property #2	$ 53,359
Rental property #3	43,595
Total Real Estate Mortgages Payable	$ 96,954

AFFIDAVIT

I, Bruce Howe Hendricks, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 28, 2013
(DATE)

Bruce Howe Hendricks
(NAME)



Dixie Lee Bush
Dixie Lee Bush

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

POST OFFICE BOX 835
CHARLESTON, SOUTH CAROLINA 29402

BRUCE HOWE HENDRICKS
UNITED STATES MAGISTRATE JUDGE

TELEPHONE (843) 579-1490
FAX (843) 579-1496

January 10, 2014

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

Dear Mr. Chairman:

I have reviewed the questionnaire submitted to the Senate Judiciary Committee in connection with my nomination on June 26, 2013, to be a United States District Court Judge for the District of South Carolina. Incorporating the additional information listed below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Q. 12(d)

Since my previously submitted questionnaire, I have given the following additional presentations:

December 20, 2013: I participated as a panelist in a discussion entitled, "Straight Talk from the Bench–A Conversation with South Carolina Federal Judges," in Columbia, South Carolina. The panel discussed tips for mediation, brief writing, and jury trials. The continuing legal education seminar was presented by the South Carolina Bar–Continuing Legal Education Division. I have no notes, transcript, or recording. The address for the South Carolina Bar is 950 Taylor Street, Columbia, South Carolina 29201.

October 11, 2013: I participated as a panelist in a discussion entitled, "Women in the Federal Judiciary–Weighing in on *Leaning In*," for the South Carolina Women Lawyers Association in Greenville, South Carolina. The topic of the panel was the practice of law while managing personal responsibilities. I have no notes, transcript, or recording. The address for the South Carolina Women Lawyers Association is Post Office Box 11910, Columbia, South Carolina 29211.

Q. 13(b)

I have attached a list of opinions I have issued since my previously submitted questionnaire.

Q. 13(c)

(4) Since my previously submitted questionnaire, the *Savannah Riverkeeper v. U.S. Army Corps of Engineers*, No. 9:12-cv-610 matter reached a full and court-approved settlement.

Q. 13(f)

I have listed the three instances since my previously-submitted questionnaire in which a district judge declined to fully adopt one of my reports.

McFadden v. Fuller, Civ. A. 2:13-2290-JMC-BHH, 2013 WL 6181107 (D.S.C. Sept. 24, 2013). The district court agreed with the Report and Recommendation that 91 prisoners should not be allowed to proceed together in a single case, but the district court elected to "breakout" each of the plaintiffs' cases and assign individual numbers to them rather than dismiss the entire case with leave for each plaintiff to refile.

Bui v. ADT LLC, Civ. A. 2:13-126-PMD, 2013 WL 3967183 (D.S.C. June 19, 2013). The district court declined to adopt a Report and Recommendation that a *pro se* lawsuit not be limited to $500 recovery at the motion to dismiss stage. The district court found that the damages available to the plaintiff had been specifically limited by contract.

Woods v. Boeing Co., Civ. A. 2:11-2855-RMG, 2013 WL 5309132 (D.S.C. June 10, 2013). The district court predominately adopted the Report and Recommendation but found that the plaintiff's retaliation claim under the Americans with Disabilities Act (ADA) should be dismissed.

I am also forwarding an updated net worth statement and financial disclosure report as requested in the questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Bruce Howe Hendricks

Bruce Howe Hendricks
United States Magistrate Judge

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Bruce Howe Hendricks
Supplemental Answer to Question 13b:

McFadden v. Fuller, Civ. A. No. 2:13-02290-JMC, 2014 WL 26278 (D.S.C. Jan. 2, 2014)

Hunt v. McCabe, Civ. A. No. 2:13-2881-JFA-BHH, 2013 WL 6839892 (D.S.C. Dec. 27, 2013)

Rice v. Colvin, Civ. A. No. 2:12-3420-MGL, 2013 WL 6834573 (D.S.C. Dec. 23, 2013)

Howard v. Fuller, Civ. A. No. 2:12-2409-DCN-JDA, 2013 WL 6780599 (D.S.C. Dec. 19, 2013)

Folkes v. Warden Cartledge, PCI, Civ. A. No. 2:13-00147-RMG, 2013 WL 6662554 (D.S.C. Dec. 17, 2013)

McCrief v. Wachovia Bank, Civ. A. No. 2:12-72-RMG, 2013 WL 6284435 (D.S.C. Dec. 4, 2013)

Gardner v. Litton Loan Servicing LP, Civ. A. No. 9:12-1766, 2013 WL 6193514 (D.S.C. Nov. 26, 2013)

Singletary v. Allstate Ins. Co., Civ. A. No. 2:12-940-RMG, 2013 WL 6145277 (D.S.C. Nov. 21, 2013)

Hawkins v. College of Charleston, Civ. A. No. 2:12-384-DCN, 2013 WL 6050324 (D.S.C. Nov. 15, 2013)

Repasky v. Pfizer, Inc., Civ. A. No. 2:12-03331-RMG, 2013 WL 6054461 (D.S.C. Nov. 15, 2013)

Smart v. Warden of Kershaw Corr. Inst., Civ. A. No. 2:13-02449-GRA-BHH, 2013 WL 6054475 (D.S.C. Nov. 15, 2013)

J & J Sports Prods., Inc. v. Washington, Civ. A. No. 2:12-02498-CWH, 2013 WL 6056227, (D.S.C. Nov. 14, 2013)

Abdullah v. Thomas, Civ. A. No. 2:12-3499-RMG, 2013 WL 5948122 (D.S.C. Nov. 5, 2013)

Broadcast Music, Inc. v. Main Street Bar & Grill, Inc., Civ. A. No. 2:13-00706, 2013 WL 5914144 (D.S.C. Oct. 31, 2013)

Walker v. Scarborough, Civ. A. No. 2:13-1918-RMG, 2013 WL 5771198 (D.S.C. Oct. 24, 2013)

Queen v. Drew, Civ. A. No. 2:12-1735-SB, 2013 WL 5740574 (D.S.C. Oct. 22, 2013)

Roberson v. Thomas, Civ. A. No. 2:13-1872-RMG, 2013 WL 5741582 (D.S.C. Oct. 22, 2013)

Turner v. Cooper, Civ. A. No. 2:13-02017-JMC, 2013 WL 5587856 (D.S.C., Oct. 10, 2013)

SMP Invs., LLC v. Rose, Civ. A. No. 2:11-1374-CWH, 2013 WL 5467954 (D.S.C. Sept. 30, 2013)

Evans v. Banks Const. Co., Civ. A. No. 2:11-2526-CWH, 2013 WL 5437639 (D.S.C. Sept. 27, 2013)

McFadden v. Fuller, Civ. A. No. 2:13-2290-JMC-BHH, 2013 WL 6181107 (D.S.C. Sept. 24, 2013)

Woods v. Boeing Co., Civ. A. No. 2:11-02855-RMG, 2013 WL 5332620 (D.S.C. Sept. 23, 2013)

Saunders v. Mitchell, Civ. A. No. 2:12-2152-JFA-BHH, 2013 WL 5332630 (D.S.C. Sept. 23, 2013)

Battle v. King, Civ. A. No. 2:12-2476-CMC-BHH, 2013 WL 5203650 (D.S.C. Sept. 16, 2013)

Davis v. Hampton County Solicitor Office, Civ. A. No. 9:13-1930 DCN, 2013 WL 5140732 (D.S.C. Sept. 12, 2013)

Vaughn v. Whitfield, Civ. A. No. 8:12-2405-RMG, 2013 WL 5144751 (D.S.C. Sept. 12, 2013)

Stewart v. Calhoun, Civ. A. No. 9:13-1891-DCN, 2013 WL 5146032 (D.S.C. Sept. 12, 2013)

Johnson v. Colvin, Civ. A. No. 2:12-01475-JMC, 2013 WL 5139122 (D.S.C. Sept. 11, 2013)

Martin v. Broad River Corr. Inst., Civ. A. No. 2:13-1510-TMC-BHH, 2013 WL 4776576 (D.S.C. Sept. 4, 2013)

McKissick v. Warden Evans Corr. Inst., Civ. A. No. 2:12-00015-RBH, 2013 WL 4585613 (D.S.C. Aug. 28, 2013)

Battle v. Ozmint, Civ. A. No. 2:12-1350-CMC-BHH, 2013 WL 4522517 (D.S.C. Aug. 27, 2013)

Hamilton v. Hampton County Sheriff Dept., Civ. A. No. 9:13-1929-DCN, 2013 WL 4538240 (D.S.C. Aug. 27, 2013)

Collins v. Padula, Civ. A. No. 2:12-710-CMC-BHH, 2013 WL 4510675 (D.S.C. Aug. 23, 2013)

Bryant v. Reynolds, Civ. A. No. 2:12-01731-GRA, 2013 WL 4511292 (D.S.C. Aug. 23, 2013)

Harris v. Copeland, Civ. A. No. 2:11-02209-GRA, 2013 WL 4504764 (D.S.C. Aug. 22, 2013)

Jeffcoat v. Cartledge, Civ. A. No. 2:12-2849-RMG, 2013 WL 4505408 (D.S.C. Aug. 22, 2013)

Miles v. Warden, Federal Corr. Institute, Estill, S.C., Civ. A. No. 2:13-00721-RBH, 2013 WL 4505411 (D.S.C. Aug. 22, 2013)

Lesane v. Byars, Civ. A. No. 2:12-00508-JMC, 2013 WL 4495988 (D.S.C. Aug. 20, 2013)

Collier v. Mueller, Civ. A. No. 2:12-01523-TMC, 2013 WL 4495990 (D.S.C. Aug. 20, 2013)

Gathers v. Clarey, Civ. A. No. 2:12-02206-JMC, 2013 WL 4495991 (D.S.C. Aug. 20, 2013)

Hunt v. Wilson, Civ. A. No. 2:12-3336-JFA-BHH, 2013 WL 4496066 (D.S.C. Aug. 20, 2013)

Anderson v. Holland, Civ. A. No. 2:13-1115-JFA-BHH, 2013 WL 4496073 (D.S.C. Aug. 20, 2013)

Rosario v. Mora, Civ. A. No. 2:12-3048-JFA-BHH, 2013 WL 4459830 (D.S.C. Aug. 16, 2013)

Plummer v. Riley, Civ. A. No. 2:12-03412-TLW, 2013 WL 4459839 (D.S.C., Aug. 16, 2013)

Singleton v. Eagleton, Civ. A. No. 2:12-02339-GRA, 2013 WL 4436409 (D.S.C. Aug. 15, 2013)

Collins v. Padula, Civ. A. No. 2:12-3112-CMC-BHH, 2013 WL 4436468 (D.S.C. Aug. 15, 2013)

Spillane v. Low Country Harley-Davidson, Inc., Civ. A. No. 2:12-3640-DCN-BHH, 2013 WL 4084098 (D.S.C. Aug. 13, 2013)

Beaver v. Colvin, Civ. A. No. 2:12-1810-MGL, 2013 WL 4056303 (D.S.C. Aug. 12, 2013)

Taylor v. Ashley, Civ. A. No. 2:12-02166-JMC, 2013 WL 4056307 (D.S.C. Aug.12, 2013)

Taylor v. Urch, Civ. A. No. 2:12-01293-JMC, 2013 WL 4041956 (D.S.C., August 8, 2013)

Grant v. McCall, Civ. A. No. 2:12-2859-CMC-BHH, 2013 WL 4041958 (D.S.C. Aug. 8, 2013)

Crawford v. McCall, Civ. A. No. 2:12-2795-RMG, 2013 WL 4020278 (D.S.C. Aug. 6, 2013)

Singleton v. Town of Estill, Civ. A. No. 9:12-3506-SB, 2013 WL 4027765 (D.S.C. Aug. 6, 2013)

Repasky v. Pfizer, Inc., Civ. A. No. 2:12-3331-RMG, 2013 WL 3946230 (D.S.C. July 31, 2013)

Fahnbulleh v. Force Protection Indus., Inc., Civ. A. No. 2:12-00009-RMG-BHH, 2013 WL 4851623 (D.S.C. July 31, 2013)

Bilodeau v. Colvin, Civ. A. No. 2:12-1298-CMC-BHH, 2013 WL 3880132 (D.S.C. July 26, 2013)

Childs v. Penland, Civ. A. No. 2:13-1356-MGL, 2013 WL 3880134 (D.S.C. July 25, 2013)

Malloy v. Warden of Ridgeland Corr. Inst., Civ. A. No. 2:12-03049-SB, 2013 WL 3864007 (D.S.C. July 24, 2013)

Lockhart v. S.C. Dept. of Corrs., Civ. A. No. 2:13-1345-MGL, 2013 WL 3864052 (D.S.C. July 24, 2013)

Carothers v. Atkinson, Civ. A. No. 2:13-1383-CMC-BHH, 2013 WL 3821260 (D.S.C. July 23, 2013)

Hines v. Drew, Civ. A. No. 2:12-1890-MGL-BHH, 2013 WL 5467560 (D.S.C. July 17, 2013)

Hall v. Colvin, Civ. A. No. 2:12-01692-RBH, 2013 WL 3762902 (D.S.C. July 16, 2013)

Cokley v. Warden of Kirkland Corr. Inst., Civ. A. No. 2:12-2987-RMG, 2013 WL 3746021 (D.S.C. July 15, 2013)

McClurkin v. Byer, Civ. A. No. 2:13-1507-RMG, 2013 WL 3746027 (D.S.C. July 15, 2013)

Shack v. Beaufort County School Dist., Civ. A. No. 9:11-3201-DCN, 2013 WL 4434344 (D.S.C. July 15, 2013)

Brown-Gailliard v. ACE Partnership of Charleston, S.C., Civ. A. No. 2:12-3550-RMG, 2013 WL 3550615 (D.S.C. July 11, 2013)

Jones v. Atkinson, Civ. A. No. 2:13-CV-1340-DCN, 2013 WL 3457058 (D.S.C. July 9, 2013)

Joyner v. Colvin, Civ. A. No. 2:12-00920, 2013 WL 3282905 (D.S.C. June 27, 2013)

Wright v. Boys & Girls Clubs of the Lowcountry, Civ. A. No. 9:12-3243-SB, 2013 WL 3229719 (D.S.C. June 25, 2013)

Bui v. ADT LLC, Civ. A. No. 2:13-126-PMD, 2013 WL 3967183 (D.S.C. June 19, 2013)

Sun v. Erickson, Civ. A. No. 2:12-3582-RMG, 2013 WL 3049107 (D.S.C. June 17, 2013)

Crutchfield v. Pfizer Inc., Civ. A. No. 2:12-1462-RMG, 2013 WL 2897023 (D.S.C. June 13, 2013)

Cullins v. Wilson, Civ. A. No. 2:12-CV-1982-RMG, 2013 WL 2897027 (D.S.C. June 13, 2013)

Lincoln v. Employment Servs., Civ. A. No. 2:11-3234-DCN, 2013 WL 4511264 (D.S.C. June 12, 2013)

Woods v. Boeing Co., Civ. A. No. 2:11-2855-RMG, 2013 WL 5309132 (D.S.C. June 10, 2013)

Battle v. Nettles, Civ. A. No. 2:13-660-CMC-BHH, 2013 WL 2446726 (D.S.C., June 5, 2013)

Davis v. McFadden, Civ. A. No. 2:13-719-CMC-BHH, 2013 WL 2446914 (D.S.C. June 5, 2013)

Fickens v. Cartledge, Civ. A. No. 2:12-2618-JFA-BHH, 2013 WL 2423205 (D.S.C. June 4, 2013)

Hawkins v. Turbeville Corr. Inst., Civ. A. No. 2:12-3502-JFA-BHH, 2013 WL 2423216 (D.S.C. June 4, 2013)

Sellers v. Parker, Civ. A. No. 2:12-2263-MGL, 2013 WL 2423996 (D.S.C. June 4, 2013)

Pilcher v. Georgis, Civ. A. No. 2:12-851-CMC-BHH, 2013 WL 2370549 (D.S.C. May 30, 2013)

Gilbert v. West, Civ. A. No. 2:13-CV-493-BMG, 2013 WL 2352486 (D.S.C. May 29, 2013)

Battle v. Babb, Civ. A. No. 2:13-951-CMC-BHH, 2013 WL 2241924 (D.S.C. May 21, 2013)

Demos v. U.S. Sec'y of Defense, Civ. A. No. 2:13-1-TMC-BHH, 2013 WL 3353906 (D.S.C. May 16, 2013)

Fordham v. South Carolina Dept. of Corrs., Civ. A. No. 2:13-875-CMC-BHH, 2013 WL 2099476 (D.S.C. May 3, 2013)

Charpia v. Young, Civ. A. No. 2:12-3252-RMG, 2013 WL 1914510 (D.S.C. Apr. 10, 2013)

Wilson v. Bodiford, Civ. A. No. 2:13-199-RMG-BHH, 2013 WL 1703740 (D.S.C. Mar. 29, 2013)

Wilson v. Greenville County Detention Admin. & Staff, Civ. A. No. 2:13-199-RMG-BHH, 2013 WL 1703733 (D.S.C. Mar. 27, 2013)

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
Hendricks, Bruce H.	United States District Court, District of South Carolina	1/9/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Judge, Active Status	**5a. Report Type** (check appropriate type) ☑ Nomination Date 1/6/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	**6. Reporting Period** 1/1/2013 to 1/6/2014
7. Chambers or Office Address P.O. Box 835 Charleston, SC 29402		

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.	Member of Board of Directors	Federal Bar Association, South Carolina Chapter
2.		
3.		
4.		
5.		

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

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Hendricks, Bruce H.	Date of Report 1/9/2014

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.	2014	self-employed in real estate
2.	2013	self-employed in real estate
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 Hendricks, Bruce H.	Date of Report 1/9/2014

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

☐ NONE *(No reportable gifts.)*

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

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

☐ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	First Federal of Charleston	Mortgage on Rental Property #3 (See Section VII)	K
2.	First Federal of Charleston	Mortgage on Rental Property #2 (See Section VII)	K
3.	Missouri Higher Education Loan Authority	Education loan	K
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Hendricks, Bruce H.	Date of Report 1/9/2014

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

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Rental Property #1, Charleston, SC	D	Rent	L	W	Exempt				
2. Rental Property #2, Charleston, SC	E	Rent	M	W					
3. Rental Property, #3, Charleston, SC	E	Rent	N	W					
4. Bank of America Checking Account		None	J	W					
5. Federated Kaufmann Fund	A	Int./Div.	J	W					
6. First Federal Checking Account		None	J	W					
7. United Missouri Bank Checking Account		None	J	W					
8. Phoenix Variable Life: Virtus Capital Growth		None	J	W					
9. Wells Fargo Checking Account		None	J	W					
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes:
(See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000

2. Value Codes
(See Columns C1 and D3)
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

3. Value Method Codes
(See Column C2)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Hendricks, Bruce H.	Date of Report 1/9/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

For Part VI. Liabilities, the Missouri Higher Education Loan Authority is not a new liability; it was inadvertently left off previous reports.

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Hendricks, Bruce H.	Date of Report 1/9/2014

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/ Bruce H. Hendricks**

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		13	000	Notes payable to banks-secured (auto)		18	171
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		1	900	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		87	414
Real estate owned – see schedule		960	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		63	000	Education loans		47	544
Cash value-life insurance		4	055				
Other assets itemize:							
Thrift Savings Plan		135	352				
				Total liabilities		153	129
				Net Worth	1	024	178
Total Assets	1	177	307	Total liabilities and net worth	1	177	307
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	
Federated Kaufmann Fund	$ 1,900
Total Listed Securities	$ 1,900
Real Estate Owned	
Rental property #1	$ 80,000
Rental property #2	260,000
Rental property #3	620,000
Total Real Estate Owned	$ 960,000
Real Estate Mortgages Payable	
Rental property #2	$ 44,964
Rental property #3	42,450
Total Real Estate Mortgages Payable	$ 87,414

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Mark Gerald Mastroianni

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of Massachusetts

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: Hampden District Attorney's Office
   50 State Street
   Springfield, Massachusetts 01103

   Residence: Westfield, Massachusetts

4. **Birthplace**: State year and place of birth.

   1964; Springfield, Massachusetts

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1986 – 1989, Western New England College School of Law; J.D., 1989
   1982 – 1986, American International College; B.A. (with High Honor), 1986

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2011 – present
Hampden District Attorney's Office
50 State Street
Springfield, MA 01103
District Attorney

2000 – 2011
Law Office of Mark G. Mastroianni
95 State Street, Suite 309
Springfield, MA 01103
Attorney

1995 – 2000
Affiliation with Law Office of Vincent Bongiorni
101 State Street, Third Floor
Springfield, MA 01103
Attorney

1991 – 1995
Hampden District Attorney's Office
50 State Street
Springfield, MA 01103
Assistant District Attorney

January – April 1991
Law Office of Mark G. Mastroianni
Court Square Building
31 Elm Street
Springfield, MA 01103
Attorney

September 1990 – January 1991
Hampden District Attorney's Office
50 State Street
Springfield, MA 01103
Assistant District Attorney

1989
Law Office of James McEwan
280 North Main Street
East Longmeadow, MA 01028
Clerk

1988 –1989
Law Office of Hurley, Melikian, Sousa & McFarlin
101 State Street
Springfield, MA 01103
Clerk

Other Affiliations (uncompensated):

2012 – present
American International College Board of Trustees
1000 State Street
Springfield, MA 01103
Trustee

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I 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.

   Massachusetts Missing Children's Day Award for Contributions and Service (2013)

   Kent B. Smith Award (for advancement of Criminal Law), Hampden County Bar Association (2011)

   National Honor Society, American International College (1985)

   President Golden Key Society, American International College (1985)

   Outstanding Senior Award, American International College (1986)

   Outstanding Achievement in History, American International College (1986)

   Outstanding Achievement in Political Science, American International College (1986)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Hampden County Bar Association

Massachusetts 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.

Massachusetts, 1990

There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court of Massachusetts, 1991

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 International College Board of Trustees (2012 – present)

Massachusetts Association Criminal Defense Lawyers (approximately 1998 – 2006)

Massachusetts District Attorneys Association (2011 – present)

National Association of Criminal Defense Lawyers (approximately 1998 – 2001)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations

listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, the organizations I have listed in response to question 11(a) do not currently discriminate and have no history of discriminating.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

May 13, 2013: Findings and Determination Relative to Criminal Charges related to the on-duty death of Officer Jose Torres. Copy supplied.

October 24, 2012: Letter announcing review and findings that a local police department failed to appropriately arrest or charge a police officer after an operating under the influence incident (released under FOIA). Copy supplied.

September 6, 2012: Letter by the Massachusetts District Attorneys Association to Governor Deval Patrick regarding improper handling of evidence at a State Drug Laboratory. Although I did not draft this letter, I did approve its submission on behalf of the District Attorneys Association. Copy supplied.

July 20, 2012: Letter by the Massachusetts District Attorneys Association to Governor Deval Patrick regarding comments made by him relative to the Crime Bill. Although I did not draft this letter, I did authorize my signature for its submission on behalf of the District Attorneys Association. Copy supplied.

February 17, 2011: Testimony before the Commission to Review Statutes Relative to Implementation of the School Bullying Law. I have no notes, transcript, or recording.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

May 21, 2013: Guest Speaker at Sixteen Acres Civic Association, Springfield, MA. I discussed how matters are processed in the Springfield District Court and how the community can have open communication with the Hampden District Attorney's Office. I have no notes, transcript or recording. The address of the Hampden District Attorney's Office is 50 State Street, Springfield, MA 01103.

May 8, 2013: Guest Speaker at the Springfield Kiwanis Luncheon, Springfield, MA. I discussed how the Hampden District Attorney's Office re-built after the damage from the tornado in 2011. I have no notes, transcript or recording. The address of the Springfield Kiwanis Club is 481 Carew Street, Springfield, MA 01104.

April 25, 2013: Guest speaker at the 2013 Annual Victims' Rights Conference, Holyoke, MA. I made introductory remarks. I have no notes, transcript, or recording. The address of The Baystate Education Center is 361 Whitney Avenue, Second Floor, Holyoke, MA. 01040.

March 4, 2013: Guest speaker at a Community Safety Information Night at Holyoke Catholic High School. I spoke about the Criminal Justice System interacting with teenagers on issues that affect their lives. I have no notes, transcript or recording. The address of Holyoke Catholic High School is 134 Springfield Street, Chicopee, MA 01020.

January 18, 2013: Speaker at a Conference at Western New England University highlighting domestic violence and abuse issues. I made introductory remarks discussing the cycle of domestic violence and applying new research and approaches designed to best handle this growing problem. I have no notes, transcript or recording. The address of Western New England University is 1215 Wilbraham Road, Springfield, MA 01119.

June 4, 2012: Hosted students of the Eighth Grade Social Studies Class at the M. Marcus Kiley Middle School in Springfield for a tour of the Hampden County Courthouse. I spoke to the students about problems that affect their lives and encouraged them to think about careers related to the court system. I have no notes, transcript or recording. The address for the Courthouse is 50 State Street, Springfield, MA 01103.

May 4, 2012: Keynote Speaker, Safe Driver Education Program at the Annual Community Based Juvenile Justice Project Task Force, Springfield, MA. I reviewed the work the District Attorney's Office had done with the Youth Advisory Board in developing programs aimed at young people. I have no notes, transcript or recording. The address of the Juvenile Justice Project Task Force is Office of the District Attorney, 1500 Main Street, Springfield, MA 01103.

April 30, 2012: Keynote Speaker, Crime Prevention Strategy Conference, Springfield, MA. I discussed applying non-traditional police/prosecution methods to the drug and gun problem in Springfield, MA. I have no notes, transcript or recording, but audio press coverage is available at: http://wamc.org/post/conference-highlights-crime-prevention-strategy. The conference was sponsored by the City of Springfield, Springfield City Hall, 36 Court Street, Springfield, MA 01103.

March 20, 2012: Guest Speaker at Massachusetts Bar Association: Criminal Justice Section Program, Springfield, Massachusetts. I discussed prosecution of felony and misdemeanor crimes including alcohol-related crimes in the Springfield District Court. I have no notes, transcript or recording. The address of the Criminal Justice Section of the Massachusetts Bar Association is 73 State Street, Springfield, MA 01103.

February 1, 2012: Introductory Speaker at the Youth Advisory Board Meeting sponsored by the Hampden District Attorney's Office. I discussed how these high school students could report to the District Attorney's Office about their experience with youth violence, substance abuse and school climate. I have no notes, transcript or recording. The address of the Hampden District Attorney's Office is 50 State Street, Springfield, MA 01103.

January 28, 2012: Meeting coordinator and primary speaker for a meeting with the Hampden County Legislative Delegation and Mayors of the Cities in Hampden County. I discussed the need for an increased budget for the Office in order to invest in technology upgrades for law enforcement and prosecution. I have no notes, transcript or recording. The address for the meeting is the District Attorney's Office, 18th Floor, Tower Square, 1500 Main Street, Springfield, MA 01103.

January 20, 2012: Hosted a Mock Trial Exercise for an eighth grade social studies class at the M. Marcus Kiley Middle School in Springfield I discussed the trial system and the various roles of participants. I have no notes, transcript or recording. The address for the M. Marcus Kiley Middle School is 180 Cooley Street, Springfield, MA 01128.

December 7, 2011: Guest Speaker at the Forest Park Civic Association Meeting. I discussed the recent increase in crime in that neighborhood and efforts our office would take to have better communication with the neighborhood. I have no notes, transcript or recording. The address for the meeting of the Forest Park Civic Association is the Jewish Community Center, Dickinson Street, Springfield, MA 01105

November 10, 2011: Hosted the initial Youth Advisory Board Meeting. I addressed members of the Board and discussed the reasons the Board was formed was to help gain an understanding of the school and life issues addressing high school students. I have no notes, transcript or recording. The address for the District Attorney's Office is 50 State Street, Springfield, MA 01103.

September 30, 2011: Introductory Speaker at the Safe Driving Education Program entitled "*Distracted Driving of Teenagers*" presented to students at Palmer High School. I discussed how distracted driving creates such an enormous danger and the consequences of what can occur. I have no notes, transcript or recording. The address for the Palmer High School is 4104 Main Street, Palmer, MA 01069.

April 11, 2011: Keynote Speaker at flag-raising ceremony recognizing April as Child Abuse Prevention Month, Springfield City Hall, Springfield, MA. I discussed the investigation and prosecution of crimes involving vulnerable child victims. I have no notes, transcript or recording. The event was sponsored by the City of Springfield, Springfield City Hall, 36 Court Street, Springfield, MA 01103.

Throughout 2010 I was involved in numerous political debates, lectures, and speaking appearances related to campaigning for the Office of District Attorney in the Hampden District of Massachusetts. The topics included crime-related issues, prosecution, sentencing and reform ideas to work

toward a safer community. I do not have any notes, transcripts or recordings from any of these events.

December 2008: I was the program chair for the Massachusetts Bar Association Education Series "Motions to Suppress—Identifying, Developing, and Litigating the Issues" in Springfield, Massachusetts. I lectured from a defense perspective on how to develop strategies for raising and arguing constitutionally based challenges to the seizure of evidence. I have no notes, transcript or recording. The address of the Massachusetts Bar Association is 73 State Street, Springfield, MA 01103.

March 2008: I was a faculty participant for the Massachusetts Bar Association Education Series "Criminal Trial Practice" in Springfield, Massachusetts. I gave a presentation which reviewed effective trial and advocacy techniques. The lecture covered direct and cross examination methods as well as reviewing how to communicate with a jury through opening and closing statements. I have no notes, transcript or recording. The address of the Massachusetts Bar Association is 73 State Street, Springfield, MA 01103.

August 2007: I was a panelist in a forum discussion, "Careers in the Criminal Law Field," at Western New England College School of Law in Springfield, Massachusetts. I spoke about my personal career experiences since graduating from law school. I have no notes, transcript or recording. The address of the Western New England College School of Law is 1215 Wilbraham Road, Springfield, MA 01119.

May 2006: I was a faculty participant in a Massachusetts Continuing legal Education Presentation, 'Criminal Practice Forum" in Springfield, Massachusetts. I lectured on case management and practice techniques for defense attorneys in the State District Court. I have no notes, transcript or recording. The address of the Massachusetts Continuing Legal Education is 10 Winter Place, Boston, MA 02108.

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 position as District Attorney I am interviewed on a regular basis by all forms of media. The following list represents those interviews I could identify based on my best recollection and a search of my files and the Internet. At times, the same or substantially the same article has been reprinted in multiple outlets.

November 5, 2013: Buffy Spencer, *Dennis Rosa Roman of Springfield Arrested in 2011 Chicopee Murder of Amanda Plasse*, The Republican (Springfield, MA). Copy supplied.

October 1, 2013: Buffy Spencer, *Common Scams Outlined to Agawam Seniors in Education Against Senior Exploitation Program*, The Republican (Springfield, MA). Copy supplied.

September 24, 2013: *Hampden County District Attorney Mark Mastroianni Has Been Nominated for a Federal Judgeship*, News 40 WGGB. Copy supplied.

September 24, 2013: *The White House Has Nominated Hampden County District Attorney Mark Mastroianni for a Federal Judge Post in Massachusetts*, 22 News WWLP. Copy supplied.

September 24, 2013: *Hampden County District Attorney Mark Mastroianni Has Been Nominated for Federal Judgeship by President Barack Obama*, News 3 WSMH. Copy supplied.

September 24, 2013: Stephanie Barry, *Hampden District Attorney Mark Mastroianni Nominated for Federal Judgeship by President Barack Obama,* The Republican (Springfield, MA). Copy supplied.

August 16, 2013: Lori Stabile, Buffy Spencer, Suzanne McLaughlin, *Ludlow Officer Denies Drug Charges*, The Republican (Springfield, MA). Copy supplied.

August 9, 2013: Kaitlin Goslee, *District Attorney Educating West Springfield Students*, 22 News WWLP. Video available at: http://www.wwlp.com/news/local/hampden/district-attorney-educating-west-springfield-students.

August 7, 2013: Julie McDonald & Laura Hutchinson, *Former Selectman Villamaino Sentenced,* 22 News WWLP. Video available at: http://www.wwlp.com/news/local/hampden/former-selectman-villamaino-sentenced.

August 6, 2013: Interview by John O'Brien, WAQY Radio, Bax and O'Brien Show at www.rock102.com. The interview was regarding details of the prosecution of an individual convicted of voter fraud related offenses. I have no notes, transcript or recording.

July 16, 2013: Interview by John O'Brien and Mike Baxendale, WAQY Radio, Bax and O'Brien Show at www.rock102.com. The interview was regarding the 1992 abduction and murder of a young boy determined, after

investigation, to be committed by an identified person presently serving a life sentence in prison. I have no notes, transcript or recording.

July 15, 2013: Jack Flynn, *Serial Killer Lewis Lent's Confession in Jamie Lusher Case in Massachusetts Prompts New Scrutiny of Possible Role in Older, Unsolved Killings*, The Republican (Springfield, MA). Copy supplied.

July 15, 2013: Laura Hutchinson, *Investigative Reporter, Search for Lusher's Remains to Start Tuesday*, 22 News WWLP. Video available at: http://www.wwlp.com/news/i-team/search-for-lushers-remains-to-start-tues.

June 28, 2013: Stephanie Barry, *Hampden District Attorney Mark Mastroianni Seeks Federal Judgeship in Springfield*, The Republican (Springfield, MA). Copy supplied.

May 23, 2013: Laura Hutchinson, *Investigative Reporter, Tammy Lynds Case has Remained Unsolved for 19 Years*, 22 News WWLP. Video available at:
http://www.wwlp.com/news/i-team/i-team-tammy-lynds-cold-case.

May 10, 2013: Barry Kriger, *Fraud and ID Theft Seminar to Protect Western Mass Seniors*, 22 News WWLP. Video available at:
http://www.wwlp.com/news/local/hampden/fraud-and-id-theft-seminar-to-protect-wmass-seniors.

May 1, 2013: Laura Hutchinson, *Investigative Reporter, Teens Get a Lesson in Distracted Driving*, 22 News WWLP. Video available at:
http://www.wwlp.com/news/teens-get-a-lesson-in-distracted-driving.

April 2, 2013: *YMCA Benefits from Money Seized in Drug Busts*, 40 News WGGB. Copy supplied.

April 2, 2013: Buffy Spencer, *James Texidor of Springfield Arraigned for Second Time in Murder of Jonathan Tallaj after Judge Dismisses First Indictment*, The Republican (Springfield, MA). Copy supplied.

March 15, 2013: Laura Hutchinson, *Investigative Reporter, District Attorney Forms Partnership with Holyoke School*, 22 News WWLP. Video available at: http://www.wwlp.com/news/local/hampden/district-attorney-forms-partnership-with-holyoke-school.

March 15, 2013: Laura Hutchinson, *Investigative Reporter, Interviews Continue in Kiley Drowning Investigation*, 22 News WWLP. Video available at:

http://www.wwlp.com/news/local/hampden/interviews-continue-in-kiley-drowning-investigation.

March 15, 2013: Buffy Spencer, *Recently Obtained DNA Results Lead to Warrant for Ronald Moore, Formerly of Ludlow, in 1992 Springfield Rape Case*, The Republican (Springfield, MA). Copy supplied.

March 12, 2013: Laura Hutchinson, *Investigative Reporter, Seized Drug Money to Benefit Family Recovery Program*, 22 News WWLP. Video available at: http://www.wwlp.com/news/local/hampden/seized-drug-money-to-benefit-family-recovery-program.

March 3, 2013: *State Briefs*, MetroWest Daily News (Framingham, MA). Copy supplied.

February 27, 2013: Interview by John O'Brien and Mike Baxendale, WAQY Radio, Bax and O'Brien Show at www.rock102.com. This interview was regarding the formation of office DNA Unit and use of the forensic technology to work on older cases. I have no notes, transcript or recording.

February 26, 2013: George Graham, *Chicopee Police Officer, Accidentally Shot During SWAT Training Exercise, in Good Condition at Baystate Medical Center*, The Republican (Springfield, MA). Copy supplied.

February 22, 2013: *Dozens of Local Drug Suspects Set Free Following Amherst Chemist Case*, News 40 WGGB. Video available at: http://www.wggb.com/2013/02/22/dozens-of-local-drug-suspects-set-free-following-farak-case/?app=1&cat=276.

February 7, 2013: John Zaremba, *Wife: It's Not Enough,* The Boston Herald (Boston, MA). Copy supplied.

February 7, 2013: Buffy Spencer, *Miguel Rivera of Springfield Admits Throwing 91-year-old Woman into Basement, Stealing Credit Card*, The Republican (Springfield, MA). Copy supplied.

February 1, 2013: Stephanie Barry, *Apparent Suicide in Agawam Linked to Springfield Police Officer's Service Weapon, Investigators Say*, The Republican (Springfield, MA). Copy supplied.

January 29, 2013: Dan Ring, *Massachusetts Supreme Judicial Court Upholds State's Gun Storage Law, Rejects Challenge by Springfield Man,* The Republican (Springfield, MA). Copy supplied.

January 23, 2013: Elysia Rodriguez, *Son of 1991 Murder Victim Feels Closure*, 22 News WWLP. Video available at: http://www.wwlp.com/news/local/hampden/son-of-1991-murder-victim-feels-closure.

January 23, 2013: *Hampden County D.A. Pursuing List of Cold Cases*, News 40 WGGB. Video available at: http://www.wggb.com/2013/01/23/cold-cases-actively-investigated-in-hampden-county/?app=1&cat=276.

January 22, 2013: *Faustino Diaz, Jr. Charged in 1991 Springfield Murder*, 22 News WWLP. Video available at: http://www.wwlp.com/news/local/hampden/suspect-charged-in-1991-spfld-murder.

January 22, 2013: *No Bail for Suspect in Decades Old Murder in Springfield*, News 40 WGGB. Video available at: http://www.wggb.com/2013/01/22/arrest-made-in-decades-old-springfield murder/?app=1&cat=276.

January 22, 2013: Buffy Spencer, *Myrtle Marrett Case: Faustino Diaz to Give DNA Sample to Police in New Investigation of 1991 Murder,* The Republican (Springfield, MA). Copy supplied.

January 4, 2013: *Family of Lisa Ziegert Reacts To New Developments in Murder Case*, News 40 WGGB. Video available at: http://www.wggb.com/2013/01/04/d-a-to-take-new-look-at-lisa-ziegert-murder-case/?app=1&cat=276.

December 19, 2012: Patrick Johnson, *Officials in Northampton, East Longmeadow Respond to Threats in Schools*, The Republican (Springfield, MA). Copy supplied.

December 17, 2012: Buffy Spencer, *Lastarandre Bell Found Guilty of First-Degree Murder in Retrial for Death of Julie Ann Nieves*, The Republican (Springfield, MA). Copy supplied.

December 13, 2012: Buffy Spencer, *Man Fighting Traffic Ticket Accidentally Joins Jury in Springfield District Court Assault Case*, The Republican (Springfield, MA). Copy supplied.

November 14, 2012: Jack Flynn, *Trey Malone Case at Amherst College Highlights Challenges Campus Sexual Assault Counselors Face*, The Republican (Springfield, MA). Copy supplied.

November 13, 2012: Ryan Walsh, *Investigative Reporter, Jail Time for Firearms Arrests*, 22 News WWLP. Video available at: http://www.wwlp.com/news/i-team/i-team-jail-time-for-firearms-arrests.

November 12, 2012: Stephanie Barry, *Questions Linger About Justice*, The Republican (Springfield, MA). Copy supplied.

November 2, 2012: Stephanie Barry, *Acquittal Rates Vary in Drunken Driving*, The Republican (Springfield, MA). Copy supplied.

October 17, 2012: Ryan Walsh, *Investigative Reporter, Not Guilty Plea for Villamaino in Voter Fraud Case*, 22 News WWLP. Video available at: http://www.wwlp.com/web/wwlp/news/local/hampden/villamaino-arraigned-in-superior-court.

October 2012: R. J. Cinquegrana, Interview related to the Report to the Supreme Judicial Court Regarding Jury-Waived Acquittal Rate for Operating Under the Influence Trials in Massachusetts. Although the report was originally designated as privileged and confidential, the Commonwealth of Massachusetts has made it available at: http://www.mass.gov/courts/sjc/docs/report-110112.pdf.

September 14, 2012: D.*A.: No Criminal Charges Filed in Agawam Police Shooting*, News 40 WGGB. Video available at: http://www.wggb.com/2012/09/14/d-a-no-criminal-charges-filed-in-agawam-police-shooting/?app=1&cat=276.

September 7, 2012: Sandra Constantine, *Results of DA's Probe of Accidental Shooting of Britteney Miles by Agawam Police Officer Danielle Petrangelo Due to be Released,* The Republican (Springfield, MA). Copy supplied.

August 31, 2012: Stephanie Barry, *Former East Longmeadow Selectman Enrico Villamaino, Co-suspect in Election Fraud Probe Courtney Llewellyn Reportedly Wed*, The Republican (Springfield, MA). Copy supplied.

August 22, 2012: Buffy Spencer, *Cleveland Burgess Pleads Guilty to Fatal Springfield Shooting of Richard Wayne Dillon 17 years ago, when Burgess was 16*, The Republican (Springfield, MA). Copy supplied.

August 17, 2012: Laura Hutchinson, Investigative Reporter, *East Longmeadow Employee Placed on Administrative Leave*, 22 News WWLP. Video available at: http://www.wwlp.com/news/i-team/el-employee-placed-on-admin-leave.

July 25, 2012: Laura Hutchinson, *Investigative Team, Jury Dodgers. Hundreds of People Don't Show up to Jury Duty*, 22 News WWLP.

Video available at: http://www.wwlp.com/news/i-team/i-team-jury-dodgers.

July 24, 2012: Buffy Spencer, *George Stuart, Ludlow Standoff Suspect, Pleads Innocent to Arson, Weapons Charges*, The Republican (Springfield, MA). Copy supplied.

July 18, 2012: *DA: Ludlow Standoff Ends When Retired Springfield Police Officer George Stuart Fires Weapon*, The Republican (Springfield, MA). Copy supplied.

June 29, 2012: Patrick Johnson, *Hampden DA: Drug Suspect Rams Police Cars in Riverdale Shops, Leads Police on Wild Chase Through West Springfield, Holds Couple Hostage*, The Republican (Springfield, MA). Copy supplied.

May 25, 2012: Greg Saulmon, *Officers Cleared in Fatal Shooting of Teenage Suspect Tahiem Goffe; Police Commissioner William Fitchet Calls Case "Tragic"*, The Republican (Springfield, MA). Copy supplied.

Spring 2012: Mary Ellen Lowney, *A Little Luck, A Lot of Law*, The Alumni Magazine of American International College. Copy supplied.

April 25, 2012. Suzanne McLaughlin, *Ludlow Residents Jam Forum to Learn How to Deal with 'Suburban Epidemic' of Prescription Pain Killer Abuse*, The Republican (Springfield, MA). Copy supplied.

April 22, 2012: Stephanie Barry, *New Hampden, Hampshire District Attorneys Mark Mastroianni and David Sullivan Forge New Paths, Styles*, The Republican (Springfield, MA). Copy supplied.

April 20, 2012: Interview by John O'Brien and Mike Baxendale, WAQY Radio, Bax and O'Brien Show at www.rock102.com. This interview was regarding a local shooting where an individual opened fire in a populated neighborhood on police responding to a domestic violence call. I have no notes, transcript or recording.

April 15, 2012: Jeanette DeForge, *Investigation into Chicopee Shooting Continuing, Injured State Trooper Released from Hospital*, The Republican (Springfield, MA). Copy supplied.

April 9, 2012: Patrick Johnson, *Westfield Police Officer Involved in Fatal Shooting Granted Leave as Investigation Continues*, The Republican (Springfield, MA). Copy supplied.

March 14, 2012: Buffy Spencer, *Former Holyoke Resident Vincent Deleonardis Charged in Unsolved 1993 Case Involving Rape of a Disabled Person*, The Republican (Springfield, MA). Copy supplied.

March 11, 2013: Patrick Johnson, *Homicides in Western Massachusetts: Unpredictable, Frustrating, Tragic*, The Republican (Springfield, MA). Copy supplied.

March 2, 2012: Interview by John O'Brien and Mike Baxendale, WAQY Radio, Bax and O'Brien Show at www.rock102.com. This interview was regarding the prosecution and conviction of a Springfield Police Officer for assault and battery with a dangerous weapon committed on a person being placed under arrest. I have no notes, transcript or recording.

February 29, 2012: Stephanie Barry, *Reactions to ex-Springfield Cop Jeffrey Asher's Assault Conviction Sharply Divided*, The Republican (Springfield, MA). Copy supplied.

February 17, 2012: Laura Hutchinson, *Investigative Team, D.A.: New Leads in Piirainen Case. Tips from the Public are "Keeping Them Busy,"* 22 News WWLP. Video available at: http://www.wwlp.com/news/i-team/da-new-leads-in-piirainen-case.

February 16, 2012: Sandra Constantine, *DA Completes Police Misconduct Complaint Probe*, The Republican (Springfield, MA). Copy supplied.

February 12, 2012: Jessica Stanley, In Focus: Distracted Driving Dangers, 22 News WWLP. Video available at: http://www.wwlp.com/news/local/infocus/infocus-distracted-driving-dangers.

February 9, 2012: Buffy Spencer, *Juan Rodriguez of Holyoke, Found with Drugs Inside Bologna, Pleads Guilty to Possession of Cocaine with Intent to Sell*, The Republican (Springfield, MA). Copy supplied.

January 27, 2012: Jackie Brousseau, *Upgrades to DA's Office Paying Off*, 22 News WWLP. Video available at: http://www.wwlp.com/news/local/hampden/upgrades-to-das-office-paying-off.

January 14, 2012: Sandra Constantine, *Police Complaint Under Investigation*, The Republican (Springfield, MA). Copy supplied.

January 4, 2012: Buffy Spencer, *Holly Piirainen case: Appeal for Information on David Pouliot Brings Strong Response,* The Republican (Springfield, MA). Copy supplied.

January 4, 2012: Interview by John O'Brien and Mike Baxendale, WAQY Radio, Bax and O'Brien Show at www.rock102.com. This

interview was regarding developments in the 1993 missing person/murder investigation of ten-year-old Holly Piirainen. I have no notes, transcript or recording.

November 29, 2011: Buffy Spencer, *Cleveland Burgess of Springfield, in Prison on Robbery Conviction, Now Faces Murder in 1995 Shooting of Richard Dillon*, The Republican (Springfield, MA). Copy supplied.

November 14, 2011: Conor Berry, *Rev. Talbert Swan to Address 'Inflammatory Comments' Linked to Police Shooting Case*, The Republican (Springfield, MA). Copy supplied.

November 11, 2011: Barry Kriger, *D.A. Launches Youth Advisory Board. Advisory Board Will Address WMass Youth Problems*, 22 News WWLP Video available at: http://www.wwlp.com/news/local/hampden/d-a-launches-youth-advisory-board.

October 7, 2011: George Graham, *15 Springfield Area Men Face State and Federal Firearm Charges Following Joint-sweep by City, State and Federal Law Enforcement Agencies*, The Republican (Springfield, MA). Copy supplied.

September 30, 2011: Interview by John O'Brien and Mike Baxendale, WAQY Radio, Bax and O'Brien Show at www.rock102.com. This interview was regarding distracted driving presentations to local high school students. I have no notes, transcript or recording.

September 27, 2011: Patrick Johnson, *Hampden DA Mark Mastroianni Asks State AG to Take over Investigation of 'Mystery Powder' Mailed to his Office by Prison Inmate,* The Republican (Springfield, MA). Copy supplied.

September 19, 2011: Buffy Spencer, *Former Holyoke Police Detective Paul Barkyoumb Indicted on Drug and Gun Charges*, The Republican (Springfield, MA). Copy supplied.

September 16, 2011: Buffy Spencer, *3 of 13 Witnesses Excluded by Judge in Murder Trial of Eric Denson of Springfield*, The Republican (Springfield, MA). Copy supplied.

August 30, 2011: Mike Plaisance, *Holyoke Fire Official William Moran's Status Remains Undecided after Show-cause Hearing in District Court*, The Republican (Springfield, MA). Copy supplied.

August 30, 2011: Mike Plaisance, *Probe into Holyoke Accident that Killed Thomas Monahan Wrapping up, DA Mark Mastroianni says,* The Republican (Springfield, MA). Copy supplied.

August 28, 2011: Jeannette DeForge, *Amanda Plasse of Chicopee Mourned by Friends after her Killing*, The Republican (Springfield, MA). Copy supplied.

August 18, 2011: *Hampden County DA Mark Mastroianni: Palmer Officer Justified in Non-fatal Shooting of Shawn Fontaine,* The Republican (Springfield, MA). Copy supplied.

August 9, 2011: Interview by John O'Brien and Mike Baxendale, WAQY Radio, Bax and O'Brien Show at www.rock102.com. This interview was regarding the backlog of older murder cases waiting for trial and unsolved. I have no notes, transcript or recording.

July 24, 2011: Jeanette DeForge, *Paul Barkyoumb, Former Holyoke Police Officer, Arrested in a Drug Investigation*, The Republican (Springfield, MA). Copy supplied.

July 21, 2011: Peter Goonan, *Springfield Officials Pledge Zero Tolerance Crackdown on Spate of Summer Violence*, The Republican (Springfield, MA). Copy supplied.

July 15, 2011: Buffy Spencer, *DA Mark Mastroianni: 5 Recent Springfield Homicides Don't Pose Increased Threat to Residents*, The Republican (Springfield, MA). Copy supplied.

June 13, 2011: Mike Plaisance, *District Attorney Mark Mastroianni Pledges Holyoke Traffic Death will be Probed with Integrity*, The Republican (Springfield, MA). Copy supplied.

June 2, 2011: *Mass. Digs Out After Tornadoes Kill 3, Hurt 200*, Associated Press/Boston, MA. Copy supplied.

May 26, 2011: Jeanette DeForge, *Schools Ask DA for Bully Classes*, The Republican (Springfield, MA). Copy supplied.

May 18, 2011: Brian Steele, *Danilo Feliciano, ex-Springfield Cop, Acquitted in Assault Trial*, The Republican (Springfield, MA). Copy supplied.

May 11, 2011: Patrick Johnson, *Criminal Investigation Continues into Allegations that DOC Employees Guarding Murder Suspect Tamik Kirkland Made Threatening Phone Calls*, The Republican (Springfield, MA). Copy supplied.

May 10, 2011: Buffy Spencer, *Former Wilbraham Senior Center Employee Bridget Wallace Admits Taking Money from 90-year-old Man*, The Republican (Springfield, MA). Copy supplied.

May 5, 2011: Buffy Spencer, *Springfield North End Residents Praise Police Initiative that has Reduced Crime; Increased Text-a-Tip Use Cited.* The Republican (Springfield, MA). Copy supplied.

May 5, 2011: Elysia Rodriguez, *Officer Hit by Drunk Driver Speaks*, 22 News WWLP. Video available at: http://www.wwlp.com/news/local/officer-hit-by-drunk-driver-speaks.

April 29, 2011: Patrick Johnson, *DA Mark Mastroianni's One-month Trial Run with State Police Leading Springfield Homicide Investigations Ends Without Any Murders*, The Republican (Springfield, MA). Copy supplied.

April 29, 2011: Conor Berry, *Hampden District Attorney Mark G. Mastroianni Mulls Marijuana Decision by SJC*, The Republican (Springfield, MA). Copy supplied.

April 26, 2011: Sandra Constantine, *Hampden District Attorney's Office Probing Breaching of Sewer Pipes in Agawam*, The Republican (Springfield, MA). Copy supplied.

April 8, 2011: Buffy Spencer, *Jose Cosme, Maria Cosme and Jose Rodriguez Found Guilty in Cocaine-in-Baby-Wipes Container Case*, The Republican (Springfield, MA). Copy supplied.

April 7, 2011: Buffy Spencer, *Decision to Drop Some Charges Against Melvin Jones Prompts Criticism from Springfield Police Officers' Union,* The Republican (Springfield, MA). Copy supplied.

March 31, 2011: Patrick Johnson, *Springfield Murder Investigations Turn Over to Massachusetts State Police*, The Republican (Springfield, MA). Copy supplied.

March 29, 2011: Buffy Spencer, *DA Mark Mastroianni Says He's Committed to Prosecuting Police Brutality Case Against ex-Springfield Cop Jeffrey Asher,* The Republican (Springfield, MA). Copy supplied.

March 18, 2011: Maureen Turner, *New DA Talks About Drug-Free School Zones*, The Valley Advocate. Copy supplied.

March 9, 2011: Patrick Johnson, *Hampden DA Mark Mastroianni Directs State Police to Take Temporary Charge of Springfield Homicide Investigations,* The Republican (Springfield, MA). Copy supplied.

February 23, 2011: Priscilla Benner, *Role of 'Mandated Reporting' of Bullying Comes under Scrutiny at Coakley Hearing*, The Republican (Springfield, MA). Copy supplied.

February 17, 2011: Jack Flynn, *Hampden District Attorney Mark G. Mastroianni Calls for Mandatory Reporting of Bullying Cases*, The Republican (Springfield, MA). Copy supplied.

February 14, 2011: Patrick Johnson, *DA Mark Mastroianni decides no Grounds for Criminal Charges Against 81-year-old Driver Edwin Skowyra in Fatal Chicopee Crash,* The Republican (Springfield, MA). Copy supplied.

February 14, 2011: Kathleen Mitchell, *Court of Opinion: New Hampden County DA Mastroianni States His Case*, BusinessWest Magazine. Copy supplied.

February 10, 2011: Maureen Turner, *Rethinking Drug-Free School Zones*, The Valley Advocate. Copy supplied.

January 27, 2011: S.P. Sullivan, *Connecting Point: Hampden DA Mark Mastroianni Discussed Fleury Trial, Mandatory Minimums*, The Republican (Springfield, MA). Copy supplied and video available at: http://blog.masslive.com/thefray/2011/01/hampden_da_mark_mastroianni_sa.html.

January 5, 2011: Buffy Spencer, *Mark Mastroianni Pledges Fairness, Justice As He Is Sworn In As Hampden District Attorney*, The Republican (Springfield, MA). Copy supplied and video available at: http://video-embed.masslive.com/services/player/bcpid1949055957001?bctid=739632605001&bckey=AQ~~,AAAAPmbRGcE~,QhKNocI3huiKO29RlTige73Dr2YGfEBS."

December 20, 2010: Buffy Spencer, *Elizabeth Dunphy Farris, Assistant Northwestern District Attorney, to be Adviser to Mark Mastroianni, Hampden's New District Attorney*, The Republican (Springfield, MA). Copy supplied.

December 8, 2010: Buffy Spencer, *Departing Hampden DA William Bennett Wants to Finish Delayed Trial of Edward Fleury in Christopher Bizilj Gun Show Death*, The Republican (Springfield, MA). Copy supplied.

November 13, 2010: Stephanie Barry, *District Attorney-Elect Mark Mastroianni: Prosecutors Will Have to Reapply for Their Jobs*, The Republican (Springfield, MA). Copy supplied.

November 3, 2010: Buffy Spencer, *DA-elects Mark Mastroianni, David Sullivan Begin Transition Planning,* The Republican (Springfield, MA). Copy supplied.

November 2, 2010: Buffy Spencer, *Mark Mastroianni Finds Hampden District Attorney Election over Stephen Buoniconti 'Amazing'*, The Republican (Springfield, MA). Copy supplied.

October 31, 2010: Buffy Spencer, *Jabs Continue in DA's Contest*, The Republican (Springfield, MA). Copy supplied.

October 30, 2010: Bill Dusty, *Mark Mastroianni's Bus Tour Thru Hampden County*, YouTube. Video available at: http://www.youtube.com/watch?feature=player_detailpage&v=Otqvira41Wo.

October 28, 2010: Maureen Turner, *Tailoring Justice*, The Valley Advocate. Copy supplied.

October 6, 2010: Buffy Spencer, *DA's Race Sizzles*, The Republican (Springfield, MA). Copy supplied.

September 8, 2010: Jack Flynn, *Candidates Split on Fund Raising*, The Republican (Springfield, MA). Copy supplied.

During my 2010 campaign for District Attorney, my campaign released a series of Youtube video clips of campaign advertisement. Videos available at: http://www.youtube.com/user/Markforda?feature=watch.

August 17, 2009: Julia Reischel, *Judiciary Under Siege: Hampden County Bar Takes Up Flight Against Anti-Judge Police Chief*, Massachusetts Lawyers Weekly. Copy supplied.

August 9, 2009: Stephanie Barry, *Open Mind Key to Judge's Creed*, The Republican (Springfield, MA). Copy supplied.

Press Releases:

November 6, 2013: press release announcing sponsorship of a program entitled "*An Evening of Hope*" to kick off the opening of the Western Mass chapter of Learn to Cope. Copy supplied.

May 20, 2013: press release announcing community based juvenile justice forum involving the Youth Advisory Board. Copy supplied.

April 24, 2013: press release announcing District Attorneys annual Victims' Rights conference dealing with first responder trauma after the Newtown, Connecticut shootings. Copy supplied.

April 9, 2013: press release announcing District Attorneys Youth Advisory Board presenting to Sixth grade students on the dangers of cyber bullying and online predators. Copy supplied.

March 28, 2013: press release announcing program with District Attorney's Office and the United States Attorney's Office collaborating with local schools and the Boys & Girls Club to present guidance for young people to make good decisions. Copy supplied.

March 11, 2013: press release announcing District Attorneys Adopt a School Program and promoting positive interaction with middle school and high school students. Copy supplied.

February 27, 2013: press release announcing the creation of a specialized firearms session in the District Court to assist in the coordination of firearms cases within the criminal justice system. Copy supplied.

February 26, 2013: press release announcing Community Safety Presentation for parents and high school students on topics including substance abuse, Internet safety, domestic violence. Copy supplied.

January 22, 2013: press release announcing arrest in 22- year-old unsolved murder case based on forensic testing as part of District Attorney's Office newly formed unsolved homicide unit. Copy supplied.

January 18, 2013: press release announcing sponsorship of Community Awareness Event Program highlighting domestic violence and abuse issues. Copy supplied.

January 11, 2013: Attorney General Coakley's press release announcing guilty plea of inmate for sending white powder to Hampden District Attorney's Office and Superior Court Judge. Copy supplied.

November 27, 2012: press release announcing findings relative to the shooting death/murder of police officer Kevin Ambrose and determination of self-inflicted fatal injuries by his assailant. Copy supplied.

November 13, 2012: press release announcing the forfeiture funds for Community Safety Program providing for money seized from drug prosecutions to be invested in community efforts focusing on drug related problems. Copy supplied.

September 14, 2012: press release announcing the non-fatal shooting of a civilian during police response to a domestic violence/intruder related situation, which was found to be an accidental discharge of the officer's weapon. Copy supplied.

August 27, 2012: press release announcing findings that police fatal shooting of a civilian was legally justified as the deceased had confronted police with deadly force and stabbed an officer with a knife. Copy supplied.

May 29, 2012: press release announcing the sponsorship and presentation of a training for law enforcement and advocates from across the state on investigation of crimes against persons with disabilities. Copy supplied.

May 2, 2012: press release announcing the community based Juvenile Justice Program and Youth Advisory Board presentations on distracted driving, internet crimes against children, and other issues affecting young people. Copy supplied.

April 27, 2012: press release announcing the sponsorship and presentation of a drug intervention model successfully used in North Carolina to reduce drug related and violent crime. Copy supplied.

April 23, 2012: press release announcing sponsorship and presentation of annual Victims' Rights Conference targeting community response to youth violence, gun crimes and drug market elimination from neighborhoods. Copy supplied.

April 19, 2012: press release announcing preliminary findings from investigation and review of an incident where a police officer and civilian were shot by an individual opening fire into a public area after committing a domestic related violent assault. Copy supplied.

April 10, 2012: press release announcing the formation of a multi-disciplinary team including law enforcement, women's shelter and YWCA to address the many issues surrounding violent crime against women. Copy supplied.

April 5, 2012: press release announcing collaborative investigation with State Police and FBI leading to the arrest on state charges of thirteen individuals for child pornography charges. Copy supplied.

April 2, 2012: press release announcing the creation of the first website for the District Attorney's Office. Copy supplied.

March 14, 2012: press release announcing solving of a 19-year-old rape and sexual assault case victimizing a severely disabled person. Copy supplied.

February 9, 2012: press release announcing arrest of twenty individuals on heroin distribution charges after a joint investigation between the District Attorney's Office, local police and federal authorities. Copy supplied.

February 8, 2012: press release clarifying a cell phone donation drive initiated by District Attorney's office to benefit organizations offering assistance to victims of domestic violence. Copy supplied.

February 6, 2012: press release announcing a used cellphone donation drive to benefit local domestic violence shelters. Copy supplied.

January 31, 2012: press release announcing an event in which the District Attorneys Youth Advisory Board participated in city based youth leadership forum. Copy supplied.

January 24, 2012: press release announcing the District Attorney's Office would be hosting a legislative meeting to discuss initiatives of the office and fiscal matters. Copy supplied.

January 17, 2012: press release announcing the start of the District Attorney's Adopt a School Program that allowed for continuous interaction with a local group of eighth grade students. Copy supplied.

January 4, 2012: press release seeking public help by providing information about a deceased individual found by a roadside in the early morning. Copy supplied.

January 3, 2012: press release announcing that the District Attorney's Office's unsolved homicide review program had made a development in the investigation of a twenty-year-old abduction and murder of a ten-year-old girl. Copy supplied.

December 7, 2011: press release announcing community meeting to discuss specific neighborhood issues and assignment of a prosecutor

specially assigned to be accessible to work with the community as a liaison. Copy supplied.

November 23, 2011: press release announcing criminal charges being filed against the fire department chief related to his calling in a fake emergency dispatch. Copy supplied.

November 16, 2011: press release announcing delinquency proceedings were initiated against an unnamed juvenile related to the kicking and killing of a duck in a local park. Copy supplied.

November 16, 2011: press release announcing charges and investigation related to the theft of money from fund raising efforts at an elementary school. Copy supplied.

November 16, 2011: press release announcing the investigation into circumstances of the death of a 16-year-old girl found unresponsive by her father. Copy supplied.

November 7, 2011: press release announcing the formation of a Youth Advisory Board to better understand and work with young people on the challenges they face with drugs, violence, school safety and other issues. Copy supplied.

September 28, 2011: press release announcing the formation of a distracted driving program for teenagers. Copy supplied.

September 27, 2011: press release announcing a hazardous material incident involving letters sent to the District Attorney's Office and the Judge's Lobby containing unknown white substance. Copy supplied.

September 21 2011: press release announcing that the District Attorney's Office was sponsoring a specialized training program for persons with disabilities to assist in recognizing, responding and reporting abuse. Copy supplied.

September 21, 2011: press release announcing the charging of one person with vehicular homicide for a death resulting when a civilian was coming to the aid of a vehicle that had been involved in a separate accident. Copy supplied.

September 14, 2011: press release announcing manslaughter charges against one person for a death resulting when a civilian was coming to the aid of a vehicle that had been involved in a separate accident. Copy supplied.

August 17, 2011: press release announcing findings of an investigation of the non-fatal shooting of a civilian by police during a response to a domestic call where the civilian appeared armed with what was later discovered to be a non-operating replica pistol. Copy supplied.

August 11, 2011: press release announcing charges for environmental crimes resulting from a sewer line break occurring when an individual, without notice or permit, engaged in private excavation work in wetland protected property that he did not own. Copy supplied.

August 2, 2011: press release announcing that the District Attorney's Office would be sponsoring a three day training program for school administrators and teachers on social climate and school bullying issues. Copy supplied.

July 28, 2011: press release announcing indictments for murder occurring in jurisdiction but with deceased body being left at a location in Connecticut. Copy supplied.

July 25, 2011: press release announcing arrest of a former police officer for drug distribution. Copy supplied.

July 14, 2011: press release announcing investigation of a house fire treated as a homicide case. Copy supplied.

July 6, 2011: press release announcing the charging of an individual with multiple crimes in relation to his threatening responding officers with a paintball type gun appearing to be real. Copy supplied.

June 29, 2011: press release announcing state charges after a Federal and Gang Task Force investigation into drug distribution. Copy supplied.

June 27, 2011: press release announcing facts and detail from an investigation of a fire department chief who made a fake emergency call. Copy supplied.

June 14, 2011: press release announcing threat made to hospital by a Department of Corrections employee while a defendant, who had escaped from a Department of Corrections facility, was being held there for treatment. Copy supplied.

June 13, 2011; press release announcing the District Attorney's Office's findings, after investigation, regarding a complaint of cruelty to animals against Baystate Medical Center. Copy supplied.

May 20, 2011: press release announcing the investigation of suspected hazardous material in water being left at public locations. Copy supplied.

May 17, 2011: press release announcing the apprehension of a defendant as a fugitive found in another state. Copy supplied.

May 9, 2011: press release announcing the transfer back to state prison custody of a defendant who had escaped and committed murder. Copy supplied.

May 4, 2011: press release announcing arrest of an individual on a fugitive warrant for connection with a murder committed by a prisoner who had escaped. Copy supplied.

April 6, 2011: press release announcing decision not to prosecute person arrested on drug charges and beaten by one of the officers involved. The incident was captured on poor quality audio/video and credible prosecution against the officer and person arrested could not be maintained. Copy supplied.

March 24, 2011: press release announcing a formal complaint made against Baystate Medical Center for cruelty to animals related to training and research. Copy supplied.

March 24, 2011: Commonwealth of Massachusetts Executive Office of Public Safety and Security's press release announcing that ignition of flammable vapors caused a fatal explosion. Copy supplied.

February 14, 2011: press release announcing no criminal charges would be filed related to fatal motor vehicle accident involving an elderly operator who suffered a stroke causing his car to lose control. Copy supplied.

Press Conferences:

November 5, 2013: press conference announcing the arrest and arraignment of an individual being charged with the stabbing murder of a young woman in the summer of 2011 in Chicopee. Video available at: http://www.wggb.com/2013/11/05/arrest-made-in-amanda-plasse-case/

July 15, 2013: press conference announcing the investigation into the abduction and murder of a young boy in 1992 determined the person responsible was presently serving a life sentence for a similar offense. I have no notes, transcripts 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 never held judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials:	___%
bench trials:	___% [total 100%]
civil proceedings:	___%
criminal proceedings:	___% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have never held judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

District Attorney, Hampden District (Massachusetts): Elected (2011 – present).

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify

the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Committee to Elect Mark G. Mastroianni for District Attorney (2010), formed to raise funds and organize campaign activities.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I never served as clerk to a judge after graduating from law school.

ii. whether you practiced alone, and if so, the addresses and dates;

January – April 1991
Law Office of Mark G. Mastroianni
Court Square Building
31 Elm Street
Springfield, MA 01103
Attorney

1995 – 2000
Affiliation with Law Office of Vincent Bongiorni
101 State Street, Third Floor
Springfield, MA 01103
Attorney

2000 – 2011
Law Office of Mark G. Mastroianni
95 State Street, Suite 309
Springfield, MA 01103
Attorney

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1990 – 1991
Hampden District Attorney's Office
50 State Street
Springfield, MA 01103
Assistant District Attorney

January – April 1991
Law Office of Mark G. Mastroianni
Court Square Building
31 Elm Street
Springfield, MA 01103
Attorney

1991 – 1995
Hampden District Attorney's Office
50 State Street
Springfield, MA 01103
Assistant District Attorney

1995 – 2000
Affiliation with Law Office of Vincent Bongiorni, worked in return for use of office space and referrals.
101 State Street, Third Floor
Springfield, MA 01103
Attorney

2000 – 2011
Law Office of Mark G. Mastroianni
95 State Street, Suite 309
Springfield, MA 01103
Attorney

2011 – present
Hampden District Attorney's Office
50 State Street
Springfield, MA 01103
District Attorney

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

I worked as an Assistant District Attorney for two different administrations between 1990 and 1995. My area of practice was purely criminal prosecution during that time with the exception of

a four-month period in 1991 after an election related change in District Attorney administrations. From January to April 1991, I engaged in a private practice while waiting to be re-hired as a prosecutor by the newly elected District Attorney. I focused on court-appointed criminal defense, minor business contract matters and real estate. From 1995 to 2011, I returned to private practice, focusing on criminal defense work. I also had some involvement in other general law practice areas including personal injury, real estate and estate planning. From January 2011 to present, as the elected District Attorney for one of eleven districts in Massachusetts, my area of practice has been criminal prosecution.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Both in my current practice as the District Attorney for Hampden and in my previous practice as an Assistant District Attorney for Hampden, my client has been the Commonwealth of Massachusetts. In private practice, starting in 1995, my criminal defense specialization included representing indigent persons charged with crimes, primarily through court appointments. I continued to do public defender appointed work throughout my private practice career, but I transitioned to a majority of private paying clients by 2000. While primarily having a private paying cliental, I was also appointed to the Commonwealth's Committee for Public Counsel Services' list for homicide cases, as well as to the Federal panel in the District of Massachusetts for representation of indigent defendants.

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.

Over my entire career I have remained heavily focused on litigation, which has comprised approximately 90 percent of my practice. While employed as an Assistant District Attorney and then in private practice, I appeared in court at least one or more times each day on multiple cases. Presently, as District Attorney, my actual time in court has been drastically reduced from my years in private practice. Administrative responsibilities of my current position, since January 2011, have required my court appearances to be reduced to three or four times per month. However, I maintain a trial caseload and have litigated five jury trials to completion since being elected in 2011.

i. Indicate the percentage of your practice in:
   1. federal courts: 25%
   2. state courts of record: 75%
   3. other courts: 0%
   4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 5%
   2. criminal proceedings: 95%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have litigated approximately 200 cases to verdict as sole or chief counsel. Among the jury cases that I have tried to verdict, I have served as the prosecutor in five murder trials, and the defense attorney in three murder trials. In addition to the numerous major felony trials in superior court and felony and misdemeanor trials in the Commonwealth's district courts, I have served as defense attorney in eight jury trials in federal court and I have made seven appearances at the Commonwealth's appellate courts.

i. What percentage of these trials were:
   1. jury: 75%
   2. non-jury: 25%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never appeared before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Commonwealth v. Kirkland*, Docket No. 11-044 (Hampden County Superior Court June 2013), Judge Tina Page.

I was the lead prosecutor in this matter, which resulted in convictions for murder in the first degree, multiple counts of armed assault with intent to murder, and weapons charges. The defendant had targeted a barber for a mid-day shooting while the shop was open for business and full of people. The person sitting in the barber's chair was killed when hit by multiple bullets. The barber was seriously wounded but survived. The defendant escaped the scene and was found hiding one block away in the trunk of car. The defendant emerged and shot two police officers wearing protective vests. The case involved detailed ballistics evidence, weapons, bullet, and shell casing comparisons from multiple weapons. There also was a challenge to the photo array procedures used and to how scientific forensic evidence was collected and interpreted. The defendant espoused a third party culprit theory, with the challenge to the identification of the shooter at that scene being a central issue.

Opposing Counsel: Andrew Klyman
Nikolas Andreopoulos
Committee for Public Counsel Services
101 State Street
Springfield, MA 01103
(413) 732-3107

2. *Commonwealth v. Bell*, Docket No. 07-0211 (Hampden County Superior Court December 2012), Judge John Ferrara.

I was the lead prosecutor in this matter, which resulted in a guilty verdict after trial for first degree murder by premeditation, felony murder, and extreme atrocity. This was the retrial of a case that had been reversed on appeal on issues of jury instructions and the law on first degree felony murder. The defendant filed motions to suppress challenging the voluntary nature of statements he made when he was suffering from his own burn injuries. There were detailed forensic evidence and testimony specifically relating to fire ignition and spreading. Both sides presented expert witnesses relative to injuries on both victim and defendant. The primary

focus of the defense was on the collection of evidence and integrity of techniques used by investigators to make conclusions.

Opposing Counsel: Donald Frank
95 State Street
Springfield, MA 01103
(413) 733-2898

3. *Commonwealth v. Denson*, Docket No. 10-369 (Hampden County Superior Court October 2011), Judge Peter Velis (retired).

I was the lead prosecutor in this matter, which resulted in a guilty verdict after trial of first degree murder by premeditation and extreme atrocity and cruelty. The conviction is presently being appealed. This case involved a young man being stabbed in the throat at a crowded party. There were significant identification issues because the eyewitnesses gave primarily general clothing descriptions that could have matched a number of individuals at the party. There was detailed video enhancement evidence from a surveillance tape made at a neighboring convenience store. There was extensive testimony regarding evidence collection and examination, including DNA. Forensic issues included blood pattern analysis, evidence preservation and collection issues. The prosecution used new courtroom technology equipment for the presentation of the video surveillance evidence. Several experts were called by the prosecution and defense on various identification, scientific, forensic and medical issues.

Opposing Counsel: Harry Miles
77 Pleasant Street
Northampton, MA 01060
(413) 586-8218

4. *United States v. Crooker*, Docket No. 09-cr-30017-MAP (District of Massachusetts (Springfield) July 2010), Judge Michael Ponsor and Magistrate Judge Kenneth Neiman.

I was defense lead trial counsel in this matter, which resulted in a not guilty verdict after jury trial as to the charges of unlawful possession of firearms and ammunition by a user of controlled substances but a guilty verdict as to possession of marijuana. These charges were filed after an ongoing FBI investigation of defendant's uncle and father resulted in his residence being searched pursuant to a warrant. The investigation centered on suspicion and evidence of defendant's uncle and father being connected with biological weapons as well as firearms and explosives. The defense successfully argued for the use of Grand Jury testimony of a prosecution witness who was deceased but had testified relative to exculpatory issues. A motion to suppress relative to the warrant, its scope and defendant's

statements was unsuccessfully litigated by the defense. Although the defendant was acquitted on the more substantial charge, he appealed his conviction on possession of marijuana. All suppression issues were reviewed in the decision which affirmed the simple possession of marijuana conviction. 688 F.3d 1 (1st Cir. 2012).

Opposing Counsel: AUSA Kevin O'Regan
U.S. Attorneys Office
300 State Street, Suite 230
Springfield, MA 01105
(413) 785-0142

5. *Commonwealth v. Dominguez*, Docket No. 05-1325 (Hampden County Superior Court May 2007), Judge Brian McDonald (retired).

I was defense lead trial counsel in this matter, which resulted in a not guilty after jury trial as to the first degree murder charge. This case involved the prosecution for first degree murder of the defendant who was with a group of friends near a crowded area where a shooting resulted in someone being struck and killed. There were co-defendants involved and numerous witnesses relative to identification and circumstances surrounding the incident which led to shots being fired. The defense focused on contradictory eyewitness descriptions and testimony. There was detailed ballistics and firearms expertise issues that were litigated relative to the ability to make conclusions regarding the defendant's involvement.

Opposing Counsel: Brett Vottero
1350 Main Street
Springfield, MA 01103
(413) 886-0400

Counsel for co-defendant: (current) Judge Margaret Guzman
Worcester District Court - Dudley Division
279 West Main Street
Dudley, MA 01571
(508) 943-7123

6. *United States v. Zayas*, Docket No. 05-cr-30012-RGS (District of Massachusetts (Boston) June 2007), Judge Nancy Gertner (retired),

I was defense lead trial counsel in a matter that resulted in a not guilty verdict after trial on one indictment with guilty plea on remaining indictments. The defendant was charged after a search warrant was executed at a location that he was connected to for purposes of storing drugs. The defendant gave a statement after being arrested and *Miranda*

issues relative to the admissibility of the statement were litigated. The defendant entered guilty pleas on multiple drug distribution charges, as well as possession of a firearm and ammunition. The defendant went to trial on the single charge that he had allegedly used the seized firearm in furtherance of his drug distribution, which carried a significant penalty. The defense successfully argued to the jury that the firearm possessed was not connected with drug distribution.

Opposing Counsel: AUSA Thomas Kanwit
U.S. Attorneys Office
One Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

7. *United States v. Moorer*, Docket No. 05-cr-30057-MAP (District of Massachusetts (Springfield) September 2007), Judge Michael Ponsor and Magistrate Judge Kenneth Neiman.

I was the defense lead trial counsel in a matter that resulted in a not guilty verdict after trial on the charge of possession with intent to distribute cocaine base. In this matter, if convicted, the defendant would have been subject to a life-sentence based on the Government's filing of a notice of qualifying prior convictions. The prosecution's case was based on a combined local and federal law enforcement investigation into drug sales in a specific area. The police claimed an ability to make a positive identification of the defendant based on their surveillance and observations of street level drug sales. The defense challenged the surveillance techniques used by law enforcement, as well as the identification procedures utilized when another officer was the identifying witness. The defense raised issues relative to the bias of local police involved in the investigation based on their prior history with defendant.

Opposing Counsel: Kevin O'Regan
U.S. Attorneys Office
300 State Street, Suite 230
Springfield, MA 01105
(413) 785-0142

8. *Commonwealth v. Rodriguez*, Docket No. 99-521 (Hampden County Superior Court May 2000), Judge MaryLou Rup.

I was the defense lead trial counsel in a matter that resulted in a not guilty verdict after trial on a first degree murder charge. This case involved allegations of a gang and drug related shooting in front of a group of people. The prosecution's evidence included voice recording and other material gathered from wire interceptions. Other evidence included

statements of the defendant that were categorized as an admission. Civilian testimony was offered against the defendant under cooperation agreements, and the defense focused on the integrity of such testimony under the circumstances. There was detailed ballistics and forensic evidence offered relative to the distance and positioning of the firearm, including analysis of powder and contact wounds caused by a close distance firing.

Opposing Counsel: Laurel Brandt
Hampden District Attorney's Office
1500 Main Street
Springfield, MA 01103
(413) 505-5966

9. *United States v. Moriarty*, Docket No. 96-cr-30055 (District of Massachusetts (Springfield) 1996), Judge Frank Freedman (deceased) and Magistrate Judge Kenneth Neiman.

I was the lead counsel for the defendant and replaced a prior attorney who withdrew after the arraignment in this matter. The case resulted in the most serious charge being dismissed and a plea disposition on remaining charges. The defendant was employed at the Hampden County Hall of Justice and charged with intercepting voicemail of various employees including the staff of the District Attorney's Office. The defendant was also alleged to have been conducting an illegal gambling business out of the Hall of Justice. The case received significant media attention and was subject to a defense challenge as to the legitimacy of three indictments charging wiretap, voicemail interception, and obstruction of justice. The defendant prevailed on a motion to dismiss the most serious wiretap charge and negotiated a further dismissal of the voicemail interception charge.

Opposing Counsel: Jeffrey Kinder, Esq. (currently
Massachusetts Superior Court Judge)
Hall of Justice
50 State Street
Springfield, MA 01103
(413) 748-7620

10. *Commonwealth v. Allard*, Docket No. 94-1953 (Hampden County Superior Court April 1995), Judge John J. Moriarty (deceased),

I was the lead prosecutor in this matter, which resulted in a guilty verdict after trial of first degree murder by way of extreme atrocity and cruelty and premeditation. This case involved the investigation into the disappearance of a teenage boy who had shown an interest in the girlfriend

of another. The victim was reported missing by his parents after not returning home from a job interview at a local business. The investigation revealed that the purported job interview was used by the defendant to lure the victim to an area where he could be attacked. A vehicle used, as well as a pipe used as the weapon, were located in Connecticut, but the body was ultimately recovered in the woods near the supposed job interview. The issues included state jurisdiction between Massachusetts and Connecticut. as well as use of dental records to identify the victim. Forensics included blood spatter evidence, blood typing and matching, hair sample analysis, and fingerprint and palm-print examination. Among the witnesses used by the prosecution was an individual who assisted in hiding the body and was later prosecuted for that involvement. The conviction was affirmed on appeal.

Opposing Counsel: Linda Thompson
1331 Main St.
Springfield, MA 01103
(413) 739-2100

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 career I was fortunate enough to be involved in several significant legal matters. One was writing and arguing before the State Supreme Judicial Court on a case taken up from the Appeals Court in order to decide an important legal issue. This case was my first experience doing appeals work as a prosecutor. The matter set precedent which remains very relevant today on the issue of securing a premises before a search warrant is authorized as a way to prevent destruction of evidence; *Commonwealth v. Blake*, 413 Mass 823 (1992).

I have had multiple meaningful legal experiences litigating many murder cases over my career. These cases have allowed me to develop an expertise and appreciation for forensic sciences and how modern technology can be used in criminal investigations. I have used modern technology to successfully defend cases in my career. I have also used technology to open and conduct a re-examination of cold case murders as District Attorney. Recently, I have started a program to apply modern DNA extraction and analysis technology to unsolved cold cases. This resulted in solving and making an arrest relative to the murder and rape of an 89-year-old woman in 1991. Several other leads have been discovered in other cold cases using this same technology.

It has been very significant over the last several years that I have established or modified units in the District Attorney's Office to address child sexual abuse, domestic and elder abuse, and unsolved homicides. Numerous initiatives have been started for positive community impact including addressing middle and high school students on issues of drugs, violence and other things that affect their school and life experiences. I was able to use a program allowing a portion of seized drug forfeiture money to be donated to qualified non-profits doing community-based drug deterrent education and rehabilitation work in neighborhoods at high risk. The unique experience of being involved in both legally and community-based matters has been a rewarding and important legal activity for me.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no future benefits 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 plans to pursue outside commitments other than holding open the possibility to consider teaching one or two college or law school courses.

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 parties appearing were former clients from my private practice, a conflict or appearance of one would arise. Similarly, if individuals appeared who were part of any investigation that I was involved in as District Attorney, an obvious conflict assessment would have to be made. Dealing with a potential conflict situation would require a case by case analysis of the circumstances creating the actual or apparent conflict. I would resolve any such issues through strict adherence to the standard of 28 U.S.C. §455 and the Code of Conduct for United States Judges.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would consult and apply the standards under the code of the Code of Conduct for United States Judges, 28 U.S.C. §455, and any and all other laws, rules, and practices governing such circumstances. As needed I would consult with judicial colleagues.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my entire career in private practice I routinely did pro bono work including acceptance of court appointed assignments on a pro bono basis when special circumstances developed in court. I volunteered to take cases on a pro bono basis when there was no public defender available or a case was identified by a Judge as having a certain complexity. At one point in my private practice the Bar Advocate/Public Defender group refused to accept cases during a dispute with the State over their contract. I volunteered to take cases, many on a pro bono basis, as individuals were not being assigned attorneys. In my private practice I would accept clients regularly who had no financial resources but had some

compelling legal issue that needed to be addressed.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In March 2013, Senator Elizabeth Warren announced the formation of an advisory committee to make recommendations for the district court vacancies in Massachusetts. On April 14, 2013, I submitted my application. On May 13, 2013, I met with the advisory committee to be interviewed in Springfield, Massachusetts. On June 15, 2013, I met with Senator Warren in Springfield, Massachusetts. Since June 19, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 26, 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
Mastroianni, Mark G.	U.S. District Court for the District of Massachusetts	09/24/2013
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 09/24/2013 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2012 to 09/18/2013
7. Chambers or Office Address		
Hall of Justice Superior Court District Attoneys Office 50 State Street Springfield, Massachusetts, 01103		

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 Trustees member	American International College
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2011	Massachusetts SERS DEFERRED BENEFIT PENSIONPLANS (NO CONTROL)
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Mastroianni, Mark G.	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	COMMOMWEALTH OF MASSACHUSETTS SALARY	$109,274.33
2.	2012	COMMONWEALTH OF MASSACHUSETTS SALARY	$145,733.16
3.	2011	COMMONWEALTHOF MASSACHUSETTS SALARY	$145,733.16
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 Mastroianni, Mark G.	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 4 of 6	**Name of Person Reporting** **Mastroianni, Mark G.**	**Date of Report** 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)	 (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	 (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	 (2) Date mm/dd/yy	 (3) Value Code 2 (J-P)	 (4) Gain Code 1 (A-H)	 (5) Identity of buyer/seller (if private transaction)
1. UNITED BANK CASH ACCOUNTS	A	Interest	L	T					
2. FIDELITY UFUND COLLEGE SAVINGS PORTFOLIO 2012	A	Int./Div.	J	T					
3. FIDELITY UFUND COLLEGE SAVINGS PORTFOLIO 2015	A	Int./Div.	J	T					
4. T.ROWE PRICE RETIREMENT 2030 FUND	D	Int./Div.	M	T					
5. T.ROWE PRICE RETIREMENT STRATEGIC INCOME FUND	A	Int./Div.	J	T					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$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 5 of 6	Name of Person Reporting Mastroianni, Mark G.	Date of Report 09/24/2013

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Mastroianni, Mark G.	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/ Mark G. Mastroianni

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		84	204	Notes payable to banks-secured (autos)		30	938
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		234	321	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	684
Due from relatives and friends		25	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		160	901
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		85	000				
Cash value-life insurance							
Other assets itemize:							
Massachusetts SERS		42	660				
				Total liabilities		202	523
				Net Worth		718	662
Total Assets		921	185	Total liabilities and net worth		921	185
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	
Fidelity UFund College Savings Plan Portfolio 2012	$ 5,391
Fidelity UFund College Savings Plan Portfolio 2015	1,309
T. Rowe Price Retirement 2030 Fund	214,804
T. Rowe Price Strategic Income Fund	12,817
Total Listed Securities	$234,321

AFFIDAVIT

I, Mark G. Mastroianni, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9/27/13
(DATE)

(NAME)

(NOTARY)

KATHLEEN ANN CORTESE
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires Nov. 7, 2014

Mark G. Mastroianni

January 6, 2014

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire that I previously filed in connection with my nomination to be a United States District Judge for the District of Massachusetts. Incorporating the additional information below, I certify that the information contained in those documents and items is, to the best of my knowledge, true and accurate.

12(c):

December 13, 2013: Letter announcing the findings of an investigation into a Police Department paying a civilian employee for hours not worked. Copy supplied.

12(d):

November 6, 2013: Guest Speaker at a community event sponsored by Hampden District Attorney's Office, the Hampden County Sheriff Department, and Learn to Cope, Springfield, Massachusetts. The event was meant to raise awareness, educate, and provide resources for individuals and their families affected by substance abuse. I have no notes, transcript or recording. The address of the Hampden District Attorney's Office is 50 State Street, Springfield, MA 01103.

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,

Mark G. Mastroianni

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

MARK G. MASTROIANNI
DISTRICT ATTORNEY

COMMONWEALTH OF MASSACHUSETTS
HAMPDEN DISTRICT
HALL OF JUSTICE

50 STATE STREET
SPRINGFIELD, MASSACHUSETTS 01102-0559

OFFICE OF THE DISTRICT ATTORNEY

SUPERIOR COURT OFFICE
TEL: 413-747-1000
FAX: 413-781-4745

SPRINGFIELD DISTRICT COURT OFFICE
TEL: 413-747-1001
FAX: 413-747-5628

December 13, 2013

Chief Russell Sienkiewicz
Northampton Police Department
29 Center Street
Northampton, Massachusetts 01060

RE: Captain Scott Savino and
Administrative Employee Marianne Keating

Dear Chief Sienkiewicz:

The State Police Detective Unit assigned to this office has been conducting a work-related financial investigation of Marianne Keating, a civilian employee of the Police Department, and Police Captain Scott Savino. This matter was referred to the Hampden District Attorney's Office due to a potential conflict raised by the Hampshire District Attorney's Office. The investigation included a review of the financial compensation system for civilian employees of the Police Department. Interviews were conducted of both civilian employees and officers within the Department; additionally records were reviewed and an accounting was conducted of the salary and payment history for Marianne Keating. As the Northampton Police Department utilizes a "flex time" compensation system, the inherent flexibility of that system was specifically reviewed relative to how hours worked are monitored and recorded so that actual pay reflects actual time worked. The system of supervisory oversight as well as the signing and verifying of actual time worked was examined.

It is the determination of this office, after full review, there were clear improprieties relative to the compensation realized by Marianne Keating for the hours that she actually worked since January 2011. While she had a fixed salary that was not exceeded, the investigation focused on her actual hours working not adding up to the time required to justify the salary amount realized. Under the "flex system" any set hours established for her could be substituted

by her coming to work at varying hours as long as the total hours required to be worked every week were satisfied and a supervisor verified in writing that she was actually on the job. The internal process of paying administrative employees and verifying or proving if hours were actually worked under the "flex system" is not a completely clear or concise one. There are facts present which potentially could be proven to support criminal charges relative to a larceny scheme where Ms. Keating was paid for hours that were actually not worked. Captain Savino of the Northampton Police Department was involved and he was responsible for knowingly verifying a small portion of the unworked hours at issue for Ms. Keating. The remainder of pay for unworked hours was realized through Ms. Keating having payments processed without verification of actual work. The total amount for unworked hours being paid to Ms. Keating has been determined to be $18,000.00.

The level of proof required to pursue criminal charges is more substantial than what is necessary for addressing this matter administratively and/or by means of a civil action. An agreement has been reached between the City and the two individuals being investigated which included full payback of money lost and also what was spent by the City in dealing with this matter. The agreement also addresses the employment consequences for the individuals involved. No other individuals were found to be implicated to any degree as being involved in this matter. I believe that administrative handling is appropriate under the circumstances and, therefore, decline to further pursue the possibility of this factual scenario supporting the standard of proof necessary for pursuing criminal charges.

Sincerely,

Mark G. Mastroianni
Hampden District Attorney

lcd

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
Mastroianni, Mark G.	U.S. District Court for the District of Massachusetts	01/06/2014
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 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/15/2013
7. Chambers or Office Address		
Hall of Justice Superior Court District Attorneys Office 50 State Street Springfield, Massachusetts, 01103		

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 Trustees member	American International College
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☐ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.	2011	Massachusetts SERS DEFERRED BENEFIT PENSIONPLANS (NO CONTROL)
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Mastroianni, Mark G.	Date of Report 01/06/2014

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	COMMOMWEALTH OF MASSACHUSETTS SALARY	$142,545.81
2.	2012	COMMONWEALTH OF MASSACHUSETTS SALARY	$145,733.16
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.	2013	Law office of Attorney Susan McFarlin Wages
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 Mastroianni, Mark G.	Date of Report 01/06/2014

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 Mastroianni, Mark G.	Date of Report 01/06/2014

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. UNITED BANK CASH ACCOUNTS	A	Interest	L	T					
2. FIDELITY UFUND COLLEGE SAVINGS PORTFOLIO 2012	A	Int./Div.	J	T					
3. FIDELITY UFUND COLLEGE SAVINGS PORTFOLIO 2015	A	Int./Div.	J	T					
4. T.ROWE PRICE RETIREMENT 2030 FUND	D	Int./Div.	M	T					
5. T.ROWE PRICE RETIREMENT STRATEGIC INCOME FUND	A	Int./Div.	J	T					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)

3. Value Method Codes (See Column C2)
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Mastroianni, Mark G.	Date of Report 01/06/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Mastroianni, Mark G.	Date of Report 01/06/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature: **s/ Mark G. Mastroianni**

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		66	732	Notes payable to banks-secured (autos)		28	394
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		231	739	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		7	376
Due from relatives and friends		25	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		159	890
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		85	000				
Cash value-life insurance							
Other assets itemize:							
Massachusetts SERS		46	634				
				Total liabilities		195	660
				Net Worth		709	445
Total Assets		905	105	Total liabilities and net worth		905	105
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Fidelity UFund College Savings Plan Portfolio 2015	$ 1,594
T. Rowe Price Retirement 2030 Fund	217,142
T. Rowe Price Strategic Income Fund	13,003
Total Listed Securities	$ 231,739

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Leslie Ragon Caldwell

2. **Position**: State the position for which you have been nominated.

   Assistant Attorney General, Criminal Division, U.S. Department of Justice

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Morgan Lewis & Bockius
   101 Park Avenue
   New York, NY 10178

4. **Birthplace**: State date and place of birth.

   Steubenville, OH; 1957

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.

   George Washington University Law School, August 1979-May 1982, J.D. May 1982

   Pennsylvania State University, August 1975-May 1979, B.A. May 1979

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   September 2004-Present
   Partner
   Morgan Lewis & Bockius
   101 Park Avenue
   New York, NY 10178

   August 2004-January 2012 (Estimated)
   Member
   Ethics Committee of Board of Directors of U.S. Olympic Committee
   1 Olympic Plaza
   Colorado Springs, CO 80909

(Not compensated)

May 2004-August 2004
Special Assistant to the Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

January 2002-May 2004
Director
Enron Task Force
Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Washington, D.C. 20005

May 2001 (Estimated)-January 2002
Chief
Criminal Division
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

September 2001-January 2002
Terrorism Coordinator
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

February 2000-August 2001 (Estimated)
Chief
Securities Fraud Section
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

January 1999-May 2001 (Estimated)
Deputy Chief
Criminal Division
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

January 1999-February 2000
Chief
Economic Crimes Section
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

August 1987-December 1998

Assistant U.S. Attorney
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

August 1996 (Estimated)-December 1998
Senior Trial Counsel
Business & Securities Fraud Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

February 1994-August 1996 (Estimated)
Chief
Violent Criminal Enterprises Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

March 1993 (Estimated)-February 1994
Assistant U.S. Attorney
Special Prosecutions Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

September 1991 (Estimated)-March 1993 (Estimated)
Deputy Chief
General Crimes Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

December 1988 (Estimated)-September 1991 (Estimated)
Assistant U.S. Attorney
Narcotics Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

August 1987-December 1988 (Estimated)
Assistant U.S. Attorney
General Crimes Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

May 1984 (Estimated)-July 1987
Associate
Cadwalader, Wickersham & Taft
One World Financial Center
New York, NY 10281

September 1982-May 1984 (Estimated)
Associate
Spengler Carlson Gubar and Brodsky
280 Park Avenue
New York, NY 10029
(Firm no longer exists)

May 1981 (Estimated)-August 1981
Summer Associate
Sidley & Austin
1501 K Street, N.W.
Washington, D.C. 20005

June 1980-August 1980
Summer Intern
U.S. Interstate Commerce Commission
Twelfth Street and Constitution Ave., N.W.
Washington, D.C. 20423
(Agency no longer exists)

June 1979-August 1979
Bookkeeper
Koppers Co. Follansbee Tar Plant
100 Koppers Road
Follansbee, WV 26037

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 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.

National Law Journal 50 Most Influential Women Lawyers in America, 2007
Attorney General's Award for Exceptional Service as Director of Enron Task Force, 2006
New York Super Lawyer, 2006-2011
Attorney General's Award for Fraud Prevention, 2000
Attorney General's John Marshall Award for Trial of Litigation, 1991
Director's Award for Superior Performance, 1994, 1996
New York City Bar Association Henry L. Stimson Medal for Outstanding Public Service by an AUSA, 1994
Articles Editor, George Washington Law Review
JD, cum laude
BA, summa cum laude
Phi Beta Kappa

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, Member, January 2007-Present
American Bar Association National White Collar Crime Institute, Organizing Committee, 2004-2011
Association of Bar of City of New York, Member, May 1997-November 2010
Association of Business Trial Lawyers of Northern California, Member, Board of Governors, 2000-2001

10. **Bar and Court Admission**: Answer each part separately.

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, December 1983
California State Bar (Admission pending)

I have had no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

U.S. District Court, Southern District of New York, 1987
U.S. District Court, Eastern District of New York, 1987
U.S. Court of Appeals for the Second Circuit, 1988

I have had no lapses in membership.

11. **Memberships**: Answer each part separately.

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.

Member, Ethics Committee of Board of Directors of U.S. Olympic Committee, August 2004-January 2012 (Estimated)

Member, Phi Beta Kappa, 1978-Present
Member, Alpha Phi Fraternity, 1977-Present
Member, Metropolitan Museum of Art, Various times including at present.
Member, Museum of Modern Art, 2012
Member, Iron Oars Team, Bay Area Whaleboat Racing Association, 1999-2002

I have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds and

did not otherwise participate in programmatic activities although the organization may label me a member.

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None to my knowledge, with the exception that membership in the Alpha Phi Fraternity is restricted to women.

12. Published Writings and Public Statements: Answer each part separately.

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify any titles, publishers and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

Manhattan District Attorney Promises Broader Use of the Martin Act in Combating Financial Fraud and Vows to Fight for Tougher Penalties, with Martha B. Stolley and Kelly A. Moore, Mondaq, February 2, 2011 (Copy Supplied)

The UK Bribery Act Continues to Keep Businesses on Edge as They Await Its Implementation, Morgan Lewis LawFlash, January 18, 2011 (Copy Supplied)

Proposed Rewards for FCPA Whistleblowers Raise Risk for Multinational Corporations, Morgan Lewis LawFlash, April 15, 2010 (Copy Supplied)

Department of Justice Announces Key Changes to the Principles of Federal Prosecution of Business Organizations, Morgan Lewis LawFlash, July 15, 2008 (Copy Supplied)

Recent Delaware Decision Orders Production of Communications Among Independent Counsel, Special Committee, and Full Board of Directors in Stock Options Investigation, Morgan Lewis LawFlash, December 6, 2007 (Copy Supplied)

Different Rules for Different Suspects, Cal. Law Review, November 21, 2007; same article also published as *DOJ's Inconsistent Publicizing of Suspects (Not Accused)*, New York Law Journal, November 14, 2007 (Copy Supplied).

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If

you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following, which, except where indicated, were to the best of my knowledge neither recorded nor transcribed, and having spoken without prepared text, I did not retain any notes or outlines:

Panelist, Office Depot Conference
Success Strategies for Businesswomen (Copy of Newspaper Coverage Provided)
Boca Raton, FL
February 24, 2003

Panelist, ABA National Institute on White Collar Crime
Securities Fraud Panel
Miami, FL
March 2004

Speaker, ABA Annual Meeting
White Collar Crime
Kona, Hawaii
September 2004

Panelist, ABA General Counsel Conference
Corporate Crime and Investigations
Palm Beach, FL
December 11, 2004

Panel Moderator, ABA White Collar Crime Committee
Philadelphia Chapter – Young Lawyer Division

"The Driving Forces Behind the Government's Corporate Prosecutions in the Post-Enron Era"
Philadelphia, PA
February 25, 2005

Panel Moderator, ABA National Institute on White Collar Crime
"What to Do When the World Is Watching: Handling High Profile Cases"
Las Vegas, NV
March 4, 2005

Panelist, New York Council of Defense Lawyers
White Collar Crime
New York, NY
March 11, 2005

Speaker, Smeal College of Business
Pennsylvania State University
White Collar Crime
University Park, PA
March 31, 2005

Panelist, ABA Section of Litigation Annual Meeting
White Collar Crime
New York, NY
April 20, 2005

Panelist, AdvaMed Conference
"Fraud and Abuse: A Case Study Approach—A (Bad) Day in the Life of a Medical Technology Sales & Marketing Executive"
Hosted by Advanced Medical Technology Association
Philadelphia, PA
April 28, 2005

Panelist, ABA Health Care Fraud Annual Meeting
Health Care Fraud
Palm Springs, CA
May 18, 2005

Speaker, Dallas Bar Association
White Collar Crime
Dallas, TX
June 14, 2005

Panelist, Georgetown Law School Continuing Legal Education Program
"Defending the White Collar Case in and out of Court"
Georgetown Law School
Washington, D.C.
September 22, 2005

Panelist, Los Angeles Bar Association
Securities Fraud and Corporate Internal Investigations
Los Angeles, CA
October 28, 2005

Panelist, Minority Corporate Counsel Association Annual Meeting
"Civil Litigation: Employee Criminal Acts"
Chicago, IL
March 15, 2006

Panelist, Boalt Hall School of Law
University of California at Berkeley
"The Criminalization of Corporate Law"
Berkeley, CA
March 17, 2006

Panelist, American Conference Institute Pharmaceutical Roundtable
"A Question of Confidentiality: Preserving Privilege in Internal Investigations"
New York, NY
April 27, 2006

Panelist, Northern District of California Judicial Conference
White Collar Crime
Santa Cruz, CA
April 28, 2006

Panelist, American Corporate Counsel Association Meeting
Corporate Internal Investigations
Pittsburgh, PA
May 2, 2006

Panelist, ABA National Institute on Health Care Fraud
"Corporate Crime and Compliance"
Ft. Lauderdale, FL
May 18, 2006

Speaker, University of Pennsylvania
The Wharton School
Corporate Crime
Philadelphia, PA
June 14, 2006

Panelist, ABA Annual Meeting
"Deferred Prosecution Agreements"
Honolulu, HI
August 4, 2006

Panelist, ABA National Institute on White Collar Crime
Securities Fraud
San Diego, CA
May 2, 2007

Panelist, Northern District of California Judicial Conference
White Collar Crime
Santa Cruz, CA
May 5, 2007

Panel Moderator, American Conference Institute FCPA Conference
"Dealing with Potential Violations: How to Conduct an Internal Investigation in Challenging Countries"
London, UK
June 14, 2007

Panelist, Association of Business Trial Lawyers of Northern California
"International Criminal Investigations Opportunities and Obstacles"
San Francisco, CA
October 8, 2007

Panelist, ABA National Institute on White Collar Crime
Securities Fraud
Miami, FL
May 6, 2008

Panelist, Northern District of California Judicial Conference
Corporate Crime
Napa, CA
May 3, 2008

Panelist, Santa Clara University
Corporate Ethics
Santa Clara, CA
May 28, 2008

Panel Moderator, ABA National Institute on White Collar Crime
"Securities Enforcement"
San Francisco, CA
March 5, 2009

Panelist, American Corporate Counsel Association Meeting
"Risks and Temptations: Governance Game-Changers in 2010"
Pittsburgh, PA
April 20, 2009

Panelist, ABA National Institute on Securities Fraud
Securities Fraud
Washington, DC
October 15, 2009

Panelist, ABA National Institute on White Collar Crime
White Collar Crime
Miami, FL
February 25, 2010

Speaker, Morgan Lewis Webinar
Foreign Corrupt Practices Act Webinar Series: A Focus on FCPA Investigations
(Copy of Presentation Materials Supplied)
March 4, 2010

Panelist, American Corporate Counsel Association Meeting
Corporate Internal Investigations and Governance

Pittsburgh, PA
April 19, 2010

Speaker, Morgan Lewis Webinar
FCPA Mid-Year Webinar Series: A Focus on FCPA Investigations (Copy of Presentation Materials Supplied)
September 9, 2010

Speaker, Morgan Lewis Webinar
Working with Expert Consultants: Procedures for Controlling Material Non-Public Information (MNPI)
(Copy of Presentation Materials Supplied)
December 2, 2010

Guest Speaker, Stanford Law School
The Enron Prosecution
Palo Alto, CA
February 3, 2011

Speaker, Morgan Lewis Webinar
The FCPA and the Dodd-Frank Act (Program 2, the 2011 Foreign Corrupt Practices Act Webinar Series) (Copy of Presentation Materials Supplied)
March 8, 2011

Panelist, Minority Corporate Counsel Annual Meeting
Corporate Internal Investigations
Chicago, IL
March 17, 2011

Panelist, ABA Section of International Law Spring Meeting
"International Investigations: Too Fast Too Furious"
Washington, DC
April 6, 2011

Panelist, American Corporate Counsel Association Meeting
"New Rules of the Game – Corporate Governance Challenges 2011"
Pittsburgh, PA
April 12, 2011

Panelist, United States Sentencing Commission Annual Conference
Organizational Sentencing Guidelines
San Diego, CA
May 20, 2011

Panelist, National Association of Criminal Defense Lawyers Conference
Corporate Crime
Lake Tahoe, NV
June 16, 2011

Speaker, Morgan Lewis Webinar
Foreign Corrupt Practices Act Update (Audio recording available online at http://www.morganlewis.com/index.cfm/fuseaction/publication.detail/publicationid

[illegible]; Copy of Presentation Materials Supplied)
November 17, 2011

Speaker, Morgan Lewis Webinar,
2011 FCPA Year in Review (Audio recording available online at http://www.morganlewis.com/index.cfm/fuseaction/publication.detail/publicationID/35e06ddb-524f-465c-bbdb-36b0b4e46217)
February 2012

Panelist, ABA National Institute on Internal Corporate Investigations
"The Nuts and Bolts of Internal Investigations"
San Francisco, CA
May 18, 2012

Panelist, American Conference Institute FCPA Boot Camp
"In-House Think Tank: Adequate Standards and Global Structures for Anti-Corruption Compliance Programs in a Changing Enforcement Environment"
Berkeley, CA
October 2, 2012

Panelist, American Corporate Counsel Association Meeting
Corporate Internal Investigations
Pittsburgh, PA
April 26, 2013

Panelist, United States Sentencing Commission Annual Conference
Organizational Sentencing Guidelines
New Orleans, LA
June 15, 2013

Speaker, Legal Outreach
Prosecutions in New York
New York, NY 10178
July 13, 2013

Panelist, ABA Annual Meeting, White Collar Crime Section
"Internal Investigations in a Time of Enhanced Enforcement"
San Francisco, CA
August 9, 2013

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews given, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

"10 Years After the Collapse: Views Clash on Legacy of Enron: Some Battle the Negatives, While Others Say Image Deserved," Tom Fowler, The Houston Chronicle, December 4, 2011. Copy Supplied.

"Enron Lessons Lost, So History Repeats: Observers Say the Collapse of 2008 Had Same Ingredients," Tom Fowler, The Houston Chronicle, December 2, 2011. Copy Supplied.

"10 Years After the Collapse: British Bankers' Guilty Pleas 'Put an End to a Nightmare,'" Tom Fowler, The Houston Chronicle, November 27, 2011. Copy Supplied.

"Blowing the Whistle to Pay Off: In a Move that Could Prove Far-Reaching, Rewards for Exposing Fraud Now Extended to the Private Sector," David G. Savage, Chicago Tribune, July 26, 2010. Copy Supplied.

"Law Sets Payday for Wall Street Whistle-Blowers: In a Move that Could Prove Far-Reaching, Rewards for Exposing Fraud Now Extended to the Private Sector," David C. Savage, The Baltimore Sun, July 24, 2010. Copy Supplied

"Finance Reform Law to Reward Tipsters: In a Move that Could Prove Far-Reaching, Whistle-blower Policy has Been Extended to the Private Sector," David C. Savage, Los Angeles Times, July 23, 2010. Copy Supplied

"Financial Reform Law to Reward Fraud Tipsters," David C. Savage, Chicago Tribune, July 22, 2010. Copy Supplied.

"Clarity on Insider Trading Often Elusive: Wall Street is Watching Fund Case for Clues on Where the Line is Drawn," Alex Berenson, The International Herald Tribune, October 21, 2009. Copy Supplied.

"A Thin Line Separates Insider Trading and Legal Research," Alex Berenson, The New York Times, October 20, 2009. Copy Supplied.

"Federal Crackdown on Insider Trading," On the Trail with Barack Obama, October 19, 2009. Copy Supplied.

"Knotty Problems Hang Over Nominee for Top Legal Post," Joanna Chung & Edward Luce, Financial Times, January 15, 2009. Copy Supplied.

"Collapsing Firms' GCs in Spotlight: In-house Counsel; Potential Actions Echo Backdating Era, but Difficult to Prove," Amanda Bronstad, The National Law Journal, November 17, 2008. Copy Supplied.

"A Labyrinthine Path to Justice: FBI, SEC Lead Complex Probe of Housing Crisis," Carrie Johnson, The Washington Post, February 14, 2008. Copy Supplied.

"Corporate Crackdown Not Netting Lots of Jail," Bloomberg News, Pittsburgh Tribune Review, December 23, 2007. Copy Supplied.

"Lawyers 'Fly Blind' on Options Penalties," Pamela A. MacLean, The National Law Journal, August 20, 2007. Copy Supplied.

"Looks Like Eliot's M.O.," The New York Post, July 24, 2007. Copy Supplied.

"Ten Former Federal Prosecutors Talk About Life In The Private Sector," Kelly Niknejad, California Lawyer, June 2007. Copy Supplied.

"Lifestyles of the Rich and Infamous: Alleged Criminal Acts Peaked with Conrad and Barbara Amiel Black's spending, Records Show," Patricia Hurtado, The Vancouver Sun, May 26, 2007. Copy Supplied.

"Looks Bad on the Resume," Sherry Karabin, Corporate Counsel, May 1, 2007. Copy Supplied.

"Skilling Embarking on Longest Prison Term in Enron Case," Patrick Condon, Associated Press Financial Wire, December 13, 2006. Copy Supplied.

"Israeli Public Companies Must Take Action on Misconduct," Sharon Wrobel, Jerusalem Post, November 1, 2006. Copy Supplied.

"End of Enron's Saga Brings Era to a Close: Corporate-Crime Enforcement Shifts Focus," Carrie Johnson, The Washington Post, October 25, 2006. Copy Supplied.

"Moving the Market—Executives on Trial: Enron: The Tale of Two Sentencings If Skilling Gets 20 Years in Prison, It'll Show It Hurts Not to Sing to Prosecutors," John R. Emshwiller, The Wall Street Journal, October 19, 2006. Copy Supplied.

"Subway Series Alive After All: The Legal One—Federal Prosecutors in Brooklyn One-Up Prosecutors Across River, Snag More White-Collar Cases," Paul Davies & Peter Lattman, The Wall Street Journal, October 11, 2006. Copy Supplied.

"Fastow Gets Six Years as Judge Calls for Mercy—Plea Deal Had Envisioned A Decade of Imprisonment; Ebbers Also Begins His Time," John R. Emshwiller & John M. Biers, The Wall Street Journal, September 27, 2006. Copy Supplied.

"The Enron Case That Almost Wasn't," Alexei Barrionuevo and Kurt Eichenwald, The New York Times, June 4, 2006. Copy Supplied.

"McAfee GC Fired Over Stock Options: Brewing in the Background is a Possible Bicoastal Tussle between Federal Prosecutors," Petra Pasternak & Justin Scheck, Corporate Counsel, May 31, 2006. Copy Supplied.

"The Enron Verdicts: Trial Fails to Answer Many Questions About a Spectacular Collapse," Rebecca Smith, The Wall Street Journal, May 26, 2006. Copy Supplied.

"Milberg Weiss Weighs Nonprosecution Deal," Justin Scheck, National Law Journal, May 16, 2006. Copy Supplied.

"Enron Prosecutors Aim to Rattle, Not Be Rattled," Alexei Barrionuevo, The New York Times, April 13, 2006. Copy Supplied.

"Enron Trial Puts Focus on Fastow -- Ex-Finance Chief, a Key Witness, Poses Trouble for Both Sides," John R. Emshwiller, The Wall Street Journal Europe, January 30, 2006. Copy Supplied.

"Taking Enron to Task; Government's Prosecutors Are Ambitious, Driven and Accustomed to Winning," Carrie Johnson, The Washington Post, January 18, 2006. Copy Supplied.

"Branches Nationwide," Corporate Counsel, November 2005. Copy Supplied.

"Spreading Franchise: Fraud Cases," Pamela A. MacLean, The National Law Journal, August 22, 2005. Copy Supplied.

"Tracking the Numbers/Street Sleuth: How a Big Securities-Fraud Case Unravels—An Initial 48-Count Indictment Mysteriously Shrinks to a Plea On Two Counts With No Jail Time," John R. Emshwiller, The Wall Street Journal, August 16, 2005. Copy Supplied.

"Women to Watch (A Special Report)—The Watchdogs," Elizabeth Grossman, The Wall Street Journal, November 8, 2004. Copy Supplied.

"CEOs Grumble at Spitzer Style," Ann Davis, Kara Scannell & Charles Forelle, The Wall Street Journal, October 26, 2004. Copy Supplied.

"The Chosen One: After Spending Most of Her Career Putting Drug Dealers and Mobsters Behind Bars, Valerie Caproni Landed One of the Most Coveted Legal Jobs in the Intelligence Community," Robert Vosper, Corporate Legal Times, October 1, 2004. Copy Supplied.

"Enron Prosecutor Joins Morgan, Lewis," The Recorder (California), September 10, 2004. Copy Supplied.

"Respected Federal Prosecutor Joins Morgan Lewis," Eric Cummins, San Francisco Daily Journal, September 9, 2004. Copy Supplied.

"Briefs and Company News" The Toronto Star, September 9, 2004. Copy Supplied.

"Prosecutors Score White-Collar Victories," Alex Berenson, The New York Times, April 4, 2004. Copy Supplied.

"Leader of Justice's Enron Team to Step Down," Kurt Eichenwald, The New York Times, March 2, 2004. Copy Supplied.

"The Nation; Ex-CEO Arraigned in Fraud at Enron," Dana Calvo & David Streitfeld, Los Angeles Times, February 20, 2004. Copy Supplied.

"Fastow Plea Deal Could Boost Cases Against Enron Ex-CEOs," John R. Emshwiller & Thaddeus Herrick, The Wall Street Journal, January 15, 2004. Copy Supplied.

"Enron's No. 3 Exec Pleads Guilty," Howard Witt & Cam Simpson, Chicago Tribune, January 15, 2004. Copy Supplied.

"Ex-Chief Financial Officer of Enron and Wife Plead Guilty," Kurt Eichenwald, The New York Times, January 15, 2004. Copy Supplied.

"Enron Wizard Admits Conspiracy," Carrie Johnson, The Washington Post, January 15, 2004. Copy Supplied.

"Fastow Plea Deal May Boost Cases Against Enron's Ex-CEOs," John R. Emshwiller & Thaddeus Herrick, The Wall Street Journal, January 15, 2004. Copy Supplied.

"Plea Boosts Enron Investigation: Ex-Finance Chief to Help Prosecutors," Kristen Hays, The Herald-Sun, January 15, 2004. Copy Supplied.

"Fastows Plead Guilty to Enron Charges," Dana Calvo & Rivera Brooks, Los Angeles Times, January 15, 2004. Copy Supplied.

"Baby-sitting Bogs Down Enron: A Plea Agreement Shows the Government Needs Andrew Fastow to be part of its Investigation," Joshua Chaffin, The Financial Times (London), January 12, 2004. Copy Supplied.

"Enron Plea Bargain Deal Folds; Lea Fastow Sentencing Guide at Issue," James P. Miller & contributions made by Cam Simpson, Chicago Tribune, January 10, 2004. Copy Supplied.

"Update (2): Lea Fastow's Lawyer Says Plea Talks To Go On," Dow Jones Energy Service, January 10, 2004. Copy Supplied.

"Enron Prosecution Beefs Up Its Team," Mary Flood, Houston Chronicle, September 26, 2003. Copy Supplied.

"The Fall of Enron: Merrill Lynch Accepts Reforms; Firm Makes Deal to Avoid Charges," Mary Flood & Melissa Drosjack, Houston Chronicle, September 18, 2003. Copy Supplied.

"Merrill Bows to Hard-Line Reforms," Edward Iwata, USA Today, September 18, 2003. Copy Supplied.

"Enron Ex-Officer Pleads Guilty Former Treasurer Glisan Becomes First Top Executive To Go to Jail Over Scandal," John R. Emshwiller & Roy R. Reynolds, The Asian Wall Street Journal, September 11, 2003. Copy Supplied.

"Enron Official Heads to Prison; Ex-Treasurer Pleads Guilty, Gets 5 Years," Carrie Johnson & Peter Behr, The Washington Post, September 11, 2003. Copy Supplied.

"Former Enron Treasurer Jailed 5 Years on Conspiracy Charge," Winnipeg Free Press, September 11, 2003. Copy Supplied.

"Former Enron Treasurer Enters Guilty Plea," Kurt Eichenwald, The New York Times, September 11, 2003. Copy Supplied.

"Former Enron Exec Pleads Guilty; Ex-Treasurer Gets 5 Years for Conspiracy," Chicago Tribune, September 11, 2003. Copy Supplied.

"First Ex-Enron Official Jailed; Former Treasurer Sentenced to Five Years After Pleading Guilty to Conspiracy Charge," Kristen Hays, The Globe and Mail (Canada), September 11, 2003. Copy Supplied.

"Ex-Treasurer Is First Enron Officer to Go to Prison—Ben Glisan's Guilty Plea Without Cooperation Deal Closes an Avenue in Inquiry," John R. Emshwiller, The Wall Street Journal, September 11, 2003. Copy Supplied.

"Analysis: Former Enron Treasurer Ben Glisan Pleads Guilty to a Single Count of Conspiracy," Wade Goodwyn, National Public Radio, September 10, 2003. Copy Supplied.

"News Wrap: Ex-Enron Treasurer Pleads Guilty, Gets 5 Years," Dow Jones News Service, September 10, 2003. Copy Supplied.

"Enron Probe Focusing On Executives' Motives," Carrie Johnson & Peter Behr, The Washington Post, September 10, 2003. Copy Supplied.

"Lawyers Find Riches in Companies' Dirty Laundry," Jayne O'Donnell and Greg Farrell, USA Today, June 18, 2003. Copy Supplied.

"Deception, or Just Disarray, at Enron?—Correction Appended," Kurt Eichenwald & John Markoff, The New York Times, June 8, 2003. Copy Supplied.

"A U.S. Push on Accounting Fraud," Alex Berenson, The New York Times, April 9, 2003. Copy Supplied.

"Leading the News: Two at Enron Charged With Fraud—A Move on Midlevel Staff May Aid Broader Inquiry; CFTC Brings Cases, Too," Rebecca Smith, The Wall Street Journal, March 13, 2003. Copy Supplied.

"What They're Reading," Kathleen O'Brien, The New York Times, March 9, 2003. Copy Supplied.

"Enron Prosecutors Expect More Charges This Year," Tom Fowler & Mary Flood, Houston Chronicle, January 6, 2003. Copy Supplied.

"Judge Gives Andersen $500,000 Fine, Probation," Ameet Sachdev, Chicago Tribune, October 17, 2002. Copy Supplied.

"Andersen Hit With Maximum Penalty; Judge Fines Firm $500,000, Puts It on Probation," Lee Hockstader, The Washington Post, October 17, 2002. Copy Supplied.

"Andersen Sentenced to $500,000 Fine, 5 Years of Probation; A Judge Hands Out the Maximum Penalty in the Enron-Related Obstruction Case. The Firm Says It's Not Guilty," Lianne Hart & Jeff Leeds, Los Angeles Times, October 17, 2002. Copy Supplied.

"ODJ Andersen Sentenced -4: Prosecutors Cite Amer Tissue Audit." Dow Jones Commodities Service, October 16, 2002. Copy Supplied.

"Feds Indict Enron CEO Fastow; More Charges Likely Forthcoming." Barbara Shook, Natural Gas Week, October 7, 2002. Copy Supplied.

"Task Force Probing Enron Got Guilty Plea, Witness Cooperation Via Tenacity." Mary Flood and Tom Fowler, Houston Chronicle, September 11, 2002.

"Feds Get First Enron Plea, Wash Trade Probes Move Ahead, Indictments Seen." Power Markets Week, August 26, 2002. Copy Supplied.

"Enron's Many Strands: The Overview; Ex-Enron Official Admits Payments to Finance Chief." Kurt Eichenwald, The New York Times, August 22, 2002. Copy Supplied.

"The Nation; Enron Insider Accuses Boss; Energy: Plea Agreement Implicates Former CFO Andrew Fastow in a Series of Schemes. 'We Will Chase the Money,' a Justice Dept. Official Says." Walter Hamilton & Eric Lichtblau, Los Angeles Times, August 22, 2002. Copy Supplied.

"Former Enron Exec Pleads Guilty To Money Laundering." Dow Jones Energy Service, August 21, 2002. Copy Supplied.

"Enron Task Force Faces Big Pressure to Deliver." Edward Iwata, USA Today, August 21, 2002. Copy Supplied.

"Ex-Enron Exec May Plead Guilty." Edward Iwata, USA Today, August 21, 2002.

"The Other Shoe Has Yet to Drop In Enron Case Charges Could Take Months, As Investigators Sift Through Thousands of Transactions." Jonathan Weil, The Asian Wall Street Journal, August 6, 2002. Copy Supplied.

"The Long Arm of the Law Is Taking a Long Time – Lack of Arrests for Enron Reflects Case's Complexity, Not Absence of Vigilance." Jonathan Weil, The Wall Street Journal Europe, August 6, 2002. Copy Supplied.

"3 Britons Charged In Probe Of Enron; Bank Was Defrauded, Justice Dept. Says." Peter Behr, The Washington Post, June 28, 2002. Copy Supplied.

"3 Bankers Charged in Enron Probe; Britons Siphoned $7.3 Million: U.S.." Chicago Tribune, June 28, 2002. Copy Supplied.

"Former U.K. Bankers Charged With Wire Fraud in Scheme Involving Enron." Dow Jones Business News, June 27, 2002. Copy Supplied.

"Feds Target Enron Executives: Pocketed US $622M: 'We're Going to Get to the Bottom of the Debacle.'" Peter Morton, National Post (Canada), June 18, 2002. Copy Supplied.

"Justice Turns Sights on Enron; Following Andersen Verdict, Prosecutors Are Now Vowing to Pursue Other Wrongdoers," Barrie McKenna, The Globe and Mail (Canada), June 17, 2002. Copy Supplied.

"Enron's Many Strands: The Lawyer: A Big Misunderstanding Or a Calculated Gamble?," John Schwartz & Kurt Eichenwald, The New York Times, June 17, 2002. Copy Supplied.

"The Andersen Verdict; Voices," Los Angeles Times, June 16, 2002. Copy Supplied.

"Jury Finds Andersen Guilty; Auditor Convicted of Obstructing U.S. Investigation of Enron Failure; Firm Says Verdict 'effectively ends' Its Core Practice," E. A. Torriero & Robert Manor, Chicago Tribune, June 16, 2002. Copy Supplied.

"Andersen Guilty Of Obstruction; Accounting Firm Will End Audit Work," Carrie Johnson and Peter Behr, The Washington Post, June 16, 2002. Copy Supplied.

"One Victory, And a Signal," Kurt Eichenwald, The New York Times, June 15, 2002. Copy Supplied.

"The Andersen Verdict; Andersen Found Guilty of Obstruction; Courts: Jury Says Memo from Firm's Lawyer Showed Intent to Hinder a Securities Probe of Enron Officials. Defense Claims Judge Offered Flawed Instructions," Jeff Leeds, Los Angeles Times, June 16, 2002. Copy Supplied.

"Law & Order: Enron Victims Unit," Gary Weiss, BusinessWeek, March 18, 2002. Copy Supplied.

"Enron Case Shapes Up As Tough Legal Fight," Carrie Johnson, The Washington Post, February 18, 2002. Copy Supplied.

"S.F. Prosecutor Chosen to Oversee Enron Probe," Stacy Flint, San Francisco Chronicle, January 21, 2002. Copy Supplied.

"A Specialist in Tough Cases Steps Into the Legal Tangle," The New York Times, January 21, 2002. Copy Supplied.

"Stock Scheme Defrauded Investors of $100 Million," Associated Press, September 7, 2001. Copy Supplied.

"Couple Arrested for Stock Fraud," David Kravets, Associated Press, September 6, 2001. Copy Supplied.

"Feds File High-Tech Fraud Charges," Michael Liedtke, Associated Press, September 6, 2001. Copy Supplied.

"U.S. Charges 2 Tech Execs With Fraud; Probe: Indictment Claims the Former Indus International Officers Inflated the Firm's Financial Results," David Streitfeld, Los Angeles Times, September 6, 2001. Copy Supplied.

"When the Numbers Just Don't Add up," Karl Schoenberger, The New York Times, August 19, 2001. Copy Supplied.

"Criminal Element: White-Collar Criminal Defense in Vogue as Feds Get Tough on Securities Laws: As the Feds Crack Down, Criminal Law Practice is Becoming Fashionable in Silicon Valley," Renee Deger, Law.com, July 26, 2001. Copy Supplied.

"The Law Rides Into The Valley: Investigators Fight Dot-Com Fraud," David Streitfeld, The Washington Post, April 22, 2001. Copy Supplied.

"Lawyer's Loose Lips Sink Trader," Jason Hoppin, The Recorder, March 28, 2001. Copy Supplied.

"There's a New Sheriff In Town," Jason Hoppin, The Recorder, December 28, 2000. Copy Supplied.

"2 Ex-Executives Are Indicted In Fraud Case," Alex Berenson, The New York Times, September 29, 2000. Copy Supplied.

"Tracking Tech Crime: Law Enforcement's Cybersleuths Study Computer 'Fingerprints' to Crack Fraud Cases," Christian Berthelsen, San Francisco Examiner, September 3, 2000. Copy Supplied.

"Tech Worker Named in Insider Trading: Alleged Stock Buy Preceded Major Deal," David Lazarus, San Francisco Chronicle, August 30, 2000. Copy Supplied.

"Nursing Home Pleads Guilty to Defrauding Federal Medicare Program: Chain Agrees to Guilty Plea in Criminal Case," Howard Mintz, Tribune News Service, February 4, 2000. Copy Supplied.

"Nursing Home Firm Settles Fraud Case: Beverly Enterprises to pay $175 Million in Medicare Complaint," David S. Hilzenrath, The Washington Post, February 4, 2000. Copy Supplied.

"Largest-Ever Case Against Rest Home Nets $170 Million Bay Area Firm also Fined $5 Million for Bilking Medicare," Seth Rosenfeld, San Francisco Examiner, February 4, 2000. Copy Supplied.

"Nursing Home Fraud Garners Record Fine," Pamela A. MacLean, The Daily Journal, February 4, 2000. Copy Supplied.

"Beverly Subsidiary To Plead Guilty To Felony Charges," J.C. Conklin, The Wall Street Journal, February 3, 2000. Copy Supplied.

"Alleged Tipster Hatched Plan Before Starting Analyst Post," Ann Davis, The Wall Street Journal, August 3, 1999. Copy Supplied.

"Departing U.S. Attorney Quietly Makes an Imprint, If Not a Name," Kevin Flynn, The New York Times, June 8, 1999. Copy Supplied.

"A Woman of Her Convictions," Amy Aldrich, The George Washington University Magazine, June 1998. Copy Supplied.

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"Filling Stations' Owner Held in Fraud and Killings," David M. Herszenhorn, The New York Times, July 9, 1997. Copy Supplied.

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"A Double Life—Authorities: Businessman Led Vicious Chinatown Gang," Patricia Hurtado, Newsday, October 30, 1995. Copy Supplied.

"Life Sentence for Ex-Head of Chinatown Tong," Joseph P. Fried, The New York Times, October 12, 1995. Copy Supplied.

"Shadows of Chinatown: a Special Report; Portrait of Man as Mobster Stirs Community's Disbelief," Douglas Frantz & Vivian S. Toy, The New York Times, July 11, 1995. Copy Supplied.

"Private Phone Lists Cited In Case of Chinatown Boss," Joe Sexton, The New York Times, June 3, 1995. Copy Supplied.

"Bizman's Charged As Gang Boss," Jerry Capeci and Ying Chan, New York Daily News, June 2, 1995. Copy Supplied.

"3 Men Accused of Running Chinatown Organized Crime," Joe Sexton, The New York Times, June 2, 1995. Copy Supplied.

"Chinatown's New Enforcer," The New Yorker, April 3, 1995. Copy Supplied.

"Tong Boss Faces Life for Murder," Simon Beck, South China Morning Post, February 2, 1995. Copy Supplied.

"A Message Sent: Tong Leader Handed Murder Conviction," Molly Gordy, New York Newsday, January 18, 1995. Copy Supplied.

"Chinatown Godfather Guilty in Teen's Slay," Greg B. Smith, Daily News, January 18, 1995. Copy Supplied.

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"She Loved Her Work: Parole Officer Dated Hit Man, Sold Gang Info," David Martin & Stephen McFarland, Daily News, May 5, 1993. Copy Supplied.

"Parole Office Gave Information to a Drug Dealer, Officials Reveal at Trial," Joseph P. Fried, The New York Times, April 25, 1993. Copy Supplied.

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"Dealer Guilty of Ordering Officer Killed," Leonard Buder, The New York Times, December 12, 1989. Copy Supplied.

"Drug-Gang Leader Convicted in Killing of Rookie Officer," Associated Press, December 12, 1989. Copy Supplied.

"Trial is Shunned By a Defendant In Police Slaying," Leonard Buder, The New York Times, November 29, 1989. Copy Supplied.

13. Public Office, Political Activities and Affiliations: Answer each part separately.

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.

None.

14. Legal Career: Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not clerked.

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.

September 2004-Present
Partner
Morgan Lewis & Bockius
101 Park Avenue
New York, NY 10178

May-August 2004
Special Assistant to the Assistant Attorney General
Criminal Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

January 2002-May 2004
Director
Enron Task Force
Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Washington, D.C. 20005

May 2001 (Estimated)-January 2002
Chief
Criminal Division
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

September 2001-January 2002
Terrorism Coordinator
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

February 2000-August 2001 (Estimated)
Chief
Securities Fraud Section
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

January 1999-May 2001 (Estimated)
Deputy Chief
Criminal Division
U.S. Attorney's Office for the Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

January 1999-February 2000
Chief
Economic Crimes Section
U.S. Attorney's Office for the Northern District of California

450 Golden Gate Avenue
San Francisco, CA 94102

August 1987-December 1998
Assistant U.S. Attorney
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

August 1996 (Estimated)-December 1998
Senior Trial Counsel
Business & Securities Fraud Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

February 1994-August 1996 (Estimated)
Chief
Violent Criminal Enterprises Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

March 1993 (Estimated)-February 1994
Assistant U.S. Attorney
Special Prosecutions Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

September 1991 (Estimated)-March 1993 (Estimated)
Deputy Chief
General Crimes Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

December 1988 (Estimated)-September 1991 (Estimated)
Assistant U.S. Attorney
Narcotics Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

August 1987-December 1988 (Estimated)
Assistant U.S. Attorney
General Crimes Section
U.S. Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

May 1984 (Estimated)-July 1987
Associate

Cadwalader, Wickersham & Taft
One World Financial Center
New York, NY 10281

September 1982-May 1984 (Estimated)
Associate
Spengler Carlson Gubar and Brodsky
280 Park Avenue
New York, NY 10029
(Firm no longer exists)

May 1981 (Estimated)-August 1981
Summer Associate
Sidley & Austin
1501 K Street, N.W.
Washington, D.C. 20005

June 1980-August 1981
Summer Intern
U.S. Interstate Commerce Commission
Twelfth Street and Constitution Ave., N.W.
Washington, D.C. 20423
(Agency no longer exists)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

September 1982-July 1987 (Estimated), Associate: I was an associate handling litigation matters. I started by assisting partners and other associates in litigation arising from commercial disputes. As I developed an interest in trial work and matters involving fraud, I began to develop courtroom skills and participated in two trials, one each in state and federal court.

August 1987-December 1998, U.S. Attorney's Office for the Eastern District of New York: From 1987 until approximately December 1988, I was assigned to the General Crimes Section, where I handled cases involving narcotics trafficking and some smaller fraud and corruption cases, including approximately 7 jury trials. I was then promoted to the Narcotics Section, where I handled investigations and trials involving large drug organizations. My primary focus was on two violent inner city narcotics organizations run by Lorenzo "Fat Cat" Nichols and Howard "Pappy" Mason, which were responsible for dozens of murders, including the execution-style murders of a New York City Police Officer and a New York State Parole Officer. In approximately September 1991, I was promoted to Deputy Chief of the General Crimes Section, and held that role through approximately March 1993. I provided training for a group of new AUSAs, including serving as a supervisory "second seat" on more than a dozen trials, and also continued to handle my own docket of Racketeer Influenced and Corrupt Organizations (RICO) murder and other cases. In approximately March 1993, I transferred to the Special Prosecutions Section (Public Corruption), and prosecuted numerous corruption cases, including cases against corrupt parole officers who assisted drug organizations. I also tried a major RICO case against the leaders of the murderous "Supreme Team" drug gang, whose leader had been acquitted repeatedly on state murder charges. In February 1994, I became the Chief of the newly-created Violent Criminal Enterprises Section, whose mandate was to prosecute non-traditional organized crime groups. As Chief of that Section, I oversaw many prosecutions involving Asian organized crime, Russian organized crime, and cases involving other major violent groups. I also continued to try cases, including: RICO cases against Chinatown businessmen who, while purporting to be civic leaders, were in fact the bosses of a violent Chinatown gang; the attempted murder of an AUSA by booby-trapped briefcase; a RICO case involving a criminal defense attorney who deployed his clients and others to engage in criminal conduct throughout the country; and a case involving an attempted murder at the Brooklyn Navy Yard in which an insanity defense was asserted. In approximately August 1996, I became Senior Trial Counsel in the Business and Securities Fraud Section, and prosecuted numerous cases involving market manipulation and other securities fraud. In total, while in the EDNY I successfully first-chaired approximately 25 jury trials, including numerous multi-defendant RICO matters, and handled more than 20 appeals to the U.S. Court of Appeals for the Second Circuit. I also second-chaired at least a dozen other trials in a supervisory capacity.

January 1999-January 2002, U.S. Attorney's Office for the Northern District of California: In January 1999, I joined the U.S. Attorney's Office in San Francisco after being recruited by then-U.S. Attorney Robert S. Mueller III. Initially I was Deputy Chief of the Criminal Division and Chief of the Economic Crime Section. As Deputy Chief, I supervised AUSAs in San Francisco, Oakland and San Jose in the prosecution of white collar crime, computer crime and intellectual property theft. As Chief of Economic Crime, I oversaw all of the District's major white collar cases, and personally handled major health care fraud cases involving Medicare fraud and unlawful drug promotion. At the same time, I initiated numerous securities fraud investigations.

In February 2000, U.S. Attorney Mueller created a Securities Fraud Section, and named me Chief (while I continued to serve as Deputy Chief of the Criminal Division). That Section was charged with investigating and prosecuting financial fraud, insider trading and other securities violations in Silicon Valley and the Bay Area. Working closely with the FBI and the Securities and Exchange Commission (SEC) in San Francisco and Washington, D.C., the NDCA brought numerous insider trading, accounting fraud, and other securities fraud prosecutions, significantly raising the profile of the office and the San Francisco office of the SEC. In approximately May 2001, I became the Chief of the Criminal Division, overseeing the work of all criminal prosecutors in San Francisco, San Jose and Oakland. This included matters involving narcotics trafficking, securities fraud, health care fraud, public corruption, organized crime, and terrorism. In September 2001 I was appointed as Terrorism Coordinator for the NDCA. I also continued to handle my own docket of securities fraud matters until leaving the NDCA in January 2002.

January 2002-May-2004, Enron Task Force: In January 2002 I was asked by then Assistant Attorney General Michael Chertoff to lead a task force being created to oversee an investigation into the collapse of the Enron Corp. I served as Director of the Enron Task Force from January 2002 through May 2004, and oversaw all aspects of the Enron investigation, which resulted in the prosecution of approximately 30 individuals. The Task Force also prosecuted others associated with Enron, including the accounting firm Arthur Andersen, which was charged with obstructing justice through document destruction, and executives of banks that assisted in the Enron fraud. Also, two banks entered into deferred prosecution agreements as a result of their dealings with Enron.

May 2004-July 2004, Special Assistant to the Assistant Attorney General, Criminal Division: From approximately May-July 2004, at the request of then-AAG Chris Wray, I conducted a comprehensive review of DOJ's Fraud Section, and made recommendations regarding the Section's management, structure and mission.

September 2004-Present, Morgan Lewis & Bockius: Since 2004, I have been a partner at the law firm of Morgan Lewis & Bockius. The firm is a large full-service firm, with offices in 16 U.S. and 8 foreign cities. My practice is focused on white collar crime and other regulatory matters. At the firm, I have been Co-Chair of the Corporate Investigations and White Collar Practice Group (2004-08). I also have represented companies, corporate boards, board committees, senior executives and others in connection with internal investigations and government inquiries relating to various matters, including allegations of fraud.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

When I was a law firm associate, I did not have my own clients. I worked for a variety of clients brought in by partners of the firms. These included mainly corporations, and a smaller number of non-profit groups and individuals.

As a federal prosecutor, my client was the United States.

As a partner at Morgan Lewis, my clients have mainly been large corporations, as well as senior corporate executives.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice has been 100% focused on litigation, including investigations. As an associate attorney from 1982-1987, I appeared in court occasionally, with more frequent appearances (including two trials) as I grew more experienced. As a federal prosecutor in the EDNY from 1987-1998, I appeared in court frequently (including approximately 25 first-chair jury trials, at least a dozen jury trials as a supervisory second seat, more than 20 appeals, and numerous other hearings and appearances). As a federal prosecutor in NDCA, I appeared somewhat less frequently given my mainly supervisory role. As Director of the Enron Task Force, I attended major court hearings but personally appeared only occasionally, given my role. As a partner at Morgan Lewis, I have appeared occasionally—the goal of my practice has been mainly to assist my clients in avoiding indictment or other events that would require court appearances.

i. Indicate the percentage of your practice in:

1. federal courts: Approximately 90%
2. state courts of record: Approximately 10% (higher as an associate attorney)
3. other courts: N/A
4. administrative agencies N/A

ii. Indicate the percentage of your practice in:

1. civil proceedings: Approximately 40%
2. criminal proceedings: Approximately 60%

While in government, 100% of my practice was in federal courts. I did not practice in state court, other courts, or before administrative agencies. While an associate attorney in private practice, approximately 70% of my practice was in federal courts, and approximately 30% was in state courts. I did not practice in other courts or before administrative agencies. As a partner in private practice, approximately 90% of my practice is in federal courts or in matters that might end up in federal court. Approximately 10% involves matters that might be handled by a state court.

While in government, 100% of my practice involved criminal proceedings, although I often worked in coordination with civil enforcement authorities including the SEC and the U.S. Attorney's Office or Department of Justice Civil Division. In private practice, approximately 60% of my practice has involved criminal or potential criminal proceedings, and approximately 40% has involved civil or potential civil proceedings.

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

N.Y. State Supreme Court: one bench trial as associate counsel
U.S. District Court, SDNY: one jury trial as associate counsel
U.S. District Court, EDNY: approximately 25 jury trials as sole or chief counsel; at least a dozen jury trials as supervisory "second seat", supervising junior AUSAs
U.S. District Court, NDCA: one jury trial as co-counsel
U.S. Court of Appeals for the Second Circuit: Briefed and argued approximately 20 appeals while an AUSA in the Eastern District of New York

i. What percentage of these trials were:
   1. jury; All but one
   2. non-jury; One (NY state court)

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 had one matter in which my client's case was heard by the Supreme Court. I represented Kenneth Maxwell, who was the head of counter-terrorism in the FBI's New York Field Office at the time of the September 11, 2001 terrorist attacks. Special Agent Maxwell and several other government officials were named as defendants in a case where plaintiffs alleged that their rights had been violated as a result of their detentions in the aftermath of the September 11th terrorist attacks. The case, Iqbal v. Ashcroft, et al., was heard by the Supreme Court. The docket number is No. 07-1015. I did not participate in oral argument. Copy of brief supplied.

15. Litigation: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a

capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Securities and Exchange Commission v. Oracle Corp., No. C 12-4210 (CRB) (NDCA)

Chief counsel for Oracle Corp. in connection with an internal investigation and subsequent August 2012 settlement agreement, in which Oracle neither admitted nor denied a violation of the books and records provisions of the Foreign Corrupt Practices Act (FCPA). The SEC complaint alleged that certain former employees of Oracle's Indian subsidiary arranged to keep funds separate from Oracle's books, creating the risk that the funds could be used in improper ways.

Judge: The Honorable, Charles R. Breyer, NDCA

Co-counsel:

Susan Resley, Esq.
Morgan Lewis & Bockius
One Market Street
San Francisco, CA 94105
415-442-1000

Counsel for the SEC:

Jina Choi, Esq.
Elena Ro, Esq.
SEC San Francisco Regional Office
44 Montgomery Street
San Francisco, CA
415-705-2338

2. United States v. Young Keun Park, No. CR 11-00911 (RS) (NDCA)

Counsel for Young Keun Park in connection with cartel investigation by the DOJ Antitrust Division. On March 27, 2012 Mr. Park, the Chief Marketing Officer of Hitachi LG Data Storage (HLDS), pleaded guilty in connection with the Division's investigation of price fixing and bid rigging by Asian manufacturers of data storage products. Mr. Park was sentenced to a term of 10 months imprisonment.

Judge: The Honorable Richard Seeborg, NDCA

Counsel for Antitrust Division:

Sidney Majalya, Esq.
Manish Kumar, Esq.
Jacklin Chou Lem, Esq.
U.S. Department of Justice, Antitrust Division
San Francisco Regional Office
450 Golden Gate Avenue
San Francisco, CA 94102
415-436-6700

3. United States v. Myron Olesnyckyj, No. 07 CR 0120-01 (JSR) (SDNY)

Counsel for Myron Olesnyckyj, the former General Counsel of Monster.com, in connection with parallel criminal and SEC investigations into stock options backdating. In August 2009, Mr. Olesnyckyj pleaded guilty to securities fraud in connection with the backdating scheme. He agreed to cooperate and later testified at the trial of Monster.com's CFO, who was convicted. At sentencing on March 3, 2010, Mr. Olesnyckyj received a sentence of one year probation.

Judge: The Honorable Jed S. Rakoff, SDNY

Counsel for U.S. Attorney's Office, SDNY:

Deirdre A. McEvoy, Esq.
Current contact details:
Patterson Belknap Webb & Tyler
1133 Avenue of the Americas
New York, NY 10036
212-336-2796

4. United States v. Genentech, Inc. CR 99-141 MJJ (NDCA)

Lead prosecutor in a case against Genentech for violating FDA labeling rules. In 1999, Genentech pleaded guilty and agreed to pay $50 million in penalties.

Judge: The Honorable Martin J. Jenkins, NDCA

Co-Counsel:

AUSA Joann Swanson
(Last known contact details)
450 Golden Gate Avenue
San Francisco, CA 94102
415-436-7200

AUSA Andy Scoble
450 Golden Gate Avenue
San Francisco, CA 94102
415-437-7200

Counsel for Genentech:

David P. King, Esq.
Current Contact Details:

Chief Executive Officer, Laboratory Corporation of America
358 South Main Street
Burlington, NC 27215-5837
336-229-1127

5. United States v. Beverly Enterprises – California, CR 00-0061 THH (NDCA)

Chief counsel for the United States in this matter, in which the country's largest nursing home chain pleaded guilty to Medicare fraud in 2000. Beverly also paid a total of $175 million in fines and penalties.

Judge: The Honorable Thelton E. Henderson

Co-counsel:

AUSA George Hardy
U.S. Attorney's Office, Southern District of California
880 Front Street, Room 6293
San Diego, CA 92101
619-657-5747

Laurie Oberembt, Esq.
Department of Justice
Civil Division, Fraud Section
Judiciary Center Building
555 4th St., N.W.
Washington, D.C. 20001
202-514-3345

Counsel for Beverly Enterprises:

J. Sedwick Sollers, Esq.
King & Spalding
1700 Pennsylvania Ave., N.W.
Washington, D.C. 20006
202-737-0500

Honorable Griffin Bell, Esq.
King & Spalding
(Deceased)

Mark Biros, Esq.
Proskauer LLP
1001 Pennsylvania Ave. N.W.
Washington, D.C. 2004-2533
202-416-6800

6. United States v. Lai Kwok Fu, 93 CR 1340 (RR) (EDNY)

Chief prosecutor in a RICO prosecution of a tong boss in New York City's Chinatown neighborhoods. The defendant, a prominent civic figure and advisor to then-Governor Mario Cuomo, was charged with agreeing with other tong bosses to divide control of Chinatown "rackets" into distinct geographic zones. Each tong had an affiliated gang

that was responsible for collecting extortion payments from nearly every lawful business in its zone, as well as guarding and collecting payments from area gambling and "massage parlors". Lai pleaded guilty in 1995, on the morning of jury selection, in connection with the murders of two men whose Hong Kong triad had tried to wrest control of a tong-controlled gambling parlor.

Judge: The Honorable Reena Raggi, EDNY (Now U.S. Court of Appeals for the Second Circuit)

Counsel for Lai Kwok Fu:

Paul Goldberger, Esq.
Goldberger & Dubin
401 Broadway, Suite 306
New York, NY 10013
212-431-9380

7. United States v. Wong Chi Fai, et al., 93 CR 1340 (RR) (EDNY)

Chief prosecutor in a multi-defendant RICO case involving members of Asian organized crime. Following a three month trial in 1994-95, six defendants were convicted of RICO, including multiple murders, arson, extortion and gambling. Those convicted included a prominent Chinatown tong boss and top ranking members of an affiliated Chinatown gang. The convictions were affirmed on appeal to the U.S. Court of Appeals for the Second Circuit.

Judge: The Honorable Reena Raggi, EDNY (Now U.S. Court of Appeals for the Second Circuit)

Co-counsel:

Margaret Giordano Friedberg
1150 Fifth Avenue
New York, NY 10128
Phone number unknown

Defense Counsel (last known contact details):

Barry Schulman, Esq.
189 Montague Street
Brooklyn, NY 11201
718-855-8855

Margaret Alverson, Esq.
41 Madison Avenue, #34
New York, NY 10010
212-213-0511

Joel Cohen, Esq.
11 East Broadway, Suite 9-D
New York, NY 10038
212-571-8899

J. Jeffrey Weisenfeld, Esq.
401 Broadway
New York, NY 10013
212-925-8640

Paul Brenner, Esq.
700 White Plains Road-Suite 223
Scarsdale, NY 10538
914-332-3076

David Stern, Esq.
70 Lafayette Street, 7th Floor
New York, NY 10013
212-571-5500

Jeremy Orden, Esq.
233 Broadway
New York, NY 10279
212-406-4100

Dana L. Hanna Esq.
189 Montague Street, 8th Floor
Brooklyn, NY 11201
718-694-9768

Bernard Udell, Esq.
16 Court Street
Brooklyn, NY 11241
718-596-2410

8. United States v. Gerald Miller, et al., 92 CR 91 (RJD) (EDNY)

Chief prosecutor in this 1993 trial in which seven top members of the "Supreme Team" drug gang were convicted of RICO, including multiple murders, drug trafficking and money laundering. The convictions were affirmed on appeal to the U.S. Court of Appeals for the Second Circuit.

Judge: The Honorable Raymond J. Dearie, EDNY

Co-Counsel:

Mark P. Ressler, Esq.
(Current contact details)
Kasowitz, Benson, Torres & Friedman
1301 Avenue of the Americas, 36th Floor
New York, NY 10019
212-506-1752

Defense Counsel (Last known contact details):

Joyce London, Esq.
20 Vesey Street, Suite 400
New York, NY 10007

212-964-3700

Harry Batchelder, Esq.
100 Maiden Lane, Suite 501
New York, NY 10038
212-504-5629

Larry Schoenbach, Esq.
111 Broadway, Suite 1305
New York, NY 10006
212-346-2400

Ephraim Savitt, Esq.
260 Madison Avenue
New York, NY 10016
212-679-4470

Phil Katowitz, Esq.
20 Vesey Street, Suite 400
New York, NY 10007
212-233-1477

Joel Stein, Esq.
Three New York Plaza, 10th Floor
New York, NY 10004
212-344-8008

Joel Walter, Esq.
67 Atlantic Avenue
Brooklyn, NY 11201
718-522-2772

9. United States v. David Kwong, 93 CR 1415 (RJD) (EDNY)

Prosecutor in this 1994 trial in which the defendant was convicted of attempted murder of an Assistant U.S. Attorney to whom he mailed a booby-trapped briefcase. The conviction was affirmed on appeal to the U.S. Court of Appeals for the Second Circuit.

Judge: The Honorable Raymond J. Dearie, EDNY

Counsel for David Kwong:

Lawrence Schoenbach, Esq.
111 Broadway, Suite 1305
New York, NY 10006
212-346-2400

10. United States v. Howard Mason, 88 CR 496 (ERK) (EDNY)

Chief prosecutor in this RICO prosecution of Queens druglord who ordered the execution-style murder of uniformed New York City Police Officer Edward Byrne. The defendant was convicted of RICO violations, including Officer Byrne's murder.

following trial in 1989. The conviction was affirmed on appeal to the U.S. Court of Appeals for the Second Circuit.

Judge: The Honorable Edward R. Korman, EDNY

Co-counsel:

Peter T. Sheridan, Esq.
P.O. Box 743
Pearl River, NY 10965
(Last Known Address)

Counsel for Howard Mason:

Harry Batchelder, Esq.
100 Maiden Lane, Suite 501
New York, NY 10038
212-504-5629

16. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the matters listed above, I have conducted numerous confidential internal investigations on behalf of a number of Fortune 500 clients and corporate boards and Audit Committees.

I also have represented numerous corporate and individual clients in matters under investigation by the DOJ and/or SEC in which no action was taken, or which are pending.

I have not performed lobbying services on behalf of any client or organization.

17. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I taught Trial Advocacy at New York Law School during approximately 1994-96. The course was designed to train law students in various trial skills, culminating in mock trials at the end of the course. Syllabus not available.

I also participated as an instructor in Department of Justice training programs, including at least once each in Washington, D.C. and at the National Advocacy Center in Columbia, S.C. I have searched my records and have been unable to locate the dates of or topics covered by those programs. Both would have occurred while I was an AUSA in the Eastern District of New York and would have related to criminal law.

18. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    I have no deferred income or other anticipated future benefits from previous business relationships, including membership in my firm. I have made no arrangements to be compensated in the future for any financial or business interest. As a former U.S. Government employee, I participate in the Federal Thrift Savings Plan.

19. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

    No.

20. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached SF-278.

21. **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.

22. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

        In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

        In the event of a potential conflict of interest, I would consult the Department's designated agency ethics official.

23. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Legal Outreach: In 2013, I was a guest speaker for this group, which acts as portal for disadvantaged New York City children interested in pursuing careers in the legal profession. The group identifies promising young people in the eighth grade and provides mentoring and training to them through high school. I spent approximately six hours preparing and making my presentation to the group.

Batya: Between 2010 and 2013, I assisted this non-profit medical rescue organization, which provides emergency services primarily in Orthodox Jewish communities in New York and Israel, in exposing a bogus rescue organization to the New York State Office of Attorney General. In 2013, the AG sued the other "charity" for fraudulently soliciting donations for the bogus rescue organization and numerous other phony charities. I spent approximately 40-50 hours on this matter.

Supervisory FBI Agent: I represented an FBI supervisory special agent (now retired) in connection with an investigation by the DOJ Office of Professional Responsibility (OPR). OPR closed the inquiry without taking any action in April 2011. I spent approximately 100 hours on this matter. This was not a pro bono matter, but was billed at a greatly reduced rate.

Darfur Project: In 2007, I participated in the ABA-sponsored Darfur Project, in which I and other American lawyers provided trial advocacy training to a group of Sudanese human rights lawyers who would represent victims of the Darfur atrocities in the International Criminal Court. The program was an intensive two-week exercise in which I and other lawyers demonstrated advocacy skills, trained the Sudanese lawyers, and critiqued their performances. I spent approximately 120 hours on this matter.

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	$	125	000	Notes payable to banks-secured			0
U.S. Government securities-add schedule			0	Notes payable to banks-unsecured		420	000
Listed securities-add schedule		84	340	Notes payable to relatives			0
Unlisted securities--add schedule			0	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			0
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable-add schedule			0
Real estate owned-add schedule	2	500	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts--itemize:			0
Autos and other personal property		20	000				
Cash value-life insurance			0				
Other assets itemize:			0				
Federal Thrift Savings Plan		482	768				
Morgan Lewis Retirement Account		384	880				
				Total liabilities		420	000
				Net Worth	$	187	065
Total Assets	$	607	065	Total liabilities and net worth	$	607	065
CONTINGENT LIABILITIES			0	GENERAL INFORMATION			
As endorser, comaker or guarantor			None	Are any assets pledged? (Add schedule)			No
On leases or contracts		1	800	Are you defendant in any suits or legal actions?			No
Legal Claims			None	Have you ever taken bankruptcy?			No
Provision for Federal Income Tax			None				
Other special debt			None				

Listed Securities: $84,389

Bunge Limited (BG): $26.25
EBay Inc. (EBAY): $11,366
Facebook Inc. (FB): $45,459
General Electric (GE): $5,863
Oracle Corp. (ORCL): $10, 575
JP Morgan Intrepid Euro A (VEUAX): $11,100

Real estate owned: $2,500,000

New York, NY
$1,900,000 (Estimate)
(Primary residence)

Philadelphia, PA
$600,000 (Estimate)
(Secondary residence)

AFFIDAVIT

I, LESLIE R. CALDWELL, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

10/23/15
(DATE)

(NAME)

ANTIONETTE E. BOSTWICK NOTARY PUBLIC DISTRICT OF COLUMBIA MY COMMISSION EXPIRES 06/14/2016

(NOTARY)

District of Columbia: SS
Subscribed and Sworn to before me
this 23 day of October, 2015

Notary Public, D.C.

My commission expires 6/14/2016

Statement of Leslie R. Caldwell
Senate Judiciary Committee
February 11, 2014

Mr. Chairman, Ranking Member Grassley, and Members of the Committee, thank you. I am honored to appear before you today as President Obama's nominee to be the Assistant Attorney General for the Criminal Division of the Department of Justice.

Let me take a moment to introduce my partner, Michele Kohler, and her daughter Hannah Ryan, who are sitting behind me. Also here with me are my niece Megan Caldwell, my fantastic administrative assistant Donna Weekes, and several other close friends and colleagues. I thank them all for their support and for being here today. I also thank my brothers Bruce and Douglas and their wives Teresa and Jean, who were unable to be here today.

I know that if they had made it to this day, my parents, Key and Caryl Caldwell, would have been so proud to see their daughter sitting here before this Committee. My father Key was a Tennessee native, who at the age of 19 enlisted in the Army Air Corps in World War II. He became a B-24 bomber pilot, assigned to the 8th Air Force, based in England. After many successful missions over Germany, his plane was shot down. He managed to keep the plane airborne just long enough to leave German airspace, and landed in a field in Switzerland. All but one of his crew survived. He was detained by the Swiss, but escaped, and with the help of the French Resistance, made his way to safety. While my father went on to become an engineer and a successful businessman in Pittsburgh, he was also a very humble man. In fact, I never even knew the story I just shared with you until I was well into adulthood, when I stumbled upon my Dad's war diary. When I asked him with amazement about his exploits, he said very matter of factly that all he had done was serve his country as best he could. He never spoke of it again.

My mother Caryl was a remarkable woman who set an example for me every day of her life. She was raised in a single parent home in a poor neighborhood on Pittsburgh's north side. Though she was the valedictorian of her high school class, there was no money for college. So she took a full-time job as a secretary in the Legal Department of U.S. Steel, and attended the University of Pittsburgh at night. At around the same time when she met and married my Dad, she graduated from Pitt summa cum laude and as a member of Phi Beta Kappa. Though she never again worked in a traditional job, she raised three children, and also played leadership roles in several community organizations, while volunteering many hours as an adult literacy teacher. I like to think that if she had been born 30 years later, my Mom would be the one sitting before this Committee.

Our parents taught my brothers and me that the values that matter most in life are integrity, fairness, hard work, and humility. As I sit before this Committee, I am especially mindful of those values, and of the honor of public service, to which I have dedicated much of my career.

As a young lawyer, I was fortunate enough to get a job as an Assistant United States Attorney in the Eastern District of New York, in Brooklyn. New York was a very different city then. Homicides and other drug-related violence were at an all-time high. As a young narcotics prosecutor, I was tasked with prosecuting members of a drug organization that was responsible for an especially notorious crime: the execution –style murder of a uniformed New York City Police Officer named Edward Byrne. More than 20 years later, I still consider the conviction of the druglord who ordered Officer Byrne's murder as perhaps my proudest professional accomplishment. During my 10 years in Brooklyn I prosecuted and tried many types of cases, including large-scale narcotics trafficking, violent organized crime and gangs, corrupt public officials, and securities fraud. During that time, I had the privilege to serve under three U.S. Attorneys who all understood that the interests of justice are best served when government remains mindful of its great power, and when enforcement is vigorous and swift, but fair.

In 1999, I was asked by former FBI Director Bob Mueller, who was then the U.S. Attorney in San Francisco, to join his team as chief white collar crime prosecutor. Working for Director Mueller was one of the finest experiences of my professional life. It is with his example in mind that I would approach my duties if I am confirmed as Assistant Attorney General.
In 2002, I was honored when then Criminal Division Assistant Attorney General Mike Chertoff asked me to lead a task force that would investigate the collapse of Enron. For more than 2 years I was privileged to lead an extraordinary team of prosecutors, FBI agents and IRS agents, and to work with lawyers from the SEC, CFTC and other agencies as we unraveled that fascinating and complex case.

I believe that my experience as a prosecutor of nearly every type of federal crime, and in such diverse cities as New York, San Francisco, Washington D.C. and Houston, as well as my leadership and management experience in both government and private practice, have provided me with the perspective, judgment, and skill to lead the Criminal Division. If I become head of the Criminal Division, I will do my best to ensure the vigorous enforcement of our criminal laws, and to apply them with equal force whether the wrongdoing is in a boardroom, across a computer network, or on a street corner.

I am deeply honored to have this opportunity to serve our country, and to once again work alongside the dedicated career professionals that form the backbone of the Department of Justice. I thank you again for considering my nomination and I am pleased to respond to any questions you may have.

Statement of Senator Schumer

Nominations Hearing – February 11th, 2014

While I am unable to appear at today's hearing, I am pleased to offer my strong support for the confirmation of a highly qualified and accomplished New Yorker, Leslie Caldwell, who has been nominated by President Obama to serve as the Assistant Attorney General for the Criminal Division at the Department of Justice. I ask that my remarks be included in the Committee's record of this hearing.

Leslie Caldwell is an eminently qualified prosecutor with the credentials and experience to lead the Criminal Division. Ms. Caldwell has given years of tireless service to protecting the people of New York, during her long tenure as an Assistant United States Attorney in the Eastern District of New York from 1987-1998, where she rose through the ranks to become Chief of the Violent Criminal Enterprises Section, prosecuting complex multi-defendant cases against violent organized crime syndicates responsible for drug trafficking, racketeering and murder. Her notable cases include winning a conviction against a Queens drug lord responsible for the murder of a uniformed New York City police officer, Edward Byrne.

The tenacity displayed by Ms. Caldwell in New York led her to be appointed to leadership positions in the U.S. Attorney's Office for the Northern District of California by Robert Mueller. There, Ms. Caldwell led the Securities Fraud, Economic Crime sections and later rose to become Chief of the Criminal Division supervising prosecutors throughout the bay area in the prosecution of white collar crime, computer crime, intellectual property, health care fraud and securities fraud cases.

In 2002, then-Assistant Attorney General for the Criminal Division Michael Chertoff asked Ms. Caldwell to lead a task force created to oversee the investigation into the collapse of the Enron Corporation. From January 2002 until May 2004, Ms. Caldwell oversaw all aspects of the investigation, which resulted in the prosecution of approximately 30 defendants. After leaving government service, she returned to New York where she has been a partner with the law firm of Morgan Lewis & Bockius since 2004.

Ms. Caldwell graduated Penn State University summa cum laude, where she was elected to Phi Beta Kappa, and graduated from the George Washington University Law School cum laude, where she served as Articles Editor on the Law Review. In 2007, she was named by the National Law Journal as one of the 50 Most Influential Women Lawyers in America.

Ms. Caldwell's distinguished resume, experience and dedication to public safety exemplifies the kind of public servant that would well serve the Criminal Division of the Department of Justice.

Statement of Senator Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate

Before the Committee on the Judiciary regarding the Nominations of:

Robin Rosenbaum, to be United States Circuit Judge for the Eleventh Circuit
Bruce Hendricks, to be United States District Judge for the District of South Carolina
Mark Mastroianni, to be United States District Judge for the District of Massachusetts
Leslie Caldwell, to be Assistant Attorney General

February 11, 2014

Mr. Chairman,

First, I'd like to congratulate today's nominees and their families. It's an important milestone in all of your careers and I welcome you here today.

Before we turn to the nominees appearing before us today, I'd like to say a word about the nominees pending on the Senate floor. Over the course of the last several weeks, I've heard some of my colleagues in the Majority expressing frustration because the nominees on the Floor haven't yet been confirmed.

I must say, I find this somewhat surprising. As everyone knows, last year, the Senate Democrats invoked the "nuclear option." By voting to invoke the so-called "nuclear option," the Majority stripped the Minority of any ability to stop any nominee from being confirmed on the Floor.

The bottom line is that the Majority voted to cut the Minority out of the process. As a result, under the precedent 52 Democrats voted to establish, the Majority Leader can bring up these nominations for a vote on the floor anytime he decides to do so. The Minority simply has no ability to stop anyone from getting a vote. There is no filibuster of a nominee anymore.

And, as anyone who watches the Senate proceedings can tell you, the Senate Floor isn't exactly working overtime. We certainly aren't considering a lot of amendments to legislation. Instead, on most days, very little is considered on the Senate floor. And we are very rarely in session on Fridays.

So, there is really no reason why the Majority Leader can't bring these nominations up for a vote.

Finally, I'd like to compare our progress so far this year, compared to where we were at this point during 2006, President Bush's 6th year in office.

Thus far during the 113th Congress, we've had hearings for 66 judicial nominees. After today, during this year alone, we've had hearings for 12 judicial nominees. By comparison, up to this point in the 109th Congress, the Senate had held hearings on only 19 judicial nominees.

So as of today, we've held hearings for almost as many of President Obama's judicial nominees in just one month when it took the Committee over a year to reach a comparable number of hearings for President Bush's judicial nominees. This is just another example of just how fairly and

efficiently the Committee is treating President Obama's judicial nominees compared to those of President Bush.

So I'll conclude by saying that I applaud the Chairman for his work. He continues to keep us busy as he makes sure that the Committee moves at a brisk pace.

Again, I welcome the nominees and their families today and look forward to their testimony.

Questions for the Record from Senator Dianne Feinstein

For Leslie R. Caldwell

Senate Committee on the Judiciary

February 11, 2014

Prosecution of Drug, Gun, and Gang Crimes

You have significant experience prosecuting drug, gang, and gun crimes, including as Chief of the Criminal Division in the U.S. Attorney's Office in my hometown of San Francisco. As you know, these often violent crimes continue to devastate many communities in California and across our country. According to the Centers for Disease Control and Prevention, 11,101 homicides were committed with firearms in the United States in 2011, the latest year that data is available. The 2011 National Gang Threat Assessment found that gang membership increased by 40 percent between 2009 and 2011 and that "[g]angs are responsible for an average of 48 percent of violent crime in most jurisdictions and up to 90 percent in several others . . . ."

- **If confirmed, will you vigorously enforce federal law against gang members and others who commit major drug or gun trafficking crimes, in coordination with the Offices of the U.S. Attorney?**

- **What will be your priorities in determining which drug, gun, and gang crimes will be prosecuted by attorneys in the Criminal Division and in formulating criminal enforcement policy for the broader Department of Justice?**

Money Laundering – HSBC Case

As you and I discussed when we met in my office in December, the failure of some U.S. banks to comply with anti-money laundering laws fuels drug-related violence in Mexico. As you know, HSBC allowed over $670 billion in wire transfers and over $9.4 billion in physical money to enter the U.S. from Mexico unmonitored. Of that money, we know that at least $881 million in Mexican drug proceeds entered the U.S. illegally. On December 11, 2012, HSBC entered into a Deferred Prosecution Agreement with the Department of Justice and paid $1.92 billion in fines.

An April 2013 report by the Senate Caucus on International Narcotics Control, which I chair along with Senator Grassley, stated that it is unacceptable for monetary penalties to remain the cost of doing business for financial institutions that do not comply with U.S. anti-money laundering laws. I believe the individuals responsible need to be criminally prosecuted and barred from the financial sector.

- **Do you agree with this assessment?**

- **If confirmed, what will you do to ensure that monetary penalties are not simply the cost of doing business for financial institutions that violate U.S. anti-money laundering laws?**

Senator Chuck Grassley
Questions for the Record

Robin S. Rosenbaum
Nominee, United States Circuit Judge for the Eleventh Circuit

1. What is your understanding of the constitutionality of states to provide "conscience rights" to pharmacists and health care providers who refuse to facilitate abortions or fill prescriptions for contraceptives if they are personally opposed to such practices?

2. The Supreme Court has held that there is a general right to abortion. What is your understanding of the constitutionality of sex-selective abortion?

3. If confirmed, what would be your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?

4. What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?

5. What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?

6. Do you believe that the death penalty is an acceptable form of punishment?

7. 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?

8. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

    a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

b. Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?

9. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

10. 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 on psychological and sociological scientific studies?

11. What would be your definition of an "activist judge"?

12. What is the most important attribute of a judge, and do you possess it?

13. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

14. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

15. 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?

16. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

17. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

18. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

19. What weight should a judge give legislative intent in statutory analysis?

20. 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.

21. 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.

22. 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?

23. 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?

24. It appears that you have spent most of your legal career doing trial level work and have limited experience with appellate courts. Please describe how you will prepare to transition to the appellate level. What do you expect to be most difficult part of this transition for you?

25. 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.

26. Please describe with particularity the process by which these questions were answered.

27. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

Bruce Howe Hendricks,
Nominee, U.S. District Judge for the District of South Carolina

1. In 2009, you upheld a jury award of $3 million in punitive damages in a defamation case. That was 30 times more than the amount of compensatory damages awarded.

   a. What is your view on the amount of deference jury awards are entitled to?

   b. Every case is different, but what are your views, generally, on the appropriateness of an award that large, where the plaintiff has suffered little or no physical injury?

2. In a 2008 speech you stated your belief that "there is certainly evidence of racial injustice and inequality in our court system." Please explain what you meant by that statement.

3. In a September 2011 speech you described your caseload a "junk no one else wants to do." (Emphasis in original). Please explain what you meant by that statement.

4. What is the most important attribute of a judge, and do you possess it?

5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

7. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

10. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community," in determining the meaning of the Constitution? Please explain.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

13. If confirmed, how do you intend to manage your caseload?

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

16. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees."

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

17. Please describe with particularity the process by which these questions were answered.

18. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

Mark Mastroianni,
Nominee: U.S. District Judge for the District of Massachusetts

1. You have worked as both a prosecutor and a defense attorney. How have these experiences prepared you to become a federal judge?

2. During your hearing I asked you about Massachusetts gun storage law and case. You discussed the concept that states have authority to impose regulations on gun rights and listed safety as one of the legitimate reason for doing so. As I'm sure you would recognize, however, at a certain point excessive regulations effectively deny the right. With respect to the individual Second Amendment right to keep and bear arms, please provide examples of regulations that would be too restrictive, such that the rights guaranteed by the Second Amendment are abridged.

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. If confirmed, how will you use the Sentencing Guidelines in your decision making?

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. 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.

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    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.

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18. Please describe with particularity the process by which these questions were answered.

19. Do these answers reflect your true and personal views?

QUESTIONS SUBMITTED TO LESLIE CALDWELL BY SENATOR GRASSLEY

Questions for the Record
Leslie R. Caldwell,
to be Assistant Attorney General of the Criminal Division, Department of Justice
February 18, 2014

I am concerned that the Department is avoiding prosecuting institutions or executives at financial institutions for fear that the company is "too big to jail." I certainly recognize that settlements and non-prosecution agreements have a place in the prosecutor's playbook. But I find it disturbing how often they are relied on. In my view, this rewards and perpetuates criminal misconduct, and increases the risk that future criminal behavior will adversely affect financial markets and our fragile economy.

1. Do you believe that there is any corporation or any corporate executive that is "too big to jail?"

2. How much deference should the Department give a regulator's advice concerning the collateral effects of a criminal prosecution or conviction on an institution's viability or the broader economy in weighing criminal charges against that institution?

3. You certainly have extensive experience in prosecuting these types of cases. As a federal prosecutor, did you ever consult with an outside expert or with a regulator on the effects a criminal charge against a company or an individual could have on the economy or financial markets? If so, what factors did you and the Department consider before making a charging decision?

4. What factors should the Department consider relevant when a regulator expresses concerns over a potential criminal prosecution?

A few days after your hearing before the Committee on the Judiciary, the Department of Justice and the Department of the Treasury jointly released two memos providing further guidance on one of the issues we discussed: money laundering and marijuana business proceeds.

The February 14, 2014 memo issued by Deputy Attorney General James M. Cole, states the following:

> "This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA, the

> money laundering and unlicensed money transmitter statutes, or the BSA, including the obligation of financial institutions to conduct customer due diligence.... This memorandum is not intended, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It... does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

5. In light of the above paragraph in the Department's February 14, 2014 memo, do you agree that:
    a. The possession, cultivation, and distribution of marijuana remains illegal in all states under the Controlled Substances Act;
    b. The laundering of the proceeds of the possession, cultivation, and distribution of marijuana remains illegal in all states under federal money laundering statutes;
    c. The Department's ability to enforce federal law in these areas remains unchanged; and
    d. The memo does not create a "safe harbor" that an institution can rely upon as a defense to a prosecution under either of these types of laws.

The Treasury Memo attempts to offer guidance to financial institutions on how they may offer various financial services to business engaged in marijuana production or distribution despite federal criminal law clearly prohibiting the same.

6. Please confirm that the activities described in or that would require a bank to file a "Marijuana Limited" Suspicious Activity Report are, despite the Cole Memos, a direct violation of current federal anti-money laundering statutes.

7. If, within the statute of limitations of the federal money-laundering statute, the Department of Justice reverses course and fully enforces the Controlled Substances Act and federal anti-money laundering statutes, could the Department of Justice use these "Marijuana Limited SARs" in the criminal prosecution against financial institutions that file them?

a. If no, please describe what would limit a federal prosecutor from using these SARs in a criminal prosecution, other than prosecutorial discretion.

The February 14, 2104 memos attempt to provide guidance to financial institutions on how they can simultaneously meet their reporting obligations under the Bank Secrecy Act ("BSA") while providing banking services to individuals or entities engaged in the cultivation or distribution of marijuana in certain states. At the same time, according to recent media reports, the Department's Civil Division has been aggressively pursuing certain legal practices by financial institutions in an operation named "Operation Choke Point."

As a result, on one hand, the Department of Justice's Criminal Division appears to be facilitating illegal behavior specifically prohibited by federal law by unilaterally limiting the scope of the BSA, while on the other hand, the Department's Civil Division is using the BSA in order to stop legal online lending practices, such as pay-day lending, by pressuring the banking industry to cease providing legal third-party payment services.

Given this inconsistent application of the BSA, it is understandable that the financial services industry should not trust the Department's assurances that those entities who engage in financial activities with marijuana cultivators, distributors, or retailers will not be prosecuted under existing federal law, including the BSA, the CSA, and federal money laundering statutes.

8. Will you commit that as Assistant Attorney General of the Criminal Division you will work to ensure that the various divisions within the department reach consensus on the Department's interpretation of the proper scope or use of a statute?

I recently asked Attorney General Holder these questions and have not yet received response. As the Foreign Corrupt Practices Act falls within Criminal Division jurisdiction, would you please respond to the following questions.

9. What are the Department's current enforcement priorities under the Foreign Corrupt Practices Act?

10. What particular industries, markets or practices is the Department focusing on, and why?

11. What proportion of the Department's enforcement activity during 2013 involved non-U.S. companies?

12. Has the Department seen a recent increase in whistleblower claims of FCPA violations?

    a. If so, to what would you attribute that?

    b. How has the Department responded?

13. Although the Department does not publicize each particular instance in which it declines prosecution despite evidence of an FCPA violation, what characterized the Department's declinations during 2013? Did the number increase from 2012? What factors were most important in leading the Department to decline prosecution?

14. In November 2012, the Department and the SEC issued the FCPA "Resource Guide," which reflected guidance from your agencies regarding the interpretation and enforcement of the FCPA. Does the Department anticipate updating, supplementing or amending the "Resource Guide" in the foreseeable future?

15. In 2013, the Department issued only one Opinion Release concerning the FCPA. Does the Department consider the "Resource Guide" a substitute for its opinion release program?

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).

Responses of Robin S. Rosenbaum
Nominee to be United States Circuit Judge for the Eleventh Circuit
To the Written Questions of Senator Chuck Grassley

1. **What is your understanding of the constitutionality of states to provide "conscience rights" to pharmacists and health care providers who refuse to facilitate abortions or fill prescriptions for contraceptives if they are personally opposed to such practices?**

   Response: Neither the Supreme Court nor the Eleventh Circuit has considered this exact issue. Although some of the federal circuit courts have addressed this specific issue, their approaches to it have not been uniform. Under these circumstances, assuming that no Supreme Court or Eleventh Circuit precedent exists by the time that such a case might come before me, any opinion that I might develop on the issue would arise after thorough consideration of the parties' briefs, the analyses contained in other courts' opinions, and any Supreme Court or Eleventh Circuit precedent that might bear in a more general way on the matter. *See, e.g., Hosanna-Tabor Evangelical Lutheran Church v.EEOC*, ___ U.S. ___, 132 S. Ct. 694 (2012) (holding that Free Exercise Clause and Establishment Clause both operate to create a ministerial exception to an otherwise-neutral law of general applicability); *Employment Div. v. Smith*, 494 U.S. 872 (1990) (upholding neutral law of general applicability in face of challenge based on Free Exercise Clause); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (adopting the undue-burden test to evaluate abortion restrictions before viability). If confirmed to serve on the Eleventh Circuit, I would consider and follow all applicable Supreme Court and Eleventh Circuit precedent.

2. **The Supreme Court has held that there is a general right to abortion. What is your understanding of the constitutionality of sex-selective abortion?**

   Response: I have been unable to find any reported cases analyzing the constitutionality of sex-selective abortion. Thus, the law in this area is currently not well developed. In the absence of a concrete case or controversy, it is difficult to anticipate how the issue might arise and what concerns might bear on the analysis. Under these circumstances, assuming that no Supreme Court or Eleventh Circuit precedent exists by the time that such a case might come before me, any opinion that I might develop on the issue would arise after thorough consideration of the parties' briefs, the analyses contained in any other courts' opinions, and any Supreme Court or Eleventh Circuit precedent that might bear in a more general way on the matter.

3. **If confirmed, what would be your judicial philosophy or approach in applying the Constitution to modern statutes and regulations?**

Response: If confirmed to serve on the Eleventh Circuit, I would continue to employ the same approach that I have used as a district judge and as a magistrate judge. First, I would consider any applicable Supreme Court and Eleventh Circuit precedent and would look to the language of the statute or regulation and any applicable constitutional provisions to determine whether the question could be resolved by the plain language. If a question continued to exist, I would consider persuasive, non-binding precedent from other courts, as well as opinions involving analogous issues. In conducting this analysis, I would take care to avoid unnecessarily determining any constitutional questions and would ensure that any constitutional analysis required would be limited to resolving the narrowest possible question.

4. **What weight or consideration should a judge give to evolving norms and traditions of our society in interpreting the written Constitution?**

Response: The only circumstance of which I am aware where the Supreme Court has evaluated "evolving standards of decency" is in determining whether a penalty violates the Cruel and Unusual Punishments Clause of the Eighth Amendment. *See, e.g., Estelle v. Gamble*, 429 U.S. 97, 102 (1976); *Roper v. Simmons*, 543 U.S. 551 (2005); *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455, 2463 (2012). If confirmed to serve on the Eleventh Circuit, I would continue to follow all relevant precedent of the Supreme Court and the Eleventh Circuit.

5. **What is your understanding of the current state of the law with regard to the interplay between the establishment clause and free exercise clause of the First Amendment?**

Response: Since at least 1970, in *Walz v. Tax Commission of City of New York*, 397 U.S. 664, 669 (1970), the Supreme Court has explained that "there is room for play in the joints" between the First Amendment's Free Exercise Clause and the First Amendment's Establishment Clause. The Court has repeated this description several times since issuing *Walz*, most recently in *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005) (citation omitted), where the Supreme Court again confirmed that "legislative action neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause" may constitutionally exist. If confirmed and the issue came before me, I would apply *Walz, Cutter*, and other relevant Supreme Court and Eleventh Circuit precedent.

6. **Do you believe that the death penalty is an acceptable form of punishment?**

Response: In *Gregg v. Georgia*, 428 U.S. 153 (1976), and in several subsequent cases, the Supreme Court has held that the death penalty, when applied with required procedural safeguards, is constitutional. If confirmed to serve on the Eleventh Circuit and the issue

came before me, I would follow *Gregg* and other relevant Supreme Court and Eleventh Circuit precedent.

7. Do you believe there is a right to privacy in the U.S. Constitution?

Response: Although the Supreme Court has not identified a specific right to privacy in the Constitution, it has nonetheless characterized certain protections within the Bill of Rights and the Fourteenth Amendment as relating to privacy. For example, in *Buckley v. Valeo*, 424 U.S. 1, 64 (1976), the Supreme Court described the First Amendment as protecting "privacy of association and belief . . . ."

Similarly, in *Katz v. United States*, 389 U.S. 347, 350 n.5 (1967), the Supreme Court again opined that the First Amendment regards "privacy in one's association." The Court further stated that the Third Amendment also protects an "aspect of privacy from governmental intrusion" in that it prohibits peacetime quartering of soldiers where the property owner does not consent. *Id.* (citation omitted). The *Katz* footnote likewise characterized the Fifth Amendment as "reflect[ing] the Constitution's concern for . . . the right of each individual 'to a private enclave where he may lead a private life.'" *Id.* (citation omitted).

In *Johnson v. United States*, 333 U.S. 10, 14 (1948), the Supreme Court referred to the Fourth Amendment's protections as conferring a "right of privacy" and protecting privacy in the home. *See also Kentucky v. King*, ___ U.S. ___, 131 S. Ct. 1849, 1862 (2011) (describing the Fourth Amendment as protecting certain "privacy rights"); *Missouri v. McNeely*, ___ U.S. ___, 133 S. Ct. 1552, 1558 (2013) (stating that obtaining a blood sample "implicates an individual's 'most personal and deep-rooted expectations of privacy") (citation and quotation marks omitted).

As for the Fourteenth Amendment's Due Process Clause, the Supreme Court has recognized that "marital privacy" is a part of the "liberty" that it protects. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (citation omitted).

a. Where is it located?

Response: Please see response to Question 7 above.

b. From what does it derive?

Response: Please see response to Question 7 above.

c. What is your understanding, in general terms, of the contours of that right?

Response: Please see response to Question 7 above.

8. **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: In *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997), the Supreme Court explained that, in order to determine whether a right that is not explicitly stated in the Constitution is nonetheless constitutionally protected, a court must examine whether the claimed right is "deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty" (citations and internal quotation marks omitted). In addition, the proponent of the right must provide a "careful description" of the asserted fundamental liberty interest. *Id.* (citations omitted).

   b. **Is it appropriate for a judge to search for "penumbras" and "emanations" in the Constitution?**

      Response: As a district judge and, previously, as a magistrate judge, I have not searched for penumbras and emanations in the Constitution. Likewise, if confirmed to the Eleventh Circuit, I would not search for penumbras and emanations in the Constitution. Instead, I would apply *Glucksberg* and all other relevant Supreme Court and Eleventh Circuit precedent.

9. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, ___ U.S. ___, 130 S. Ct. 3020 (2010), the Supreme Court did not specifically establish the appropriate standard of scrutiny to apply in a Second Amendment challenge against a federal or state gun law, but it did clarify that some heightened form of scrutiny applies. In *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1261 n. 34 (11th Cir. 2012), the Eleventh Circuit opined that a two-step inquiry adopted by several other circuits was appropriate for evaluating the constitutionality of a challenged provision. First, the court considers whether the restricted activity is protected by the Second Amendment, and, if so, the court then determines the appropriate level of scrutiny. *Id.* Because the Eleventh Circuit determined that the restricted activity in *GeorgiaCarry.Org, Inc.*, was not protected by the

Second Amendment, the court did not explain the methodology that it would employ to determine the appropriate level of scrutiny. But the cases that the Eleventh Circuit approvingly cited have generally determined that the appropriate level of scrutiny depends on the "nature of the conduct being regulated and the degree to which the challenged conduct burdens the right," so that a law that "imposes a substantial burden upon the core right of self-defense protected by the Second Amendment must have a strong justification, whereas a [law] that imposes a less substantial burden should be proportionately easier to justify." *Heller v. District of Columbia*, 670 F.3d 1244, 1257 (D.C. Cir. 2011); *see also Ezell v. City of Chicago*, 651 F.3d 684, 701-04 (7th Cir. 2011); *United States v. Chester*, 628 F.3d 673, 680 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 800-01 (10th Cir. 2010); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010).

10. 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 a general rule, judges should not consider matters outside the record of the case. But, where appropriate under Federal Rules of Appellate Procedure 10 or 16 or under Federal Rule of Evidence 201, the record may be supplemented by materials outside the record. If confirmed, I would not consider materials outside the record of the case unless doing so was consistent with the law and with precedent of the Supreme Court and the Eleventh Circuit.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions on psychological and sociological scientific studies?

Response: If, for example, a case involves expert testimony that complies with the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Federal Rule of Evidence 702, a court may be required to render a decision that accounts for expert psychological or sociological scientific studies that are a part of the case record. If confirmed, I would follow all precedent of the Supreme Court and the Eleventh Circuit in considering any such evidence.

11. What would be your definition of an "activist judge"?

Response: In my opinion, an activist judge decides the preferred outcome of the case and then attempts to craft reasoning to justify it. An activist judge may alternatively or additionally be one who has a personal agenda and seeks to use the judicial position to advance it. In my more than six years on the bench, I have not engaged in such conduct, and

I would not engage in such conduct in the future, either in my current position or, if confirmed to serve on the Eleventh Circuit, as a judge of that court.

12. What is the most important attribute of a judge, and do you possess it?

Response: I believe that the most important attribute of a judge is integrity. Integrity includes fairness, intellectual honesty, and diligence. I believe that I have integrity and that I have demonstrated it during my time on the bench as a magistrate judge and as a district judge.

13. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work on the court, if confirmed?

Response: Yes, I believe that collegiality is an important element of the work of a Circuit Court. If I were confirmed, I would approach my work with diligence and an open mind, and I would be respectful to all involved in the process, including the other judges, the court staff, the attorneys, and the litigants.

14. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be fair, even-tempered, and patient, treating with dignity and respect all who come before the judge. I consider all of these aspects of the appropriate judicial temperament of a judge to be essential. I believe that I meet this standard.

15. 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: I am entirely committed to following faithfully the precedents of the Supreme Court and the Eleventh Circuit Court of Appeals and giving them full force and effect, even if I personally disagree with such precedents. If I were confirmed to serve on the Eleventh Circuit, the only conditions under which it might be appropriate to reconsider Eleventh Circuit precedent would be during *en banc* review in the extremely limited circumstances discussed below in response to Question 23. Under no circumstances, however, would I decide a case based on my personal agreement or disagreement with precedents.

16. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what

sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a case of first impression involving a statute, I would examine the language of the provision. If the language were clear, my analysis would begin and end with the language. If an ambiguity in the language existed, however, I would look to the structure and framework of the statute as a whole to interpret the provision at issue. In so doing, I would be careful to avoid a construction that would result in the redundancy or meaninglessness of any portion of the statute. If the answer were still not clear, I would consider whether precedents involving any analogous statutes were instructive. Finally, if ambiguity continued to exist, as a last resort, I would consider plainly ascertainable legislative intent, such as a statement of purpose enacted as part of the governing statute or the fact that a statute was clearly enacted in response to the issuance of judicial interpretation of an earlier statute.

17. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: My opinion about the correctness of Supreme Court and Eleventh Circuit precedent would be irrelevant to my rendering of decisions. Regardless of my personal views, I would faithfully follow the precedents of the Supreme Court and the Eleventh Circuit Court of Appeals, giving them full force and effect -- even if I personally disagreed with them.

18. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: A statute should be declared unconstitutional only in rare circumstances where no possible fair constitutional interpretation can be discerned and only where the statute plainly violates a provision of the Constitution. Constitutional questions should be determined only if absolutely necessary and then, only in the narrowest possible way.

19. **What weight should a judge give legislative intent in statutory analysis?**

Response: A court should first consider the language of the statute at issue. If the language is clear, the court should conclude its analysis there. If an ambiguity in the language exists, the court should look to the structure and framework of the statute as a whole to interpret the provision at issue. In so doing, the court must be careful to avoid a construction that would result in the redundancy or meaninglessness of any portion of the statute. If the answer is still not clear, the court should consider whether precedents involving any analogous statutes

are instructive. Finally, if ambiguity continues to exist, as a last resort, the court may consider plainly ascertainable legislative intent, such as a statement of purpose enacted as part of the governing statute or the fact that a statute was clearly enacted in response to the issuance of judicial interpretation of an earlier statute.

20. Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.

Response: I do not believe that a judge's gender, ethnicity, or other demographic factor should have any influence in the outcome of a case. Cases should be decided solely on the basis of the law.

21. 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 uniquely American document. Consequently, except where Supreme Court or Eleventh Circuit precedent requires, *see, e.g., Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 565 (1990) (reviewing and considering 18th-century English common law in determining whether the Seventh Amendment guarantees a right to a jury trial in certain types of civil cases), I would not rely on foreign law or the views of the world community in determining the meaning of the Constitution.

22. 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 give my complete and unqualified assurances that I will put aside any personal views and be fair to all who appear before me, if confirmed, as I believe I have in my service as a federal judge.

23. 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: The circumstances in which a circuit may overrule precedent are extremely limited and may occur only when the court sits *en banc*. Rule 35 of the Federal Rules of Appellate Procedure provides that *en banc* hearings and rehearings are disfavored and ordinarily will not be ordered except where they are "necessary to secure or maintain uniformity of the court's decisions" or the matter "involves a question of exceptional importance." In order to resolve conflicts among circuit precedent, abrogation of at least some circuit precedent is likely in the first situation. As for the second, however, reversal of circuit precedent may or may not be required. An example of a situation where abrogation

by the court sitting *en banc* may be appropriate may occur where earlier circuit precedent conflicts with the reasoning — but not the holding — of a subsequent Supreme Court decision. *See Main Drug, Inc. v. Aetna U.S. Healthcare, Inc.*, 475 F.3d 1228, 1230 (11th Cir. 2007) ("[W]ithout a clearly contrary opinion of the Supreme Court or of this court sitting *en banc*, we cannot overrule a decision of a prior panel of this court.") (citation and quotation marks omitted). Similarly, where a case may present an "issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue," the court sitting *en banc* may determine that reversal of the panel's decision is appropriate. *See* Fed. R. App. 35(b)(1)(B).

24. It appears that you have spent most of your legal career doing trial level work and have limited experience with appellate courts. Please describe how you will prepare to transition to the appellate level. What do you expect to be most difficult part of this transition for you?

Response: Although I have spent much of my career doing trial-level work, I was fortunate to have had the opportunity to clerk for the Honorable Stanley Marcus while he was serving on the Eleventh Circuit. In addition, I have engaged in some limited federal appellate practice, having handled approximately eight appeals before various federal circuit courts, including the Eleventh Circuit. Besides this appellate experience, as a district judge, I regularly decide certain types of cases that are effectively appeals. These include Social Security cases, habeas matters, and bankruptcy appeals, among others. Finally, I have reviewed the Federal Rules of Appellate Procedure and the Eleventh Circuit's Rules and Internal Operating Procedures. While I fully expect that I would experience a transition period if I were fortunate enough to be confirmed to serve on the Eleventh Circuit, I would work exceptionally hard to hit the ground running, and I believe that, as a result of my experience and of my nearly twenty-three years of varied federal practice, I would be well equipped to serve as a circuit judge.

25. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the nature of the communications.

Response: I have 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: I am not aware of any endorsements or promised endorsements by the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ.

26. Please describe with particularity the process by which these questions were answered.

Response: On February 18, 2014, I received these questions from the Office of Legal Policy at the Department of Justice. I then conducted research, prepared my answers, and reviewed my answers with an attorney in the Office of Legal Policy. Thereafter, I made revisions and finalized my answers for submission to the Committee.

27. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Robin S. Rosenbaum
Nominee to be United States Circuit Judge for the Eleventh Circuit
To the Written Questions of Senator Ted Cruz

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I believe that in deciding cases, judges should diligently ascertain the applicable law and apply it faithfully to the facts of the case. In so doing, judges should be fair and impartial, treating with respect and dignity all who come before the court. In addition, in order to promote the legitimacy and fairness of the system, judges should fully explain the reasons for their decisions. The role of judges in our constitutional system is a limited one. Judges do not make the law; instead, judges apply the law as it is written, impartially and fairly, ensuring compliance with our Constitution.

Although I would not characterize myself as sharing a judicial philosophy of a particular Justice, I strive to emulate the diligence and work ethic of all of the Justices.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has employed originalism to interpret the Constitution. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court considered the public understanding of the Second Amendment at and after its ratification in order to interpret the Amendment. In *Boumediene v. Bush*, 553 U.S. 723 (2008), on the other hand, the Supreme Court reviewed the Framers' intent when construing the writ of habeas corpus and the Suspension Clause. If confirmed to serve on the Eleventh Circuit, I would continue to follow the Supreme Court and Eleventh Circuit precedent applicable to the particular constitutional provision under consideration.

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: The circumstances in which a circuit court may overrule precedent are extremely limited and may occur only when the court sits *en banc*. Rule 35 of the Federal Rules of Appellate Procedure provides that *en banc* hearings and rehearings are disfavored and ordinarily will not be ordered except where they are "necessary to secure or maintain uniformity of the court's decisions" or the matter "involves a question of exceptional importance." In order to resolve conflicts among circuit precedent, abrogation of at least some circuit precedent is likely in the first situation. As for the second, however, reversal of circuit precedent may or may not be required. An example of a situation where abrogation by the court sitting *en banc* may be appropriate may occur where earlier circuit precedent conflicts with the reasoning — but not the holding — of a subsequent Supreme Court decision. *See Main Drug, Inc. v. Aetna U.S.*

Healthcare, Inc., 475 F.3d 1228, 1230 (11th Cir. 2007) ("[W]ithout a clearly contrary opinion of the Supreme Court or of this court sitting *en banc*, we cannot overrule a decision of a prior panel of this court.") (citation and quotation marks omitted). Similarly, where a case may present an "issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue," the court sitting *en banc* may determine that reversal of the panel's decision is appropriate. *See* Fed. R. App. 35(b)(1)(B).

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: While it is true that procedural safeguards inherent in the structure of the federal system provide some protection for state sovereign interests, the Supreme Court has determined that state sovereign interests are protected in other ways as well. For example, in *Printz v. United States*, 521 U.S. 898 (1997), the Supreme Court judicially enforced limitations on federal power, finding provisions of the Brady Act to be unconstitutional because they violated state sovereign rights. *See also New York v. United States*, 505 U.S. 144 (1992) (holding that federal law requiring states either to dispose of radioactive waste or to take title to it and be liable for it was an unconstitutional violation of state sovereign rights). If confirmed to serve on the Eleventh Circuit, I would continue to follow all applicable precedent.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *United States v. Morrison*, 529 U.S. 598 (2000), and *United States v. Lopez*, 514 U.S. 549 (1995), the Supreme Court held that the federal laws under consideration in each case were unconstitutional because they exceeded congressional power under the Commerce Clause. In reaching these conclusions, the Supreme Court emphasized the noneconomic nature of the activities regulated, although the Supreme Court did not hold that noneconomic activity could never be regulated under the Commerce Clause. Moreover, in *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring) (citation omitted), Justice Scalia relied on the Necessary and Proper Clause in conjunction with the Commerce Clause to conclude that "Congress may regulate even noneconomic local activity if that regulation is a necessary part of a more general regulation of interstate commerce." If confirmed to serve on the Eleventh Circuit, I would continue to follow all applicable precedent of the Supreme Court and the Eleventh Circuit in determining issues under the Commerce Clause and the Necessary and Proper Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring), Justice Jackson set forth a framework for evaluating the constitutionality of executive actions. Under the three-part framework, the President's power reaches its zenith when the President "acts pursuant to an express or implied authorization of Congress." *Id.* at 635. A person challenging the President's actions in such circumstances bears a heavy burden of persuasion. *Id.* at 636-37. Where neither a congressional grant nor denial of power exists, the President acts in "a zone of twilight in which [the President] and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.* at 637. Finally, the President's power sinks to its nadir when he acts contrary to the expressed or implied will of Congress. *Id.* Under those circumstances, the President can rely on only the President's "own constitutional powers minus any constitutional powers of Congress over the matter[,]" courts may uphold the President's actions only by precluding Congress from acting on the matter. *Id.* at 637-38. In *Dames & Moore v. Regan*, 453 U.S. 654 (1981), the Supreme Court favorably discussed Justice Jackson's framework for evaluating executive action. Since that time, in *Medellin v. Texas*, 552 U.S. 491, 524 (2008), the Supreme Court described Justice Jackson's *Youngstown* concurrence as "provid[ing] the accepted framework for evaluating executive action . . . ." If confirmed to serve on the Eleventh Circuit, I would continue to follow all applicable Supreme Court and Eleventh Circuit precedent on the judicially enforceable limits on the President's ability to engage in executive actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997), the Supreme Court explained that, in order to determine whether a right that is not explicitly stated in the Constitution is nonetheless constitutionally protected, a court must examine whether the claimed right is "deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty" (citations and internal quotation marks omitted). In addition, the proponent of the right must provide a "careful description" of the asserted fundamental liberty interest. *Id.* (citations omitted). If confirmed to serve on the Eleventh Circuit, I would continue to follow all applicable precedent of the Supreme Court and the Eleventh Circuit.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: In *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985), the Supreme Court explained that classifications that are "so seldom relevant to the achievement of any legitimate state interest" are subjected to strict scrutiny. These classifications include race, national origin, and sometimes alienage. *See id.* Classifications that "frequently bear[] no relation to ability to perform or contribute to society," such as gender and illegitimacy, are subjected to intermediate scrutiny. *Id.* at 440-41. If confirmed to serve on the Eleventh Circuit, I would continue to follow all applicable Supreme Court and Eleventh Circuit precedent concerning when a

classification should 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).

Response: In *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), the Supreme Court opined that twenty-five years from the date of that decision, it anticipated that race would no longer need to be considered in order to achieve diversity in the student bodies of colleges and universities. Since that time, in *Fisher v. University of Texas at Austin*, ___ U.S. ___, 133 S. Ct. 2411 (2013), the Supreme Court has provided further guidance regarding consideration of race to obtain diversity in higher education. If confirmed to serve on the Eleventh Circuit, I would continue to follow all applicable precedent of the Supreme Court and the Eleventh Circuit regarding consideration of race in admissions to schools of higher education.

Senator Chuck Grassley
Questions for the Record

Bruce Howe Hendricks,
Nominee, U.S. District Judge for the District of South Carolina

1. **In 2009, you upheld a jury award of $3 million in punitive damages in a defamation case. That was 30 times more than the amount of compensatory damages awarded.**

   a. **What is your view on the amount of deference jury awards are entitled to?**

      Response: The jury system is foundational to our system of justice and constitutionally enshrined. The Fourth Circuit Court of Appeals has recognized that, "[u]nder the applicable legal principles, a trial court 'should exercise its discretion to award a new trial sparingly,' and a jury verdict is not to be overturned except in the rare circumstance when the evidence 'weighs heavily' against it." *United States v. Smith*, 451 F.3d 209, 216-17 (4th Cir. 2006) (quoting *United States v. Perry*, 335 F.3d 316, 320 (4th Cir. 2003)).

   b. **Every case is different, but what are your views, generally, on the appropriateness of an award that large, where the plaintiff has suffered little or no physical injury?**

      Response: A district court judge should consider all punitive damage awards in accordance with the factors outlined in the United States Supreme Court decision, *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574-75 (1996), including: (1) the degree of reprehensibility of the defendant's misconduct; (2) the ratio of the actual or potential harm suffered by the plaintiff to the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil or criminal penalties authorized for comparable misconduct. The United States Supreme Court has stated that the most important of these three guideposts is the degree of reprehensibility of the defendant's conduct, as it reflects the elementary notion that "some wrongs are more blameworthy than others." *Gore*, 517 U.S. at 575.

2. **In a 2008 speech you stated your belief that "there is certainly evidence of racial injustice and inequality in our court system." Please explain what you meant by that statement.**

   Response: In the 2008 speech, I was attempting to remind attorneys in attendance that their obligations in representation should not be affected by the type of representation secured, whether retained or court appointed. I discussed an article that suggested that a defendant's ability to pay for legal representation is more predictive of outcome than a defendant's race. The statement quoted above was simply a prefatory acknowledgement that even as there exists evidence of some disparity of outcome in our judicial system

along racial lines, the data indicates socio-economics may be more responsible than any sort of perceived racial bias.

3. **In a September 2011 speech you described your caseload a "junk no one else wants to do." (Emphasis in original). Please explain what you meant by that statement.**

Response: Every case that comes before me is important. It is my privilege to hear them. By way of context, the District of South Carolina by Local Rule makes referral of certain substantive areas, to its magistrate judges, automatic. For their reoccurrence in some volume, those types of cases are well-suited for the specialization and institutional knowledge magistrate judges can accrue in them. Without such a system, these same cases might pose a challenge to the general efficiency of the Court. Continuing education is an annual requirement of lawyers at the bar. Any opportunity I have to speak with some levity to them, I do. Notwithstanding, the tongue-in-cheek sentiment above could have been phrased more tastefully or not at all. It does not reflect any view of mine, as my judicial record, and the seriousness with which I approach each case, plainly demonstrate.

4. **What is the most important attribute of a judge, and do you possess it?**

Response: A good judge must possess many important attributes, including conformity to the rule of law. But, before any element of one's judicial philosophy or jurisprudential virtue, a judge must be humble first. A judge must possess humility before the law, humility before the bar and litigants, and humility before each case. A humble spirit allows a judge to see clearly and rule objectively. Over the last 12 years, as a United States Magistrate Judge, I have made it my goal to allow those who know better - the lawyers, litigants, experts, and witnesses - space to try their case without the unnecessary over-involvement of a too self-important judge.

5. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: Appropriate judicial temperament includes, in the least, the qualities of impartiality, fairness, respectfulness, humility, integrity and commitment to the rule of law. I believe my record as United States Magistrate Judge demonstrates my dedication to those ideals.

6. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: My personal view is not relevant to the adjudication of any case that would appear before me. If confirmed, I would faithfully apply the controlling legal precedents

of the United States Supreme Court and the Fourth Circuit Court of Appeals regardless of my privately held opinions, if any.

7. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: I would first consider the plain language of any statute, regulation, or other provision applicable to the question. If the language was unambiguous, then I would apply the language as written. If the language was ambiguous, at least as applied to the facts of the particular case before me, then I would apply the principles of statutory construction and look to precedents from the United States Supreme Court and the Fourth Circuit. If no analogous or instructive Supreme Court or Fourth Circuit precedent existed, I would look to other circuit courts of appeals in analogous cases which addressed the issue before me. Finally, if no such persuasive authority existed in the courts of appeals, I would look to consideration of the issue by the district courts, first of the Fourth Circuit and then elsewhere.

8. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: If confirmed, I would always follow the precedents of the United States Supreme Court and the Fourth Circuit Court of Appeals, notwithstanding any personal opinion I may have.

9. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: As courts of limited jurisdiction and a co-equal branch, federal courts should presume the constitutionality of congressional action. A court, therefore, should not address the constitutionality of a statute if the case can be decided on other grounds. Should a court, however, determine that a statute enacted by Congress exceeded its authority or contradicts the Constitution it would be appropriate for a federal court to declare the statute unconstitutional if such a determination was absolutely necessary and appropriate to resolve the case and otherwise justiciably appropriate. I would follow Supreme Court and Fourth Circuit precedent in making such a determination.

10. **In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community," in determining the meaning of the Constitution? Please explain.**

Response: No.

11. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: I have no agenda, political or personal. My record as a United States Magistrate Judge for 12 years proves my commitment to *stare decisis* and the rule of law.

12. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: My personal views are irrelevant to the judicial decisions before me. My record as a United States Magistrate Judge for 12 years attests to my objectivity and impartiality.

13. If confirmed, how do you intend to manage your caseload?

Response: I have now had 12 years' experience managing a significant caseload as a United States Magistrate Judge. In addition to reports and tools available in the district court's electronic filing system, I have developed my own methodology for tracking the progress of cases assigned to me. If confirmed I would continue to actively manage my caseload with the assistance of chambers staff and staff from the clerk of court. I would make every effort to promptly dispose of motions and discovery disputes and I would strongly encourage the parties to engage in serious settlement discussions early in the case.

14. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Judges have an essential role in controlling the pace and conduct of litigation. Our judicial system would be overrun without active oversight. If confirmed, I would set firm scheduling deadlines, promptly decide motions, encourage settlement discussions early in the litigation, and promote the efficient resolution of discovery disputes. That being said, cases do not belong to the judge. They are chiefly the interest of litigants and their lawyers. I do not meddle. I believe that docket management is some balance of both judicial vigilance and restraint.

15. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: I read the written submissions of the parties, review the cases cited by the parties, listen and consider any oral argument presented, and apply the law as set forth in the decisions of the United States Supreme Court and the Fourth Circuit Court of Appeals to the facts of the case.

16. **According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees."**

    a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

    Response: No.

    b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

    Response: No.

17. **Please describe with particularity the process by which these questions were answered.**

    Response: The questions were provided to me on the afternoon of February 18, 2014, by personnel from the Department of Justice. I prepared responses to the questions and reviewed them with a representative of the Office of Legal Policy of the Department of Justice, on February 20, 2014, and asked that my responses be submitted to the Senate Judiciary Committee.

18. **Do these answers reflect your true and personal views?**

    Response: These answers reflect my true and personal views.

Questions for the Record
Senator Ted Cruz

Bruce Howe Hendricks,
Nominee, U.S. District Judge for the District of South Carolina

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: Although I do not ascribe to some fully unified judicial philosophy, there are certain rudimentary jurisprudential guidelines I follow, including a commitment to the rule of law, the doctrine of *stare decisis*, respecting the limited jurisdiction of federal courts, judicial economy, and considerations for federalism. My philosophical approach would also include impartiality, fairness, respectfulness, humility, and integrity. I think these principles have been exhibited by many, if not all, of the justices presiding in the courts identified above.

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: My role as a district judge in a case involving constitutional interpretation would be to study the facts of the case before me and apply the applicable precedent to the case, including precedent which considers the original public meaning of the text, as the Supreme Court did in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or the original intent of the drafters.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: As a district judge, I would never overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: Respectfully, my personal view of the statement is not relevant. If confirmed to serve as a United States District Judge, I would be bound by the Supreme Court's decision in *Garcia*. I would apply the holding in that case without regard to whether or not I personally agreed with the decision.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: United States Supreme Court precedent, including the seminal decision, *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), provides that Congress may regulate under the Commerce Clause in three ways: it may (1) "regulate the use of the channels of interstate

commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) "regulate those activities having a substantial relation to interstate commerce." *Lopez*, 514 U.S. at 558-59; *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow the precedent of the Supreme Court and Fourth Circuit in determining the propriety of congressional action pursuant to the Commerce Clause.

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court spoke on the President's authority to act in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) and in *Medellin v. Texas*, 552 U.S. 491, 524 (2008). The Supreme Court has determined that the President's authority to act must come from either an act of Congress or from the Constitution. If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent in deciding any challenge to executive action.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: In *Washington v. Gluckberg*, 521 U.S. 702, 720-21 (1997) (internal citations omitted), the Supreme Court held 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." If confirmed, I would follow Supreme Court and Fourth Circuit precedent in deciding issues concerning fundamental rights.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has identified the immutable and protected classifications which are subject to heightened scrutiny under the Equal Protection Clause. Government action that affects race, alienage, and national origin, is subject to strict scrutiny, while government action that implicates gender and illegitimacy is subject to intermediate scrutiny. *See City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440-41 (1985). If confirmed, I would faithfully follow Supreme Court and Fourth Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

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: Respectfully, I would not express any opinion or projection about the status of racial preferences in public higher education fifteen years from now. Such speculation is beyond my role as magistrate judge or, if confirmed, district judge.

Questions for the Record
Senator Grassley

Mark G. Mastroianni
Nominee, U.S. District Judge for the District of Massachusetts

1. **You have worked as both a prosecutor and a defense attorney. How have these experiences prepared you to become a federal judge?**

   Response: Being both a prosecutor and defense attorney has given me unique insight on the functioning of the criminal justice system. I recognize the system is adversarial and the design works to assure fairness and integrity. I have a complete understanding of how opposing sides on criminal cases will each look to the protection of the law and apply the same concepts in different ways. Legal concepts are open to good faith argument, differing views and challenge as part of advocacy in the system. However, the role of a judge is very different from that of an advocate. The judicial role in the system guarantees opposing sides are fully and fairly heard and matters are decided based on an unbiased application of the law to facts.

2. **During your hearing I asked you about Massachusetts gun storage law and case. You discussed the concept that states have authority to impose regulations on gun rights and listed safety as one of the legitimate reason for doing so. As I'm sure you would recognize, however, at a certain point excessive regulations effectively deny the right. With respect to the individual Second Amendment right to keep and bear arms, please provide examples of regulations that would be too restrictive, such that the rights guaranteed by the Second Amendment are abridged.**

   Response: An individual's Second Amendment rights to possess a firearm for lawful use is recognized by the controlling precedent of *District of Columbia v. Heller*, 554 U.S. 570 (2008). An example of regulation which is too restrictive is that struck down in *Heller* where firearms were required to be "disassembled or bound by a trigger lock at all times, rendering them inoperable" when actually possessed by the lawful owner in the home. *See id. at 628.* Additionally, any regulations which effectively operate to prohibit the exercise of the right to legally own a firearm would be violative of the Second Amendment. *See McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

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: Gender, ethnicity or other demographic factors should have no influence on the outcome of a case.

4. **If confirmed, how will you use the Sentencing Guidelines in your decision making?**

   Response: If confirmed as a judge the Federal Sentencing Guidelines will serve as guidance when considering an appropriate and fair sentence for a particular offender under the facts of the case. The Guidelines serve the important goal of ensuring uniformity and consistency in sentencing. The Guidelines establish a general range which considers a specific type of offense as well as offender characteristics and criminal history, among other things. Accordingly, the Guidelines provide an organized way to assess an offender and the particular crime and are a valuable resource to include in the overall consideration of appropriate sentencing.

5. **What is the most important attribute of a judge, and do you possess it?**

   Response: I believe patience is the most important attribute for a judge. It would be difficult to gain a full and detailed understanding of matters upon which a decision must be rendered without patience. Fairness and integrity are the cornerstones of the justice system. However, patience is necessary to thoroughly gather all information relative to a case and allow opposing sides to fully and fairly present arguments so that fairness and integrity can be relied upon to render a decision. I believe I have this necessary and important attribute for a judge to possess.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament to you consider the most important, and do you meet that standard?**

   Response: A judge must be thoughtful, respectful, calm, patient and open-minded to allow an argument to be fully and fairly presented and developed before making a decision. I believe I have these elements of temperament.

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: If confirmed, I will follow all binding precedent and I am committed to giving such precedent full force and effect whether or not I 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: If I am confirmed as a judge, I would utilize the fundamental principles of legal analysis including first examining the plain language and text of a particular statute. Unambiguous language and text would resolve the matter but if ambiguity remained I would seek guidance from case law as persuasive authority including the examination of other circuits that may have an issue somewhat similar. Finally I would consider the legislative history to develop a full understanding of the matter presented as part of my approach to matters 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?**

Response: If confirmed as a judge I would apply binding precedent in all cases including those in which I may disagree with the decision of a higher court.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It would only be appropriate to declare a statute unconstitutional if there was a plain showing that Congress had exceeded its constitutional bounds. Respecting a presumption of constitutionality to all validly enacted statutes, if confirmed as a judge, I would rely on established precedent as a guide in such an analysis.

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, it would not be proper for a judge to rely on foreign law or "world community" views 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?**

Response: If confirmed, I assure the Committee that I am committed to and respect my obligation to render decisions grounded in precedent and not on underlying political ideology or motivation. In my current position as District Attorney I perform my duties with this same commitment.

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: If confirmed as a judge I assure the Committee that any personal views or feelings would be put to the side and all decisions would be rendered in a fair and impartial way. I am committed to working within the fair system of justice where

matters are determined not on personal beliefs but on the neutral application of facts to the law.

14. If confirmed, how do you intend to manage your caseload?

Response: If confirmed as a judge I would utilize the court's Case Management System, having conferences scheduled soon after the filing of cases. The Case Management System will allow for schedules to be set for discovery as well as motions and other hearings. I would endeavor to decide all motions efficiently and monitor the status and development of cases through their various stages.

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: I believe that judges should take a role in controlling the pace and conduct of litigation and if confirmed I would utilize the procedures generally outlined in my response to the previous question.

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 have no previous experience as a judge but if confirmed I would thoughtfully consider all facts gathered during a case being processed and look to binding precedent in making decisions.

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 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 received these questions on February 18, 2014 and drafted responses which were provided to the U.S. Department of Justice on February 20, 2014. I finalized my responses to the questions after discussing my draft with a representative of the Department of Justice and submitted my final responses on February 23, 2014.

19. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Mark G. Mastroianni
Nominee, U.S. District Judge for the District of Massachusetts

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, the philosophy that would guide me is that all judicial actions must promote and honor the fundamental principles of fairness, integrity and respect for the law. I have an insufficiently detailed understanding of the philosophies and practices of individual justices to make an analogous comparison.

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 in *District of Columbia v. Heller,* 554 U.S. 570 (2008) recognized that the public understanding of the Constitution, at the time it was ratified, is an important consideration relative to constitutional interpretation. If confirmed, I will follow Supreme Court and First Circuit precedent on the issue.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed I would not overrule precedent as that would be beyond my authority and I would be bound to follow and apply controlling precedent.

Explain whether you agree that "State sovereign interests...are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed, I would follow and apply *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985), as well as any other binding precedent on that or any other point of law.

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 indicated Congress can regulate three identified areas of interstate commerce. These areas are "the use of channels of interstate commerce", the "instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities" and "activities that substantially affect interstate commerce." *See United States v. Morrison*, 529 U.S. 598, 608-610 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). If confirmed, I would apply and follow this and all other binding precedent.

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 action must come from an Act of Congress or the Constitution itself. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). The Court in *Youngstown* has established an analysis for evaluating and determining the constitutionality of executive actions or orders. *See id. at* 635-638 (Jackson, J., concurring). If confirmed, I would follow the controlling precedent on this issue.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: A right is fundamental when "'deeply rooted in this nation's history and traditions', and 'implicit in the concept of ordered liberty.'" *See Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997) (internal citations omitted). If confirmed, I would follow the controlling precedent on this issue.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: Heightened security under the Equal Protection Clause is required by the Supreme Court when dealing with matters that burden a fundamental right or operate to the peculiar disadvantage of a suspect class. *See*, e.g. *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439-441 (1985). Classifications included for strict scrutiny are based on race, national origin and alienage, while gender and illegitimacy are given intermediate scrutiny. *Id.* If confirmed, I would follow all controlling precedent regarding application of scrutiny under the Equal Protection Clause.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: My personal expectation regarding racial preferences in public higher education will play no role in any judicial decisions if I am confirmed. I would follow the holding of *Grutter v. Bollinger*, 539 U.S. 306 (2003) and *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013) as well as other binding precedent on this issue.

February 24, 2014

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you again for giving me the opportunity to appear before the Committee on February 11, 2014. I enclose my responses to the Questions for the Record that I received from Senator Feinstein and Ranking Member Grassley.

Sincerely,

Leslie R. Caldwell

Enclosure

Questions for the Record from Senator Charles Grassley
Leslie R. Caldwell
Nominee for Assistant Attorney General of the Criminal Division, Department of Justice
February 24, 2014

I am concerned that the Department is avoiding prosecuting institutions or executives at financial institutions for fear that the company is "too big to jail." I certainly recognize that settlements and non-prosecution agreements have a place in the prosecutor's playbook. But I find it disturbing how often they are relied on. In my view, this rewards and perpetuates criminal misconduct, and increases the risk that future criminal behavior will adversely affect financial markets and our fragile economy.

1. Do you believe that there is any corporation or any corporate executive that is "too big to jail?"

   ANSWER: No individual or corporation is above the law. As I said in my statement to the Committee, if confirmed, I will vigorously prosecute criminal wrongdoing whether it occurs in a boardroom, across a computer network, or on a street corner. Indeed, as a prosecutor I brought criminal charges against numerous senior executives and institutions and would draw on those experiences if confirmed as the Assistant Attorney General of the Criminal Division.

2. How much deference should the Department give a regulator's advice concerning the collateral effects of a criminal prosecution or conviction on an institution's viability or the broader economy in weighing criminal charges against that institution?

   ANSWER: The Department has long-established guidelines that must be considered when weighing whether to bring criminal charges against an institution. One of several factors to be considered is what, if any, collateral consequences a criminal charge might have on innocent third parties. In considering claims by a prospective defendant institution that a criminal charge could have negative effects on the company or beyond, it would be prudent for the Department to consult with appropriate regulators to obtain their advice on the likelihood that the claimed consequences actually would come to pass. However, the Department alone would make the ultimate decision whether to bring a criminal charge in a particular case.

3. You certainly have extensive experience in prosecuting these types of cases. As a federal prosecutor, did you ever consult with an outside expert or with a regulator on the effects a criminal charge against a company or an individual could have on the economy or

financial markets? If so, what factors did you and the Department consider before making a charging decision?

ANSWER: In my experience as a federal prosecutor, I never consulted with an outside expert on the effects that a criminal charge against a company or individual could have on the economy or financial markets. Nor did I ever consult with a regulator regarding the possible financial or economic effects of a charge against an individual. I can recall two occasions when I consulted with regulators regarding the possible collateral financial impacts of a potential corporate criminal prosecution. In one case, involving the prosecution of a national nursing home chain for Medicare fraud, I consulted and worked with the Department of Health and Human Services to ensure that residents of the homes would not be displaced or their care disrupted as a result of the prosecution. In the other case, I and others in the Department consulted with the Securities and Exchange Commission to determine whether a criminal charge against an accounting firm could be disruptive to the markets they regulate. In both cases, after weighing all the factors listed in the Department's guidelines for federal prosecution of business organizations, criminal charges were filed.

4. What factors should the Department consider relevant when a regulator expresses concerns over a potential criminal prosecution?

ANSWER: The Department has a long history of working collaboratively with a broad array of regulators who serve as valuable partners in the Department's law enforcement mission. Given that these regulators often have significant subject matter expertise, the Department may seek their input when appropriate in weighing whether to bring a criminal prosecution. As noted above in response to Question 2, however, a regulator's view as to the potential collateral consequences of a possible prosecution is just one factor the Department considers in deciding whether to file a criminal charge. The decision whether to bring a criminal charge in any given case rests solely with the Department, and if confirmed, I would make such decisions after consulting the factors enumerated in the United States Attorney's Manual.

A few days after your hearing before the Committee on the Judiciary, the Department of Justice and the Department of the Treasury jointly released two memos providing further guidance on one of the issues we discussed: money laundering and marijuana business proceeds.

The February 14, 2014 memo issued by Deputy Attorney General James M. Cole, states the following:

> "This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA, the money laundering and unlicensed money transmitter statutes, or the BSA, including the obligation of financial institutions to conduct customer due diligence.... This memorandum is not intended, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It... does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

5. In light of the above paragraph in the Department's February 14, 2014 memo, do you agree that:

   a. The possession, cultivation, and distribution of marijuana remains illegal in all states under the Controlled Substances Act;

      ANSWER: Yes. If I am confirmed as the Assistant Attorney General of the Criminal Division, I will carefully review the memorandum issued to all United States Attorneys on February 14, 2014. I certainly support the Department's continuing and vigorous enforcement of the Controlled Substances Act in a manner consistent with appropriate policies and priorities. As a federal prosecutor for 17 years, I prosecuted numerous drug crimes and drug trafficking organizations and know too well the devastating effect that gang and drug violence bring to our communities. I would draw on those experiences in confronting these issues at the Department.

   b. The laundering of the proceeds of the possession, cultivation, and distribution of marijuana remains illegal in all states under federal money laundering statutes;

      ANSWER: Yes. As described above, if I am confirmed as the Assistant Attorney General of the Criminal Division, I will carefully review the memorandum issued to all United States Attorneys on February 14, 2014. I

certainly support the Department's continuing and vigorous enforcement of federal money laundering statutes in a manner consistent with appropriate policies and priorities.

c. The Department's ability to enforce federal law in these areas remains unchanged; and

ANSWER: Because I am not currently at the Department, I have not studied the memorandum issued to all United States Attorneys on February 14, 2014. If confirmed, I will review it carefully. In response to this question, I do note that the portion of the memorandum quoted above states in part, "This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law."

d. The memo does not create a "safe harbor" that an institution can rely upon as a defense to a prosecution under either of these types of laws.

ANSWER: Because I am not currently at the Department, I have not studied the memorandum issued to all United States Attorneys on February 14, 2014. If confirmed, I will review it carefully. In response to this question, I do note that the portion of the memorandum quoted above states in part, "Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA, the money laundering and unlicensed money transmitter statutes, or the BSA, including the obligation of financial institutions to conduct customer due diligence...."

The Treasury Memo attempts to offer guidance to financial institutions on how they may offer various financial services to business engaged in marijuana production or distribution despite federal criminal law clearly prohibiting the same.

6. Please confirm that the activities described in or that would require a bank to file a "Marijuana Limited" Suspicious Activity Report are, despite the Cole Memos, a direct violation of current federal anti-money laundering statutes.

ANSWER: I am not currently at the Department; therefore I am not in a position to respond to this question. If I am confirmed as the Assistant Attorney General of the Criminal Division, I will carefully review the memorandum issued by the United States Department of Treasury on February 14, 2014, as well as the memoranda

issued by Deputy Attorney General James Cole on August 29, 2013, and February 14, 2014. I certainly support the Department of Justice's continuing and vigorous enforcement of the Controlled Substances Act and federal money laundering statutes in a manner consistent with appropriate policies and priorities.

7. If, within the statute of limitations of the federal money-laundering statute, the Department of Justice reverses course and fully enforces the Controlled Substances Act and federal anti-money laundering statutes, could the Department of Justice use these "Marijuana Limited SARs" in the criminal prosecution against financial institutions that file them?

    a. If no, please describe what would limit a federal prosecutor from using these SARs in a criminal prosecution, other than prosecutorial discretion.

    ANSWER: As stated above, I am not currently at the Department; therefore I am not in a position to respond to this question. If I am confirmed, I look forward to carefully reviewing these issues.

The February 14, 2014 memos attempt to provide guidance to financial institutions on how they can simultaneously meet their reporting obligations under the Bank Secrecy Act ("BSA") while providing banking services to individuals or entities engaged in the cultivation or distribution of marijuana in certain states. At the same time, according to recent media reports, the Department's Civil Division has been aggressively pursuing certain legal practices by financial institutions in an operation named "Operation Choke Point."

As a result, on one hand, the Department of Justice's Criminal Division appears to be facilitating illegal behavior specifically prohibited by federal law by unilaterally limiting the scope of the BSA, while on the other hand, the Department's Civil Division is using the BSA in order to stop legal online lending practices, such as pay-day lending, by pressuring the banking industry to cease providing legal third-party payment services.

Given this inconsistent application of the BSA, it is understandable that the financial services industry should not trust the Department's assurances that those entities who engage in financial activities with marijuana cultivators, distributors, or retailers will not be prosecuted under existing federal law, including the BSA, the CSA, and federal money laundering statutes.

8. Will you commit that as Assistant Attorney General of the Criminal Division you will work to ensure that the various divisions within the department reach consensus on the Department's interpretation of the proper scope or use of a statute?

    ANSWER: I am not familiar with Operation Choke Point or the concerns presented in this question. However, I can assure you that if I am confirmed, I will

consult my colleagues in other components of the Department on areas of mutual interest.

I recently asked Attorney General Holder these questions and have not yet received response. As the Foreign Corrupt Practices Act falls within Criminal Division jurisdiction, would you please respond to the following questions.

9. What are the Department's current enforcement priorities under the Foreign Corrupt Practices Act?

   ANSWER: I am not in the Department; therefore, I am not in a position to address this question. If I am confirmed as the Assistant Attorney General of the Criminal Division, I assure you that I will be vigilant in pursuing cases under the Foreign Corrupt Practices Act.

10. What particular industries, markets or practices is the Department focusing on, and why?

    ANSWER: I am not in the Department; therefore, I am not in a position to address this question. As noted above, if I am confirmed as the Assistant Attorney General of the Criminal Division, I assure you that I will be vigilant in pursuing cases under the Foreign Corrupt Practices Act.

11. What proportion of the Department's enforcement activity during 2013 involved non-U.S. companies?

    ANSWER: I am not in the Department; therefore, I am not in a position to address this question. If I am confirmed as the Assistant Attorney General of the Criminal Division, I assure you that I will be vigilant in pursuing cases against U.S. and non-U.S. companies that violate the Foreign Corrupt Practices Act.

12. Has the Department seen a recent increase in whistleblower claims of FCPA violations?

    a. If so, to what would you attribute that?

    b. How has the Department responded?

    ANSWER: I am not in the Department; therefore, I am not in a position to address these questions.

13. Although the Department does not publicize each particular instance in which it declines prosecution despite evidence of an FCPA violation, what characterized the Department's

declinations during 2013? Did the number increase from 2012? What factors were most important in leading the Department to decline prosecution?

ANSWER: I am not in the Department; therefore, I am not in a position to address these questions. While I have not been privy to the internal deliberations surrounding the Department's declination decisions, if confirmed as the Assistant Attorney General of the Criminal Division, I assure you that declination decisions will be based on the law and the evidence presented.

14. In November 2012, the Department and the SEC issued the FCPA "Resource Guide," which reflected guidance from your agencies regarding the interpretation and enforcement of the FCPA. Does the Department anticipate updating, supplementing or amending the "Resource Guide" in the foreseeable future?

ANSWER: I am not in the Department; therefore, I am not in a position to address this question.

15. In 2013, the Department issued only one Opinion Release concerning the FCPA. Does the Department consider the "Resource Guide" a substitute for its opinion release program?

ANSWER: I am not in the Department; therefore, I am not in a position to address this question.

Questions for the Record from Senator Dianne Feinstein

For Leslie R. Caldwell

Senate Committee on the Judiciary

February 24, 2014

Prosecution of Drug, Gun, and Gang Crimes

You have significant experience prosecuting drug, gang, and gun crimes, including as Chief of the Criminal Division in the U.S. Attorney's Office in my hometown of San Francisco. As you know, these often violent crimes continue to devastate many communities in California and across our country. According to the Centers for Disease Control and Prevention, 11,101 homicides were committed with firearms in the United States in 2011, the latest year that data is available. The 2011 National Gang Threat Assessment found that gang membership increased by 40 percent between 2009 and 2011 and that "[g]angs are responsible for an average of 48 percent of violent crime in most jurisdictions and up to 90 percent in several others . . . ."

- **If confirmed, will you vigorously enforce federal law against gang members and others who commit major drug or gun trafficking crimes, in coordination with the Offices of the U.S. Attorney?**

  Answer: Yes. As a former federal prosecutor, I have prosecuted many violent gang cases and led the Violent Criminal Enterprises Section of the U.S. Attorney's Office in the Eastern District of New York, and oversaw the prosecution of violent drug traffickers, gangs and gun traffickers as Chief of the Criminal Division in the Northern District of California. I know too well the devastating effect that gang and drug violence bring to our communities. If confirmed, I certainly would vigorously enforce the law against this activity, in coordination with United States Attorneys' Offices.

  What will be your priorities in determining which drug, gun, and gang crimes will be prosecuted by attorneys in the Criminal Division and in formulating criminal enforcement policy for the broader Department of Justice?

Answer: Since I am not now at the Department, I am not familiar with the current prosecution priorities for drug, gun and gang violence. If confirmed, I will familiarize myself with the Department's criminal enforcement policy and evaluate its current priorities. In any event, I would expect that prosecution of gangs and major drug and gun trafficking crime would be a significant Department priority. I also would expect to have a strong voice in formulating the Department's criminal enforcement policy.

Money Laundering – HSBC Case

As you and I discussed when we met in my office in December, the failure of some U.S. banks to comply with anti-money laundering laws fuels drug-related violence in Mexico. As you know, HSBC allowed over $670 billion in wire transfers and over $9.4 billion in physical money to enter the U.S. from Mexico unmonitored. Of that money, we know that at least $881 million in Mexican drug proceeds entered the U.S. illegally. On December 11, 2012, HSBC entered into a Deferred Prosecution Agreement with the Department of Justice and paid $1.92 billion in fines.

An April 2013 report by the Senate Caucus on International Narcotics Control, which I chair along with Senator Grassley, stated that it is unacceptable for monetary penalties to remain the cost of doing business for financial institutions that do not comply with U.S. anti-money laundering laws. I believe the individuals responsible need to be criminally prosecuted and barred from the financial sector.

- **Do you agree with this assessment?**

  Answer: I believe no person or institution is above the law, and when the evidence warrants, individuals responsible for corporate wrongdoing should be held accountable. As I said in my statement to the Committee, if confirmed, I would enforce the law vigorously whether the wrongdoing occurred in a boardroom or on a street corner.

- **If confirmed, what will you do to ensure that monetary penalties are not simply the cost of doing business for financial institutions that violate U.S. anti-money laundering laws?**

Answer: While I have not studied the facts of the HSBC matter or the report that you reference, I agree that potential criminal cases against financial institutions or other business organizations must be evaluated by applying the many factors discussed in the Department's long-standing guidance relating to federal prosecution of business organizations. At times, application of those factors may result in a decision to file criminal charges against the business. At other times, a decision may be made to enter into a DPA, which involves filing criminal charges and imposing case-specific compliance or reporting requirements, in addition to monetary payments. I am aware from my time both as a federal prosecutor and in private practice that, from a company's perspective, the non-monetary reporting and compliance requirements imposed pursuant to DPAs can be quite onerous, and often include terms that could not be imposed by a court following a conviction of the company at trial. If confirmed, I would follow the evidence in each case and use the tools available to federal prosecutors to hold accountable institutions and individuals that violate U.S. money laundering laws.

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VIA EMAIL AND FIRST-CLASS MAIL

November 8, 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 Robin Stacie Rosenbaum to the United States Court of Appeals for the Eleventh Circuit-Florida***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Judge Robin Stacie Rosenbaum who has been nominated for a position on the United States Court of Appeals for the Eleventh Circuit-Florida. As a result of our investigation, the Committee is of the opinion that Judge Robin Stacie Rosenbaum is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Judge Rosenbaum.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ddc

cc: The Honorable Robin Stacie Rosenbaum
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 November 8, 2013.

Defending Liberty
Pursuing Justice

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VIA EMAIL AND FIRST CLASS MAIL

June 27, 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 Bruce Howe Hendricks to the United States District Court for the District of South Carolina

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Bruce Howe Hendricks who has been nominated for a position on the United States District Court for the District of South Carolina. As a result of our investigation, the Committee is of the opinion that for this position Magistrate Judge Hendricks is Unanimously Well Qualified.

A copy of this letter has been provided to Magistrate Judge Hendricks.

Sincerely,

Judy Perry Martinez
Chair

cc: The Honorable Bruce H. Hendricks (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 June 27, 2013.

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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 Mark G. Mastroianni to the United States District Court for the District of Massachusetts***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Mark G. Mastroianni who has been nominated for a position on the United States District Court for the District of Massachusetts. As a result of our investigation, a substantial majority of the Committee is of the opinion that Mr. Mastroianni is Well Qualified and a minority of the Committee is of the opinion that Mr. Mastroianni is Qualified for this position.

A copy of this letter has been provided to Mr. Mastroianni.

Sincerely,

Bettina B. Plevan
Chair

BBP:ddc

cc: Mark G. Mastroianni, 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 24, 2013.

December 30, 2013

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, D.C. 20510-4502

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Leslie Caldwell, Nominee for Assistant Attorney General, U.S. Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

We are friends, admirers, and former Justice Department colleagues of Leslie Caldwell, and we write in strong bipartisan support of her nomination to be the next Assistant Attorney General for the Criminal Division at the U.S. Department of Justice. All of us have held, at one time or another, senior positions within the Justice Department, and have worked or are familiar with Ms. Caldwell.

Before entering private practice, Ms. Caldwell had a long and very distinguished career with the Department of Justice as an experienced prosecutor and manager. She has a depth and breadth of experience with criminal justice issues that will serve her well as Assistant Attorney General. She was an Assistant United States Attorney in both the Eastern District of New York and Northern District of California from 1987-2002. In the Eastern District of New York she tried numerous high profile RICO cases involving organized crime and the murders of law enforcement officers. During her time in the Northern District of California, she served as supervisor of the District's Securities Fraud Unit, as well as the Office's Criminal Chief. As a federal prosecutor, she tried more than 30 criminal cases and argued more than 30 appeals. In 2002, she was selected by the Department of Justice to lead the Enron Task Force and oversaw all aspects of the investigations, which resulted in the prosecution of more than 30 individuals. She received several awards for her service, including the prestigious Attorney General's Award for Exceptional Service, the Attorney General's John Marshall Award and the Attorney General's Award for Fraud Prevention. She also received numerous awards for Superior Performance as an Assistant U.S. Attorney and the New York City Bar Association's Stimson Medal for outstanding performance as an Assistant U.S. Attorney.

Ms. Caldwell has held several management positions and has the necessary management skills to oversee the 750 plus individuals working in the Criminal Division. She is thoughtful and pursues a principled approach to matters and policy issues. In addition, throughout her career, she has worked well with state and federal law enforcement agencies, as well as independent agencies such as the Securities & Exchange Commission and the Commodities Futures Trading Commission. This ability to work with those outside the Department of Justice is also an important component of

her ability to lead. She is known throughout for her professionalism, legal acumen, ethics, and fairness.

We believe Ms. Caldwell possesses the characteristics to be a strong and effective leader of the Criminal Division. We thank the Committee for allowing us to present this information about her and believe that our country would be well-served to see her confirmed.

Respectfully,

Jamie Gorelick, *former Deputy Attorney General*

Paul McNulty, *former Deputy Attorney General*

George Terwilliger, *former Deputy Attorney General*

Larry Thompson, *former Deputy Attorney General*

Lanny Breuer, *former Assistant Attorney General, Criminal Division*

Ben Campbell, *former United States Attorney, Eastern District of New York*

Zach Carter, *former United States Attorney, Eastern District of New York*

Mike Carvin, *former Assistant Attorney General, Office of Legal Counsel*

Michael Chertoff, *former Assistant Attorney General, Criminal Division*

Colm Connolly, *former United States Attorney, District of Delaware*

Alice Fisher, *former Assistant Attorney General, Criminal Division*

Pat Fitzgerald, *former United States Attorney, Northern District of Illinois*

Matt Friedrich, *former Assistant Attorney General, Criminal Division*

Dwight Holton, *former United States Attorney, District of Oregon*

David Kelley, *former United States Attorney, Southern District of New York*

Neil MacBride, *former United States Attorney, Eastern District of Virginia*

Andrew J. Maloney, *former United States Attorney, Eastern District of New York*

Karen Popp, *former Office of Legal Counsel*

David Shapiro, *former United States Attorney, Northern District of California*

Jeff Taylor, *former United States Attorney, District of the District of Columbia*

Ron Tenpas, *former Assistant Attorney General, Environmental and Natural Resources Division*

Alan Vinegrad, *former United States Attorney, Eastern District of New York*

Beth Wilkinson, *former Principal Deputy Attorney General*

Chris Wray, *former Assistant Attorney General, Criminal Division*

Deb Yang, *former United States Attorney, Central District of California*

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February 18, 2014

Via Federal Express and E-mail

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, D.C. 20510-4502

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-4502

Re: Leslie Caldwell, Nominee for Assistant Attorney General, Criminal Division, U.S. Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

I respectfully submit this letter in support of the nomination of Leslie Caldwell to be the next Assistant Attorney General for the Criminal Division at the U.S. Department of Justice. I have known Leslie for approximately twenty five years and I am very familiar with her many professional accomplishments, and strong personal attributes and outstanding character. These accomplishments and traits will serve her and the DOJ well in her new role as the AAG for the Criminal Division should she be confirmed for that very important position.

I served in the U.S. DOJ from 1988-1994 and that is when I first met Leslie. I served as an AUSA in the U.S. Attorney's Office for the Southern District of NY from 1988-1992, and then as a Deputy Chief in the Criminal Division of the U.S. DOJ in Washington, DC, from 1992-1994. During that time I (and my family) observed firsthand what an outstanding

federal prosecutor and public servant Leslie was and would continue to be throughout her career. In the early morning hours of February 26, 1988, one of my younger brothers, rookie New York City Police Officer Eddie Byrne, was assassinated while he was on duty in a marked police car in South Jamaica, Queens. My brother Eddie was ambushed and assassinated by an extremely violent crack gang. That violent drug gang acted on the order from a jailed drug dealer and violent convicted felon, Howard "Pappy" Mason, to kill a cop. Mason had been sent back to NY state prison earlier in February 1988. Using a telephone for prisoners from his NY State prison, Mason ordered his gang to kill a cop to send a "message" to the cops that because he was sent back to jail, he and his violent drug gang would retaliate by killing a cop.

At the time that Eddie was assassinated (just 5 days after his 22nd birthday) he was on duty in a fixed post in the 103 Police Precinct in South Jamaica, Queens. Eddie was working the midnight to 8 am shift on February 26th, guarding the home of a Guyanese immigrant named Arjune. Arjune had previously called the police several times about drug dealers in his neighborhood and he had agreed to testify against them. As a result of Arjune's heroic efforts, he and his family were repeatedly threatened and his home was firebombed prior to the night that Eddie was assassinated. To protect Arjune and his family, the NYPD established around the clock protection outside of his home with a marked police car manned by one NYC Police Officer at all times. When Mason's drug gang readily complied with the order from Mason to murder a NYC Police Officer, they already knew that a single Police Officer would be sitting alone in marked police car on the night they ambushed and assassinated Eddie.

The premeditated assassination of rookie NYC Police Officer Byrne by a jailed, convicted drug dealer and his violent drug gang was an unprecedented crime at the time (and since then). It was meant to send a message of intimidation to all Police Officers and law enforcement personnel by violent drug dealers who ravaged the South Jamaica, Queens's community (and many other parts of NYC) in the 1980's. This was a crime that shocked New York City and the entire nation. This crime was a terrible tragedy for my entire family. My Dad was a NYC Police Officer for 22 years; one of my other brothers has been an FBI agent for almost 25 years and my other brother served as an Assistant District Attorney in Queens and has been an SEC Enforcement attorney for the past fourteen years. But this notorious act of violence was much more than just a personal tragedy and terrible loss for my family. As many public officials have noted over the years and very recently again, including the Honorable Charles Schumer (a distinguished member of this Committee and a great supporter of law enforcement for his entire outstanding career as a dedicated public official), the assassination of rookie Police Officer Eddie Byrne posed a grave threat to the safety and protection of all Police Officers.

It was, therefore, extremely important as a matter of public policy and public safety that Mason and his gang who committed this notorious crime be brought to justice for it. Fortunately, then AUSA Leslie Caldwell led a great team of federal prosecutors and federal agents to investigate and prosecute Mason for this terrible crime. After a very complex, far-ranging investigation and a long, difficult trial (and lengthy, complicated post-trial proceedings) Mason was convicted and sentenced to life without parole for this terrible crime. Throughout that massive federal law enforcement effort to prosecute Mason, Leslie displayed what would become her customary tireless work ethic, good judgment, excellent investigative and trial skills, and the highest level of integrity and ethical behavior. She demonstrated the foregoing while being a forceful, effective and responsible advocate for the DOJ. I am confident that she will continue to use those many extraordinary strengths and talents should she be confirmed to serve as the AAG of the Criminal Division. I hope and strongly recommend that she be confirmed.

I want to thank you and the entire Committee for the opportunity to share this information with you. I hope it is helpful and I hope that our Great Nation will have the opportunity to be well served once again by Leslie in this extremely important position at DOJ. Please contact me at any point if you have any questions about the foregoing or Leslie more generally.

Respectfully submitted,,

Lawrence Byrne

cc: Honorable Charles E. Schumer

January 21, 2014

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, D.C. 20510-4502

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Leslie Caldwell, Nominee for Assistant Attorney General, U.S. Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

We are friends, admirers, and former officials of the United States Securities and Exchange Commission ("SEC") who have worked with or know Leslie Caldwell, and we write in strong support of her nomination to be the next Assistant Attorney General for the Criminal Division at the U.S. Department of Justice. All of us have held, at one time or another, senior positions within the SEC, and have worked or are familiar with Ms. Caldwell.

Before entering private practice, Ms. Caldwell had a long and very distinguished career with the Department of Justice as an experienced prosecutor and manager. She has a depth and breadth of experience with criminal justice issues that will serve her well as Assistant Attorney General. She was an Assistant United States Attorney in both the Eastern District of New York and Northern District of California from 1987-2002, and was Director of the Department of Justice's Enron Task Force from 2002-2004. For much of that time, she worked on matters involving securities fraud, in partnership with various offices of the SEC. Starting in 1997, she prosecuted numerous securities fraud cases in the Eastern District of New York. In 1999, she was recruited by then U.S. Attorney Robert S. Mueller, III to the Northern District of California for the purpose of spearheading an increase in white collar crime prosecutions, with an emphasis on securities fraud. In that role, Ms. Caldwell proactively reached out to SEC officials in San Francisco, Los Angeles, and Washington, D.C., and developed close working relationships that led to many successful joint investigations and prosecutions, including of accounting fraud, insider trading, and market manipulation. As a result of her experience, management skills, and strong working relationship with the SEC, Ms. Caldwell was in 2002 named Director of the Department's Enron Task Force. In that role, she continued to work closely with the SEC in coordinating the very complex investigation that led to the criminal and/or civil prosecution of more than 40 individuals. In all these matters, Ms. Caldwell's respectful and collaborative approach ensured that the SEC and the Department were able to work efficiently and effectively toward successful outcomes, while not losing sight of the agencies' different enforcement goals.

Ms. Caldwell has held several management positions and has the necessary management skills to oversee the 750 plus individuals working in the Criminal Division. She is thoughtful and pursues a principled approach to matters and policy issues. We believe that her proven ability to work effectively and respectfully with those outside the Department of Justice is also an important component of her ability to lead. We believe Ms. Caldwell possesses the characteristics to be a strong and effective leader of the Criminal Division. We thank the Committee for allowing us to present this information about her and believe that our country would be well-served to see her confirmed.

Respectfully,

David Bayless, *Regional Director, San Francisco*

Marc Fagel, *Regional Director, San Francisco*

Rob Khuzami, *Director, Enforcement*

Randall Lee, *Regional Director, Los Angeles*

Matt Martens, *Chief Litigation Counsel*

Bill McLucas, *Director, Enforcement*

Helane Morrison, *Regional Director, San Francisco*

Linda Thomsen, *Director, Enforcement*

January 31, 2014

The Honorable Patrick Leahy
United States Senate
437 Russell Senate Office Building
Washington, D.C. 20510-4502

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Leslie Caldwell, Nominee for Assistant Attorney General, U.S. Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

We are former Federal Bureau of Investigation colleagues of Leslie Caldwell and write to you in support of her nomination to be the next Assistant Attorney General for the Criminal Division at the U.S. Department of Justice. We have worked with Ms. Caldwell both as executives and investigators in the investigation and prosecution of some of the country's most complex and significant criminal investigations.

As a prosecutor in the Eastern District of New York and the Northern District of California she built a reputation for her prosecution of a range of cases from single defendants, to organized crime groups, as well as the most sophisticated and complex white collar crimes. She possesses a keen legal ability, tempered with the necessary prosecutorial discretion to only hold accountable those who have betrayed our society. She is a person of integrity and solid judgment, sensitive to the ordeals of victims and effective at balancing effective prosecution with the needs of the community.

In 2002, when she was selected to lead the Enron Task Force, Ms. Caldwell created a collaborative environment, building a national multi-agency effort, that resulted in more than 30 criminal prosecutions of individuals. For her leadership, legal acumen and skill, she was recognized with the Attorney General's Award for Exceptional Service, the Justice Department's most prestigious accolade for excellence in investigation.

As a distinguished prosecutor, Ms. Caldwell successfully worked in partnership with federal, state and local law enforcement as well as many federal and state regulatory agencies individually and through multi-agency task forces. Ms. Caldwell understands the important contributions of these agencies in investigations and successful prosecutions which will be a key element in leading the men and women of the Criminal Division.

Ms. Caldwell uses a grounded approach in decision-making and policy and will be a strong and decisive leader for the Criminal Division. We thank you for allowing us to provide you this perspective from law enforcement regarding Ms. Caldwell's nomination. We believe Ms. Caldwell's lengthy experience as a prosecutor, coupled with her recent private sector practice; provide her the skills and experience to lead the Criminal Division.

The nation and law enforcement community will be well-served by her confirmation and service to the country.

Respectfully,

Grant D. Ashley, former Executive Assistant Director, Criminal, Cyber, Response and Services Branch

James H. Burrus, Jr., former Assistant Director, Criminal Division

Joseph L. Ford, former Associate Deputy Director and former Inspector in Charge, Enron Task Force

Bruce J. Gebhardt, former Deputy Director

NOMINATIONS OF HON. GREGG JEFFREY COSTA, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT; TANYA S. CHUTKAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; HON. M. HANNAH LAUCK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA; HON. LEO T. SOROKIN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS; AND JOHN CHARLES CRUDEN, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

TUESDAY, FEBRUARY 25, 2014

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in Room SD–226, Dirksen Senate Office Building, Hon. Al Franken, presiding.

Present: Senators Franken and Cornyn.

OPENING STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator FRANKEN. This hearing will come to order. Welcome, everybody. We will hear from five nominees today, each of whom has a very impressive legal career, enjoys widespread support from his or her colleagues and home State Members of Congress, and is well qualified for the positions to which he or she has been nominated.

Judge Costa has had an impressive career as a Federal prosecutor and then as a district court judge.

Tanya Chutkan spent more than a decade with the D.C. Public Defender Service and now focuses on private enforcement of the antitrust laws at Boies, Schiller and Flexner.

Hannah Lauck has spent nearly a decade on the Federal bench as a magistrate judge, a position she assumed after a successful career as a Federal prosecutor.

Leo Sorokin has spent nearly a decade on the Federal bench as a magistrate judge, too, a position he assumed after service with the Federal Public Defender's Office.

And John Cruden has served at the Environment and Natural Resources Division for two decades, working in both Democratic and Republican administrations in various capacities, including as the Acting Assistant Attorney General. He has also had an impressive career in the army, both before and after becoming an attorney.

I hope that we can act quickly and in a bipartisan manner to give these nominees an up-or-down vote. I look forward to hearing from all of you today.

Ranking Member Cornyn, it is a great pleasure to chair this hearing with you. Would you like to give any opening remarks and introduce Judge Costa?

OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. I do. Thank you, Mr. Chairman, and I am glad to be joining you on the dais this morning. I think we could have—we almost have a quorum of the U.S. Senate present today. So I know we have a number of good nominees to hear from, and obviously Representative Norton.

So I want to thank Chairman Leahy for convening today's hearing. We know the Founders vested the Senate with the authority and responsibility to provide advice and consent on the nomination of judges and officers for the executive branch. We all take these jobs very seriously, and one good reason to do it beyond the constitutional mandate is the fact that many of these Federal judges will long survive us in public service. They will serve for many, many years to come.

Today we will hear from five of the President's nominees. I want to focus my comments on Judge Costa of the Southern District of Texas who was nominated to the Fifth Circuit Court of Appeals. He was raised in Texas. Following his graduation from Dartmouth—I am not sure how he got to Dartmouth from Texas, but to his credit, he attended Dartmouth and 2 years in Mississippi with Teach for America. He returned to the University of Texas to attend law school, where he was the editor-in-chief of the Texas Law Review. He served as a law clerk on the D.C. Court of Appeals, a Bristow Fellow in the Office of the Solicitor General, and a law clerk to Chief Justice William Rehnquist.

Even more impressive, he came back home to Texas, and after practicing in civil litigation for 2 years, he went into public service as an Assistant U.S. Attorney in the Southern District. At the Department of Justice, he tried more than 15 cases to verdict, argued six cases before the Fifth Circuit, and directed the Hurricane Katrina Fraud Task Force. He received a departmental award for his prosecution of Allen Stanford.

Because of these qualifications, the Texas Federal Judicial Evaluation Committee evaluated Judge Costa for the district court seat that he now occupies, and it was with pride and admiration that Senator Hutchison and I recommended him to the President for that district court nomination. Now the President has given him a

promotion after a short time on the trial bench, and the President's recent nomination follows hard work again of the same Federal Judicial Evaluation Committee, this time appointed by Senator Cruz and myself, in close consultation with the White House and important input from the members of the Texas congressional delegation, like Congressman Green, who is here in the audience.

His nomination is a testament to his hard work and his accomplishment, and I know he and his family are proud of his accomplishments, as they should be. I look forward to hearing from him and the other witnesses here today.

Thank you, Mr. Chairman.

Senator FRANKEN. Thank you, Senator.

Well, we have several Members of Congress who are here today to introduce the nominees from their home States, and I would like to give each of them an opportunity to go ahead with their remarks. I guess we will work our way across starting with Senator Udall.

PRESENTATION OF JOHN CHARLES CRUDEN, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, BY HON. TOM UDALL, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator UDALL. Thank you, Chairman Franken and Senator Cornyn, and thank you for the opportunity to introduce John Cruden, who has been nominated to be Assistant Attorney General for the Environment and Natural Resources Division. I have known John for many years. From the time I served as Attorney General of New Mexico, John was the chief of the Environmental Enforcement Section at the Justice Department. We often worked together on important environmental enforcement cases. He also joined me for a groundbreaking conference in New Mexico of all State Attorneys General where we focused on strengthening environmental compliance.

It has been a pleasure for me to follow John's career. He was a highly regarded Deputy Assistant Attorney General for the Environment and Natural Resources Division, a strong leader on the most important environmental cases, and he also pioneered a close working relationship with State Attorneys General, promoting joint enforcement and collaborative efforts.

John has an impressive background. He is a West Point graduate and served with distinction in the military. He then moved to the U.S. Department of Justice where he was responsible for all Federal civil environmental enforcement in the United States. He is a highly regarded litigator, one who fights for the best interests of the United States, and his work has resulted in major settlement negotiations.

While at the Department, he has received many honors, including the Muskie-Chafee Award, the highest honor the Environmental Division can bestow. He is the recipient of three Presidential rank awards from three different Presidents of both parties. John was the first Government attorney to be elected and then serve as the president of the District of Columbia Bar and the first Government attorney to be elected as the Chair of the American

Bar Association's Section on Environment, Energy, and Natural Resources.

John left the Department of Justice in 2011 and became President of the Environmental Law Institute, a nonpartisan research institute with a long and distinguished history, providing education and training and some of the leading environmental publications in the Nation. The Environmental Law Institute gives a series of annual awards honoring individuals who benefit the environment through wetland protection. The most recent awards ceremony was at the Botanic Garden up here on Capitol Hill. John invited me to be the keynote speaker. It was a moving event. Local ranchers, community leaders, and city engineers were recognized for having a real on-the-ground impact. This is John's hallmark, pulling people together to get things done. ELI is renowned for its commitment to environmental protection, and John has served ably as its President.

Just a further word about ELI. ELI is a forum to find environmental ideas and policies that work, not a partisan focus, just results.

I cannot imagine a more qualified individual than John for this very important position. He has twice served as Acting Assistant Attorney General for the Division. He is a well-known expert in environmental law. While he led the Division, it was designated "the best place to work in the Federal Government," a tribute to his leadership skills.

I strongly support the nomination of John Cruden. He has experience, integrity, and dedication to the rule of law. He will make a superb Assistant Attorney General.

Thank you very much.

Senator FRANKEN. Thank you, Senator Udall, for being here this morning. I know you have a lot to do. You are welcome to stay for the rest of this, but certainly I know how busy we all are, so if you need to duck out, I totally understand.

Senator UDALL. Thank you.

Senator FRANKEN. We will go now to our Virginia Senators, first Senator Warner.

PRESENTATION OF HON. M. HANNAH LAUCK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA, BY HON. MARK R. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, Chairman Franken and Ranking Member Cornyn. It is a real honor for me to be with my good friend and colleague Tim Kaine to introduce a fellow Virginian as President Obama's nominee to the U.S. District Court for the Eastern District of Virginia, Judge Hannah Lauck. If confirmed, Hannah will become the first woman judge on the Federal trial bench in Richmond.

Hannah is exceptionally well qualified to carry out the duties and responsibilities of a Federal district judge. Hannah earned her bachelor's degree magna cum laude, actually also Phi Beta Kappa at Wellesley. She also—although since all of us I think were at—went to law school in Boston, she did go down toward New Haven for law school where she went to Yale and graduated in 1991

where she directed the homeless clinic and served on the board of the Initiative for Public Interest Law.

Hannah began her legal career in the Eastern District of Virginia, serving as a clerk for Judge Jim Spencer, and I think probably Senator Kaine will mention more about that. Judge Spencer is extraordinarily well regarded in Richmond for his legal acumen, honest nature, and service to community, and will actually go to senior status later this year.

Coming full circle, Hannah has now been nominated to fill the seat of Judge Spencer, her mentor and for whom she clerked right out of law school.

From 1994 to 2004, she served as Assistant U.S. Attorney in the Eastern District where she handled both civil defense matters as well as criminal prosecutions. Following a brief stint in the private sector, Hannah became a U.S. magistrate judge in the Eastern District of Virginia where she has served since 2005.

As a magistrate judge, she helped begin one of the first Federal re-entry courts, which is designed to reduce recidivism of individuals released from prison who have serious addictions. She is also an active member of the community where she has helped the next generation of legal experts. For many years she has taught at the University of Richmond, where, again, Senator Kaine also is active.

She has been highly recommended by all the appropriate bar associations, and I have gotten to know her over the last few years. I think she is extraordinarily well qualified, and I appreciate the Chairman's comment as well about the need to make sure that we fill all these judicial vacancies. She comes extraordinarily highly recommended. I am very proud that the President has nominated her, and she comes with my full 100 percent support.

And with apologies to my colleagues, I have got a hearing upstairs, and apologies to the nominee, but thank you, Mr. Chairman, for the opportunity to present this well-qualified candidate.

Senator FRANKEN. Thank you, Senator Warner, for your words on Judge Lauck.

We will go to Senator Kaine.

PRESENTATION OF HON. M. HANNAH LAUCK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA, BY HON. TIM KAINE, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator KAINE. Thank you, Mr. Chair and Ranking Member Cornyn. It is good to be here with you today on behalf of Judge Lauck.

Mark and I were together at Harvard Law School. I became a lawyer and he became a client. He was smarter than me. But—and he still is smarter than me. But it is good to be here together for this wonderful nominee.

Judge Lauck, just amplifying a point that Mark made, started her legal career after she graduated from Yale Law School, working with Judge Spencer, the person whose decision to go senior status has led to this opening. Jim Spencer is really a towering figure in the Eastern District in the Federal judiciary, and she has big shoes to fill. But since she started as a law clerk with him, judges kind of treat their law clerks almost as their children. They take a pa-

rental pride in what they do. And I have talked to Judge Spencer about this particular occasion. He is very, very proud of his law clerk, Hannah, and what she has done during her career.

Mark did a good job of laying out her professional background. She has been, in addition to a law clerk, in private practice, a corporate counsel with Genworth in Richmond, but her main work before she went on the bench as a magistrate was with the U.S. Attorney's Office for 10 years. As an Assistant U.S. Attorney, half of her time was focused on civil litigation, and then—I think the first half of her career was on criminal litigation, the second half on civil litigation. Very familiar with the docket in this court.

As a U.S. magistrate from 2005 to today, Judge Lauck's work has involved all Federal misdemeanors. Magistrates in Richmond Division try Federal misdemeanors, and they also try any civil matter completely and fully with the consent of the parties. So she has acted as a judge in virtually the entire range of cases that this court handles.

I will just say this in closing: This is a court I am very close to. My wife clerked for a Federal judge on this court when she started her legal career, and I was a litigator for 17 years, and the bulk of my practice was in the Richmond Division of the Eastern District of Virginia. It was a happy day for that court when I tried my last case in 2001, but I have stayed very close to the court. I know the judges, I know the bailiffs, I know the court personnel, I know the lawyers, I know many of the parties. They speak with uniform plaudits about the work that Judge Lauck has done as a magistrate, and they have the utmost confidence that she will be a wonderful Article III judge in this seat that is being vacated by her mentor, Judge Spencer. I recommend her highly.

Senator FRANKEN. Thank you, Senator Kaine.

And just for everybody here, as I introduce Senator Warren, not everyone in the Senate has an association with Harvard Law.

[Laughter.]

Senator FRANKEN. Senator Warren.

PRESENTATION OF HON. LEO T. SOROKIN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS, BY HON. ELIZABETH WARREN, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator WARREN. Thank you, Mr. Chairman, thank you, Ranking Member Cornyn, for holding this hearing and for allowing me to be here today. I am very pleased to introduce Judge Leo Sorokin, who has been nominated to fill a judicial vacancy on the district court for the District of Massachusetts.

Judge Sorokin's nomination came after he was recommended to me for this position by the Advisory Committee on Massachusetts Judicial Nominations. The advisory committee is comprised of distinguished members of the Massachusetts legal community, including prominent academics and litigators, and is chaired by former Massachusetts District Court Judge Nancy Gertner. The committee's recommendation reflects the strength of Judge Sorokin's resume, the extraordinary support that he has received from those who have worked with him and appeared before him, and the con-

clusion of the Massachusetts legal community that he is a superlative nominee.

Judge Sorokin is joined here today by his wife, Dr. Pam Wolf, and their three children—are you back there? There you are. Good. Jake, who is a sophomore at Yale; Mikaela, who is a senior at Brookline High School; and Sascha, who is in eighth grade. And also here today are his sisters, Sharon Sorokin James—Sharon, are you back there? Okay, making sure—and Dr. Rachel Sorokin Goff and Rachel's husband, James Goff. I know they are all tremendously proud to be sharing this moment, and we are very proud to have them here.

Judge Sorokin is a 1983 graduate of Yale and a 1991 graduate of Columbia Law School, after which he clerked for Judge Rya Zobel on the district court in Boston. He served as a magistrate judge in Massachusetts since 2005, handling both civil and criminal matters for the district court in Boston, and he served as chief magistrate judge since 2012. Judge Sorokin's track record as a magistrate should give the Senate a high level of confidence in his ability to serve as a district court judge.

Judge Sorokin's prior legal career is also very impressive. He spent 2 years as an associate in civil litigation practice at Mintz Levin in Boston and then 3 years in the Attorney General's office before another 8 years as an assistant Federal defender in Boston. In that capacity, he handled both trials and appeals across a broad swath of Federal criminal law matters and all manner of cases from single defendant cases to complex multi-defendant cases.

Judge Sorokin has also truly distinguished himself in his time as a magistrate in Massachusetts. In particular, Judge Sorokin was principally responsible for the creation of the Court-Assisted Recovery Effort, known as CARE, a re-entry program that was developed in the District of Massachusetts. CARE is designed to help Federal offenders returning from prison avoid relapse behavior that might endanger the community. Participants are subject to a high degree of oversight, including more frequent drug testing, and review of their conduct by the courts as often as every week. They receive incentives like drug treatment and other resources, such as mock job interviews and courses on financial literacy. At the same time, they face swift sanctions, potentially including immediate jail or time in community service, for any noncompliance with the program, such as a failed drug test.

The CARE model was one of the first re-entry programs in the Federal system. To date, nearly half of the district courts in the United States have such a court or are considering starting one. Observers from all over the country have come to Boston to see it in action, and early data on the effectiveness of the program is significant. An academic study in 2009 comparing CARE participants to a control group of similarly situated individuals under regular Federal supervision concluded that CARE participants were a third less likely to be re-arrested in the first year after the program was put into effect.

Done right, programs like CARE reduce crime, improve the safety of our communities, and improve the lives of former prisoners. They represent the kind of work that can be done to improve our justice system when Federal judges have the diversity of profes-

sional experience to create and facilitate innovative solutions to persistent problems.

Judge Sorokin is a first-rate lawyer with impressive credentials and a demonstrated commitment to public service. I am proud to have recommended him to President Obama, and I look forward to his full approval by this committee and swift confirmation by the full U.S. Senate. Thank you very much.

I apologize, but I am supposed to be in a Banking hearing at this same moment, so I will excuse myself.

Senator FRANKEN. Well, then, go there.

Senator WARREN. I will go. I will, and I apologize to Judge Sorokin's family, but I know it is going to be a good hearing. Thank you.

Senator FRANKEN. Thank you for being here, Senator.

Representative Eleanor Holmes Norton.

PRESENTATION OF TANYA S. CHUTKAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA, BY HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA

Ms. NORTON. Thank you, Chairman Franken, Ranking Member Cornyn. I appreciate this hearing. I appreciate the opportunity to introduce a highly qualified candidate for the United States District Court for the District of Columbia, Tanya S. Chutkan.

Tanya Chutkan is the hiring and recruiting manager of a major DC law firm where she engaged in both civil and criminal litigation. She is currently representing plaintiffs in antitrust cases, which is her major focus, in Federal courts in New York, Pennsylvania, California, Tennessee, and Alabama.

Ms. Chutkan has also had extensive criminal experience at the Public Defender Service of the District of Columbia. She tried more than 30 cases there, argued two cases on appeal. Ms. Chutkan is a graduate of the University of Pennsylvania Law School. She also attended George Washington University here. At the law school, she served as an associate editor of the Law Review and as an Arthur Littleton Legal Writing Fellow.

Tanya Chutkan has won uniform praise from both her colleagues and opposing counsel and judges as well. I strongly recommend her based on her intellect and her character and her skills and diligence and temperament and her fairness. And, Mr. Chairman, if I may note, by coincidence, you are holding this hearing during Black History Month, and before the District has any courtesy to recommend judges to the President, there had only been one African American woman to serve on the district court until—here for 32 years. Since we have had this courtesy, we have had the second to serve, and Ms. Chutkan, if she is approved, as I am sure she will be by virtue of her extraordinary qualifications, will be only the second African American woman on the bench. We are very proud of what she has achieved, and we are very proud of our court that she, I hope you agree, should join, because it is a distinguished court, and she is, in my view, a highly qualified candidate.

I recommend her strongly to you for approval by this Committee and, of course, for confirmation by the senate.

Senator FRANKEN. Thank you, Representative Holmes Norton, for coming to our side of the Hill, and I know that you are busy over there. You are welcome to stay, certainly, but if you have to leave, we certainly understand.

I would now like to ask Judge Gregg Costa to come forward, and as is customary—you may keep standing—I will administer the oath and swear in the witness.

Judge Costa, Gregg Cost, do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth?

Judge COSTA. I do.

Senator FRANKEN. Thank you. Welcome, Judge Costa, and congratulations on your nomination. I would like to give you an opportunity to make an opening statement and to acknowledge any friends or family who may be here with you today or watching from home.

STATEMENT OF HON. GREGG JEFFREY COSTA, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Judge COSTA. Thank you, Senator Franken, and thank you for presiding today. Thank you, Senator Cornyn, for your kind introduction, for supporting me for a second time. I also want to thank Senator Cruz and thank the Federal Judiciary Evaluation Committee that both Senator Cornyn and Senator Cruz have set up in Texas, which has treated me very fairly and supported me for a second time.

I certainly want to thank President Obama for nominating—this great honor of a second nomination, and I have someone here today as well who—a public official who is really the one who started me out on this path. That is Representative Al Green from Houston. I did not know the Congressman until a few years ago when he set up this process to start considering judicial nominees, and the fact that he started me down this path is something I will always be grateful for.

I do want to introduce my family who is here. A week or two ago, when I found out about this hearing, I sent my mother a very brief email that just said, "The White House called. The hearing is set for 2/25." And my mother and father were at a restaurant when she got the email, and she said, "Wow, it is pretty remarkable when your son sends an email saying the White House called." And that really did drive home for me what an amazing journey this has been and these amazing opportunities I have had. And as I said when I was sworn in to the district court bench, I think these amazing opportunities I have been able to enjoy speaks not just to the greatness of our country but to my mother and father's greatness as parents.

My wife, Jennifer, my biggest supporter and my best friend, is here.

And then that brings me to the two people who are probably the biggest beneficiaries of my second nomination. That is my two boys, Elijah and Joshua, because it is giving them an opportunity to redeem their behavior from the last hearing they attended.

[Laughter.]

Judge COSTA. I will not know until I watch the video later today if they have improved.

And then making her debut in the Senate today is my 4-year-old daughter, Rebekah, but I have no concerns whatsoever about her behavior.

Senator Franken, being from Minnesota, this morning's snow was probably no big deal to you, but it was the first time my kids on the way over here had ever seen snow falling from the sky. So I promise you at least for them this morning's snow is going to be far more memorable than anything I say this morning.

But with that, I am ready to take the Committee's questions.

[The biographical information of Judge Costa appears as a submission for the record.]

Senator FRANKEN. Well, thank you, and welcome to your family.

Judge Costa, it is somewhat customary for this Committee to ask nominees to describe their judicial philosophies. I take this to mean the approach that you will take when deciding close cases, cases where the law is not quite as clear or where the evidentiary record is disputed. I would like to give you a chance to address that and, in particular, what we can expect of you and what litigants can expect of you when you are confirmed to the court of appeals.

Judge COSTA. Thank you for the question, Senator Franken. When I was a lawyer, the thing I most enjoyed about being in front of judges was when they approached the case with an open mind, when you did not think they brought preconceived notions to the case before they heard from the lawyers or looked at the evidence. And so I think the appropriate role of a judge is to view each case with an open mind and base the decision on the facts and law in that case.

In cases when there is not a precedent directly on point that you referred to, I think there are still, you know, standard, commonly accepted methods of interpretation that a judge can rely on to find what the appropriate answer is for that case.

Senator FRANKEN. Well, congratulations on your second nomination in such a close time period. When you were being considered for your current position at the district court, Senator Grassley submitted a written question for the record in which he asked you about judicial temperament. You gave an answer that included open-mindedness. This is what you said. You said, "The most important elements of judicial temperament are open-mindedness, respect for all parties, attorneys and other participants in the judicial process, and humility."

Now you have been on the bench for nearly 2 years. How would you respond to the same question? How has your experience—has it in any way changed your view on that question?

Judge COSTA. I do not think it has. All those qualities I think are still very important for a judge to have, and I have worked hard to try and exhibit those.

I think the one thing from the experience I have had thus far that I might add to that is, as a Federal judge, you really need a strong work ethic, because if you want to be open-minded, if you want to give fair consideration to the parties' arguments in each case, there are a lot of cases, and there is a lot of paper that gets

filed. And so it is a lot of work to take the time to read everything and make sure everyone has got a fair hearing.

I know at the district court it is an incredibly demanding job. I know at the circuit, if I were fortunate enough to be confirmed, it would be as well. I think the Fifth Circuit has the second busiest docket behind the Ninth. But it is something I have been able to do during my time on the district bench, and I would hope to do the same, if confirmed.

Senator FRANKEN. So what you are saying is that 2 years ago you had no idea how hard you would be working.

[Laughter.]

Judge COSTA. Some idea, but until it really hits you, right?

Senator FRANKEN. Judge Costa, you clerked for Judge Randolph and Justice Rehnquist, and you have written about Justice Marshall. Are there any judges or Justices who you particularly admire, someone whom you might consider a role model?

Judge COSTA. Well, certainly the two judges I clerked for I learned an amazing amount from, as I hope my law clerks have learned something from me. And in many ways, the way I run my chambers, my writing style I think mirrors some of what I learned from Judge Randolph and Chief Justice Rehnquist. I think Justice Ginsburg has said Chief Justice Rehnquist was the best boss she ever had. He was my boss in a very different capacity than he was her boss, but I would echo her sentiment. So I look to both of them.

I also think given that I am being considered for the Fifth Circuit, it is worth mentioning there were four judges, including John Minor Wisdom, who the Fifth Circuit building in New Orleans is named for—three of them were Eisenhower appointees. They served during the 1960s. It fell to them the task of applying *Brown v. Board of Education* on the ground in the South. And they did so and applied the law—they were bound as lower court judges to apply the law, and they did so in the face of great social ostracism and sometimes threats of violence. And so I think their fidelity to the rule of law in very difficult circumstances is also a great example.

Senator FRANKEN. Thank you, Judge Costa. I have heard about Judge Wisdom. How do you spell "Minor" in Wisdom?

Judge COSTA. M-I-N-O-R. A great judge name—Judge Wisdom.

Senator FRANKEN. But Minor Wisdom is just odd.

[Laughter.]

Senator FRANKEN. It always struck as very Southern in some way. I do not know why.

Senator Cornyn.

Senator CORNYN. It is a sign of judicial humility.

[Laughter.]

Senator CORNYN. I could be wrong, Chairman Franken, but I believe Senator Alexander clerked on the Fifth Circuit, and I want to say he clerked for Judge Wisdom. I could be wrong there.

Senator FRANKEN. I think Senator Sessions may have as well. Well, anyway.

Senator CORNYN. So, Judge Costa, you and I are well acquainted with one another professionally, and I am glad to see you here today sitting in this seat at long last now for this hearing.

Just by way of some description, you alluded to the Federal Judicial Evaluation Committee process, and just to put a little meat on the bones, this is a bipartisan group of what I think are probably the top practitioners in the State to evaluate the professional qualifications and credentials of the candidates. And, of course, we work with the Texas congressional delegation, like Congressman Green and others, to make sure that we get the best talent to actually apply for these benches.

But could you describe a little bit about your interaction with the Federal Judicial Evaluation Commission, both when you applied for the district bench as well as the court of appeals?

Judge COSTA. Absolutely. On both occasions, they have a very open process. It is well publicized when they are accepting applications. Any lawyer in the State can submit an application, and then a certain number are notified who are selected for interviews. And both times I met with the full committee for interviews. They asked tough but fair questions. On the committee are some of the most respected lawyers in the State. When I was there last time, I was thinking how much they could have been billing if you added up all 35 members while I was sitting there spouting off on the law.

But, again, they take this very seriously, and it is refreshing to see that these lawyers who have so many other important things to do put so much care into making sure that there are people on the Federal bench who are well suited to being there.

Senator CORNYN. Well, you appreciated, I know, that the legal profession is made up of people who obviously advocate for clients and are not necessarily advocating for a cause. And what the legal profession depends on and what I believe the bedrock of America depends on is somebody at some point who is going to call balls and strikes and who is going to apply the law as written or based on the precedents established by the U.S. Supreme Court or superior court. Is that something that you are committed to doing?

Judge COSTA. Certainly, Senator, and I think my record in the year and a half or so that I have been on the Federal bench hopefully shows that. Judges are not here to make policy. We leave that to you all and to the President. Our job is to apply and interpret the law.

Senator CORNYN. Well, the policymaking can get pretty messy sometimes, but I appreciate your answer.

So let me talk about the 164 memoranda, opinions, and orders that you have written since you have been on the district bench. I note that the Fifth Circuit has reversed three of those, which, by my count, is not a bad record. I remember when I was in private practice, somebody pointed out that the only lawyers who never lose a case are those who never try a case. And I think there is probably an analogue here for judges, and obviously you call the balls and strikes in your capacity as a district judge, but it is the appellate court's responsibility to do its independent review of your work. And I would just note that 3 out of 164 ain't bad.

But could you tell me and tell the Committee what, if anything, you learned from the reversals? Sometimes I think we learn less when people agree with us than when people disagree with us.

Judge COSTA. Thank you for the question, Senator Cornyn. We said the same thing about trial lawyers losing cases in the U.S. Attorney's Office, and I have often said—I think I had two defendants who got a mixed verdict or were acquitted, and I always learned more as a trial lawyer in those two instances than I did when you win and you go home and think you did everything great.

And I think, you know, obviously the appellate court is there to have three judges look at an issue. The appellate court often has fuller briefing, often has more time to consider an issue. So I obviously give great weight to what the appellate court thinks and, you know, I review that and respond in future opinions I have accordingly based on the issues that they thought were incorrectly decided.

Senator CORNYN. Well, Judge Costa, I am happy to support your nomination, and I would say that in a Washington environment where very often there is polarization and where the White House and the Congress is at loggerheads, this is one area where we have been able to come together, and I think thanks to your hard work and outstanding record and commitment to the rule of law, we have been able to come together and agree on your nomination. So I just want to say congratulations to you and your family, and I look forward to your confirmation and to your outstanding record of public service now in the Fifth Circuit.

Judge COSTA. Thank you.

Senator FRANKEN. Thank you, Senator Cornyn. I would like to echo that, and you are dismissed.

Judge COSTA. Thank you, Senator. We will go see the snow.

Senator FRANKEN. The kids behaved very well.

[Laughter.]

Senator FRANKEN. I would now like to ask Tanya Chutkan, Leo Sorokin, Hannah Lauck, and John Cruden to come to the witness table, and you can remain standing.

Please remain standing to be sworn. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. CHUTKAN. I do.

Judge LAUCK. I do.

Judge SOROKIN. I do.

Mr. CRUDEN. I do.

Senator FRANKEN. Thank you. Please be seated.

Welcome and congratulations to you all on your nominations. I would like to give you each an opportunity to make an opening statement and to acknowledge any friends or family who may be here with you or watching from home.

We will start with Ms. Chutkan.

STATEMENT OF TANYA S. CHUTKAN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA

Ms. CHUTKAN. Good morning. Thank you very much, Senator Franken and Ranking Member Cornyn, for holding this hearing today. I realize that a tremendous amount of effort goes into preparing this, and I thank you and your staffs for doing that.

I also want to thank Congresswoman Holmes Norton for her very kind introduction and for the work her Judicial Nominations Com-

mission did in reviewing my materials and the honor they do me in recommending me for this nomination.

I would like to acknowledge with me here today this morning my husband, Peter Krauthamer, who—we met years ago as young public defenders and whose service on the D.C. superior court bench has been an example and inspiration for me. And my two sons, Nicholas and Max Krauthamer, who are delighted to be missing school to be here today.

[Laughter.]

Ms. CHUTKAN. It is not always easy being the child of two trial lawyers or a trial lawyer and a judge or, worse yet, two judges, but they have become very effective advocates for themselves.

[Laughter.]

Ms. CHUTKAN. Quite skillful.

I would like to thank President Obama for nominating me. He has given me a great honor, and it is one I hope to uphold and live up to.

I want to thank my—here today with me, my sister, Dr. Robynne Chutkan, who is here, and with her husband, Eric Mann, who is from the Department of Homeland Security. My brother, Dr. Norman Chutkan, could not be here today. He is actually performing surgery right now, but I know if he could be here, he would.

And my wonderful, wonderful parents, Dr. Winston Chutkan and Noelle Chutkan, who could not be here today, but I am sure are watching on a webcast. My parents have been a steadfast source of love and encouragement and support for all three of their children, and any success that we have achieved has really been due to the wonderful example they have set for us. So I am thinking of them today.

I want to thank my mother-in-law, my father-in-law and his wife, my many sister- and brother-in-laws who are watching from near and far; my 12 nieces and nephews, who should all be in school today; colleagues from both my law firm of Boies, Schiller and Flexner, including my partner, William Isaacson, who is here today; and colleagues from the Public Defender Service, neighbors, and friends who are here today and watching by webcast. Thank you all.

[The biographical information of Ms. Chutkan appears as a submission for the record.]

Senator FRANKEN. Thank you, Ms. Chutkan.

Judge Lauck.

STATEMENT OF HON. M. HANNAH LAUCK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA

Judge LAUCK. Thank you, Chair, Senator Franken. I also want to thank Ranking Member Cornyn for the opportunity to appear in front of this Committee and to the Committee for organizing this hearing for us.

I want to thank President Obama for the honor of the nomination and especially thank Senators Warner and Kaine for their gracious words of introduction.

I would like to introduce my family. My husband of 20 years is here, Jay Wood. He is my best friend. He is the source of all happiness in my life and a terrific father and teacher.

Our son is here, Frost Wood. He is a ninth grader in his father's school and has permission to be here today, both from his father and from the other teachers in the school.

[Laughter.]

Senator FRANKEN. He did not get permission from me.

[Laughter.]

Senator FRANKEN. From the Chair, but okay.

Judge LAUCK. They are having a great year because not only are they missing school today, they have had a lot of snow days. This is pretty much the winter of excellence for them in academia.

My daughter, Addie Wood, is here. She is a seventh grader in the sister school where Jay teaches.

Our parents, many of them have passed, including my mother, who was a Minnesotan. But we are hoping that Jay's father, Hank Wood, is successfully manipulating the webcast today, and there is a good chance of that.

With us in the room are my brother, Jett Lauck. My sister, Dede Cockerill, Dede has come in from Texas and has brought a Texan delegation with her. Her husband, Jim Cockerill, is in Texas still. My niece, Sarah Jones, may be gone because she has a little baby, Ella, whom she was gracious enough to bring just a few weeks after birth. I do not know if they are back here yet.

Senator FRANKEN. I see a mother with a little baby.

[Laughter.]

Senator FRANKEN. She is kind of blond.

Judge LAUCK. Yes.

Senator FRANKEN. Is that her?

Judge LAUCK. That would be it. And I would like to note for the record I certainly am a great aunt.

With Sarah is her husband, Brad, who is a graduate of SMU and works in the House across the way.

I also have numbers of supporters from—colleagues from work, good, long, dear friends who have taken the effort to come here, including law school friends.

Our cousins are here, Ted Bond and Ashley Silverberg, and we have members from our courthouse, which is a family in the Eastern District. My law clerk, L.A. Kirkendahl, is here, and Kristen Kirtsos, and I know that Judge Spencer is here in spirit, and I appreciate the opportunity at all to be associated with the seat that he has occupied.

And I look forward to your questions.

[The biographical information of Judge Lauck appears as a submission for the record.]

Senator FRANKEN. Thank you, Judge, and welcome to all family members and also to Ms. Chutkan's family.

Judge Sorokin.

STATEMENT OF HON. LEO. T. SOROKIN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MASSACHUSETTS

Judge SOROKIN. Thank you, Senator. I would like to thank you and the other Members of the Committee for convening this hearing; President Obama for the high honor and humbling honor of the nomination to the district court; Senator Warren for her kind words regarding me, her support in this process; and also Senator

Markey, who I know is not here today but who has also been supportive of my nomination.

As Senator Warren mentioned, I am joined by my wife, who has been the love of my life for over 30 years; our children, who are here today, relishing, I think, the opportunity to miss school; my sisters, who Senator Warren mentioned; my brother-in-law, Jim; and from your neck of the woods, Senator, I know on the webcast watching is my sister-in-law, brother-in-law, and their three children, who live in Rushford, Minnesota, on their farm.

Two people who I would just like to briefly acknowledge who are not here are my parents, my mother and father, proud graduates of the University of Connecticut School of Law in 1950 and 1953, respectively. Without them I would not sit here today. They taught me the importance of hard work, character, and commitment to the rule of law, and though I know that they are saddened—or at least I am, that they are not here to share this moment with me, I am sure that they are beaming with pride looking down upon us from the heavens.

Senator FRANKEN. I am sure they are.

Judge SOROKIN. So I thank you.

[The biographical information of Judge Sorokin appears as a submission for the record.]

Senator FRANKEN. Thank you, and welcome to your family and friends.

Mr. Cruden.

STATEMENT OF JOHN CHARLES CRUDEN, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. CRUDEN. Senator Franken, Senator Cornyn, thank you so much for chairing this, and I am really honored not just by the President's nomination and the support I received from the Attorney General, I am honored to be on this panel with judges that, if I am so lucky to be confirmed, I may be in front of at some time in my life.

I also want to thank Senator Udall, who is a superb Senator but was a wonderful Attorney General, and that was where I first encountered him.

Senator Udall told you a bit about my background, and it is relevant to some of the people that are in the audience supporting me today. It has been a somewhat unique career trajectory. I graduated from West Point, and in the audience today I have some of the individuals who graduated with me.

In my office, on the wall of my office is a print of the plains of West Point. Superimposed on that are the names of my classmates who died in Vietnam, and every morning I go into the office and I see the real price but also the importance of service and public service, but also my warm salute to those men and women in uniform who continue to do extraordinary things for the Nation.

I was fortunate leaving West Point to be selected to be the chief of the Environmental Enforcement Section, which Senator Udall already pointed out that is how we met. I was there also joined by extraordinary individuals, professionals who worked very hard every day promoting the rule of law, advancing the environment,

and many of them are here today also in support of me, and I am so thankful for their public service and their friendship. It means a lot to me. Those career professionals in the Environment Division are really the backbone of that organization.

Listening on webcast, I know, because I have had the fortune of working with Federal officials and so many agencies across the United States, agencies that the Department of Justice served, but I have also had the chance of working with Attorneys General and local attorneys on efforts of advancing the environment, they have been very supportive, and I thank all of them.

And also in the audience today are individuals who served with me in two other ways. I was fortunate enough to be elected by my peers to be the president of the District of Columbia Bar Association, and then later the American Bar Association's Section of Environment, Energy, and Natural Resources, and there are individuals here from those two great organizations who dedicate their valuable time to advancing the rule of law and supporting attorneys.

But like others on the—here before you today, I would not be here today, clearly would not be here today without others that I do want to single out. Almost immediately after I graduated from West Point—maybe I waited a few days—I married my wife, Sharon, who is here today. She is a great professional in her own right, giving her life to teaching learning-disabled young people.

Wonderful professionals, I am so proud of my daughters, Kristen and Heather. They are here with their husbands, Major Scott Campbell and Travis Mason, but now I am at the stage of my life where I have been gifted with other things, and I have four grandchildren. They are boys and girls. With us today are Ryan Mason and Jonathan Mason. Watching us and here in spirit are Lauren Campbell and Katelyn Campbell, two extraordinary young girls.

So thank you again for the opportunity to appear before you today. Thank you for your consideration. I look forward to your questions.

[The biographical information of Mr. Cruden appears as a submission for the record.]

Senator FRANKEN. Well, welcome to all your family and grandchildren, the grandchildren watching, and thank you for your service. I will start the questioning with you, Mr. Cruden.

In your view, what are the most pressing challenges facing the Environment and Natural Resources Division today? And how will you address those challenges?

Mr. CRUDEN. Thank you, Senator. Although I served in the Environment Division for a number of years, I have been out of it now for 3 years in an environmental organization, and so as you would expect, the very first thing I would do going back to the Division would be learning and listening to all of those, so I can tell you in that learning and listening, here are areas that I will be clearly focusing on: Over half of the Division's resources are dedicated to environmental issues, either enforcing our Nation's laws or defending agency policies, and I want to look at that. I want to advance those things. It is extraordinarily important to me.

Another whole part of the Division's responsibilities is as a stewardship for natural resources, our public lands, our national parks.

And I want to work on that. It always has litigation and has litigation today. I need to familiarize myself with that, but I want to make sure that we are using our resources wisely.

And then a third area that I intend to concentrate on as well is there is a unique responsibility the Division has for Native American rights. They both represent tribes through the Department of Interior, but they also have litigation with tribes of the United States. It is an area where I have some familiarity because I have met with tribal leaders, but not a lot. And so I will need to learn. I will need to have that experience and expertise. I will need to meet with tribal members, as I will need to meet with State Attorneys General to actually not only figure out how best to use those priorities but, to answer better your question, how best do I implement the enormous responsibilities of the Environment and Natural Resources Division.

Senator FRANKEN. Thank you for that thoughtful response.

It is going to be the rest of you, to be judges—or judges already and about to be a judge, hopefully. Ms. Chutkan, Judge Sorokin, and Judge Lauck, I would like to ask you the same question I asked Judge Costa, which is to please describe your judicial philosophy, the approach that you would take in deciding close cases, what we can expect of you, what litigants can expect of you when you are confirmed as a Federal district court judge. We will start with Ms. Chutkan.

Ms. CHUTKAN. Thank you, Senator. Like Judge Costa, as a trial lawyer, both at the Public Defender Service and in my career in private practice, I have had the opportunity and the privilege to practice before a wide variety of judges, both in Federal and State courts, and really the ideal judge has always been for me one who is open-minded, fair, and prepared. And that would be my philosophy, and that would be the guiding principles for me as a judge.

Impartiality is bedrock. Listening to both sides, treating all people who come before me, be they individuals or corporations, with respect and with dignity, and working very hard to review all relevant materials, do my own research, be prepared so that when I listen to the arguments of both sides, I am aware of the relevant case law and of the facts. And in the close cases, to really pay close attention to the language of the statute, if I am interpreting a statute, to the facts, to the binding precedent of the Supreme Court and the D.C. Circuit, and to treat each case individually and on its own merits, and apply the law to the facts without fair or favor or partiality to any side.

Senator FRANKEN. Thank you for that answer.

Judge Lauck, I would like to nominate you not to use that answer.

[Laughter.]

Judge LAUCK. That is the universe of good judging that I will do my best to respond. Obviously Ms. Chutkan has an impressive description of what a good judge should be. I cannot say that I have a word that describes my philosophy. What I have tried to do in my years as a magistrate judge is to be both predictable and persuadable.

The predictability flows from following the rule of law, applying precedent clearly, applying the rules of procedure in an accurate and speedy manner.

The persuadability stems from some of what Ms. Chutkan talked about, which is being open-minded, creating an atmosphere in which everyone who walks in the courtroom feels as if they have a fair shot, listening carefully to what the litigants are trying, the case that they are bringing to you, so that whatever decision you reach and however it comes down, the individuals feel fairly heard and they know that the law has been fairly and impartially applied.

Senator FRANKEN. Thank you.

Judge Sorokin.

Judge SOROKIN. Thank you. The litigants I think could expect that I would approach every case with an open mind; that I would come to court prepared, having reviewed carefully all the submissions that they had provided me; that I would treat them both with civility and respect; and that I would endeavor to render both a prompt decision and a decision that I could clearly explain to the parties so that they understood not only what the result was but why I was reaching the result that I had reached.

In terms of resolving close cases, what I would attempt to do is to identify exactly what it is in dispute between the parties and then look at both the general binding precedent from the Supreme Court and the First Circuit governing the question, the methodology to approach the question, analogous case law related to the issue before me, even if it is not deciding the issue before me, and then render an impartial decision under the law to the narrow question before me.

Senator FRANKEN. Thanks to all of you for that.

I want to talk a little bit about recidivism. Judge Lauck, you started a Second Chance Offender Rehabilitation Effort court in 2007, and, Judge Sorokin, you have done work with the Massachusetts drug re-entry court program. I have long advocated for mental health courts and drug courts as alternatives to traditional incarceration in appropriate cases.

Can each of you tell the Committee about your work in this area and whether you have identified effective ways to reduce recidivism and what those are?

Ms. CHUTKAN. Thanks, Senator. I have not done a tremendous amount of work on recidivism in my practice.

Senator FRANKEN. Okay.

Ms. CHUTKAN. But I can tell you that from my time as a public defender—and I spent 11 years as a public defender—I found that clients—I was less likely to see clients a second or third time if there were adequate supports for them in the community, especially drug treatment and assistance in transitioning back into society so that they would have the support and resources they needed so that they would not fall back into the kind of behavior that led them into the criminal justice system in the first place.

So I am a big proponent of programs to reduce recidivism.

Senator FRANKEN. Judge Lauck, you started an anti-recidivism program. Can you tell me about it and what your findings are?

Judge LAUCK. Yes, thank you, Mr. Senator. We have begun the SCORE program. It is called SCORE, a Second Chance Offender Rehabilitation Effort, and in our court we—it is a re-entry program so it is individuals who have already been convicted and are on supervised release. And the goal of this program is to identify individuals who are highly addicted to give them the skills to stop using, to become sober, but also other life skills. And I think one of the greater aspects of the success of the SCORE program has been the life skills of education, getting a GED, getting a driver's license, getting employed. All of those things have had, I think, a measurable effect on reducing recidivism with those individuals and leading them to a successful and employed and sober life within our community.

It has also the benefit of saving resources for individuals who are not going back into the jail system. I think it overall has a very positive effect on the community at large.

Senator FRANKEN. Thank you for that work.

Judge Sorokin.

Judge SOROKIN. Thank you. Senator, in 2006 our district started something called the "Court-Assisted Recovery Effort." Similar to the program that Judge Lauck mentioned, our program is focused on individuals who are returning from Federal prison onto supervised release who have serious drug—histories of drug addiction and drug abuse. And the aim of the program is to help the participants first to create and then to maintain a sober, employed, and law-abiding life.

We have found that by combining the public health approach of treatment with the criminal justice approach of accountability together, we are able to encourage and achieve success with these individuals returning from Federal prison. And as Senator Warren mentioned, we have studied it and found that we have effectively reduced recidivism. We have not studied the resource savings, but anecdotally it does appear that it is certainly cheaper for people in supervised release to provide them treatment than to jail them.

Senator FRANKEN. And they become more productive and on and on.

Well, I want to thank all of you, and I hope we get you confirmed as soon as possible. And I would like to congratulate you and your loved ones and family and friends who have come today.

We will hold the record open for 1 week for submissions of questions for the witnesses and other materials. This hearing is now adjourned.

[Whereupon, at 11:07 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

"Nominations"

Tuesday, February 25, 2014
Dirksen Senate Office Building, Room 226
10:00 a.m.

Panel I

Gregg Jeffrey Costa, to be a United States Circuit Judge for the Fifth Circuit

Panel II

Tanya S. Chutkan, to be a United States District Judge for the District of Columbia

M. Hannah Lauck, to be a United States District Judge for the Eastern District of Virginia

Leo T. Sorokin, to be a United States District Judge for the District of Massachusetts

John Charles Cruden, to be an Assistant Attorney General

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

   Gregg Jeffrey Costa

2. **Position:** State the position for which you have been nominated.

   United States Circuit Judge for the Fifth 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.

   United States District Court
   Southern District of Texas
   601 25th Street
   Galveston, Texas 77550

   Residence: Bellaire, Texas

4. **Birthplace:** State date and place of birth.

   1972; Baltimore, Maryland

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1996 – 1999, University of Texas School of Law; J.D., 1999

   1990 – 1994, Dartmouth College; 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.

   2012 – present
   United States District Court
   Southern District of Texas (Galveston and Victoria Divisions)

601 25th Street
Galveston, Texas 77550
United States District Judge

2005 – 2012
United States Attorney's Office
Southern District of Texas
919 Milam
P.O. Box 61129
Houston, Texas 77208
Assistant United States Attorney

2002 – 2005
Weil, Gotshal & Manges
700 Louisiana, Suite 1600
Houston, Texas 77002
Associate

Spring Semester 2004 and 2005
University of Houston Law Center
100 Law Center
Houston, Texas 77204
Adjunct Professor

2001 – 2002
Hon. William H. Rehnquist
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543
Law Clerk

August 2000 – June 2001
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Bristow Fellow

1999 – 2000
Hon. A. Raymond Randolph
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, DC 20001
Law Clerk

Summer 1999
United States Department of Justice
Antitrust Division
600 E Street, NW
Washington, DC 20530
Summer Law Intern

Summer 1998
Susman Godfrey
1000 Louisiana, Suite 5100
Houston, Texas 77002
Summer Associate

Summer 1998
Baron & Budd
3102 Oak Lawn Avenue # 100
Dallas, Texas 75219
Summer Associate

Summers 1997, 1998
Mayor, Day, Caldwell & Keeton (now defunct, merged with Andrews Kurth)
700 Louisiana, Suite 1900
Houston, Texas 77002
Summer Associate

Summer 1997
Carrington, Coleman, Sloman & Blumenthal
200 Crescent Court, Suite 1500
Dallas, Texas 75201
Summer Associate

July 1996
Sar-el Volunteers for Israel
No physical address
Volunteer, Air Force base near Be'er Sheva, Israel

1994 – 1996
East Sunflower Elementary School (placement through Teach for America)
212 East Claiborne Street
Sunflower, Mississippi 38778
Third and fourth grade teacher

Other affiliations (uncompensated):

1999 – present
Sunflower County Freedom Project
120 Delta Avenue
Sunflower, Mississippi 38778
Board Member, Secretary

2013 – present
Texas Law Review Association
727 East Dean Keeton St.
Austin, Texas 78705
Board Member

2004 – 2006
Congregation Beth Yeshurun 100 Jewish Men
4525 Beechnut
Houston, Texas 77096
Board Member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the military. I 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.

   As Assistant United States Attorney:

   John Marshall Award for Performance in Prosecuting White Collar Crime (the Department of Justice's highest award offered to attorneys for contributions in specialized areas of legal performance) (2013)
   Assistant Attorney General's Award for Exceptional Service for work on Allen Stanford prosecution (2012)
   Recognition from United States Postal Inspection Service for work on various fraud cases, including multimillion dollar kickback case involving international oil traders (2012)
   Award from Immigration and Customs Enforcement for work on cases involving importation of counterfeit technology products from China (2010)
   Houston Bar Association Bob Susman Scholarship (awarded annually to two prosecutors to fund attendance at ABA Annual White Collar Crime Conference) (2010)

Certificate of Appreciation from Director of the Secret Service for work on mortgage fraud prosecution (2009)
Certificate of Appreciation from Inspector General of the Department of Homeland Security for work on FEMA fraud cases (2008)

At University of Texas School of Law:

Graduated with highest honors (1999)
Vice Chancellor (ranked second in class after second year of law school) (1998)
Editor in Chief, *Texas Law Review*
Ellen Waters Olson Scholarship (three years full tuition) (1996)
One of two students selected by Dean to Task Force on the Future of the Law School
Elected Permanent Class Representative
First Place, Hutcheson First Year Moot Court Competition (Section 5, 1997)
First Place and Best Brief, Gibbs & Bruns Moot Court Competition (Fall 1997)
Dean's Achievement Award (top grade in class): Criminal Law; Constitutional Law II: Free Speech; Constitutional Law II: Race & The Constitution; Labor Law; Administrative Law; Professional Responsibility for Civil Litigators

At Dartmouth College:

Presidential citation for excellence in American government
Tucker Foundation Fellowship for semester spent working at parochial elementary school in Jersey City, New Jersey

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
Co-Chair, White Collar Crime Subcommittee, South Texas Chapter (2008 – 2012)

Federal Bar Association
Southern District of Texas Chapter, Judicial Liaison (2012 – present)

Galveston County Bar Association

State Bar of Texas
Editorial Board member, *The Advocate* (journal of the Bar's Section of Litigation) (2012 – present)

Texas Law Review Association (2013 – present)
Board of Directors

The American Law Institute (2014 – 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.

Texas, 2000.

There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Fifth Circuit, 2005
United States Court of Appeals for the Seventh Circuit, 2001
United States District Court for the Southern District of Texas, 2002

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.

Bellaire Little League (assistant baseball coach, 2010 – 2011)

Bellaire Recreation Center (youth soccer coach, 2008 – 2009)

Congregation Beth Yeshurun (2002 – present)
100 Jewish Men (Board Member, 2004 – 2006)

Federal Judges Association (2012 – present)

Houston Express Soccer Club (team manager, 2012 – present)

Houston Urban Debate League (2008 – 2009)

National Association of Assistant United States Attorneys (2009 – 2012)

Sunflower County Freedom Project (Board Member, 1999 – present)

Supreme Court Historical Society (2003 – present)

Teach for America (1994 – present)

United States Public Service Academy Task Force on Service Learning
Coordinator (2006 – 2007)

University of Texas School of Law, Reunion Committee (2004, 2014)

YMCA (youth soccer coach, 2006 – 2007)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above discriminates or previously discriminated on the basis of race, sex, religion, or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements:**

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Honest Services at Skilling*'s One Year Anniversary*, Co-written with David Issak, Presented at State Bar of Texas 37th Annual Advanced Criminal Law Course: Federal Workshop, Houston, Texas, July 2011. Copy supplied.

Amazed and Inspired, Sunflower County Freedom Project Newsletter, Oct. 1, 2008. Copy supplied.

E-mail quoted in Peter King, *Saints' Slide Continues*, cnnsi.com, Sept. 25, 2007. Copy supplied.

Current Antitrust Issues in Patent Law, Co-written with David J. Healey and Ed Chin, Presented at 2004 Advanced Patent Law Institute, Austin, Oct. 2004. I have been unable to obtain a complete copy, but I have provided the Table of Contents and first page that I found on the Internet.

Are the Standards Changing for Standard-Setting? Antitrust Issues in Standard-Setting and High-Tech Cases, Presented at University of Texas School of Law Continuing Legal Education "Computer and Technology Law Institute," May 2004. Copy supplied.

2004 Update on Antitrust in High Tech and IP Cases, 2004, Advanced Patent Law Institute, San Antonio. I have been unable to locate a copy of this paper, but its content is similar to the two antitrust articles listed above.

John Marshall, the Sedition Act, and Free Speech in the Early Republic, 99 Tex. L. Rev. 1099 (1999). Copy supplied.

I also recall writing two articles in *The Dartmouth* during college. One of the articles supported Senator Bob Kerrey's campaign in the 1992 New Hampshire Presidential Primary. The other discussed the United States' support of Saddam Hussein during the Iran-Iraq conflict. I have not been able to find copies of these articles.

In October 1990, I wrote a letter to the editor for the Dallas Morning News relating to an off-campus publication at Dartmouth that had published a quotation from Mein Kampf. I have been unable to obtain a copy of the letter.

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 served as coordinator for the United States Public Service Academy Task Force on Service Learning. The Academy released a report in February 2007 that summarized the work of my task force as well as that of seven others. A copy of the report is supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On November 2, 2011, I testified before the United States Senate Judiciary Committee concerning my district court nomination. Testimony and responses to questions for the record 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.

December 18, 2013: *Naturalization Ceremony,* Houston, Texas. Draft remarks supplied.

October 24, 2013: *Panel: Going to Trial*, ABA National Institute on Securities Fraud, New Orleans, Louisiana. Notes supplied.

October 24, 2013: *Welcome Address: The Fraud Stays The Same, The Law Changes (Comparing the Fraud Schemes of Allen Stanford and Charles Ponzi)*, ABA National Institute on Securities Fraud, New Orleans, Louisiana. Draft speech and PowerPoint supplied.

October 18, 2013: *Judicial Panel: Perspectives on Admiralty Law and Jurisdiction*, 21st Annual Conference on Admiralty and Maritime Law by the University of Texas School of Law, Houston, Texas. Audio supplied.

October 11, 2013: *My First Year on the Bench*, Federal Judicial Center's Phase I Orientation for Newly Appointed District Judges, Fort Worth, Texas. Outline supplied.

September 19, 2013: *The Galveston Federal Court: Then And Now*, Galveston Bar Association, Galveston, Texas. PowerPoint supplied.

September 9, 2013: *Early Thoughts From The Bench*, Houston Bar Association Employment & Labor Law Section. Notes supplied.

July 31, 2013: *Naturalization Ceremony,* Houston, Texas. Draft remarks supplied.

June 26, 2013: *Naturalization Ceremony,* Houston, Texas. Draft remarks and press coverage supplied.

June 13, 2013: *Comments on Closing Arguments*, United States Attorney's Office, Houston, Texas (with Fifth Circuit Judge Jennifer Walker Elrod). Judge Elrod and I discussed the categories of error that arise in closing arguments. I have no notes, transcript, or recording. The address of the U.S. Attorney's Office is 1000 Louisiana, Suite 2300, Houston, Texas 77002.

June 10, 2013: *Keynote Address*, Houston Bar Association Communities in Schools Orientation, Houston, Texas. Draft speech supplied.

May 23, 2013: *The Southern District of Texas: Then and Now (A History of the District)*, Federal Bar Association, Houston, Texas. PowerPoint supplied.

April 26, 2013: *Federal Court Practice*, Corpus Christi Bar Association 2013 Advanced Civil Trial Law Seminar, Corpus Christi, Texas (with United States District Judge Nelva Gonzales Ramos). Judge Ramos and I discussed the differences between federal and state court practice and trends in federal court filings, and answered questions during a 45-minute session. I have no notes, transcript or recording. The address of the Corpus Christi Bar Association is 555 North Carancahua Street, Corpus Christi, Texas 78401.

April 18, 2013: *Early Thoughts From The Bench*, Houston Bar Association Federal Practice Group, Houston, Texas. This was primarily a question-and-answer session in which I discussed with the attendees the procedural differences between federal and state court, reasons for the paucity of civil jury trials, the makeup of the civil docket in my court, and lessons from criminal practice that I think may benefit civil lawyers. My notes would have been substantially similar to the ones on September 19, 2013, which have been supplied.

April 11, 2013: *Early Thoughts From The Bench,* Federal Bar Association, Southern District of Texas Chapter, Victoria, Texas. Other than focusing on the makeup of the Victoria Division docket as opposed to the Galveston Division docket, my notes would have been substantially similar to the ones on September 19, 2013, which have been supplied.

March 15, 2013: *Keynote Speech: The Case of the Vietnamese Fishermen's Association vs. The Knights of the Ku Klux Klan*, Vietnamese-American Lawyers and Legal Assistants Association, Houston, Texas. Draft speech supplied.

February 27, 2013. *The Galveston Federal Court: Then and Now*. Galveston Rotary Club Weekly Luncheon, Galveston, Texas. PowerPoint supplied.

February 14, 2013: *Early Thoughts From The Bench*, Houston Trial Lawyers Association, Houston, Texas. This was primarily a question-and-answer session in which I discussed with the attendees the procedural differences between federal and state court, reasons for the paucity of civil jury trials, the makeup of the civil docket in my court, and lessons from criminal practice that I think may benefit civil lawyers. My notes would have been substantially similar to the ones on September 19, 2013, which have been supplied.

November 15, 2012: *Early Thoughts From The Bench*, Galveston Bar Association Monthly Luncheon, Galveston, Texas. PowerPoint supplied.

November 12, 2012: *The More Things Change...: A Comparison of the Fraud Schemes of Allen Stanford and Charles Ponzi*, Houston Chapter of the Association of Certified Fraud Examiners, Houston, Texas. PowerPoint supplied.

September 20, 2012: *New Black Robes: Perspectives on Advocacy and Ethics From Three Recent Judicial Appointees*, Texas Ass'n Civil Trial and Appellate Specialists, Houston Chapter (Texas Court of Appeals Justices Rebecca Huddle and Brett Busby were co-panelists). The moderator, then-Texas Court of Appeals Justice Jeff Brown, and guests asked the panelists questions concerning court procedures and advocacy tips. I have no notes, transcript or recording. The address for this association is 712 Main Street, Houston, Texas 77002.

September 11, 2012: I administered the oath of office to Galveston Police Chief Henry Porretto, Galveston, Texas. Video available at: http://www.youtube.com/watch?v=Jgnt4HFNb00.

August 10, 2012: I delivered remarks at my investiture ceremony, Galveston, Texas. Transcript supplied.

June 18, 2012: *International Issues In Fraud Cases*, Lecture to University of Houston Criminal Procedure Class, Houston, Texas. PowerPoint supplied.

October 5, 2011: The Jewish Community Center in Houston organized a four-part series on the history of the Supreme Court of the United States as part of its adult education program. I gave the first talk, discussing the early history of the Court through the Civil War and the mechanics of how a case ends up at the Supreme Court. Notes supplied.

July 19, 2011: *Honest Services at* Skilling*'s One Year Anniversary*, State Bar of Texas 37th Annual Advanced Criminal Law Course: Federal Workshop, Houston, Texas (with David Issak). PowerPoint supplied. A copy of the paper we presented is supplied in response to 12(a).

March 29, 2011: *Panel on Trying Counterfeit Trademark Cases*, Computer Hacking and Intellectual Property Coordinators' Conference, National Advocacy Center, Columbia, South Carolina. I have no notes, transcript or recording. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 24, 2011: *Panel on Alumni Lawyers: Pursuing Justice Through a Career in Law*, Teach for America's "What Comes Next" Event for Houston Corps Members, Houston, Texas. I have no notes, transcript or recording. The address of Teach for America is 4669 Southwest Freeway, Suite 600, Houston, Texas 77027.

January 26, 2011: Alumni Speaker, Induction Ceremony for Chancellors Honor Society, University of Texas School of Law. I have no notes, transcript or

recording, but law school coverage is supplied. The address of the law school is 727 East Dean Keeton Street, Austin, Texas 78705.

October 14, 2010: *Issues in International Financial Fraud Investigations*, Financial Fraud Enforcement Coordinators Conference, National Advocacy Center, Columbia, South Carolina (with Paul Pelletier). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 23, 2010: *Panel on Honest Services Law after Supreme Court* Skilling *Decision*, Federal Bar Association Southern District of Texas Chapter/ABA White Collar Crime Subcommittee, Houston, Texas. I have no notes, transcript or recording. The address of the FBA Southern District of Texas Chapter is 2726 Bissonnet #240-239, Houston, Texas 77005.

March 18, 2010: *Investigating and Prosecuting Complex Immigration Fraud Schemes*, Immigration Law Conference, National Advocacy Center (with ICE Agent Marcus Barton). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

October 2009: I participated on a "Career in Law" panel for Rice University students, Houston, Texas. My remarks focused on opportunities for law graduates in the public sector. I have no notes, transcript or recording, but press coverage supplied. The address of Rice University is 6100 Main, Houston, Texas 77251.

February 26, 2008: *Prosecuting Disaster Fraud Cases*, California Wildfires Disaster Fraud Conference, United States Attorney's Office for the Southern District of California (San Diego) (with Jonathan Rusch). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address for the U.S. Attorney's Office is 880 Front Street, Room 6293, San Diego, California 92101.

December 7, 2006: *Major Theft Cases: The Prosecutor's Perspective*, FBI Major Theft Conference, Houston, Texas. PowerPoint supplied.

May 21, 2004: *Are the Standards Changing for Standard-Setting? Antitrust Issues in Standard-Setting and High-Tech Cases*, University of Texas School of Law Continuing Legal Education "Computer and Technology Law Institute," Austin, Texas. A copy of the paper we presented is supplied in response to 12(a).

2004: *Update on Antitrust in High Tech and IP Cases*, Advanced Patent Law Institute, San Antonio. I presented the paper noted in response to question 12a, which I have been unable to locate. The Advanced Patent Law Institute is

sponsored by the University of Texas School of Law Office of Continuing Education, which is located at 727 East Dean Keeton Street, Austin, Texas 78705.

In addition to these specific talks I recall, I have participated in other Teach for America career panels for members interested in legal careers and have given talks to a number of summer law interns about judicial clerkships. I do not have records showing the dates of these talks.

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.

A number of articles have quoted statements I made in court while serving as an Assistant United States Attorney. The following are those articles I could find in which I spoke directly to a reporter.

Chris Paschenko, *DOJ to Honor Judge Costa for Prosecution of $7B Ponzi Scheme*, Galveston Daily News, November 29, 2013. Copy supplied.

Leah Fabel, *One Day* (Teach for America Alumni Magazine), Fall 2012. Copy supplied.

Chris Paschenko, *Young Law: Costa Successfully Prosecuted R. Allen Stanford in $7B Ponzi Scheme*, Galveston Daily News, Oct. 29, 2012. Copy supplied.

Andy Soto, *Interview With Judge Costa*, Galveston County Bar and Texas Young Lawyers Association Newsletters, Aug. 10, 2012. Copy supplied.

John Council, *Senate Confirms Gregg Costa, David Guaderrama for Federal Benches in Texas,* Texas Lawyer Ex Parte Blog, Apr. 26, 2012. Copy supplied.

Laurel Brubaker Calkins, *Stanford CFO Forged Boss's Name, Fought Cost Control Measure, Witness Says*, Bloomberg News, Feb. 17, 2012. Copy supplied.

Miriam Rozen, *A Zero-Tolerance Policy for Hurricane Disaster-Relief Fraud*, Texas Lawyer, Aug. 23, 2010. Copy supplied.

Darren Barbee, *Con Artist Given 10 Years in Prison, Ordered to Pay $3.1 Million*, Fort Worth Star Telegram, May 13, 2010. Copy supplied.

Darren Barbee, *Houston-Area Woman Pleads Guilty in Swindling Case*, Fort Worth Star Telegram, Aug. 25, 2009. Copy supplied.

Darren Barbee, *Woman's Bail Revoked after Prosecutors Accuse Her of Continuing Fraud*, Fort Worth Star Telegram, June 16, 2009. Copy supplied.

Chris Vogel, *No Honest Players Among Human Smugglers*, Houston Press, Aug. 7, 2008. Copy supplied.

Staff, *Crime & Courts; Murder-for-Hire Case Spurs Arrest*, Houston Chronicle, Dec. 4, 2007. Copy supplied.

Rosanna Ruiz and Cindy George, *Brothers Behind Bogus Web Site Guilty*, Houston Chronicle, June 15, 2007. Copy supplied.

Cindy George, *3 Sentenced Over Storm Fraud*, Houston Chronicle, Mar. 31, 2007. Copy supplied.

Harvey Rice, *Life Term Possible on Gun Charge*, Houston Chronicle, Sept. 27, 2006. Copy supplied.

Laura Elder, *Flagship Operator Pleads Not Guilty*, Galveston Daily News, Mar. 9, 2006. Copy supplied.

On September 4, 2005, I was interviewed by Houston local television station KPRC the day after Chief Justice Rehnquist passed away. I have been unable to obtain a copy of the video.

Alumni News: Two Graduates Will Clerk at U.S. Supreme Court, Townes Hall Notes (UT Law Alumni Magazine), Fall 2000. Copy supplied.

Scholarship Opens Doors for Recipients, Townes Hall Notes (UT Law Alumni Magazine), Fall 1999. 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 nominated to serve as a United States District Judge for the Southern District of Texas by President Obama on September 8, 2011, and I was confirmed by the Senate on April 26, 2012. As a United States District Judge, I have the authority to preside over civil and criminal matters filed in or removed to the Southern District of Texas.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over nine cases that have gone to verdict or judgment.

i. Of these, approximately what percent were:

jury trials: 78%

bench trials:	23%
civil proceedings:	67%
criminal proceedings:	33%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Gaalla et al. v. Citizens Medical Ctr. et al.*, No. Cv. V-10-14. For opinion dismissing board members on legislative immunity grounds, *see* 2012 WL 2870701. For opinion denying plaintiff's motion to file amended complaint, *see* 2012 WL 3205634. For opinion granting in part and denying in part hospital administrator's motion for summary judgment, *see* 2013 WL 66250.

Three cardiologists of Indian origin brought suit against a county-owned hospital alleging various actions of discrimination. The case was transferred to me after the Fifth Circuit remanded the case in an interlocutory appeal. Based on the Fifth Circuit opinion, I then granted summary judgment in favor of the hospital board members on legislative immunity grounds and granted in part and denied in part a summary judgment motion filed by the hospital administrator who had asserted a qualified immunity defense. A couple of weeks prior to the scheduled January 2013 trial, the case settled for the publicly disclosed amount of $8 million.

Counsel for Plaintiffs:

Monte F. James
Joshua Romero
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, TX 78701
512-236-2066

Counsel for Citizens Medical, Brown, and Board Members:

Daniel M. McClure
Lance Bremer
Fulbright & Jaworski
1301 McKinney Street, Suite 5100

Houston, TX 77010
713-651-5159

Kevin Dudley Cullen
Cullen, Carsner, Seerden & Cullen LLP
P.O. Box 2938
Victoria, TX 77902
361-573-6318

Counsel for Campbell:

Rex Lee Easley, Jr.
Cole Cole & Easley
302 West Forrest Street
Victoria, TX 77901
361-575-0551

2. *Coates v. Brazoria County et al.*, No. Civ. G-10-71. For order denying motion to disqualify counsel, *see* 2012 WL 2568129; for order dismissing Juvenile Board, *see* 894 F. Supp. 2d 966 (2012); for order granting in part and denying in part Brazoria County's summary judgment motion, *see* 2012 WL 6160678; for Order denying motion to certify interlocutory appeal, *see* 919 F. Supp. 2d 863 (2013).

Two former employees of the Brazoria County Juvenile Board sued a former county court judge, the Juvenile Board, and the County asserting section 1983 and Title VII claims based on allegations that the judge sexually harassed them and that they were fired in retaliation for reporting the harassment. The case had been pending for more than two years when it was transferred to me. Plaintiffs had recently filed an amended complaint adding the Juvenile Board as a new defendant. I denied a motion seeking disqualification of the Juvenile Board's counsel; granted the Juvenile Board's motion to dismiss based on a finding that the entity did not have the capacity to sue or be sued under Texas law; and then granted in part and denied in part the County's motion for summary judgment on the section 1983 claims. These rulings required a legal determination of whether the Juvenile Bound is a state or local entity and whether it is a final policymaker for the county over employment decisions and policies. The case settled pursuant to a Rule 68 offer of judgment for $750,000 the weekend before trial.

Plaintiffs' counsel:

Iain Gordon Simpson
Simpson, P.C.
P.O. Box 924555
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Counsel for Defendant Brazoria County:

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713-228-6601

Counsel for Defendant Brazoria County Juvenile Board:

Rusty Hardin
Cristen David Feldman
Rusty Hardin & Associates
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Houston, TX 77010
713-652-9000

County for Defendant Blackstock:

Anthony P. Griffin
A Griffin Lawyers
1115 21st Street
Galveston, TX 77550
409-763-0386

3. *United States v. Baker*, No. Cr. G-11-8.

I presided over a bench trial in this child pornography case. This case arose when German police recorded the IP addresses of individuals making film clips available on a file-sharing network. German authorities referred the information to the ICE Cyber Crime Center. Summons served on the service provider identified the defendant as the user of three IP addresses used to make files available on the network. After execution of a search warrant, ICE authorities

recovered computers containing more than 6,000 still images and 60 video clips containing child pornography. I found the defendant guilty on all three charged counts: receipt of child pornography; possession of pornography; and access with intent to view child pornography. In December 2012, I sentenced defendant Baker to a prison term of 132 months.

Counsel for United States:

Robert Stabe
Sherri Zack
U.S. Attorney's Office for the Southern District of Texas
1000 Louisiana, Suite 2300
Houston, TX 77002
713-567-9000

Counsel for Defendant Baker:

George D. Murphy Jr
808 Travis Street, 24th Floor
Houston, TX 77002
713-658-1960

4. *United States v. DeLeon*, No. Cr. L-12-560-2.

I presided over a trial in the Laredo Division given the volume of criminal filings there. This case arose out of the Organized Crime Drug Enforcement Task Force's "Operation El Patron," which investigated a drug trafficking conspiracy that transported drugs and money from Mexico to Atlanta, Georgia, with Laredo, Texas serving as the place where the contraband crossed the border. After a three day trial in which the primary evidence came from cooperating codefendants and transcripts from wire taps, the jury convicted DeLeon of conspiring to possess with intent to distribute at least five kilograms of cocaine, conspiring to engage in money laundering, and two substantive drug offenses. The jury acquitted DeLeon on a substantive charge of international money laundering. Sentencing is set for March 7, 2014.

Counsel for United States:

Graciela Rodriguez Lindberg
Sanjeev Bhasker
1100 Matamoros Dr., Suite 200
Laredo, Texas 78040
956-721-4960

Counsel for DeLeon:

Scott McCrum
700 N. Saint Mary's St., Suite 1900
San Antonio, Texas 78205
210-225-4851

5. *Luu v. International Inv. Trade & Serv. Group*, No. Cv. G-11-182. For Order granting the defendant's motion to withdraw admissions and denying summary judgment, *see* 2012 WL 2450773.

More than fifty Vietnamese laborers who travelled to the United States to work as welders, filed suit against Vietnamese companies they contend engaged in an international human trafficking conspiracy. Plaintiffs assert claims under the Trafficking Victims Protection Reauthorization Act of 2005, the 13th Amendment, and the Alien Tort Claims Act. The plaintiffs sought summary judgment on the ground that the Vietnamese defendant had failed to respond to requests for admissions. I denied that request and ruled that the deemed admissions should be withdrawn because, among other things, the defendant did not have American counsel at the time, uncertainty existed concerning whether service of the requests was proper, and summary judgment on that basis would prevent any presentation on the merits of the dispute. Trial is currently set for May 2014.

Counsel for Plaintiffs:

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The Tammy Tran Law Firm
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Houston, TX 77002
713-655-0737

Anthony G. Buzbee
The Buzbee Law Firm
JP Morgan Chase Tower
600 Travis, Suite 7300
Houston, TX 77002
713-223-5393

Counsel for Defendant:

Charles Stephen Kelley
Mayer Brown LLP
700 Louisiana, Suite 3400
Houston, TX 77002
713-238-2634

6. *Anderson v. BNSF Railway*, No. Cv. G-11-270.

I presided over a jury trial in this Federal Employers Liability Act case. Anderson alleged that he was injured while pulling pins on railcars because BNSF Railway did not maintain a safe rail yard. The central dispute between the experts who testified concerned whether the ballast in the rail yard was properly balanced. After a four-day trial, the jury returned a verdict in favor of the defendant finding no negligence.

Counsel for Anderson:

Michael P. Doyle
Doyle Raizner LLP
One Houston Center
1221 McKinney, Suite 4100
Houston, TX 77010
713-571-1146

Counsel for BNSF Railway:

Douglas W. Poole
Bryan Lasswell
P.O. Box 629
Galveston, TX 77553
409-763-2481

7. *Bear Ranch LLC v. HeartBrand Beef, Inc.* No. Cv. V-12-14. For opinion denying motion to intervene, *see* 286 F.R.D. 313 (2012); for opinion granting leave to amend, *see* 2013 WL 4520425; for opinion on motion to dismiss, *see* 2013 WL 6190253.

Defendant HeartBrand claims to be the sole source for Akaushi beef in the United States. When it sells the cattle to the ranches, it includes a number of provisions requiring the registration of any offspring and restricting the sale of Akaushi semen. Bear Ranch, one of the ranches that had purchased Akaushi cattle from HeartBrand, filed suit alleging that the restrictions violate federal antitrust and Texas contract law. I denied a motion by another ranch to intervene and then granted plaintiff's motion to file an amended complaint. After the filing of the amended complaint, I then granted in part and denied in part a motion to dismiss claims in the amended complaint. I dismissed the claim seeking a declaratory judgment that the contractual restrictions on breeding and sales were void as a result of fraudulent inducement, concluding that such relief would amount to an impermissible partial rescission under Texas law. I denied the motion to dismiss the claim for damages resulting from any fraudulent inducement, finding that the

plaintiff had sufficiently pleaded that it overpaid for the cattle as a result of the alleged misrepresentations. Trial is currently set for April 2014.

Counsel for Bear Ranch:

R. Paul Yetter
Yetter Coleman LLP
909 Fannin Street, Suite 3600
Houston, TX 77010
713-632-8000

John Campbell Barker
Yetter Coleman LLP
221 West Sixth Street, Suite 750
Austin, TX 78701
512-533-0150

Andrew R. Seger
McWhorter Cobb Johnson LLP
1722 Broadway
Lubbock, TX 79401
806-762-0214

Counsel for HeartBrand:

James A. Reeder, Jr.
Stacy Neal
Vinson & Elkins
1001 Fannin Street, Suite 2500
Houston, TX 77002
713-758-2202

Counsel for Proposed Intervener Twinwood Cattle:

William D. Wood
David Hanns
Fulbright & Jaworski LLP
1301 McKinney Street, Suite 5100
Houston, TX 77010
713-651-5151

8. *Blythe v. Bumbo International Trust*, No. Cv. V-12-36. For opinion granting in part and denying in part motion for summary judgment, *see* 2013 WL 6190284.

This is a products liability case involving the Bumbo Baby Seat, which has been subject to separate recalls by the Consumer Products Safety Commission. Parents of an infant allegedly injured while sitting in the seat on a counter brought suit against Bumbo, the manufacturer, and Target, which sold the seat. I granted the defendant's motion on summary judgment on the marketing defect claim, finding that the warning used after the 2007 recall were sufficient as a matter of law. I denied summary judgment on the design defect claim, the gross negligence claims, and on the question whether Target had actual knowledge of the defect which would support an exclusion from the Texas statute immunizing nonmanufacturing sellers in products liability cases. I then presided over a six-day trial in Victoria. The jury returned a verdict finding no liability on the part of the defendants.

Counsel for Plaintiffs:

Martin Rose
Michael Ross Cunningham
Rose Walker LLP
3500 Maple Ave, Suite 900
Dallas, TX 75219
214-752-8600

Counsel for Defendants:

Tarush R. Anand
John Davis
Brown Sims, P.C.
1177 West Loop South, Tenth Floor
Houston, TX 77027
713-629-1580

9. *Voting for America v. Andrade*, No. Cv. G-12-44. For order granting in part and denying in part motion for preliminary injunction, *see* 2012 WL 3155566, stay granted, 2012 WL 6160678.

Nonprofit organizations that engage in voter registration activities sued the Texas Secretary of State and Galveston County Registrar challenging eight Texas statutes governing voter registration activities. I issued a preliminary injunction enjoining enforcement of five of the eight challenged provisions on either preemption or First Amendment grounds. The opinion also addressed the defendants' arguments that plaintiffs lacked standing to sue them. In a 2-1

decision, the Fifth Circuit stayed my order pending appeal. In a 2-1 decision by a different panel, the Fifth Circuit vacated the injunction.

Counsel for Plaintiffs:

Chad W. Dunn
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281-580-6310

Brian Mellor
Michelle Kanter Cohen
Michelle Rupp
Project Vote
1350 Eye Street, NW, Suite 1250
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Counsel for Secretary of State:

Kathlyn Claire Wilson
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P.O. Box 12548
Austin, TX 78711
512-463-2120

Counsel for Galveston County:

Donald S. Glywasky
Galveston County Legal Department
722 Moody Avenue, Fifth Floor
Galveston, TX 77550
409-770-5562

10. *Washington v. La Marque Independent School District*, No. G-12-154. For opining denying motion to remand and consolidating cases, *see* 2012 WL 5289682. For opinion granting former District Attorney Sistrunk's motion to dismiss and granting in part and denying in part La Marque ISD's motion for summary judgment, *see* 930 F. Supp. 2d 790. For opinion denying La Marque ISD's motion for reconsideration on the one claim that survived its summary judgment motion, *see* 2013 WL 2323122.

The former chief of police for the La Marque School District sued the district, members of the school board, and the former Galveston County District Attorney in two separate lawsuits. The suits raised various constitutional, statutory and tort claims arising out of the termination of Washington based on criminal charges brought against him that were later dismissed. I denied Washington's motion to remand one of the lawsuits to state court and consolidated the cases. I then granted former District Attorney Sistrunk's motion to dismiss on immunity grounds and granted in part and denied in part the school district's motion for summary judgment on due process claims.

Counsel for Washington:

Chad C. Pinkerton
The Pinkerton Law Firm, PLLC
5020 Montrose Blvd., Suite 550
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281-332-2002

Counsel for La Marque ISD and individual district employees:

Richard A Morris
Rogers, Morris & Grover, L.L.P.
5718 Westheimer, Suite 1200
Houston, TX 77057
713-960-6019

Counsel for former District Attorney Sistrunk:

Donald S Glywasky
Galveston County Legal Department
722 Moody, Fifth Floor
Galveston, TX 77550
409-770-5562

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. *Voting for America v. Andrade,* Opining granting in part and denying in part motion for preliminary injunction. 888 F. Supp. 2d 816 (S.D. Tex. 2012), *stay granted by* 488 Fed. Appx. 890 (5th Cir. Sept. 26, 2012), *rev'd* 732 F.3d 382 (5th Cir. 2013).

   Counsel for Plaintiffs:

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   281-580-6310

   Brian Mellor
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   David C. Peet
   Julia Lewis
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   Ropes & Gray, LLP
   700 12th Street NW, Suite 900
   Washington, DC 20005
   202-508-4826

   Counsel for Secretary of State:

   Kathlyn Claire Wilson
   Office of the Attorney General
   General Litigation Division
   P.O. Box 12548
   Austin, TX 78711
   512-463-2120

   Counsel for Galveston County:

   Donald S. Glywasky
   Galveston County Legal Department
   722 Moody Avenue, Fifth Floor
   Galveston, TX 77550
   409-770-5562

2. *Maples v. University of Texas Medical Branch at Galveston.* Opinion granting summary judgment. 901 F. Supp. 2d 874 (S.D. Tex. 2012), *aff'd*, 2013 WL 1777501 (5th Cir. Apr. 26, 2013).

   Counsel for Maples:

   Anthony Griffin
   1115 21st Street
   Galveston, TX 77550
   409-763-0386

   Counsel for University of Texas Medical Branch at Galveston:

   Erika M. Laremont
   Office of the Attorney General
   General Litigation Division
   P.O. Box 12548 Capitol Station - 019
   Austin, TX 78711
   512-475-4102

3. *Coates v. Brazoria County*, Opinion granting in part and denying in part County's Motion for Summary Judgment. 2012 WL 6160678 (S.D. Tex. Dec. 11, 2012).

   Plaintiffs' counsel:

   Iain Gordon Simpson
   Simpson, P.C.
   P.O. Box 924555
   Houston, TX 77292
   281-989-0742

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Counsel for Brazoria County:

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Counsel for Blackstock:

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4. *De La Garza v. Brumby*. Opinion granting in part and denying in part summary judgment. 2013 WL 754260 (S.D. Tex. Feb. 27, 2013).

Counsel for De La Garza:

Robert E. McKnight, Jr.
203 North Liberty Street
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361-573-5500

Margaret Ann Harris
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Counsel for Defendants:

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Casey Cullen

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P.O. Box 2938
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361-573-6318

5. *Pittman-Bey v. Clay.* Opinion granting summary judgment. 2013 WL 797415 (S.D. Tex. Mar. 4, 2013).

   Counsel for Pittman-Bey:

   Leo Pittman-Bey (pro se)

   Counsel for Defendants:

   Gerald O'Ryan McMillan
   Office of the Attorney General
   P.O. Box 12548
   Austin, TX 78711-2548
   512-463-2080

6. *Washington v. Burley.* Opinion granting in part and denying in part motion for summary judgment. 930 F. Supp. 2d 790 (S.D. Tex. 2013).

   Counsel for Washington:

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   281-332-2002

   Counsel for school district and individual district employees:

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   Counsel for former District Attorney Sistrunk:

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   722 Moody, Fifth Floor
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   409-770-5562

7. *Welding Technologies v. James Machine Works LLC.* Opinion denying motion to stay or transfer venue. 2013 WL 1123852 (S.D. Tex. Mar. 18, 2013).

   Counsel for Welding Technologies:

   James Stanley Teater
   Jones Day
   717 Texas Ave, Suite 3300
   Houston, TX 77002
   832-239-3777

   Counsel for James Machine Works:

   Richard John Tyler
   Jones Walker
   201 St Charles Ave
   New Orleans, LA 70170
   504-582-8266

8. *Choice Hotels International v. Patel.* Opinion granting in part and denying in part plaintiff's motion for summary judgment and granting injunction. 940 F. Supp. 2d (S.D. Tex. 2013).

   Counsel for Choice Hotels International:

   Mark Wesley Thayer
   Gordon & Rees, LLP
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   Houston, TX 77027
   713-961-3366

   Counsel for Defendants:

   Edward J Hennessy
   2900 Weslayan
   Suite 500
   Houston, TX 77027
   713-224-5066

9. *Mazurkiewicz v. Clayton Homes, Inc.*, Opinion granting in part and denying in part motion for summary judgment. 2013 WL 3992248 (S.D. Tex. Aug. 2, 2013).

   Plaintiffs' counsel:

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   The Jansse Law Firm
   8438 Fountain Circle
   San Antonio, TX 78229
   210-595-8665

   Gay Ellen Gilson
   418 Peoples St., Suite 402
   Corpus Christi, TX 78401
   361-887-0552

   Counsel for Defendant:

   Michael D. Mitchell
   Ogletree Deakins
   500 Dallas Street
   Suite 3000
   Houston, TX 77002-4709
   713-655-5756

10. *United States ex rel. Parikh v. Citizens Medical Center*, Opinion granting in part and denying in part defendants' motion to dismiss. 2013 WL 5304057 (S.D. Tex. Sept. 20, 2013).

    Relators' Counsel:

    Monte F. James
    Joshua Romero
    Jackson Walker LLP
    100 Congress Avenue, Suite 1100
    Austin, TX 78701
    512-236-2066

    Defendants' Counsel:

    Kevin Michael Clark
    King & Spaulding LLP
    1100 Louisiana Street, Suite 4000
    Houston, TX 77002
    713-276-7334

e. Provide a list of all cases in which certiorari was requested or granted.

I am not aware of any case of mine in which certiorari was requested or granted. In *Voting for America v. Andrade*, No. G-12-44, the plaintiffs filed an application with the Supreme Court seeking to lift the Fifth Circuit's stay. The Supreme Court denied the application, with Justice Sotomayor dissenting. 133 S. Ct. 99 (Sept. 25, 2012).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Voting for America v. Andrade, 888 F. Supp. 2d 816 (S.D. Tex. 2012), *stay granted by* 488 Fed. Appx. 890 (5th Cir. Sept. 26, 2012), *rev'd* 732 F.3d 382 (5th Cir. 2013). In a 2-1 decision, the Fifth Circuit stayed the preliminary injunction I issued in the *Voting for America* case and then later vacated that injunction. The court of appeals disagreed that voter registration activity was governed by the Supreme Court decisions on petition activity for ballot initiatives, held that the Texas law governing compensation for participants in voter registration drives could be given a narrowing construction, and concluded that the National Voter Registration Act did not preempt two Texas statutes.

Baker v. Cage, 2012 WL 4486273, *rev'd*, *In re Whitley*, 2013 WL 6596790 (5th Cir. Dec. 16, 2013). The Fifth Circuit reversed my decision affirming an order of the bankruptcy court that had required a debtor's counsel to return real estate he had received from the debtor but failed to disclose to the bankruptcy court. The court of appeals held that the bankruptcy court improperly relied on a provision of the bankruptcy code regulating excessive attorney compensation as opposed to the provision allowing sanctions against an attorney who violates disclosure requirements and remanded the case to the bankruptcy court where findings could be made concerning the latter.

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 file all my decisions with the federal judiciary's CM/ECF system, which makes all written decisions available to the public online. Westlaw and Lexis have published most of my substantive (*i.e.*, non-scheduling) rulings on their websites.

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.

Voting for America v. Andrade, 888 F. Supp. 2d 816, *stay granted,* 488 Fed. Appx. 890 (5th Cir. Sept. 26, 2012), *rev'd* 732 F.3d 382 (5th Cir. 2013).

Washington v. Burley, 930 F. Supp. 2d 790 (2013).

De La Garza v. Brumby, 2013 WL 754260 (2013)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The United States District Court for the Southern District of Texas has an automated conflict check system. I list in that system the names of companies in which I hold stock and the names of any family members and close friends whom I have concluded should not appear before me. I recused myself *sua sponte* in the following cases, all of which were flagged by the automated conflict check system:

Sims v. Legal Eagles et al., G-CV-07-206
Backe et al. v. *LeBlanc et al.*, G-CV-10-388
Williams-Smith et al. v. Designers Edge, Inc. et al., G-CV-10-590
Matagorda County Teen Program v. City of Bay City, G-CV-11-032
Yates v. City of Kemah, G-CV-11-123

Cruz v. City of Galveston, G-CV-11-205
Aldous v. City of Galveston, G-CV-11-228
Allen v. Stroud et al., G-CV-11-263
Nguyen v. Bank of America, No. G-CV-11-290.
Forbes v. Citimortgage, No. G-CV-11-409.
Hall v. BAC Home Loans Servicing, No. G-CV-11-417
Rowlands et al. v. Bank of America, No. G-CV-11-555
Phillion v. Home Depot U.S.A., No. G-CV-12-21
Walker v. Home Depot U.S.A., G-CV-12-65
Davis v. Bank of America Corp., G-CV-12-100
Wulf v. BAC Home Servicing LP, G-CV-12-124
Cortines et al. v. Bank of America, G-CV-12-174
Black Sigma LLC v. Bank of America, G-CV-12-181
Bastien v. Bank of America, G-CV-12-192
Belknap v. Bank of America, G-CV-12-198
Mallette v. Deutsche Bank Berkshire Mortgage, G-CV-12-231
GE Commercial Distrib. Finance Corp. v. Chardee, Inc., G-CV-12-303
Rowlands v. Bank of America, N.A., G-CV-12-366
United States v. Blevins, G-CR-13-03
Mendoza v. McDonald, G-CV-13-60
Cornett v. Bank of America, N.A., G-CV-13-94
Arnold v. Federal Nat'l Mortgage Ass'n et al, G-CV-13-101
Bastian v. Bank of America, N.A., G-CV-13-110
Gribble v. Bank of America, NA., G-CV-13-154
In re Young, G-CV-13-205
Knapik v. Bank of America, N.A., G-CV-13-206
Young et al v. Bank of America, N.A., G-CV-13-257
Brown v. Bank of America, N.A., G-CV-13-263
Williams v. Federal Nat'l Mortgage Ass'n et al, G-CV-13-318
Luna v. Bank of America, N.A., G-CV-13-343
Sharp v. Mortgage Electronic Registration Sys., Inc. et al, G-CV-13-360
Simon, III v. Bank of America, N.A., G-CV-13-379
Adkins et al v. Apple, Inc., G-CV-13-402
Lyerly v. BAC Home Loans Servicing, L.P., G-CV-13-461
Speedy Stop Food Stores LLC v. Visa, Inc. et al, V-CV-13-73

No party has filed a motion seeking my recusal.

15. **Public Office, Political Activities and Affiliations:**

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Dartmouth College Democrats (Acting President, Vice President, 1991 – 1992)

Volunteer, campus coordinator, Bob Kerrey for President campaign (New Hampshire Primary, 1991 – 1992)

Volunteer, Clinton for President and Dallas County Democratic Party Coordinated Campaign (Fall 1992)

Intern, Democratic National Committee (Summer 1991)

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 1999 through July 2000, I served as a law clerk to Judge A. Raymond Randolph, United States Court of Appeals for the D.C. Circuit.

From July 2001 through July 2002, I served as a law clerk to Chief Justice William Rehnquist, Supreme Court of the United States.

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.

2000 – 2001
United States Department of Justice, Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Bristow Fellow

2002 – 2005
Weil, Gotshal & Manges
700 Louisiana, Suite 1600
Houston, Texas 77002
Associate

2005 – 2012
United States Attorney's Office
Southern District of Texas
919 Milam
P.O. Box 61129
Houston, Texas 77208
Assistant United States Attorney

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

As a Bristow Fellow, I authored numerous briefs in opposition to petitions for certiorari, recommended to the Solicitor General whether the United States should appeal adverse district court decisions, assisted permanent office attorneys with drafting Supreme Court merit briefs and preparing for oral arguments, and argued an appeal in the Seventh Circuit.

During summer 2002, I returned to Texas and joined the Houston office of Weil Gotshal as an associate. I had primary day-to-day responsibility for civil litigation matters including intellectual property litigation, class actions, international arbitration, bankruptcy litigation and general commercial disputes. I also worked on appellate matters and a number of pro bono cases.

In early 2005 I joined the Houston United States Attorney's Office as an Assistant United States Attorney and worked there until I was appointed to be a United States District Judge in 2012. I worked in the Major Offenders and Major Fraud sections of the office, investigating and prosecuting criminal matters in the following areas: mortgage fraud, investment fraud, securities fraud, government benefit fraud, public corruption, importation of counterfeit products, internet fraud, child

pornography, human smuggling, hostage taking, postal crimes, and narcotics and firearms violations. I also handled numerous appellate matters and argued six cases in the Fifth Circuit.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

When working in private practice at Weil Gotshal, the typical clients I represented were corporations involved in complex civil litigation. In pro bono matters I handled during that time, I represented a defendant in a criminal case and a nonprofit organization in constitutional litigation.

As an Assistant United States Attorney, I represented the United States in criminal prosecutions.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:
   1. federal courts 90%
   2. state courts of record: 10%
   3. other courts:
   4. administrative agencies:

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 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.

Seventeen (this includes two cases that were tried twice because the jury hung on some counts). I tried all of these cases as an Assistant United States Attorney. Two prosecutors typically handle a trial and evenly split the witnesses and jury addresses. (I may have tried one or two cases to magistrate judges in cases from the misdemeanor civil violations bureau docket, but I do not recall the specific cases and did not include those cases in the number of trials listed here.)

i. What percentage of these trials were:
   1. jury: 100%
   2. nonjury: 0%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As a Bristow Fellow in the Solicitor General's office, I drafted numerous responses to petitions for certiorari. The only one I recall by name is *United States v. Dusenberry*, 534 U.S. 161 (2002), because the Supreme Court granted the petition in that case. Copy supplied.

I also recall providing research and other assistance to permanent office attorneys for the merits briefs filed in the following cases: *Indianapolis v. Edmond*, 531 U.S. 32 (2000); *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); and *Zadvydas v. Davis*, 533 U.S. 678 (2001).

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. Stanford, et al.*, No. H-09-242 (S.D. Tex.); Judge David Hittner. Court of Appeals decisions relating to Stanford's pretrial detention are reported at 2011 WL 867057, 395 Fed. App'x 72, 367 Fed. App'x 507, and 341 Fed App'x 979.

I was co-lead counsel for the United States in the prosecution of Stanford, other Stanford Financial Group executives, and the former head of the Antiguan Financial Services Regulatory Commission. The indictment alleged that the defendants engaged in a $7 billion investment fraud relating to the sale of certificate of deposits by Antiguan-based Stanford International Bank. I was involved in all aspects of the case including trying the case; working with foreign governments to extradite a defendant, obtain evidence and freeze over $300 million in foreign bank accounts; and briefing four Fifth Circuit appeals and arguing the one in which oral argument was held. The CFO of Stanford Financial Group pled guilty. A jury found Stanford guilty on thirteen of fourteen counts after a seven-week trial. After I was appointed to the bench, Stanford was sentenced to a 110-

year term of imprisonment, and the three remaining defendants, who had been awaiting trial, were convicted and sentenced to prison terms.

Co-counsel (at various stages of the prosecution):

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Andrew Warren
Jack Patrick
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Opposing Counsel (at various stage of the prosecution):

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Counsel for defendant Pendergest:
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Counsel for defendant Lopez:
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Jim Lavine
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Counsel for defendant Kuhrt:
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2. *United States v. Barnes, et al.*, No. H-10-787 (S.D. Tex.); Judge Sim Lake.

This case involved an alleged $80 million dollar kickback and international money laundering scheme relating to the shipment of oil from Venezuela to a Houston area refinery. Barnes, who was the Marine Chartering Manager for LyondellBassell's Houston refinery, pled guilty to receiving more than $20 million in kickbacks from oil traders in exchange for agreeing to pay inflated prices for the shipping that the traders were arranging through companies they controlled. Barnes subsequently cooperated with the government and was sentenced to a seven-year prison term. Two of the oil traders

plead guilty and were sentenced to terms of 54 and 66 months. The investigation in this case involved obtaining evidence from authorities in Switzerland, France and the British Virgin Islands. We also obtained forfeiture of approximately $25 million of the fraud proceeds.

Opposing Counsel:

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Counsel for defendant Langley:
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Counsel for defendant Meltzer:
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(214) 758-1032

David Gerger
Gerger & Clarke
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(713) 224-4400

3. *United States v. Curtis, et al.*, No. H-08-323 (S.D. Tex.); Judge Nancy Atlas. The Court of Appeals decision affirming the convictions and sentences is available at 2011 WL 846703 (5th Cir. 2011).

This case involved nine defendants charged with conspiring to commit mortgage fraud in the Montrose neighborhood of Houston. The organizer of the scheme, Curtis, used his supposed investment company CLC Holdings to receive large profits from the sale of homes in which straw buyers were used to pay inflated amounts for the home. Some of the loan applicants used children's' social security numbers, which were purchased from a Houston "credit repair" business. Eight of the defendants, including two mortgage brokers and the owner of the credit repair business, pled guilty and were sentenced to various terms of imprisonment. Curtis went to trial and a jury convicted him of conspiracy, wire fraud, and aggravated identity theft. Judge Atlas sentenced Curtis to

twelve years in prison. I worked with the Secret Service in investigating the case, presented the case to the grand jury, negotiated the plea agreements of the eight defendants who pled guilty, and, along with a colleague, tried the case against Curtis.

Trial Co-counsel:
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Opposing Counsel:

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For defendant Cherry:
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For defendant Ly:
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For defendant Nunnerly:
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For defendant Nguyen:
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4. *United States v. Ashoor*, No. H-09-307 (S.D. Tex.); Judge David Hittner. The Court of Appeals decision affirming the conviction is reported at 2011 WL 1659780 (5th Cir. 2011).

The defendant, who had a company that serviced government contracts, imported counterfeit Cisco products from China which he intended to supply to the Marine Corps in Iraq. After a hung jury resulted in a mistrial of the first trial, a jury convicted the defendant of trafficking in goods with counterfeit trademarks, and he was sentenced to a fifty-one month prison term. I worked with ICE in the initial stages of this investigation, another AUSA completed the investigation and obtained an indictment in the case, and I then tried the case with the other AUSA.

Trial Co-counsel:
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Counsel for Ashoor:
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5. *United States v. Stephens and Stephens*, H-06-242 (S.D. Tex.); Judge David Hittner. The Court of Appeals decision affirming the convictions and sentences is reported at 571 F.3d 401 (5th Cir. 2009).

I managed the investigation and prosecution of these two defendants charged with creating a fraudulent Salvation Army website shortly after Hurricane Katrina struck the Gulf Coast, which falsely purported to collect donations for hurricane victims. Hundreds of individuals across the country donated to the website before it was shut down. To disguise their involvement with the website, the brothers used stolen identities, including Social Security numbers, to register the various PayPal accounts they used to collect money donated through the website. A jury convicted both defendants of conspiracy, wire fraud and aggravated identity theft. One defendant received a sentence of 111 months and the other received a sentence of 105 months.

Co-counsel:
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Opposing Counsel:

Counsel for defendant S. Stephens:
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Gerger & Clarke (then Office of the Federal Public Defender)
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Counsel for defendant B. Stephens:
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(713) 426-2244

6. *United States v. Trevino, et al.*, H-07-664 (S.D. Tex.); Judge Randy Crane.

This public corruption case involved tens of thousands of dollars paid in bribes to the City Manager and Director of Parks and Recreation for the City of Mission, Texas. The contractors paid the bribes in exchange for favorable treatment in the awarding of contracts for debris and sludge removal, the construction of a skateboard park, expansion of a city pool and the painting of a downtown parking lot. The case arose from a longstanding FBI undercover investigation in the Rio Grande Valley which another AUSA oversaw. I handled the prosecution of the two public officials and two contractors

charged in this case. All four defendants pled guilty. The two public officials and one of the contractors were sentenced to various prison terms; the other contractor received a sentence of probation based on his cooperation.

Opposing Counsel:

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Jack Wolfe (deceased)
Counsel for defendant Villegas:
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Counsel for defendant Cavazos:
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(956) 687-6415

Counsel for defendant D. Trevino:
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7. *United States v. Speezia*, H-07-31 (S.D. Tex.); Judge Ewing Werlein, Jr.

The defendant was associated with a human smuggling organization in Houston. A meeting was arranged at a gas station at which the smugglers planned to seek payment from the brother of one of the Mexican nationals who had been brought from the border to Houston. Upon learning that the brother did not have the smuggling fee, the defendant and others kidnapped him at gun point and took him to a motel room in the Houston area. Over the next few days, the defendant and his associates called relatives of the hostage and demanded payment of the smuggling fee, which they kept increasing. During the calls, the defendant tortured the hostage by, among other things, burning his forearms with an iron and hammering his toenails. The jury convicted the defendant of conspiracy, alien smuggling, and hostage taking. The defendant was sentenced to a 25-year prison term. Another AUSA investigated and charged the case. I joined him to prepare and try the case and then I handled the sentencing hearing.

Co-counsel:
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Opposing counsel:
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8. *United States v. Huang and Liu*, H-05-392 (S.D. Tex.); Judge David Hittner. The Court of Appeals decision affirming Liu's conviction and sentence is reported at 288 Fed. App'x 193 (5th Cir. 2008).

A Houston lawyer and her legal assistant were charged with engaging in a complex visa fraud scheme. The fraud involved, among other things, intracompany transfer visas, which allow a foreign citizen to work in the United States as an executive at a foreign company's American subsidiary and can serve as a basis for permanent residence status. Chinese nationals paid large sums, up to $60,000 each, to obtain such visas under fraudulent pretenses. The defendants created legal documents, such as stock certificates and Board of Director minutes, falsely showing that Chinese companies had purchased American subsidiaries, which they submitted to support the fraudulent visa applications. Defendant Huang, the attorney, was convicted of conspiracy and four counts of visa fraud and sentenced to fifty-one months in prison. Defendant Liu was convicted of one count of visa fraud, acquitted on the other counts, and sentenced to eighteen months in prison. This case was reassigned to me after it was charged. I then prepared and tried the case with another AUSA, handled the sentencing hearings, and argued Liu's appeal.

Co-counsel:
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Opposing Counsel:

Counsel for defendant Huang:
Neal Andrew Davis
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Counsel for defendant Liu:
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9. *Canatxx Energy Ventures, Inc. v. General Electric Capital Corp.*, Case No. H-09-4425 (S.D. Tex.); Judge Kenneth Hoyt. The Fifth Circuit decision reversing the judgment and rendering judgment in favor of GE Capital is at 2008 WL 4601691 (5th Cir. 2008).

My firm represented GE Capital in this lawsuit concerning the termination of a power plant project. Canatxx was the project developer and signed a Dissolution Agreement with GE Power Systems in which the parties agreed to terminate the joint venture to build power plants. Canatxx then filed suit against GE Capital, which was a financial advisor on the project, raising state-law claims of breach of fiduciary duty, unfair competition fraud, and civil conspiracy. During the time I was involved in the case, I drafted the motions, argued at a court hearing, and managed discovery, including attending depositions in London. After I left my firm, another firm was hired to try the case. A jury returned a verdict of favor of Canatxx, but the Fifth Circuit reversed and rendered judgment in favor of GE Capital based on its holding that the Dissolution Agreement also applied to affiliates of GE Power Systems, which included GE Capital.

Lead counsel:
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Houston, TX

Opposing counsel:
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10. *Pataki v. Assembly and Silver v. Pataki*, 824 N.E.2d 898 (N.Y. Ct. App. 2005).

My firm represented the speaker of the New York assembly in litigation against Governor Pataki related to disputes over the budget process in New York. The case involved questions concerning whether the New York Constitution allowed the legislature to amend certain legislation proposed by the Governor and whether the Governor could exercise the line-item veto with respect to those bills. The two related cases reached the New York Court of Appeals, which ruled 5-2 in favor of the Governor. I had significant involvement in crafting the arguments and drafting the briefs in both the intermediate appellate courts and in the New York Court of Appeals.

Lead counsel:
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Opposing counsel:
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Cravath, Swain & Moore
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(212) 474-1000

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While an associate at Weil Gotshal, in addition to the litigation I handled, I was involved in one antitrust counseling matter.

As an Assistant United States Attorney, in addition to prosecuting cases, I served as the Deputy International Affairs Coordinator for the United States Attorney's Office. In that capacity, I helped coordinate incoming and outgoing requests for foreign evidence gathering under Mutual Legal Assistance Treaties with numerous countries. In addition to this oversight role, I personally handled such requests on behalf of the governments of Malaysia, Turkey, Colombia, Lithuania, Greece, France, the United Kingdom, Trinidad and Tobago, Ireland, Norway, and Brazil. I also handled and provided guidance to other AUSAs on extradition matters.

I also served as the Hurricane Fraud Coordinator for the Southern District of Texas, a position created in 2005 after Hurricanes Katrina and Rita. I coordinated a multi-agency task force that investigated fraud cases relating to Hurricanes Katrina, Rita, and Ike. The United States Attorney's Office prosecuted more than 100 individuals for fraud relating to the hurricanes, including government-benefit fraud, identity theft offenses, charitable fraud, and investment fraud.

In addition, the Deputy Attorney General appointed the First Assistant United States Attorney and me to serve as special prosecutors in a public corruption matter arising out of another district in which the local U.S. Attorney's Office had a conflict.

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.

During the spring semesters of 2004 and 2005, I taught Federal Jurisdiction as an adjunct professor at the University of Houston Law Center. A copy of my 2005 syllabus is supplied.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    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 such plans.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

        I do not hear cases brought by the United States Attorney's Office in which I had any participation as an AUSA. I do not preside over any cases involving the company that employs my wife. I also do not preside over cases involving the few companies in which my wife and I own stock.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would follow the recusal statutes and the Code of Conduct for United States Judges, as well as other legal authority, in resolving any potential conflicts of interest. I would also consult with colleagues and with ethics officials from the Administrative Office of U.S. Courts.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In 2003, I assisted the NAACP Legal Defense Fund in representing Timothy Towery, who was serving an 18-year sentence as one of the 38 individuals convicted as part of the Tulia drug sting. We prepared a motion for habeas corpus relief arguing that Towery's conviction should be overturned based on the ineffective assistance of his counsel who persuaded him to plead guilty. This involved investigating the case against Towery, researching the relevant legal issues and drafting the motion. On August 23, 2003, Governor Rick Perry pardoned our client and the other Tulia defendants.

In 2004, I assisted the Lawyers' Committee for Civil Rights Under Law in litigation involving two events that infringed on the voting rights of Prairie View A&M students in Waller County, Texas. One case was filed against the District Attorney who had warned college students that they were not allowed to vote in Waller County despite longstanding law (reflected in both case law and opinions from the state attorney general) that college students in Texas may choose to vote either where they attend school or where their parents reside.

The second case challenged Waller County's failure to seek approval under the preclearance provisions of Section 5 of the Voting Rights Act for attempts to reduce the number of hours that were available for early voting at the polling place closest to the Prairie View campus (the 2004 primary election took place during the school's spring break, making early voting the primary vehicle for student voting). After filing complaints seeking temporary restraining orders and preliminary injunctions against both practices, the defendants quickly settled and agreed to alter the challenged practices.

In Fall 2004, I assisted the Lawyers' Committee for Civil Rights Under Law in their nonpartisan voter protection project during the 2004 general election. We attended training on possible voting rights issues and manned a Houston phone bank on Election Day with a ready-response legal team.

While an associate at Weil Gotshal, I occasionally participated in the Houston Bar Association's Legal Lines program in which citizens could call a phone bank and receive assistance with general legal problems.

In addition to working on these legal matters, I am a co-founder and current board member of the Sunflower County Freedom Project, a nonprofit educational enrichment program created by Teach for America alumni in the Mississippi Delta county where I taught from 1994 to 1996. The program, which has been in existence for more than ten years, provides rigorous after-school and summer programs that prepare students from one of the nation's poorest regions for college. Graduates of the program have attended college at prominent institutions including the University of North Carolina, LSU, Berea College, and Mississippi State.

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, an official from the White House Counsel's Office contacted me to inquire whether I was interested in being considered for one of the pending Fifth Circuit vacancies in Texas. In late November 2012, I informed the White House that I was interested. Since that time, I have been in contact with officials from the Office of Legal Policy at the Department of Justice and the White House Counsel's Office. On December 20, 2012, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 21, 2013, I met with Senator Cornyn's and Senator Cruz's Federal Judiciary Evaluation Committee. On December 16, 2013, I met with Senator Cornyn and Senator Cruz and members of their staff in Washington, D.C. On December 19, 2013, the President submitted my nomination to the Senate. On January 6, 2014, the President submitted my renomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AO 10
Rev. 1/2012

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Costa, Gregg J.	United States Court of Appeals for the Fifth Circuit	1/6/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge	☑ Nomination Date 1/6/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/15/2013
7. Chambers or Office Address		
601 25th Street Galveston, TX 77550		

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Insert signature on last page.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Director and Secretary	Sunflower County Freedom Project
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Costa, Gregg J.	Date of Report 1/6/2014

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.	2013	Noble Americas Energy Solutions -- salary
2.		
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Costa, Gregg J.	Date of Report 1/6/2014

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
Costa, Gregg J.	1/6/2014

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
1. Apple common stock		None	L	T	Exempt				
2. Bank of America common stock	A	Dividend	K	T					
3. General Electric common stock	A	Dividend	K	T					
4. Bank of America "cash" account		None	K	T					
5. Janus Fund D	A	Dividend	K	T					
6. Columbia Seligmann Communications Fund	A	Distribution	J	T					
7. Fidelity Advisor Equity Growth		None	K	T					
8. Invesco Charter Fund	A	Dividend	K	T					
9. iShares S&P Small Cap 600 Index Fund	A	Dividend	K	T					
10. Oppenheimer Main Street Small & Midcap Fund	A	Dividend	K	T					
11. Pioneer Mid-Cap Value Fund	A	Dividend	K	T					
12. Vanguard 500 Index Fund	A	Dividend	L	T					
13. Texas 529 Large Cap Core Index Fund	A	Dividend	J	T					
14. Texas 529 Capital Appreciation Portfolio	A	Dividend	J	T					
15. Texas 529 Main Street Small & Mid-Cap Fund	A	Dividend	J	T					
16. Virginia 529 Real Estate Investment Trust	A	Dividend	J	T					
17. Virginia 529 Aggressive Fund	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
Page 5 of 8

Name of Person Reporting	Date of Report
Costa, Gregg J.	1/6/2014

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)
18. Virginia 520 Stock Index Fund	A	Int./Div.	K	T					
19. Virginia 529 International Fund	A	Dividend	J	T					
20. America Funds Europacific Growth (401k)	A	Dividend	J	T					
21. American Funds Growth Fund of America (401k)	A	Dividend	K	T					
22. Causeway International Value (401k)	A	Dividend	K	T					
23. DFA Emerging Markets Core Equity Fund (401k)		None	K	T					
24. DFA Internatioanl Core Equity Fund (401k)		None	K	T					
25. DFA U.S. Core Equity 2 Fund		None	K	T					
26. Dodge & Cox Stock Fund (401k)	A	Dividend	J	T					
27. DWS Capital Growth Fund (IRA)	A	Dividend	J	T					
28. DWS S&P 500 Index Fund (IRA)	A	Dividend	J	T					
29. DWS World Dividend Fund (IRA)	A	Dividend	J	T					
30. Fidelity Blue Chip Growth Fund (401k)	A	Dividend	K	T					
31. Fidelity Fifty Fund (401k)	A	Dividend	K	T					
32. Fidelity Freedom Income Fund (401k)	A	Dividend	K	T					
33. Fidelity Growth Company Fund (401k)	A	Dividend	K	T					
34. Fidelity Growth & Income Fund (401k)	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Costa, Gregg J.	1/6/2014

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. Fidelity Pacific Basin Fund (401k)	A	Dividend	K	T					
36. Goldman Sachs Growth Opportunity (401k)	A	Dividend	J	T					
37. Janus Global Select Fund (IRA)	A	Dividend	J	T					
38. Janus Growth & Income Fund (IRA)	A	Dividend	J	T					
39. Janus Research Fund (IRA)	A	Dividend	J	T					
40. Janus Worldwide Fund (IRA)	A	Dividend	J	T					
41. JP Morgan Smart Retirement 2020 (IRA)	A	Dividend	L	T					
42. JP Morgan Smart Retirement 2040 (IRA)	A	Dividend	L	T					
43. Matthews Asian Growht & Income Fund	A	Dividend	K	T					
44. Pyramis Select International Equity Commingled (401k)		None	K	T					
45. Sempra Energy Stock (401k)		None	J	T					
46. T. Rowe Price Growth Stock Fund (401k)	A	Dividend	L	T					
47. T. Rowe Price Small Cap Stock Fund (401k)		None	K	T					
48. Vanguard Institutional Index (401k)	A	Dividend	L	T					
49. Vanguard Money Market Fund (401k)	A	Dividend	J	T					
50. Wasatch Small Cap Growth Fund (401k)	A	Dividend	J	T					
51. State of Israel Bonds	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
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 7 of 8	Name of Person Reporting Costa, Gregg J.	Date of Report 1/6/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT Page 8 of 8	Name of Person Reporting Costa, Gregg J.	Date of Report 1/6/2014

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature_____

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		24	380	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	156	673	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		363	412
Real estate owned – personal residence		675	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		40	000				
Cash value-life insurance							
Other assets itemize:							
State of Israel Bonds		12	000				
Thrift Savings Plan		216	474				
				Total liabilities		363	412
				Net Worth	1	761	115
Total Assets	2	124	527	Total liabilities and net worth	2	124	527
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	
Apple stock	$ 96,384
Bank of America stock	48,654
Columbia Seligmann Communications Fund	14,649
Fidelity Advisor Equity Growth Fund	27,391
GE stock	27,437
Invesco Charter Fund	19,326
iShares S&P Small Cap 600 Index Fund	17,986
Janus Fund D	48,491
Oppenheimer Main Street Small & Midcap Fund	17,884
Pioneer Mid-Cap Value Fund	15,535
Vanguard 500 Index Fund	52,107
College Savings Plans	
Texas 529 Large Cap Core Index Fund	$ 12,745
Texas 529 Capital Appreciation Portfolio	10.308
Texas 529 Main Street Small & Mid-Cap Fund	13,743
Virginia 529 Real Estate Investment Trust	13,826
Virginia 529 Aggressive Fund	19,088
Virginia 529 Stock Index Fund	20,261
Virginia 529 International Fund	10,500
Retirement Holdings	
American Funds Europacific Growth Fund	$ 10,830
American Funds Growth Fund of America	24,782
Causeway International Value	17,176
DFA Emerging Markets Core Equity Fund	25,299
DFA International Core Equity Fund	30,341
DFA U.S. Core Equity 2 Fun	32,099
Dodge & Cox Stock Fund	6,104
DWS Capital Growth Fund	2,608
DWS S&P 500 Index Fund	3,374
DWS World Dividend Fund	2.258
Fidelity Blue Chip Growth Fund	29,528
Fidelity Fifty Fund	34,671
Fidelity Freedom Income Fund	21,054
Fidelity Growth Company Fund	19,967
Fidelity Growth & Income Fund	11,014
Fidelity Pacific Basin Fund	25,839
Goldman Sachs Growth Opportunity Fund	14,275
Janus Global Select Fund	1,321
Janus Growth and Income Fund	2,364
Janus Research Fund	2,148

Janus Worldwide Fund	1,624
JP Morgan Smart Retirement 2020	56,695
JP Morgan Smart Retirement 2040	60,592
Matthews Asian Growth & Income Fund	26,360
Pyramis Select International Equity Commingled	21,282
Sempra Energy Stock	12,422
T. Rowe Price Growth Stock Fund	56,867
T. Rowe Price Small Cap Stock Fund	33,697
Vanguard Institutional Index	86,034
Vanguard Money Market Fund	7,330
Wasatch Small Cap Growth Fund	3,677
Total Listed Securities	$ 1,156,673

AFFIDAVIT

I, Gregg Costa, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/6/14
(DATE)

Gregg Costa
(NAME)

VALERIE MARIE GARCIA
Notary Public
STATE OF TEXAS
My Comm. Exp. 03-21-17

Valerie M Garcia
(NOTARY)

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Tanya Sue Chutkan

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of Columbia

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Boies, Schiller & Flexner LLP
   5301 Wisconsin Avenue, NW
   Washington, D.C. 20015

4. **Birthplace**: State year and place of birth.

   1962; Kingston, Jamaica

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, University of Pennsylvania Law School; J.D., 1987
   1979 – 1983, George Washington University; B.A., 1983

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2002 – present
   Boies, Schiller & Flexner LLP
   5301 Wisconsin Avenue, NW
   Washington, D.C. 20015
   Partner (2007 – present)
   Counsel (2002 – 2006)

1991 – 2002
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004
Staff Attorney (2000 – 2002, 1991 – 1996)
Lead Attorney, Homicide (1997 – 1999)
Lead Attorney, Sex Offenses and Domestic Violence (1996 – 1997)

October 1990 – September 1991
Donovan Leisure, Rogovin, Huge & Schiller (firm no longer in existence)
1250 24th Street, NW
Washington, D.C. 20037
Associate

1987 – 1990, Summer 1986
Hogan & Hartson LLP (now Hogan Lovells)
555 13th Street, NW
Washington, D.C. 20004
Associate (1987 – 1990)
Summer Associate (Summer 1986)

Summer 1985
McKinney, Bancroft & Hughes
Four George Street, Mareva House
P.O. Box N-3937
Nassau, Bahamas
Summer law clerk

Other Affiliations (uncompensated):

2000
School for Friends
2201 P Street, NW
Washington, D.C. 20037
Board of Directors

August 2013 – present
Dress for Success Washington D.C.
101 Q Street, NE
Washington, D.C. 20002
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 U.S. Military. I was not required to register for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Dean's List, George Washington University (1982)
University of Pennsylvania Law Review, Associate Editor (1985 – 1987)
University of Pennsylvania, Arthur Littleton Legal Writing Fellow (1986 – 1987)

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (2006 – present)
National Association of Criminal Defense Lawyers (1999 – 2000)
District of Columbia Bar Criminal Law and Individual Rights Section Steering Committee (2000 – 2003)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania, 1988 (retired)
District of Columbia, 1989

There have been no lapses in membership, although I retired my membership in Pennsylvania in 2013 because I no longer practice there.

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.

Pennsylvania, 1988
District of Columbia, 1989
United States District Court for the District of Columbia, 1990
United States Court of Appeals for the District of Columbia Circuit, 2012

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.

City Year (November 2012)
Legal Community Breakfast Committee

Dress for Success Washington D.C. (August 2013 – present)
Board of Directors

School for Friends (2000)
Board of Directors

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin, either through formal membership requirements or the practical implementation of membership policies.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

From November 2009 to approximately December 2009, I was a panelist in an online forum on www.washingtonpost.com called "On Success." The forum was discontinued after two or three months. I contributed to the forum twice: November 2, 2009 and November 12, 2009. Copies of my contributions are supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have not prepared or contributed to any report, memoranda or policy statement on behalf of any bar association, committee, conference, or organization.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I signed a joint letter signed by a number of attorneys, dated June 10, 2009, in support of Justice Sotomayor's nomination to the United States Supreme Court. Copy supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

April 3, 2013: Panelist, "Addressing the Elephant in the Room: Job Placement After Law School," American Bar Association, Business Law Section, Washington, D.C. I discussed the current legal market for law school graduates. I have no notes, transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, IL 60654.

March 22, 2012: Panelist, "Third Party Litigation Financing," MCCA CLE Expo, Chicago, Illinois, Minority Corporate Counsel Association, Washington, D.C. I discussed the potential benefits and drawbacks of third party litigation funding. I have no notes, transcript, or recording. The address for the Minority Corporate Counsel Association is 1111 Pennsylvania Avenue, NW, Washington, D.C. 20004.

October 15, 2010: Presenter, "Class Action Defense," Altria Client Services, in-house CLE panel, Richmond Virginia. PowerPoint supplied.

June 25, 2010: Moderator, Corporate Counsel Panel, DuPont Minority Counsel Conference, Washington, D.C. I moderated a panel of corporate counsel who were discussing issues relating to minority lawyers. I have no notes, transcript, or recording. The address for DuPont Legal is 1007 Market Street, Wilmington, DE 19898.

2000: Panelist, "Advanced Cross Examination," Criminal Practice Institute, D.C. Public Defender Service, Washington, D.C. I discussed advanced cross-examination techniques. I have no notes, transcript, or recording. The address for the D.C. Public Defender Service is 633 Indiana Avenue, NW, Washington, D.C. 20004.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Teresa Wiltz, *'Obama Effect' for Black Women*, MORE, October 2009. Copy supplied.

FOCUS ON: Boies, Schiller & Flexner, NAT'L ASSOC. OF WOMEN LAWYERS, November – December, 2007. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? None

i. Of these, approximately what percent were:

jury trials:	0%
bench trials:	0%
civil proceedings:	0%
criminal proceedings:	0%

b. Provide citations for all opinions you have written, including concurrences and dissents.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

e. Provide a list of all cases in which certiorari was requested or granted.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not held any judicial office.

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action

taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never held public office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 2012, I volunteered for Lawyers for Obama. I participated in event planning phone calls over a period of approximately six months. In 1984, I volunteered for Mondale for President, providing occasional office assistance for a period of approximately four months.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1987 – 1990
Hogan & Hartson LLP (now Hogan Lovells)
555 13th Street, NW

Washington, D.C. 20004
Associate

1990 – 1991
Donovan Leisure, Rogovin, Huge & Schiller (firm no longer in existence)
1250 24th Street, NW
Washington, D.C. 20037
Associate

1991 – 2002
Public Defender Service for the District of Columbia
633 Indiana Avenue, NW
Washington, D.C. 20004
Staff Attorney (2000 – 2002)
Lead Attorney, Homicide (1999 – 2000)
Lead Attorney, Sex Offenses and Domestic Violence (1996 – 1999)
Staff Attorney (1991 – 1996)

2002 – present
Boies, Schiller & Flexner LLP
5301 Wisconsin Avenue, NW
Washington, D.C. 20015
Partner (2007 – present)
Counsel (2002 – 2007)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or 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.

When I first began practicing law after graduation from law school in 1987, I worked as an associate at the firm of Hogan & Hartson (now Hogan Lovells). My work consisted mostly of legal research, drafting legal and factual memoranda, reviewing documents, interviewing witnesses, and drafting discovery requests and responses. A typical case on which I worked was a railroad acquisition which involved determining and acquiring railroad trackage rights.

In 1990, I moved to the law firm of Donovan Leisure Rogovin Huge & Schiller, where I continued to work on general civil litigation matters. I drafted discovery requests and responses, assisted in preparing partners for depositions, reviewed documents, and prepared memoranda and pleadings. A typical case on which I worked included engaging in discovery practice in commercial litigation between two communications companies.

In 1991 I joined the Public Defender Service for the District of Columbia as a staff attorney. I spent eleven years representing indigent defendants charged with crimes in the District of Columbia Superior Court. During that time I was lead counsel in numerous cases, starting with the representation of juvenile respondents and progressing after a year to representing adult defendants charged with general and then more serious felonies. I tried to jury verdict numerous cases as lead counsel, including many serious felonies, such as homicide, first degree sexual assault, and kidnapping. I also spent six months in 1995 in the Appellate Division, where I wrote several appellate briefs and argued two cases before the District of Columbia Court of Appeals.

I joined Boies, Schiller & Flexner LLP in 2002, and returned to a general civil litigation practice, with a concentration in antitrust class actions. I have also represented clients in governmental investigations. In the over ten years that I have been at the firm, I have been part of a lead counsel trial team in four jury trials in federal courts, three of which resulted in favorable verdicts for our clients, and one of which was settled mid-trial. I have also been part of a team that successfully represented a corporate client at a binding arbitration in 2011.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

During the first three years after graduating from law school, my typical clients were large companies involved in civil litigation or regulatory matters.

After joining the Public Defender Service in 1991, I focused exclusively on criminal defense work, mostly at the trial level, and I also handled two appeals as primary counsel. My clients were all indigent individuals who were charged with criminal offenses in the District of Columbia Superior Court. During the last six years of my time at the Public Defender Service, my cases were almost exclusively homicides, first degree sexual offenses, and complex matters such as blackmail and conspiracy cases.

Since joining Boies, Schiller & Flexner, my practice has focused on general civil litigation, including defending banking clients in class action lawsuits and contract disputes, as well as representing class plaintiffs in

antitrust class action litigation in various federal courts. I have also represented several corporate clients in governmental and internal investigations.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

More than 90% of my practice has been devoted to litigation. I have done some investigatory or advisory work for several clients, but the majority of my career has been as a litigator, in both criminal and civil cases.

During the first three years of my career, I appeared in court rarely, although I represented an individual seeking political asylum in an evidentiary hearing before an Immigration Judge.

While at the Public Defender Service, I appeared in court on a daily basis, often on multiple matters before different judges.

Since joining Boies, Schiller & Flexner, I have appeared in federal courts regularly, including being part of a lead trial counsel team in four jury trials in federal court. I have also appeared in state courts occasionally, including D.C. Superior Court. In the last eleven years, I have appeared in court between four to ten times per year, including status conferences, motions hearings, pre-trial conferences, and jury trials.

i. Indicate the percentage of your practice in:
   1. federal courts: 48%
   2. state courts of record: 50%
   3. other courts: 0%
   4. administrative agencies: 2%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 50%
   2. criminal proceedings: 50%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 40 to 45 cases to verdict or final decision over the course of my entire career, the vast majority during my employment with the D.C. Public Defender Service. Since joining Boies, Schiller & Flexner, I have been part of a lead trial team in three cases which were tried to jury verdict and one case, for injunctive relief, that was tried to final decision.

i. What percentage of these trials were:
   1. jury: 95%
   2. non-jury: 5%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have been on the brief in the following matters, although I was not the primary author in any matter:

Columbia Iron & Metal Co. v. Lincoln Elec. Co., 129 S. Ct. 1673 (2009) (Brief in Opposition, 2009 WL 526998).

Gillard v. Mitchell, Warden, 2006 WL 3425192 (Petition for Writ of Certiorari); 2007 WL 978481 (Petition for Rehearing); 2007 WL 407763 (Reply Brief in Support of Petition for a Writ of Certiorari).

Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd., 502 U.S. 105 (1991), 1991 U.S. S. Ct. Briefs LEXIS 972 (Amicus Brief).

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *In re Vitamin C Antitrust Litigation*, Case No. 1:06-md-01738-BMC-JO (E.D.N.Y.) (Judge Brian Cogan, presiding).

Since 2005, I have been a member of the team representing class plaintiffs, who are bulk purchasers of Vitamin C. The case, filed in January 2005, was the first ever antitrust trial against Chinese companies held in the United States, and took seven years from the filing of the complaint to jury verdict. The case was also notable because for the first time, the Chinese government entered an appearance

in a United States Court to argue that the defendants' actions were mandated by the Chinese government. Judge Cogan denied defendants' motions to dismiss and for summary judgment, ruling that Chinese law did not compel the defendants' actions, but allowed the defendants to present a compulsion defense which was rejected by the jury. After a three-week trial, class plaintiffs won a $54.1 million verdict – subject to trebling – on March 14, 2013. We continue to represent class plaintiffs in defendant's appeal of the verdict, as well as in efforts to enforce the judgment.

Lead Co-Counsel for the Plaintiff Class:

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2. *Vensure Federal Credit Union v. National Credit Union Administration*, Case No. 1:11-cv-00785-RMC, 798 F. Supp. 2d 1 (D.D.C. 2011) (Judge Rosemary M. Collyer, presiding).

From April 2011 to July 2011, I led a team on behalf of Vensure Federal Credit Union in a challenge to the National Credit Union Administration's (NCUA) decision to place the credit union in receivership on the basis of the credit union's provision of automated clearinghouse services to member clients that processed payments for online poker companies. Plaintiff Vensure filed a complaint and request for injunctive relief, which was followed by an initial hearing on the request for injunctive relief, which was denied. After extensive briefing, and an evidentiary hearing at which both sides presented witnesses, the court, in a July ruling and opinion, upheld the NCUA's decision to place Vensure into receivership.

Co-Counsel:

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James Meadows
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3. *In re Scrap Metal Antitrust Litigation,* Case No. 1:02-844 (N.D. Ohio) (Judge Kathleen O'Malley, presiding), 527 F.3d 517 (6th Cir. 2008).

From late 2002 to the present, I have been part of a team representing class plaintiffs, sellers of scrap metal in northeastern Ohio, who brought antitrust claims against scrap metal dealers in northeastern Ohio, alleging that the dealers had rigged bids and allocated markets for scrap metal, causing plaintiffs to receive lower prices for their scrap metal. Several of the defendants had pleaded guilty in a parallel criminal investigation by the United States Department of Justice. After a three-week trial in February 2004, the jury returned a verdict in favor of class plaintiffs for $11.5 million, pre-trebling, against one defendant. We represented class plaintiffs through the ensuing post-trial litigation, and on appeals filed by the defendant in the Sixth Circuit, and the U.S. Supreme Court, all of which were denied. We continue to represent the class plaintiffs in efforts to collect the judgment and distribute the proceeds.

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Opposing Counsel for Defendant DeMilta Iron & Metal:

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4. *Floorgraphics, Inc. v. News America Marketing,* Case No. 04-3500 (D.N.J.) (Judge Anne Thompson, presiding).

From late 2008 to March 2009, I was part of a team that represented the owners of Floorgraphics in a case alleging tortious interference with contractual relations and interference with business relationship and prospective contractual relations against News America. Floorgraphics claimed that, beginning in or around 1999, the News America defendants commenced a deliberate and malicious campaign to destroy Floorgraphics so that it could control, among other things, the floor advertising market. After several days of jury trial before U.S. District Judge Anne Thompson in March 2009, the case was settled at the close of the plaintiff's case.

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5. *In Re Vitamins Antitrust Litigation*, MDL No. 1285, Case. No. 99-197 (D.D.C) (Judge Thomas Hogan, presiding).

From October 2002 to July 2003, I was a member of the trial team that represented class plaintiffs, bulk purchasers of the vitamin supplement choline chloride, in a trial of antitrust claims against choline chloride manufacturers. The trial represented the culmination of a long investigation and prosecution of a world-wide vitamins cartel, in which the European Union and the Department of Justice prosecuted and fined several vitamin manufacturers and their employees for fixing prices. After multiple settlements, the case proceeded to trial against the two remaining defendants: Mitsui Co., Inc. and DCV, Inc. The jury returned a verdict of $53 million – subject to trebling – for the class plaintiffs. The case was the only one to proceed to trial and represented a historic recovery on behalf of hundreds of class members who had been damaged by paying higher prices as a result of the collusion.

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6. *United States v. Greer*, No. F-7528-94, (D.C. Superior Court) (Judge Brooke Hedge, presiding), *rev'd,* 697 A.2d 1207 (D.C. 1997).

In 1996, while at the Public Defender Service, I represented Mr. Greer at trial in D.C. Superior Court. Mr. Greer was charged with and convicted of drug distribution. At trial, I requested an instruction that the absence of evidence can be considered in determining whether guilt has been proven beyond a reasonable doubt. The court refused to give the instruction and on appeal, which was briefed and argued by the Appellate Division of the Public Defender Service, the District of Columbia Court of Appeals reversed the conviction, reaffirming the principle that reasonable doubt may be based on the absence of evidence. This case, which is frequently cited, is now part of the training for all new attorneys at the Public Defender Service.

Opposing counsel:

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7. *United States v. Gervacia,* No. F 8649-97 (D.C. Superior Court) (Judge Mary Ellen Abrecht, presiding).

In 1986, I represented Mr. Gervacia on charges of first degree sexual assault. At trial, the government introduced DNA and expert evidence linking Mr. Gervacia to the sexual assault. At trial, I cross-examined the government's DNA expert extensively about the potential unreliability of the source and composition of the DNA databases in light of the fact that both parties came from a geographic area with a relatively homogenous population. Mr. Gervacia was subsequently acquitted.

Opposing Counsel:

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Kaye Scholer
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8. *United States v. Coleman,* No. F-7216-94 (1997, D.C. Superior Court) (Judge John Bayly, presiding), *rev'd,* 779 A.2d 297 (D.C. 2001).

I represented Mr. Coleman on charges of arson and malicious destruction of property in November 1997. At trial, Mr. Coleman's sister stated on cross-examination that Mr. Coleman had set fires before. After my request for a mistrial was denied, I requested that the trial judge give the jury an immediate limiting instruction, due to the prejudicial nature of the witness' statement. The trial judge refused, although he did give a corrective instruction the next day at the close of the prosecution's case. The jury acquitted Mr. Coleman of arson but convicted him of malicious destruction of property. On appeal, the D.C. Court of Appeals reversed the conviction, holding that the trial court should have given an immediate cautionary instruction, and that failure to do so was reversible error. On remand, the government entered a *nolle prosequi* and the case was dismissed.

Opposing Counsel:

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9. *United States v. Smith,* No. 95-CO-1523 (D.C. Superior Court) (Judge Henry Greene, presiding), 685 A.2d 380 (D.C. 1996), *cert. denied*, 522 U.S. 856 (1997).

While at the Public Defender Service, I represented Ms. Smith in 1995 in D.C. Superior Court. Ms. Smith was charged with several counts of stalking, blackmail, and threats. This case was significant because it was one of the first cases to be brought under the D.C. stalking law and was the first blackmail case to be tried in the District of Columbia in at least 20 years. The defense challenged the D.C. stalking statute on constitutional grounds, and after lengthy motions practice, the court granted the defense motions to dismiss. We proceeded to trial on the remaining counts and Ms. Smith was found not guilty on all charges except for one blackmail count, on which the jury was deadlocked. The government appealed the dismissal of the stalking charges, and the Court of Appeals reversed the dismissal and reinstated the charges. Ms. Smith eventually pled guilty to one misdemeanor charge.

Co-Counsel:

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10. *Turner v. Bayly*, No. 95-SP-1170 (D.C. Superior Court) (Judge John Bayly, presiding), *petition for writ of mandamus granted,* 673 A.2d 596 (D.C. 1996).

In January 1996, I represented Mr. English on a charge of misdemeanor threats. The D.C. City Council had enacted legislation that made misdemeanors punishable by more than 180 days in jail eligible for trial by jury. The offense of misdemeanor threats was punishable by up to six months in jail. On the day of trial, I therefore requested that Mr. English be tried by jury, on the grounds that an offense punishable by up to six months carried a maximum penalty of more than 180 days in jail – a position with which the U.S. Attorney's Office agreed. The judge ruled that the charge was ineligible for jury trial and refused to postpone the trial to allow the defense to seek interlocutory appeal. Along with two other similarly situated defendants, and with the assistance of co-counsel from the Public Defender Service, I sought a stay of trial and a writ of mandamus from the D.C. Court of Appeals directing the court to impanel a jury to hear the case. The Court of Appeals granted the stay and, after briefing and oral argument, granted the writ and ordered that Mr. English be tried by jury. I represented Mr. English at trial, at which he was acquitted.

Co-counsel on Petition for Stay and Writ of Mandamus:

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(no phone number available)

Hon. John Fisher
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Associate Judge
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18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In 2007, I represented a major corporate client in a grand jury investigation of alleged false statements to a governmental agency investigating environmental violations, in which my client produced hundreds of thousands of documents and in which several current and former employees testified before the grand jury. After a lengthy investigation, the Department of Justice closed the matter and decided not to pursue criminal charges against our client. I prepared and represented the client employees who testified before the grand jury and participated in meetings with the prosecutors from the Department of Justice in which we set forth our client's position.

I have participated in an internal investigation for a corporate client into possible leaks of secret and sensitive material to Chinese nationals. As part of that investigation, I conducted internal interviews of client employees and met with FBI agents regarding their investigation into the matter. The case did not result to my knowledge in the prosecution of any employee of the client or any finding that the client had violated any laws or regulations

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.

In January 2013, I was guest faculty at the Harvard Law School Trial Advocacy Workshop for one week. I participated in student exercises and critiqued mock trials and exercises over the course of the week. 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.

    Since joining the firm, I have invested in a 401(k) plan administered by Fidelity Investments. I also have a 401(a) account administered by ING from my employment with the D.C. Public Defender Service.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    If confirmed, I do not have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

        If confirmed, I would recuse myself from any matter being handled by Boies, Schiller & Flexner or in any case in which they were a party for a reasonable period of time. I would continue to recuse myself from such matters until there

were no longer any potential conflicts of interest. Even after that time, I would advise the parties that I had been a partner at Boies, Schiller & Flexner were that firm to appear before me. In addition, cases involving former clients could present potential conflicts of interest. In the event of such a potential conflict, I would advise the parties of the potential conflict and seek their input, and refer to the Code of Conduct for United States Judges and other relevant canons and/or treatises. I would also evaluate any other real or potential conflict, or relationship that could give rise to the appearance of conflict, on a case by case basis and determine appropriate action with the advice of parties and their counsel, including recusal where necessary.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If faced with a potential conflict of interest, I would advise the parties in the matter before me of the potential conflict and seek their input, and refer to 28 U.S.C. § 455, Canon 3 of the Code of Conduct for United States Judges, as well as any other applicable canons, rules, and statutes.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During the first three years of my career, while at Hogan & Hartson, I represented, on a pro bono basis and along with another associate, an individual from El Salvador who was applying for political asylum. After a hearing before an Immigration Judge, the client's petition for asylum based on a fear of political persecution was granted and he was permitted to remain in the United States.

Since leaving the Public Defender Service in 2002, I have handled, on my own, two pro bono cases, one for an individual charged with a misdemeanor in D.C. Superior Court, and one for a small business in a contract dispute. In the criminal matter, I made court appearances and negotiated a plea deal. In the contract dispute, I reviewed documents and worked with the client to prepare a demand letter to assist in negotiations.

Currently, I coordinate and supervise my office's pro bono program, which involves assigning associates to represent clients through the D.C. Bar Advocacy and Justice Clinic, which sends cases involving disadvantaged and low-income clients to associates in our office. I supervise the associates in their work on these cases, which includes assessing and assigning the cases, meeting with them and their clients, accompanying them to court when necessary, reviewing all pleadings and other written submissions, and developing strategy. I have supervised associates working on the following cases in the last two and a half years:

Meyers v. Charleston Management – D.C. Superior Court

Collins v. UIP Property Management – D.C. Superior Court
Morgan – Social Security Administration
Keys-Coleman/Child Custody – D.C. Superior Court
Simpson – Social Security Administration
Vaughan-Modification of Non-Custodial Parent Visitation – D.C. Superior Court
Hall-Domestic Violence – D.C. Superior Court
Jefferson-Eviction Proceeding – D.C. Superior Court
Green v. Willoughby Real Estate Co. – D.C. Superior Court
Copeland-Child Custody matter – D.C. Superior Court
Jones v. UIP Management – D.C. Superior Court
United States v. Green – U.S. Court of Appeals for the Eleventh Circuit
Vance v. Scutt – U.S. Court of Appeals for the Sixth Circuit

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On July 17, 2013, I submitted a Judicial Candidate Questionnaire to Representative Eleanor Holmes Norton's District of Columbia Federal Law Enforcement Nominating Committee. I met with the Committee on August 7, 2013, and with Representative Norton on September 4, 2013. Since September 11, 2013, I have been in contact with officials from the Department of Justice Office of Legal Policy. On October 31, 2013, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On December 19, 2013, the President submitted my nomination to the Senate. On January 6, 2014, the President submitted my renomination 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
Chutkan, Tanya S.	United States District Court for the District of Columbia	01/06/2014
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 01/06/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2013 to 12/15/2013
7. Chambers or Office Address		
Boies, Schiller & Flexner LLP 5301 Wisconsin Avenue, NW Washington, D.C. 20015		

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.	Member, Board of Directors	Dress for Success, Washington, DC
2.		
3.		
4.		
5.		

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting Chutkan, Tanya S.	Date of Report 01/06/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2012	Boies, Schiller & Flexner LLP - salary	$222,000.00
2.	2013	Boies, Schiller & Flexner LLP - salary	$550,000.00
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2013	D.C. Superior Court - salary
2.		
3.		
4.		

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting **Chutkan, Tanya S.**	Date of Report 01/06/2014

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.	Landon School	Tuition Agreement	K
2.	Georgetown Day School	Tuition Agreement	K
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Chutkan, Tanya S.	01/06/2014

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. AllianzGI NFJ Mid-Cap Value Fund		None	J	T					
2. American Century Growth Fund		None	J	T					
3. American Funds Capital World Growth & Income Fund	A	Int./Div.	J	T					
4. American Funds Growth Fund of America		None	K	T					
5. Ariel Fund		None	K	T					
6. Arlington Asset Investments REIT	A	Int./Div.	J	T					
7. BlackRock Core Equity Fund		None	J	T					
8. BlackRock Flexible Equity Fund	A	Int./Div.	J	T					
9. BlackRock Liquidity Federal Trust Fund	A	Int./Div.	K	T					
10. Calvert Balanced Portfolio - DC 529		None	L	T					
11. Calvert Equity Fund - DC 529		None	L	T					
12. Campbell Strategic Allocation Fund		None	J	T					
13. Cisco Systems Inc. stock	A	Int./Div.	J	T					
14. Coca Cola Co. stock	A	Int./Div.	J	T					
15. DCPLUS Stable Value Portfolio	A	Int./Div.	K	T					
16. DWS Enhanced Community Strategy Fund	A	Int./Div.	J	T					
17. Fidelity Advisor Equity Growth Fund		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Chutkan, Tanya S.	01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. Fidelity Capital & Income Fund	B	Int./Div.	L	T					
19. Fidelity Freedom K 2025 Fund	B	Int./Div.	L	T					
20. Fidelity Retirement Government Money Market Portfolio	A	Int./Div.	J	T					
21. Fidelity Spartan US Bond Fund Index	B	Int./Div.	L	T					
22. First Eagle Overseas Fund	A	Int./Div.	J	T					
23. JP Morgan Emerging Economies Fund		None	J	T					
24. Pinebridge Global Social Awareness Fund		None	J	T					
25. Illinois Finance Authority Bond	B	Int./Div.	K	T					
26. ING Core Equity Research Fund		None	K	T					
27. ING Corporate Leaders 100 Fund	A	Int./Div.	J	T					
28. ING Global Equity Dividend Fund	A	Int./Div.	J	T					
29. Invesco American Franchise Fund	A	Int./Div.	J	T					
30. ishares Goldtrust ETF		None	K	T					
31. Johnson & Johnson stock	A	Int./Div.	J	T					
32. Metlife Stable Value Fund		None	J	T					
33. MFS Total Return Fund		None	J	T					
34. Microsoft Corp. Stock	A	Int./Div.	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

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Name of Person Reporting	Date of Report
Chutkan, Tanya S.	01/06/2014

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. Oakmark International Fund	A	Int./Div.	K	T					
36. PACE Alternative Strategies Investment Fund	A	Int./Div.	K	T					
37. PACE Government Securities Fixed Income Fund	A	Int./Div.	J	T					
38. PACE High Yield Investments Fund	A	Int./Div.	J	T					
39. PACE International Emerging Markets Equity Investments Fund	A	Int./Div.	J	T					
40. PACE Internatinal Equity Investments Fund	A	Int./Div.	J	T					
41. PACE International Fixed Income Investments	A	Int./Div.	J	T					
42. PACE Large Company Growth Equity Investments Fund	A	Int./Div.	K	T					
43. PACE Large Company Value Equity Investments Fund	A	Int./Div.	K	T					
44. PACE Small/Medium Company Growth Equity Investments Fund		None	J	T					
45. PACE Small/Medium Company Value Equity Investments Fund	A	Int./Div.	J	T					
46. PACE Strategic Fixed Income Investment Funds	A	Int./Div.	J	T					
47. Pfizer Stock	A	Int./Div.	J	T					
48. Pioneer High Yield Fund	A	Int./Div.	J	T					
49. SSgA Clarion Real Estate Fund		None	J	T					
50. SSgA International Stock Selection Fund		None	J	T					
51. SSgA S&P 500 Index Fund		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
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D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
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
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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Chutkan, Tanya S.	01/06/2014

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. State Street Equity Index Fund - DC 529		None	L	T					
53. T. Rowe Price Small-Cap Value Fund	B	Int./Div.	L	T					
54. Vanguard Wellington Fund		None	K	T					
55. Vanguard Windsor II Fund		None	J	T					
56. VALIC Science & Technology Fund		None	J	T					
57. W.P. Carey Inc. REIT		None	K	T					
58. Western Asset Core Bond Fund		None	J	T					
59. PACE Money Markets Investments Fund	A	Interest	J	T					
60. UBS Bank USA Deposit Account		None	J	T					
61. Wells Fargo Bank Deposits	A	Interest	L	T					
62. Campbell Strategic Allocation Fund LP	A	Int./Div.	K	T					
63. Neighborhood Development Co. "E" Fund	E	Distribution	K	W					
64. Neighborhood Development Co. City Center Partners Fund	C	Distribution	K	W					
65. Neighborhood Development Co. O Street Fund		None	K	W					
66. Neighborhood Development 1225 Fairmont Fund	C	Distribution							
67. VALIC Fixed Account Plus	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)

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V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting Chutkan, Tanya S.	Date of Report 01/06/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting Chutkan, Tanya S.	Date of Report 01/06/2014

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/ **Tanya S. Chutkan**

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		203	493	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	095	222	Notes payable to relatives			
Unlisted securities – see schedule		99	629	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned – personal residence	1	120	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		40	000	Tuition agreements		70	000
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		201	876				
				Total liabilities		70	000
				Net Worth	2	690	220
Total Assets	2	760	220	Total liabilities and net worth	2	760	220
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
AllianzGI NFJ Mid-Cap Value Fund	$ 9,402
American Century Growth Fund	7,755
American Funds Capital World Growth & Income Fund	6,644
American Funds Growth Fund of America	15,693
Ariel Fund	16,621
Arlington Asset Investments REIT	287
BlackRock Core Equity Fund	8,825
BlackRock Flexible Equity Fund	7,341
BlackRock Liquidity Federal Trust Fund	16,906
Calvert Balanced Portfolio – DC529	74,839
Calvert Equity Fund – DC529	74,187
Campbell Strategic Allocation Fund	17,256
Cisco Systems, Inc. stock	1,594
Coca-Cola Co. stock	4,037
DCPLUS Stable Value Portfolio	33,527
DWS Enhanced Commodity Strategy Fund	1,488
Fidelity Advisor Equity Growth Fund	4,113
Fidelity Capital & Income Fund	96,348
Fidelity Freedom K 2025 Fund	89,867
Fidelity Retirement Government Money Market Portfolio	23,609
Fidelity Spartan U.S. Bond Index Fund	55,482
First Eagle Overseas Fund	14,141
Illinois Finance Authority bond	25,298
ING Core Equity Research Fund	16,405
ING Corporate Leaders 100 Fund	8,990
ING Global Equity Dividend Fund	9,829
Invesco American Franchise Fund	12,668
iShares Gold Trust ETF	17,608
J.P. Morgan Emerging Economies Fund	4,030
Johnson & Johnson stock	1,873
MetLife Stable Value Fund	6,631
MFS Total Return Fund	8,790
Microsoft Corp. stock	1,947
Oakmark International Fund	28,827
PACE Alternative Strategies Investments Fund	20,179
PACE Government Securities Fixed Income Fund	5,197
PACE High Yield Investments Fund	5,620
PACE International Emerging Markets Equity Investments Fund	2,975
PACE International Equity Investments Fund	14,279
PACE International Fixed Income Investment	5,572
PACE Large Company Growth Equity Investments Fund	21,335

PACE Large Company Value Equity Investments Fund	20,811
PACE Small/Medium Company Growth Equity Investments Fund	7,806
PACE Small/Medium Company Value Equity Investments Fund	7,006
PACE Strategic Fixed Income Investments Fund	7,239
Pfizer stock	469
Pinebridge Global Social Awareness Fund	9,760
Pioneer High Yield Fund	9,675
SSgA Clarion Real Estate Fund	8,700
SSgA International Stock Selection Fund	11,965
SSgA S&P 500 Index Fund	16,158
State Street Equity Index Fund – DC529	71,969
T. Rowe Price Small-Cap Value Fund	59,071
VALIC Science & Technology Fund	5,596
Vanguard Wellington Fund	22,303
Vanguard Windsor II Fund	14,386
W.P. Carey Inc. REIT	17,192
Western Asset Core Bond Fund	7,101
Total Listed Securities	$ 1,095,222

Unlisted Securities	
Campbell Strategic Allocation Fund, LP	$ 10,658
Neighborhood Development Co. "E" Fund	16,953
Neighborhood Development Co. City Center Partners Fund	22,290
Neighborhood Development Co. O Street Fund	49,728
Total Unlisted Securities	$99,629

AFFIDAVIT

I, TANYA S. CHUTKAN, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/2/2014
(DATE)

Tanya Chutkan
(NAME)

(NOTARY)

District of Columbia: SS
Subscribed and Sworn to before me,
this 2nd day of January, 2014

Lorna Laing, Notary Public, D.C.
My commission expires October 31, 2015

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   M. Hannah Lauck
   (Mary Hannah Lauck)

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Eastern District of Virginia

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   United States District Court
   Eastern District of Virginia
   Spottswood W. Robinson, III and Robert R. Merhige, Jr. Federal Courthouse
   701 East Broad Street, Suite 5212
   Richmond, Virginia 23219

4. **Birthplace**: State year and place of birth.

   1963; Alexandria, Virginia

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1988 – 1991, Yale Law School; J.D., 1991

   1982 – 1986, Wellesley College; B.A. (*magna cum laude*), 1986

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2005 – present
   United States District Court for the Eastern District of Virginia

Spottswood W. Robinson, III and Robert R. Merhige, Jr. Federal Courthouse
701 East Broad Street, Suite 5212
Richmond, Virginia 23219
United States Magistrate Judge

2010 – 2013, 1996 – 2006
University of Richmond, T.C. Williams School of Law
28 Westhampton Way
University of Richmond, Virginia 23173
Adjunct Assistant Professor of Law

2007 – 2010
Virginia State Bar Harry L. Carrico Professionalism Course
707 East Main Street, Suite 1500
Richmond, Virginia 23219
Faculty Member (uncompensated)

2004 – 2005
Genworth Financial, Inc.
6620 West Broad Street
Richmond, Virginia 23230
Supervising Attorney, Headquarters Litigation

1994 – 2004
United States Attorney's Office, Eastern District of Virginia
600 East Main Street, Suite 1800
Richmond, Virginia 23219
Assistant United States Attorney, Criminal Division (1994 – 1999)
Assistant United States Attorney, Civil Division (1999 – 2004)

1992 – 1994, Summer 1990
Anderson Kill Olick & Oshinsky
1825 Eye Street, N.W.
Washington, D.C. 20006
Associate (1992-1994)
Summer Associate (Summer 1990)

1991 – 1992
United States District Court for the Eastern District of Virginia
Lewis W. Powell, Jr. United States Courthouse
1000 East Main Street
Richmond, Virginia 23219
Law Clerk for Honorable James R. Spencer

Summer 1990
Jones, Day, Reavis & Pogue

1425 K Street, N.W., Suite 600
Washington, D.C. 20005
Summer Associate

Summer 1989
Sonosky, Chambers, & Sachse
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Summer Associate

February – June 1989
Yale Law School
P.O. Box 208215
New Haven, CT 06520
Research Assistant for Professor Judith Resnik

Approximately January – September 1988
Investor Responsibility Research Center
(no longer in Washington, D.C.)
Washington, D.C.
Research Analyst

Approximately 1987 – 1988
Temp Placements, Inc.
(no longer in business)
Washington, D.C.
Receptionist

Approximately September 1986 – February 1987
Lona Jensen Temporary Services
(no longer in business)
San Francisco, California
Temporary Secretary

Summer 1986
Rusty Scupper, Chart House, Pierce Street Annex
(all restaurants no longer in business)
San Francisco, California
Waitress

Other Affiliations (uncompensated):

2009 – present
Federal Bar Association, Richmond Chapter
(no physical address)
Board Member

2007 – present
John Marshall American Inn of Court
(no physical address)
Board of Directors (2007 – present)
Immediate Past President (2012 – 2013)
President (2011 – 2012)
Vice President (2010 – 2011)
Secretary and Treasurer (2009 – 2010)

2007 – 2011
St. Stephen's Preschool
6000 Grove Avenue
Richmond, Virginia 23226
Board Member (2007 – 2011)
Board President (2009 – 2010)

2004 – 2005, 2010 – 2011
Richmond Bar Association
707 East Main Street, Suite 1620
Richmond, Virginia 23219
Board of Directors (2004 – 2005)
Honorary Vice President (2010 – 2011)

Approximately 2004
Central Virginia Wellesley Club
(no physical address)
Treasurer

Approximately 1990 – 1991
The Initiative for Public Interest Law at Yale
127 Wall Street
New Haven, CT 06511
Board Member

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

   I have not served in the U.S. military. I was not required to 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.

Named a Virginia Leader in the Law (2011)

Genworth's Litigation Team: Everest Award (2005)

Commendation: Eileen J. O'Connor, Assistant Attorney General Tax Division by David Hubbert, Chief Civil Trial Section, Eastern Region (*Trigon Ins. Co. v. U.S.*) (2002)

Department of Justice, United States Attorney's Office, Eastern District of Virginia: Sustained Superior Performance Awards (2002, 1999, 1998, 1997, 1996)

Commendation: District of New Jersey Fugitive Unit U.S. Marshals Service (1997)

Commendation: Timothy A. Williams, Inspector, U.S. Marshals Service (*U.S. v. Zebrowski*) (1997)

Commendation: Prosecutorial Excellence in Operation Crossfire (*U.S. v. Garner*) (1997)

Commendation: Wayne Huggins, Superintendent Virginia State Police (*U.S. v. King*) (1996)

Drug Enforcement Administration Outstanding Contribution to Field of Drug Law Enforcement (years unknown)

Phi Beta Kappa, Wellesley College (1986)

Freshman Distinction, Wellesley College (1983)

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 (2010 – 2011)

D.C. Bar Association (Approximately 1995 – 1997)

Federal Bar Association (2009 – present)
Board Member (2009 – present)

Federal Magistrate Judge's Association (2005 – present)

Fourth Circuit Judicial Conference (2001 – present)
Invitee (2001 – 2003) (No conference held 2004)
Member (2004 – present)

John Marshall American Inn of Court (2005 – present)
Board of Directors (2007 – present)
Immediate Past President (2012 – 2013)
President (2011 – 2012)
Vice President (2010 – 2011)
Secretary and Treasurer (2009 – 2010)

Metropolitan Richmond Women's Bar Association (1994 – present)
Finance Committee (2004 – 2005)
Chair
30th Anniversary Celebration Committee (Approximately 2004)
Judicial Endorsement Committee (2003 – 2004)

Professionalism Advisory Committee
Supreme Court of Virginia and Virginia State Bar (2013 – present)
(appointed by Chief Justice Kinser of the Supreme Court of Virginia)

Richmond Bar Association (1995 – present)
Honorary Vice President (2010 – 2011)
Board of Directors (2004 – 2005)
Liaison to Publications Committee (2004)
Administration of Justice Committee (2000 – 2003, 1998 – 1999)
Chair (2003)
Publications Committee (1999 – 2002)
Chair (2001)

State – Federal Judicial Council of Virginia (2011 – present)

Virginia Bar Association (1993 – present)

Women's Bar Association of the District of Columbia (2013 – 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.

Virginia, 1993
District of Columbia, 1994

There have been no lapses in membership although I have taken judicial status in the District of Columbia and Virginia since 2005.

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, 1993
United States District Court, Eastern District of Virginia, 1993
Supreme Court of Virginia, 1993

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.

Central Virginia Wellesley Club (Approximately 1994 – present)
Treasurer (Approximately 2004)

Historical Society for the Eastern District of Virginia (2013 – present)

St. Stephen's Preschool (2007 – 2011)
Board Member (2007 – 2011)
Board President (2009 – 2010)

The Club (2012 – present)

The Elizabethan Club at Yale (1991 – present)

Yale Club of Richmond (Approximately 2011 – present)

Yale Law School Class of 1991
20th Reunion Co-Chair (2011)

Westwood Racquet Club (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.

Neither the Westwood Racquet Club nor The Club (an academic and professional book club) initially admitted women, or, in practice, minorities. Those policies ended decades prior to my association with these institutions. To the best of my knowledge, none of the other organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin 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.

Op-Ed., '*Welcome to the United States*,' RICH. TIMES DISPATCH, May 28, 2006. Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

THE SCORE PROGRAM: SECOND CHANCE – OFFENDER REHABILITATION EFFORT OVERVIEW 1 (United States District Court, E.D. Va., SCORE Team, 2009). Copy supplied.

LISA HUDSON AND M. HANNAH LAUCK, 2005 ANNUAL FINANCE COMMITTEE REPORT, METROPOLITAN RICHMOND WOMEN'S BAR ASSOCIATION (May 2005). Copy supplied.

M. HANNAH LAUCK, 2003/2004 FINAL BOARD REPORT FROM THE ADMINISTRATION OF JUSTICE COMMITTEE, RICHMOND BAR ASSOCIATION (May 2004). Copy supplied.

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

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.

A thorough review of my schedule and the Internet shows that I have spoken at the following events, although it is possible I have not found a record of every presentation I have made. I indicate where I have found a copy of the notes of the talks as drafted. I often change and vary the text when I make a presentation.

May 17, 2006 – present: Naturalization Ceremony, Addressing Newly Naturalized Citizens Following Naturalization Ceremony Performed at United States Courthouse for the Eastern District of Virginia, Richmond Division. Since May 17, 2006, I have performed two Naturalization ceremonies every other month and at the conclusion of each ceremony, I address the new citizens. Notes supplied.

June 12, 2013: Introductory remarks regarding SCORE. I have made remarks introducing others at several of our SCORE graduations and gatherings. In addition to that above, the dates have been March 28, 2013 (graduation), August 22, 2012 (graduation), June 12, 2012 (intern gathering), September 30, 2011 (graduation); April 25, 2011 (graduation). Notes provided where available.

April 13, 2013: Panelist, "Justice is a Woman: Women in the Judiciary," Virginia Women Attorneys Association Biennial Conference, Richmond, VA. Notes supplied.

March 1-2, 2013: Panelist, "Jury Selection in State and Federal Court," American Bar Association Insurance Coverage Litigation Committee 25th Annual CLE Seminar, Tucson, Arizona. I have no notes, transcript, or recording. The address of the American Bar Association is: 321 North Clark Street, Chicago, IL 60654.

December 5, 2012: Panelist, "The Rocket Docket: Trying Cases in the Eastern District of Virginia." I participated with other federal judges and attorneys specializing in federal practice in discussing practice and procedures in federal courts in the Eastern District of Virginia. I have no notes, transcript, or recording (video recording is available upon request and payment to the sponsor, Virginia Continuing Legal Education). The address of the Virginia Continuing Legal Education is: 105 Whitehead Road, Charlottesville, VA 22901.

October 3-7, 2011: Speaker, "The Role of the Judge in the Adversarial System and Case Management Issues," and "Special Investigative Measures," International Judicial Education Program sponsored by the Department of Justice

and the Department of State and hosted in Macedonia by the Republic of Macedonia in order to educate Macedonian judges. Notes supplied.

September 16, 2011: Panelist, "Discovery Issues in Federal Court: Do's & Don'ts for Employment Lawyers," Virginia Bar Association's Labor Relations and Employment Law Section Seminar, Williamsburg, VA. I have no notes, transcript, or recording. The address of the Virginia Bar Association is: 701 East Franklin Street, Suite 1120, Richmond, VA 23219.

April 28, 2011: Panelist, "Federal Practice: The Rocket Docket," Richmond Bar Association, Richmond, VA. Notes supplied.

April 1, 2011: Speaker, "Criminal Practice in Eastern District," Virginia Trial Lawyers Association, Hot Springs, VA. Notes supplied.

March 3-4, 2011: Panelist, "ICLC Idol," Parts 1 and 2. I served as one judge on a panel offering critique on trial skills during mock aspects of trial. I have no notes, transcript, or recording. The address of the American Bar Association is: 321 North Clark Street, Chicago, IL 60654.

November 6, 2010: Judge, Region IV National Moot Court Competition, Virginia Bar Association and the New York City Bar Association, Richmond, VA. I judged the final round of competition. I have no notes, transcript, or recording. The address of the Virginia Bar Association is: 701 East Franklin Street, Suite 1120, Richmond, VA 23219.

October 21, 2010: Panelist, "Viable Alternatives: Specialty Courts and the Administration of Justice," University of Richmond School of Law J. L. & PUB. INTEREST, Richmond, VA. Notes supplied.

October 4, 2010: Panelist, "Discovery Motions: Tales from the Bench," Richmond Bar Association, Richmond, VA. Notes supplied.

May 4, 2010: Panelist, "Use of Technology: High Tech, Low Tech, No Tech," Virginia Trial Lawyers Association Tort Law Seminar, Richmond, VA. Notes supplied.

December 3, 2009: Instructor, "Professionalism: A View from the Bench," Richmond, Virginia. I participated as an Instructor for the Virginia State Bar's Harry L. Carrico Professionalism Course. The discussion with new lawyers surrounded client and case scenarios that might arise in their legal practice. I have no notes, transcript, or recording. The address of the Virginia State Bar is: 707 East Main Street, Suite 1500, Richmond, VA 23219.

August 28, 2009: Panelist, "Difficult Depositions," Virginia Continuing Legal Education, Richmond, VA. Attorneys and judges discussed problems and

solutions for deposition and witness issues. I have no notes, transcript, or recording. The address of the Virginia Continuing Legal Education is: 105 Whitewood Road, Charlottesville, VA 22901.

May 4, 2009: Speaker, "Citizenship and Education," St. Christopher's School, Richmond, VA. Notes supplied.

April 20, 2009: Speaker, "Ex-Offender Reentry/Diversion: E.D. Va., Federal Probation Office, SCORE Drug Court Diversion Program," Virginia State Bar Annual Pro Bono Conference, Richmond, Virginia. Notes supplied.

March 24, 2009: Panelist, "To Be or Not To Be A Judge," George Mason University School of Law School, Fairfax, VA. I was a panelist at a seminar hosted by the National Association of Women Judges. Audio recording available at http://www.law.gmu.edu/news/2009/to_be_or_not.

December 4, 2008: Group leader, "A View from the Bench," Virginia State Bar Harry L. Carrico Professionalism Course, Richmond, VA. Notes supplied.

October 30, 2008: Panelist, "The Art of Persuasion – Effective Written Advocacy in Trial and Appellate Courts," 2008 Annual Meeting of the Virginia Association of Defense Attorneys, Richmond, VA. Notes supplied.

May 30, 2008: Speaker, "Practice in the Rocket Docket," Old Dominion Bar Association, Richmond, VA. Notes supplied.

March 28, 2008: Panelist, "Settlement Conferences in the Eastern District of Virginia," Virginia Trial Lawyers Association Convention on Mediation, Hot Springs, VA. Notes supplied (video recording available for purchase through the VTLA).

November 8, 2007: Panelist, "Mediation in the Eastern District of Virginia," Richmond, VA. I was a panel participant at a presentation for visiting judges from Kenya facilitated through the United States District Court for the Eastern District of Virginia. Notes supplied.

October 26, 2006: Panelist, "Evidence," Richmond Bar Association, Richmond, VA. Notes supplied.

July 8, 2006: Panelist, "Hiring Good Writers," Annual Conference of National Association of Appellate Court Attorneys (NAACA), Richmond, VA. Notes supplied.

April 19, 2006: Speaker, "Cum Laude Society," St. Catherine's School, Richmond, VA. Notes supplied.

February 8, 2006: Speaker, "Do's and Don'ts in the Rocket Docket," University of Richmond School of Law, Richmond, VA. Notes supplied.

February 1, 2006: Panelist, "Panel on Women Judges," Metropolitan Women's Bar Association Luncheon, Richmond, VA. I cannot recall precisely, but I believe the panel discussed issues facing women lawyers and judges. I have no notes, transcript, or recording. The address of the Metropolitan Women's Bar Association is: P.O. Box 3945, Richmond, VA 23235.

November 18, 2005: Speaker, "Fifty-Sixth Annual Moot Court Competition," Richmond, VA. I was a speaker at the Region IV National Moot Court Competition sponsored by the Virginia Bar Association and the New York City Bar Association. Notes supplied.

November 1, 2005: Speaker, Richmond Chapter of the Federal Bar Association, Richmond, VA. I spoke at a luncheon to the bar members, thanked them for the work they do with lawyers and the courts, introduced my staff, and spoke about the federal court. Notes supplied.

September 23, 2005: Panelist, "Practice Do's and Don'ts in Federal Court," Richmond Bar Association, Richmond, VA. I participated at a Brown Bag Luncheon hosted by the Young Lawyer's Section at which I discussed practice tips for trial attorneys in federal court. I have no notes, transcript, or recording. The physical address for the Richmond Bar Association is: 707 East Main Street, Suite 1620, Richmond, VA 23219, and its mailing address is P.O. Box 1213, Richmond, VA 23218.

June 22, 2005: Speaker, "Women's Networking Forum," Genworth Corporation, Richmond, VA. Notes supplied.

May 13, 2005: Speaker, "Remarks Delivered at Investiture," Richmond, VA. Speech delivered in Federal Court during my investiture as a Magistrate Judge. 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.

As an attorney and as a magistrate judge, my policy was never to comment about on-going cases or trials, though newspapers did include quotations from my in-court statements from time to time. These have not been included here. Based on my review of my files and the Internet, I have listed the interviews I have given.

Administration of Justice Committee Receives Feedback from Federal Judges, RICH. BAR NEWSLETTER, Jan. 2014. Copy supplied.

Jeremy M. Lazarus, *City Judge Jenkins in Line to Succeed U.S. Judge Spencer*, RICH. FREE PRESS, Aug. 15-17, 2013. Copy supplied.

Magistrate and Bankruptcy Judges Offer Comments to RBA Committee, RICH. BAR NEWSLETTER, Feb. 2013. Copy supplied.

Magistrate and Bankruptcy Judges Offer Comments to Bar Committee, RICH. BAR NEWSLETTER, Feb. 2012. Copy supplied.

Lisa Antonelli Bacon, *Boomers & Shakers: Bev Reynolds, Linda Powell Pruit, Hannah Lauck, and Anne Lynman Goddard: Four Power Women with Uncommon Influence*, BOOMER LIFE, Feb./Mar. 2009. Copy supplied.

Ross McKenzie, Op-Ed., *Naturalization Ceremony; "The Best Thing That Happens in Our Courthouse,"* RICH. TIMES DISPATCH, May 28, 2006. Copy supplied.

Tom Campbell, *Female Judge 'I'm Still Learning.'* RICH. TIMES DISPATCH, June 13, 2005. Copy supplied.

Tom Campbell, *Drug Ring Crackdown Quietly Producing Results*, RICH. TIMES DISPATCH, Aug. 16, 1998. Copy supplied.

Tom Campbell, *Mehrige Hears Last Case; U.S. Judge Returns to Private Practice*, RICH. TIMES DISPATCH, June 7, 1998. Copy supplied.

Tom Campbell, *16 Arrested in Drug Operation Here Linked to L.A. Street Game Bicoastal Group Ran 3 Years, Officials Say*, RICH. TIMES DISPATCH, Sept. 26, 1997. Copy supplied.

Sixteen Accused of Shipping Cocaine from L.A. to Richmond, WASH. POST, Sept. 26, 1997. Copy supplied.

Saundra Torry, *At Yale Law, a Gender Gap in Who Gets Clerkships Sparks Debate*, WASH. POST, May 13, 1991. Copy supplied.

Ted Gest, *Yale: Where Diversity of Ideas is Embraced but not Imposed*, US NEWS AND WORLD REPORT—AMERICA'S BEST GRADUATE SCHOOLS, Apr. 29, 1991. Copy supplied.

"Die-in" Protests South African Investments, UNITED PRESS INT'L, Apr. 4, 1986. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since my May 2005 appointment by the United States district judges in the Eastern District of Virginia, I have been a United States magistrate judge. I was, without opposition, reappointed in 2013 by the Court and via the merit selection panel process.

The authority of magistrate judges is derived from the Federal Magistrate Act of 1968, 28 U.S.C.A. § 631-37 (2006 & Supp. 2012). In the Eastern District of Virginia, the magistrate judges are given substantial authority to handle a wide range of criminal and civil cases. I am "on duty" every other week, meaning I preside over all initial proceedings, including arraignments, preliminary and bail hearings, arrests and search warrants, and grand jury matters. I also preside over all federal civil matters with consent of the parties and all federal misdemeanor offenses. In the Richmond Division, I am the judge who handles the prisoner litigation. I accept felony pleas on report and recommendation.

Magistrate judges in Richmond preside over settlement conferences for the district judges and for each other. I have mediated hundreds of cases, including complex class action and patent matters. Finally, I hold court once a week as part of our Second Chance Offender Rehabilitation Effort ("SCORE") court for offenders released from prison on probation or supervised release.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have handled hundreds of civil and criminal cases. A precise number is difficult to estimate because we do not track these numbers in chambers. I average one to two jury trials per year, with my estimate being that I have presided over approximately ten jury trials. In the past year, I presided over one civil and one criminal jury trial. I have presided over a much larger number of bench trials, including misdemeanor offenses. I estimate that, on average, I preside over two to four bench trials a month, which would total approximately 150 in my time as a magistrate judge.

i. Of these, approximately what percent were:

jury trials:	5%
bench trials:	95%
civil proceedings:	50%
criminal proceedings:	50%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

While some cases had pending periods that overlap with other cases, the cases are roughly listed in reverse chronological order below:

1. *United States v. Bell*, No. 3:13MJ86, United States District Court for the Eastern District of Virginia.

   In this case, the United States charged the defendant with driving under the influence and public intoxication on Naval Support Activity South Potomac in Dahlgren, Virginia. The driving under the influence charge went to the jury and the public intoxication charge was tried by the court. The jury returned a not guilty verdict with respect to the driving under the influence charge. I returned a guilty verdict on the public intoxication charge and sentenced the defendant to pay a $240 fine and $10 special assessment.

   Counsel for the United States:

   Michael C. Moore, Esq.
   United States Attorney's Office, Eastern District of Virginia
   600 East Main Street, 18th Floor
   Richmond, VA 23219
   (804) 819-5400

   Counsel for Defendant:

   Andrew Michael Stewart
   Dennis, Stewart, & Krischer PLLC
   2045 North 15th Street, Suite 200
   Arlington, VA 22201
   (703) 248-0626

2. *Drew v. Allstate*, 12CV569-JRS, United States District Court for the Eastern District of Virginia.

   I mediated this insurance recovery case stemming from the death of a seven-month old infant while the insured babysat. The mother of the infant sued the

babysitter's insurance company regarding her homeowner's insurance policy as a result of the wrongful death of the child. The mother sought to overcome the babysitter's bankruptcy for collection purposes. Allstate claimed exclusions based on the business of babysitting and the commission of a crime. The mother's employer had a lien on the recovery based on its own coverage of the baby's injuries, a matter which also had to be negotiated. The settlement was the first time the parties had seen each other since the state criminal trial. Because the settlement also resolved a wrongful death claim, the state circuit court will conduct a hearing to approve the settlement.

Counsel for Plaintiff:

John Janney Rasmussen, Esq.
Insurance Recovery Law Group PLC
3015 East Broad Street
P.O. Box 8049
Richmond, VA 23223
(804) 308-1359

Lori Lohr Smith
Marks & Harrison PC
2141 East Hundred Road
Chester, VA 23836
(804) 748-0999

Counsel for Defendant:

Ronald Weldon Cox, Jr., Esq.
McCarthy Wilson LLP
2200 Research Boulevard, Suite 500
Rockville, MD 20850
(301) 762-7770

3. *Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 3:11CV754-JRS, United States District Court for the Eastern District of Virginia.

I presided over the court's settlement of this national class action involving Fair Credit Reporting Act issues. Under this court's supervision, and with the effort of an outside mediator, two classes were formed: an injunctive class of potentially extremely high numbers (over one hundred million people), and a second class of approximately thirty-one thousand plaintiffs. At issue was the LexisNexis product "Accurint." Following the final settlement presentation in my Court, the Hon. James R. Spencer, in another hearing, granted the Motion for Preliminary Class Action Settlement and Certifying Conditional Settlement Classes. The Final Fairness Hearing occurred on December 10, 2013.

Counsel for Plaintiffs:

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Consumer Litigation Associates
763 J. Clyde Morris Boulevard, Suite 1A
Newport News, VA 23601
(757) 930-3660

Dale Wood Pittman, Esq.
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(804) 861-6000

Counsel for Defendants:

David Neal Anthony, Esq.
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1001 Haxall Point
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(804) 697-1200

James Francis McCabe, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000

Ronald Irvin Raether, Jr., Esq.
Faruki Ireland & Cox PLL
500 Courthouse Plaza, S.W.
10 North Ludlow Street
Dayton, OH 45402
(937) 227-3700

4. *United States v. Currie*, No. 09CR519, United States District Court for the Eastern District of Virginia.

   In this jury trial, the defendant was found guilty by a jury of driving under the influence at Fort Lee, a military installation that allows civilians on base to visit its regimental club for social activities. I separately made a finding of guilt as to speeding 72 miles-per-hour in a 45 miles-per-hour zone. I sentenced the defendant to two days of imprisonment, a $360 fine, and one

year of supervised release with a special condition of participating in mental health treatment.

Counsel for the United States:

Sara Elizabeth Chase, Esq.
Former Assistant United States Attorney
4100 East Parham Road, Suite A
Henrico, VA 23228
(804) 501-0824

Counsel for Defendant:

Elizabeth W. Hanes, Esq.
Office of the Federal Public Defender
701 East Broad Street, Suite 3600
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(804) 343-0800

5. *United States v. Mabry*, No. 3:07CR28, United States District Court for the Eastern District of Virginia (Copy supplied).

The district judges regularly refer cases in which defendants claim their attorneys have rendered ineffective assistance of counsel by failing to file an appeal when asked. I handle all of those references in our division. I hold an evidentiary hearing when parties offer opposing sworn affidavits about whether the appeal request occurred. This case involved a one-day evidentiary hearing in which Mabry, a federal inmate, alleged his lawyer provided ineffective assistance of counsel when his lawyer failed to file a notice of appeal as instructed. After conducting the evidentiary hearing, I found that Mabry did not expressly ask his lawyer to file an appeal. My Report and Recommendation recommended dismissing Mabry's claim of ineffective assistance of counsel and recommended denying his motion to vacate, set aside, or correct his sentence brought pursuant to 28 U.S.C. § 2255. The District Court adopted my Report and Recommendation and the United States Court of Appeals for the Fourth Circuit dismissed Mabry's appeal. *United States v. Mabry*, No. 3:07CR28, (E.D. Va. Nov. 11, 2011) (Lauck, M.J.), *report and recommendation accepted and adopted*, (E.D. Va. Jan. 5, 2012) (Payne, J.), *appeal dismissed*, 475 F. App'x 920 (4th Cir. 2012) (Copy supplied).

Counsel for the United States:

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John Staige Davis, V, Esq.
Former Criminal Chief, United States Attorney's Office for the Eastern District of Virginia
Williams Mullen
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(804) 420-6000

Counsel for Defendant:

William P. Irwin, V, Esq.
P.O. Box 70612
Richmond, VA 23255
(804) 564-9404

6. *United States v. Bacas*, Violation Nos. 1516466, 2117788, United States District Court for the Eastern District of Virginia.

This was a bench trial wherein the United States charged the defendant with speeding at Fort Lee, Virginia. At trial, I granted the motion of the United States to dismiss one violation notice. The United States then sought to admit into evidence certificates verifying the accuracy of the tuning forks used to calibrate the radar that detected the defendant's speed. Two of the certificates were certified and two were uncertified. After reviewing the post-trial briefing I had requested, I found that the certified and uncertified certificates constituted non-testimonial admissible evidence that did not run afoul of the Confrontation Clause or the Supreme Court of the United States' decision in *Melendez-Diaz*. *See United States v. Bacas*, 662 F. Supp. 2d 481 (E.D. Va. 2009). I also found that the certified certificates constituted admissible evidence to prove the reliability of the tuning forks used to calibrate the radar device. However, I found the uncertified certificates constituted inadmissible hearsay after examining Federal Rule of Evidence 803. During the status hearing after I issued the opinion, I granted the motion by the United States to dismiss the final violation notice.

Counsel for the United States:

Sara Elizabeth Chase, Esq.
Former Assistant United States Attorney
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Henrico, VA 23228
(804) 501-0824

Counsel for Defendant:

Carolyn V. Grady, Esq.
Office of the Federal Public Defender
701 East Broad Street, Suite 3600
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(804) 343-0800

7. *Lathon v. Wal-Mart Stores E., LP*, No. 3:09CV57, United States District Court for the Eastern District of Virginia.

This case involved a slip-and-fall personal injury action against Wal-Mart stemming from the plaintiff's slipping on an unmarked, wet floor at a Wal-Mart store in Fredericksburg, Virginia. The complaint alleged three negligence causes of action. I denied Wal-Mart's motion to dismiss and found that the individual causes of action corresponded to the duties owed by a store to its invitees as articulated by the Supreme Court of Virginia and that Federal Rule of Civil Procedure 8(d)(2) permitted a plaintiff to plead alternative theories. *Lathon v. Wal-Mart Stores E., LP*, No. 3:09CV57, 2009 WL 1172864 (E.D. Va. Apr. 29, 2009). Plaintiff's discovery efforts languished. After discovery closed, the plaintiff filed a motion to voluntarily dismiss her action without prejudice. I denied the plaintiff's motion to voluntarily dismiss without prejudice because prejudice to Wal-Mart would result but continued the trial. *Lathon v. Wal-Mart Stores E., LP*, No. 3:09CV57, 2009 WL 1810006 (E.D. Va. June 24, 2009). I denied Wal-Mart's motion to exclude the plaintiff's evidence and instead imposed the less severe sanction of reasonable attorneys' fees and continuing the trial. *Id.* After setting a new trial date, the case settled.

Counsel for Plaintiff:

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Law Office of Lawrence A. Thrower
10410 Kensington Parkway, # 202
Kensington, MD 20895
(301) 962-5002

Counsel for Defendant:

Joseph Michael Moore, Esq.
Donald Cameron Beck, Jr.
Morris & Morris PC
11 South 12th Street, Fifth Floor
P.O. Box 30
Richmond, VA 23218
(804) 344-8300

8. *McDonald v. Wal-Mart Stores E., LP*, No. 3:07CV425, United States District Court for the Eastern District of Virginia.

   This was a jury trial of a slip-and-fall personal injury negligence action. A minor, by and through her parent, sued Wal-Mart alleging she sustained injuries from slipping on a plastic wrap while on Wal-Mart's premises due to its negligence. Before trial, I denied the parties' cross-motions for summary judgment due to material disputes of fact as to whether Wal-Mart created the dangerous condition that caused the child's fall. *McDonald v. Wal-Mart Stores E., LP*, No. 3:07CV425, 2008 WL 153783 (E.D. Va. Jan. 14, 2008). In a second written opinion, I granted in part and denied in part Wal-Mart's motions in limine. *McDonald v. Wal-Mart Stores E., LP*, No. 3:07CV425, 2008 WL 153782 (E.D. Va. Jan. 14, 2008). I made several evidentiary findings, including granting plaintiff's motion to allow an adverse inference instruction as to the spoliation of the plastic wrap. At trial, the jury returned a plaintiff's verdict and an award of $30,000.

   Counsel for Plaintiff:

   John Anthony Rockecharlie, Esq.
   Cary Breckinridge Bowen, Esq.
   Jacqueline May Reiner, Esq.
   Bowen Champlin Foreman & Rockecharlie
   1919 Huguenot Road, Suite 300
   Richmond, VA 23235
   (804) 379-1900

   Counsel for Defendant:

   Joseph Michael Moore, Esq.
   Donald Cameron Beck , Jr.
   Morris & Morris PC
   11 South 12th Street, Fifth Floor
   P.O. Box 30
   Richmond, VA 23218
   (804) 344-8300

9. *United States v. V.D.A.*, No. 3:05MJ791, United States District Court for the Eastern District of Virginia.

   This was a bench trial involving four juvenile defendants at Fort Lee charged with conspiracy to assault a juvenile and possess a dangerous weapon, assault on a juvenile, possession of a dangerous weapon, and simple assault/resisting arrest. The record is under seal as a result of the status of the defendants. I made a finding of delinquency as to all four defendants of conspiracy to

assault a juvenile and to possess a dangerous weapon, as well as assault on a juvenile. I found one juvenile delinquent by possessing a dangerous weapon and simple assault/resisting arrest. One juvenile served one year of delinquent supervision and the other three juveniles received time served and one year of delinquent supervision.

Counsel for the United States:

Sara Elizabeth Chase, Esq.
Former Assistant United States Attorney
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10. *Bacon v. City of Richmond*, No. 3:05CV425-HEH, United States District Court for the Eastern District of Virginia.

I have mediated this case since its inception before the Honorable Henry E. Hudson in 2005 and continue to mediate the agreed settlement. The named plaintiffs brought this claim under the Americans with Disabilities Act against the City of Richmond and its School Board regarding the inaccessibility or noncompliance of the Richmond City Public Schools ("RPS"). The complaint alleged some level of noncompliance in every Richmond City School. Through mediation, the parties eventually agreed upon a five-year implementation plan, after which RPS school buildings and grounds would be ADA compliant. The settlement, whose progress is available online through the RPS website, is now in year five of five. Since 2005, I have met with the parties at least monthly, and often more frequently, reviewing what projects at which schools should commence to fulfill the dictates of the ADA, and the settlement, in the most economically feasible manner. No project has gone forward without School Board and City approval.

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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

The cases appear below in reverse chronological order.

1. *Lucas v. Henrico Cnty. Sch. Bd.*, No. 3:11CV5 (E.D. Va. Aug. 25, 2011), *report and recommendation adopted*, 822 F. Supp. 2d 589 (E.D. Va. 2011).

   The plaintiff appeared *pro se*.

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2. *Villines v. Walgreen Co.*, No. 3:10CV674, 2011 WL 1752113 (E.D. Va. May 6, 2011).

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3. *eServs., LLC v. Energy Purchasing, Inc.*, No. 3:09CV671, 2010 WL 6195580 (E.D. Va. Oct. 15, 2010), *report and recommendation accepted and adopted*, 2011 WL 1044889 (E.D. Va. Mar. 15, 2011).

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4. *Elso v. U.S. Immigration & Customs Enforcement*, No. 3:07CV57 (E.D. Va. July 21, 2010) (Copy supplied).

   The plaintiff was pro se.

   Counsel for Defendant:

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5. *A Soc'y Without a Name for People Without a Home Millennium-Future-Present v. Virginia*, No. 3:09CV480 (E.D. Va. Feb. 17, 2010), *report and recommendation accepted and adopted*, 699 F. Supp. 2d. 787 (E.D. Va. 2010), *aff'd*, 655 F.3d 342 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 1960 (Apr. 16, 2012).

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6. *Premier Pet Prods., LLC v. Travelers Prop. Cas. Co. of Am.*, 678 F. Supp. 2d 409 (E.D. Va. 2010).

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7. *Cappetta v. GC Servs. Ltd.*, 266 F.R.D. 121 (E.D. Va. 2009).

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8. *In re Extradition of Tawakkal*, No. 3:08MJ118, 2008 WL 3895578 (E.D. Va. Aug. 22, 2008).

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9. *Barnette v. Brook Road, Inc.*, 457 F. Supp. 2d 647 (E.D. Va. 2006).

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10. *Barnette v. Brook Road, Inc.*, 429 F. Supp. 2d 741 (E.D. Va. 2006).

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e. Provide a list of all cases in which certiorari was requested or granted.

I have conducted an exhaustive search of opinions issued in cases I have decided, nearly all of which are unpublished. I list those cases below in which the Supreme

Court of the United States considered certiorari. In no case was certiorari granted.

Keck v. Virginia, No. 3:10CV555, 2011 WL 4589997 (E.D. Va. Sept. 9, 2011) (Lauck, M.J.), *report and recommendation adopted*, 2011 WL 4573473 (E.D. Va. Sept. 30, 2011) (Payne, J.), *aff'd*, 470 F. App'x 127 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 444, 184 L. Ed. 2d 261 (Oct. 9, 2012)

Versatile v. Johnson, No. 3:09CV120, 2011 WL 5119152 (E.D. Va. June 22, 2011) (Lauck, M.J.), *report and recommendation accepted and adopted*, 2011 WL 5119259 (E.D. Va. Oct. 27, 2011) (Hudson, J.), *aff'd*, 474 F. App'x 385 (4th Cir. 2012), *cert. denied*, 133 S. Ct. 1261, 185 L. Ed. 2d 204 (Feb. 19, 2013)

Jacob v. Johnson, No. 3:10CV253, 2011 WL 1167477 (E.D. Va. Mar. 28, 2011) (Lauck, M.J.), *appeal dismissed*, 440 F. App'x 215 (4th Cir. 2011), *cert. denied sub nom. Jacob v. Clarke*, 132 S. Ct. 1614, 182 L. Ed. 2d 218 (Feb. 21, 2012)

Hall v. Dir., Va. Dep't of Corr., No. 3:09CV647, 2010 WL 3522966 (E.D. Va. Sept. 7, 2010) (Lauck, M.J.), *appeal dismissed*, 429 F. App'x 354 (4th Cir. 2011), *cert. denied sub nom. Hall v. Clarke*, 132 S. Ct. 1105, 181 L. Ed. 2d 989 (Jan. 17, 2012)

Ocon-Parada v. Young, No. 3:09CV87, 2010 WL 2928590 (E.D. Va. July 23, 2010) (Lauck, M.J.), *appeal dismissed*, 399 F. App'x 788 (4th Cir. 2010), *cert. denied*, 131 S. Ct. 2975, 180 L. Ed. 2d 257 (June 6, 2011)

Salinas v. Dillman, No. 3:09CV510, 2010 WL 2757116 (E.D. Va. July 12, 2010) (Lauck, M.J.), *appeal dismissed*, 401 F. App'x 816 (4th Cir. 2010), *cert. denied*, 131 S. Ct. 2459, 179 L. Ed. 2d 1224 (May 16, 2011)

Amr v. Moore, No. 3:09CV667, 2010 WL 3153977 (E.D. Va. June 21, 2010) (Lauck, M.J.), *report and recommendation adopted*, 2010 WL 3154567 (E.D. Va. Aug. 9, 2010) (Payne, J.), *aff'd*, 411 F. App'x 584 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 526, 181 L. Ed. 2d 369 (Oct. 31, 2011), *reh'g denied*, 132 S. Ct. 1139, 181 L. Ed. 2d 1012 (Jan. 17, 2012)

Amr v. Moore, No. 3:09CV667, 2010 WL 3154575 (E.D. Va. June 21, 2010) (Lauck, M.J.), *report and recommendation adopted*, 2010 WL 3154567 (E.D. Va. Aug. 9, 2010) (Payne, J.), *aff'd*, 411 F. App'x 584 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 526, 181 L. Ed. 2d 369 (Oct. 31, 2011), *reh'g denied*, 132 S. Ct. 1139, 181 L. Ed. 2d 1012 (Jan. 17, 2012)

Amr v. Moore, No. 3:09CV667, 2010 WL 3154576 (E.D. Va. June 21, 2010) (Lauck, M.J.), *report and recommendation adopted*, 2010 WL 3154567 (E.D. Va. Aug. 9, 2010) (Payne, J.), *aff'd*, 411 F. App'x 584 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 526, 181 L. Ed. 2d 369 (Oct. 31, 2011), *reh'g denied*, 132 S. Ct. 1139, 181 L. Ed. 2d 1012 (Jan. 17, 2012)

A Soc'y Without a Name for People Without a Home Millennium-Future-Present v. Virginia, No. 3:09CV480 (E.D. Va. Feb. 17, 2010) (Lauck, M.J.), *report and recommendation adopted*, 699 F. Supp. 2d. 787 (E.D. Va. 2010) (Payne, J.), *aff'd*, 655 F.3d 342 (4th Cir. 2011), *cert. denied*, 132 S. Ct. 1960, 182 L. Ed. 2d 772 (Apr. 16, 2012)

Rangel v. Stansberry, No. 3:08CV782, 2010 WL 114925 (E.D. Va. Jan. 12, 2010) (Lauck, M.J.), *aff'd*, 385 F. App'x 291 (4th Cir. 2010), *cert. denied*, 131 S. Ct. 1033, 178 L. Ed. 2d 853 (Jan. 18, 2011)

Taylor v. Hinkle, No. 3:08CV306, 2009 WL 2424087 (E.D. Va. Aug. 6, 2009) (Lauck, M.J.), *motion reconsider denied*, 2010 WL 114379 (E.D. Va. Jan. 11, 2010), *appeal dismissed*, 387 F. App'x 387 (4th Cir. 2010), *cert. denied*, 131 S. Ct. 660, 178 L. Ed. 2d 493 (Nov. 29, 2010), *reh'g denied*, 131 S. Ct. 1627, 179 L. Ed. 2d 619 (Mar. 7, 2011)

Taylor v. Hinkle, No. 3:08CV306, 2009 WL 604344 (E.D. Va. Mar. 6, 2009) (Lauck, M.J.), *appeal dismissed*, 387 F. App'x 387 (4th Cir. 2010), *cert. denied*, 131 S. Ct. 660, 178 L. Ed. 2d 493 (Nov. 29, 2010), *reh'g denied*, 131 S. Ct. 1627, 179 L. Ed. 2d 619 (Mar. 7, 2011)

Hearne v. Davis, No. 3:08CV171, 2008 WL 5234689 (E.D. Va. Dec. 15, 2008) (Lauck, M.J.), *appeal dismissed*, 325 F. App'x 171 (4th Cir. 2009), *cert. denied*, 558 U.S. 997 (2009)

Jiminez v. Vaughan, No. 3:07CV639, 2008 WL 2329767 (E.D. Va. June 5, 2008) (Lauck, M.J.), *aff'd*, 341 F. App'x 890 (4th Cir. 2009), *cert. denied*, 558 U.S. 1149 (2010)

Educ. Media Co. at Va. Tech, Inc. v. Swecker, No. 3:06CV396, 2008 U.S. Dist. LEXIS 45590 (E.D. Va. Mar. 31, 2008) (Lauck, M.J.), *rev'd in part, vacated in part, and remanded*, 602 F.3d 583 (4th Cir. 2010), *cert. denied*, 131 S. Ct. 646, 178 L. Ed. 2d 479 (Nov. 29, 2010)

Linder v. Friedman, No. 3:07CV292 (E.D. Va. Dec. 6, 2007) (Lauck, M.J.), *report and recommendation accepted and adopted*, 2008 WL 80228 (E.D. Va. Jan. 7, 2008) (Williams, J.), *aff'd*, 283 F. App'x 168 (4th Cir. 2008), *cert. denied*, 555 U.S. 1125 (2009)

Harrell v. Gaines, No. 3:05CV454, 2005 WL 5671583 (E.D. Va. Dec. 22, 2005) (Lauck, M.J.), *report and recommendation adopted*, 2006 WL 4389741 (E.D. Va. June 22, 2006) (Spencer, J.), *aff'd*, 203 F. App'x 492 (4th Cir. 2006), *cert. denied*, 551 U.S. 1150 (2007)

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed

with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Harris v. Dir., Va. Dept. of Corr., No. 3:04CV70 (E.D. Va. Feb. 27, 2006) (copy supplied), *rev'd and remanded*, 282 F. App'x 239 (4th Cir. 2008).

Harris sought a writ of habeas corpus under 28 U.S.C. § 2254, which I dismissed as having been filed outside the one-year statute of limitations. I found that Harris's writ of mandamus, filed in state court, did not toll the statute of limitations applicable to his writ of habeas corpus because the writ of mandamus did not qualify as a "properly filed application for State post-conviction or other collateral relief" regarding his underlying conviction. In an unpublished decision, the United States Court of Appeals for the Fourth Circuit reversed, finding the writ of mandamus properly filed because, even though it was time barred, it followed rules and laws governing filing in a court with jurisdiction. *Harris v. Dir., Va. Dept. of Corr.*, 282 F. App'x 239, 240, 241-42, 244 (4th Cir. 2008).

Educ. Media Co. at Va. Tech, Inc. v. Swecker, No. 3:06CV396, 2008 U.S. Dist. LEXIS 45590 (E.D. Va. Mar. 31, 2008), *rev'd in part, vacated in part, and remanded*, 602 F.3d 583 (4th Cir. 2010), *cert. denied*, 131 S. Ct. 646 (Nov. 29, 2010). *Educ. Media Co. at Va. Tech, Inc. v. Swecker*, No. 3:06CV396 (E.D. Va. Sept. 7, 2012) (on remand) (copy supplied), *rev'd sub nom. Educ. Media Co. at Va. Tech, Inc. v. Insley*, 731 F.3d 291 (4th Cir. 2013).

This case involved a challenge by college newspapers to two Virginia regulations restricting college publications from advertising alcoholic beverages except in reference to restaurants, and by using certain words, while forbidding other words, such as advertising "Polynesian Drinks," "Exotic Drinks," or "Speakeasy." In a case of first impression, under the test articulated in *Central Hudson Gas & Electric Corporation v. Public Service Commission*, 447 U.S. 557 (1980), I found that Virginia alcohol regulations 3 VAC 5-20-40(A) & (B)(3), were unconstitutional because neither regulation directly advanced the substantial governmental interest of reducing underage binge drinking, meaning they did not present a reasonable fit between the means and the ends of the regulatory scheme. In a two-to-one decision on *de novo* review, the Fourth Circuit reversed and remanded as to the second regulation, concluding that it was narrowly tailored to advance a substantial governmental interest. *Educ. Media Co. at Va. Tech, Inc. v. Swecker*, 602 F.3d 583 (4th Cir. 2010).

On remand, and constrained by the Fourth Circuit's decision, I found the second regulation survived an as-applied First Amendment challenge. On appeal, a new panel of the Fourth Circuit, whose only consistent member switched from writing the majority opinion to writing the sole dissent, found that the regulation failed the fourth prong of the *Central Hudson* test on an as-applied basis. As I had found in my first decision addressing the facial challenge, the Fourth Circuit found in this second appeal that, as applied, the regulation violated the First Amendment because

it prevented the dissemination of truthful, non-misleading advertisements to the majority of readers who were older than 21 years of age.

Lucas v. Henrico Cnty. Sch. Bd., No. 3:11CV5, 2012 WL 1665428 (E.D. Va. Apr. 12, 2012), *report and recommendation adopted in part and rejected in part*, 2012 WL 1665427 (E.D. Va. May 11, 2012).

In this 2012 decision, where the district judge had published his 2011 adoption of my recommendations as to a motion to dismiss, I recommended granting defendant's Federal Rule of Civil Procedure 12(c) motion for judgment on the pleadings to dismiss plaintiff's remaining claims of conspiracy to retaliate in violation of the Rehabilitation Act of 1973 and the ADA and abuse of process. I recommended dismissal because the statute of limitations barred the plaintiff's conspiracy to retaliate claim and because the plaintiff failed to state a claim for abuse of process. I recommended denying without prejudice plaintiff's motion to amend, and made the day of oral argument on the motion for judgment on the pleadings, because the plaintiff did not attach a copy of her proposed amended complaint. The district court adopted my Report and Recommendation except with respect to the characterization of the dismissal. The district court dismissed the action with prejudice and denied the plaintiff's motion to amend with prejudice.

United States v. Brown, No. 3:08CR488-6, (E.D. Va. Jan. 3, 2013), *report and recommendation accepted and adopted as modified*, 2013 WL 3967335 (E.D. Va. Aug. 1, 2013), *appeal docketed*, No. 13-7263 (4th Cir. Aug. 6, 2013).

This case involved a one-day evidentiary hearing in which the defendant, a federal inmate, alleged his lawyer provided ineffective assistance of counsel when his lawyer failed to file a notice of appeal as instructed. After conducting the evidentiary hearing, I found that the defendant did not expressly ask his lawyer to file an appeal. My Report and Recommendation recommended dismissing the defendant's claim of ineffective assistance of counsel and recommended denying his motion to vacate, set aside, or correct his sentence brought pursuant to 28 U.S.C. § 2255. Defendant filed objections, including objecting to the finding that the defendant pled guilty to a criminal information, instead of an indictment. The District Court accepted defendant's objection on this point only, and adopted my Report and Recommendation as modified to reflect that the defendant pled guilty to an indictment.

Ray v. Amelia Cnty. Sheriff's Office, No. 3:06CV834 (E.D. Va. Aug. 3, 2007), *report and recommendation accepted and adopted*, (E.D. Va. Aug. 22, 2007), *vacated and remanded*, 302 F. App'x 209 (4th Cir. 2008) (Copy supplied).

In an unpublished decision, the United States Court of Appeals for the Fourth Circuit reversed a decision by the Hon. Robert E. Payne adopting my Report and Recommendation that a motion to dismiss plaintiff's Age Discrimination in Employment Act claim be granted. The underlying decision dismissed the case

because plaintiff's own complaint articulated a legitimate, non-discriminatory basis for her dismissal. The Fourth Circuit vacated the District Court's order dismissing plaintiff's ADEA claim and remanded for further proceedings.

Gitter v. Cardiac & Thoracic Surgical Assoc., Ltd., 3:07CV546 (E.D. Va. July 15, 2008), *report and recommendation accepted and adopted*, (E.D. Va. Sept. 24, 2008), *aff'd in part, vacated in part, and remanded*, 338 F. App'x 348 (4th Cir. 2009), *on remand*, (E.D. Va. Dec. 22, 2009), *report and recommendation accepted and adopted*, 2010 WL 629843 (E.D. Va. Feb. 19, 2010), *vacated and remanded*, 419 F. App'x 365 (4th Cir. 2011) (first decision supplied).

The district judge twice adopted my Report and Recommendation granting defendants' motion for summary judgment because the parties, a doctor and hospital group, had not entered into a binding contract. The United States Court of Appeals for the Fourth Circuit reversed in part twice. In the most recent decision, the issue surrounded whether the doctor could establish reasonable reliance on emails that he had been hired when he had submitted answers of questionable veracity on his credentialing application to the hospital with which he sought employment. One judge dissented to the reversal.

Sewraz v. Nguyen, No. 3:08CV90 (E.D. Va. Sept. 15, 2009), *report and recommendation accepted and adopted*, 2010 WL 517898 (E.D. Va. Feb. 10, 2010), *vacated and remanded sub nom. Sewraz v. Long*, 407 F. App'x 718 (4th Cir. 2011).

The district judge adopted my Report and Recommendation to dismiss a *pro se* federal inmate's action alleging numerous state law and conspiracy claims against his ex-wife, a defense attorney, and a law firm where the inmate had made conclusory allegations regarding the alleged conspiracy between his ex-wife and other defendants. Because the inmate did not meet his obligation to plead factual content to allow the court to draw reasonable inferences that an agreement or conspiracy existed, I recommended dismissal. The Fourth Circuit vacated and remanded, finding the District Court abused its discretion in dismissing the complaint.

Global Title, LLC v. St. Paul Fire & Marine Ins. Co., No. 3:09CV550, 2011 WL 1597446 (E.D. Va. Feb. 18, 2011), *report and recommendation accepted and adopted*, 788 F. Supp. 2d 453 (E.D. Va. 2011), *vacated and remanded sub nom. First Tenn. Bank Nat'l Ass'n v. St. Paul Fire & Marine Ins. Co.*, 501 F. App'x 255 (4th Cir. 2012).

The district judge adopted my Report and Recommendation in this insurance coverage dispute stemming from a mortgage loan transaction and consequent litigation involving several parties. I recommended granting St. Paul Fire and Marine Insurance Company's cross-motion for summary judgment, and granting judgment in favor of St. Paul on all counts of St. Paul's third amended counterclaim and crossclaim for declaratory judgment. I recommended that First Tennessee's

claims asserted in the initial lawsuit and intervening complaint against Global Title did not trigger St. Paul's duty to defend or indemnify Global Title. The Fourth Circuit reversed, finding a possibility of coverage under the applicable insurance policy and that St. Paul was obligated to defend Global Title against First Tennessee's claims.

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a Magistrate Judge, nearly all of my opinions are unpublished. In a few instances, a judge adopting my Report and Recommendation has published his adoption of my Report and Recommendation. I issue hundreds of orders on non-dispositive matters, including scheduling and discovery matters. I also handle some matters on a regular basis, such as finding whether a felony guilty plea is knowing and voluntary, and recommending that a district judge enter a finding of guilt. I have conducted 400 to 500 such hearings, and issued the concomitant Report and Recommendation in each.

The Eastern District adopted electronic filing in 2007, meaning that all decisions I have issued since that time can be found through the court's Case Management Electronic Filing System (CM/ECF). LEXIS and Westlaw also report many of my cases. I estimate that approximately 100 to 125 more decisions, or about five to ten percent, exist that cannot be located on LEXIS or Westlaw. These either were not captured by LEXIS or Westlaw, or they predate the Eastern District of Virginia undertaking electronic filing. These decisions are stored in the Court's hard copy files.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I list below, in reverse chronological order, five significant decisions on constitutional matters:

Joyner v. O'Neal, No. 3:10CV406, 2012 WL 560199 (E.D. Va. Feb. 21, 2012)

Bond v. Story, No. 3:09CV147, 2011 WL 5599390 (E.D. Va. Nov. 17, 2011)

Massenburg v. Adams, No. 3:08CV106, 2011 WL 1740150 (E.D. Va. May 5, 2011)

Puranda v. Johnson, 3:08CV687, 2009 WL 3175629 (E.D. Va. Sept. 30, 2009), *appeal dismissed*, 367 F. App'x 453 (4th Cir. 2010)

Barnard v. Piedmont Reg'l Jail Auth., No. 3:07CV566 (E.D. Va. July 17, 2009), *report and recommendation adopted*, 2009 WL 2872510 (E.D. Va. Sept. 3, 2009)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I decide recusal issues in accordance with 28 U.S.C. §§ 144 and 455, and the Code of Conduct for United States Judges. My office maintains a list of cases in which I was involved as an Assistant United States Attorney. Before I review an incoming case, my office matches it against that list to determine whether or not I have a conflict as to any party.

Similarly, my office maintains a list of stock holdings that my husband, my children, or I have. Those are checked against any incoming cases and, if a conflict exists, I do not preside over the case. I have a system through which I, and my office, are informed immediately upon any change in holdings. I review that list periodically to ensure it is up to date.

When I handle a settlement conference, I do not "preside" over the case, and the conflict rules are less clear. Parties are freer to shape the nature of the mediation they seek. When I last sought input, the ethics division of the Administrative Office for United States

Judges had no final position on whether a judge can, during settlement, preside over a conference when "upon notice and without objection" he or she owns even just one share of stock. Early in my judgeship, I issued notices of potential conflict in an abundance of caution, including in mediation. These did not constitute actual conflicts, nor can I find an instance of recusal, except as noted below. I generally inform parties about stock ownership when conducting settlement conferences.

I handle a large number of cases brought by *pro se* litigants. I cannot recall ever recusing on a *pro se* litigant's case. A thorough review of the cases I handled showed one case in which a *pro se* prisoner sought recusal, which I denied:

> *Goodman v. Everett*, No. 3:06-CV-849 (E.D. Va. Dec. 31, 2007). Goodman brought a claim pursuant to 42 U.S.C. § 1983 alleging that he had been transferred to a prison where other inmates threatened to harm him. The Honorable Richard L. Williams presided, but I handled some of the initial screening orders. Goodman moved to recuse both judges on the case because, he claimed, the defendants had so clearly filed a response lacking a basis in fact that my preliminary ruling favoring defendants demonstrated incompetence, bias against prisoners, and corruption. He also objected to the informal service agreement in place with the Attorney General of the Commonwealth of Virginia. I denied the motion to recuse because I did not harbor extrajudicial bias in the case.

I have recused sua sponte in two cases.

> *Gen. Elec. v. Open MRI of S. Va.*, No. 3:06CV705-RLW (E.D. Va. June 15, 2007). I ultimately did not conduct the settlement conference because of my stock ownership in a GE retirement plan and because I had recently left a GE Company. No party had objected to my handling the conference.
>
> *Francisco v. Verizon S., Inc.*, No. 3:09CV737 (E.D. Va. Sept. 16, 2010). I entered a recusal order after informing parties of the conflict. I realized, after deciding a preliminary issue, that I owned Verizon stock. The parties did not seek re-briefing of the issue with the new judge. I did not handle this case after the decision. The case was dismissed by a different judge on the defendant's motion for summary judgment.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public office other than judicial office. I have not had any unsuccessful candidacies for appointed office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In the summer of 1984, I had a paid internship with the Democratic Policy Committee in the United States Senate, where I created a daily report listing quotes of Democratic Senators from news programs.

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 1991 to 1992, I served as a law clerk to the Honorable James R. Spencer, United States District Court for the Eastern District of Virginia

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1992 – 1994
Anderson Kill Olick & Oshinsky
1825 Eye Street, N.W.
Washington, D.C. 20006
Associate

1994 – 2004
United States Attorney's Office, Eastern District of Virginia
600 East Main Street, Suite 1800
Richmond, Virginia 23219
Assistant United States Attorney, Criminal Division (1994 – 1999)
Assistant United States Attorney, Civil Division (1999 – 2004)

2004 – 2005
Genworth Financial, Inc.
6620 West Broad Street
Richmond, Virginia 23230
Supervising Attorney, Headquarters Litigation

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I did not serve as a mediator or arbitrator in my law practice.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1992 to 1994, I worked in private practice. I was employed by Anderson Kill Olick & Oshinsky ("Anderson Kill" which is now part of Dickstein, Shapiro), a Washington, D.C., branch of a New York law firm. Anderson Kill specializes in insurance recovery cases, but generally does so for large corporations seeking products liability or environmental coverage. I handled aspects of a products liability case while at Anderson Kill, handling depositions, summary judgment briefing, and attending court for hearings and the trial.

From 1994 to 1999, I was an Assistant United States Attorney handling criminal prosecution. The majority of my cases involved large scale drug organizations such as the L.A. Crips and the Hell's Angels. I also prosecuted some white collar cases, including fraud and environmental charges. I handled several large scale jury trials, as well as misdemeanor cases and trials, and I defended and argued my own cases on appeal. During my tenure as a criminal prosecutor, then-Managing AUSA James B. Comey organized an Appellate Review Committee that reviewed every appellate brief filed out of Richmond. I was one of four attorneys to serve on that committee.

From 1999 to 2004, I worked on civil cases as an Assistant United States Attorney. The civil docket is varied, including medical malpractice, Title VII, immigration, and tax cases. When an employee or agency was sued, I represented the United States in those cases. The civil docket involves both trial work and participating in mediation on behalf of the United States.

From 2004 to 2005, I served as one of two Supervising Attorneys over litigation at the headquarters of a Fortune 500 company, Genworth

Financial, Inc. In that capacity, I directed large scale litigation conducted by outside counsel, and assured compliance with regulations so that legal concerns did not arise.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1992 to 1994, at Anderson Kill, I spent the bulk of my time handling a case for one large corporation seeking upper layers of insurance on a products liability matter.

From 1994 to 1999, as a criminal prosecutor representing the United States, I worked closely with federal investigative agencies such as the Federal Bureau of Investigation and the Drug Enforcement Administration as they investigated crimes.

From 1999 to 2004 as a civil Assistant United States Attorney, my clients were federal agencies or employees. I worked with agency employees to defend particular events or decisions, as well as policies. Nearly all of these cases arose after an agency had been sued.

From 2004 to 2005, I worked closely with the General Counsel of Genworth Financial to advise the Chief Executive Officer about any existing or impending litigation matters. We worked on compliance and managing any large scale 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 career has involved litigation. As an associate at Anderson Kill, I appeared in Delaware Chancery Court occasionally, assisting lead counsel when motions were argued and trial began. From 1994 to 1999, I appeared in the United States District Court for the Eastern District of Virginia weekly if not daily, on criminal matters. I would occasionally appear in the United States Court of Appeals when a defendant appealed a verdict. From 1999 to 2004, as a civil Assistant United States Attorney, I still appeared frequently in the United States District Court for the Eastern District of Virginia, although less than weekly. I also appeared in Virginia Circuit Courts if a federal employee was subpoenaed as a witness. From 2004 to 2005, while at Genworth, I guided outside counsel in litigation, but I did not appear in court.

i. Indicate the percentage of your practice in:
Rough estimates would be:

1. federal courts: 95%

2. state courts of record: 5%
3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:
1. civil proceedings: 50%
2. criminal proceedings: 50%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 15 to 20 criminal or civil cases (jury and bench trial) to verdict. When I first became a prosecutor, I was second chair in several cases. As I became more senior, I was generally lead or sole counsel, though I sometimes still served as co-counsel.

i. What percentage of these trials were:
1. jury: 5%
2. non-jury: 95%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not appeared before the Supreme Court of the United States.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

While some cases had pending periods that overlap with other cases, the cases are roughly listed in chronological order below:

1. *Hoechst Celanese Corp. v. Nat'l Union Fire Ins. Co.*, No. 89C-SE-35-1-cv (1992 – 1994), before the Hon. Richard Gebelein, Delaware Superior Court.

   In this coverage action, Anderson Kill Olick and Oshinsky represented Hoechest Celanese, which sought products liability coverage for issues surrounding plastic piping. Anderson Kill filed several summary judgment motions on separate insurance coverage issues. As an associate, I worked on the notice summary judgment motion and on depositions from 1992 to 1994. While we won a ruling that Hoechst Celanese had given proper notice of the claim, the court denied other summary judgment motions. I went with counsel to summary judgment arguments in court, and to trial. The case settled on the first or second day of trial.

   Co-Counsel for the Plaintiff:

   Lorelie Masters, Esq.
   Jenner & Block LLP
   1099 New York Avenue, N.W., Suite 900
   Washington, D.C. 20001
   (202) 639-6000

   Timothy W. Burns, Esq.
   Perkins Coie
   One East Main Street, Suite 201
   Madison, WI 53703
   (608) 663-7460

   Counsel for the Defendant:

   Marlene Monteleone
   Bivona & Cohen PC
   88 Pine Street
   New York, NY 10005
   (202) 363-3100

2. *United States v. King*, No. 3:93CR40 (1994), before the Hon. Richard L. Williams, United States District Court for the Eastern District of Virginia.

   The defendant attempted to manufacture methamphetamine in the Cary Street row house where he lived with his children. He claimed he was experimenting with wood preservatives for a business to sell pilings for the Chesapeake Bay, for which he had created a sham business. I was the sole prosecutor of this case after the defendant returned from fugitive status and came back to Richmond. The defendant waived a jury trial at the last minute, and the court found him guilty of all counts after a bench trial.

Counsel for Defendant:

Ray Carpenter (deceased)

3. *United States v. Smith*, No. 3:94CR79 (1995), before the Hon. James R. Spencer, United States District Court for the Eastern District of Virginia.

This was a multi-defendant, multi-count action charging drug conspiracy and money laundering. The group charged was called the "Whitcomb Court Crew" or the "Cook Em Up Crew." They operated an open air drug market in a low income residential area. Four defendants went to trial before a jury. I was second chair, assisting at trial with pretrial briefing, witness preparation, witness examination, cross-examination, and closing statement. All defendants were convicted. Along with lead counsel, I also handled the appeals that followed, including those filed by some defendants who had pled guilty. On appeal, all convictions were affirmed.

Co-Prosecutor:

John Douglass, Esq.
Former Assistant United States Attorney
University of Richmond School of Law
28 Westhampton Way
University of Richmond, VA 23173
(804) 289-8740

Counsel for Defendant Sedgwick:

Craig Cooley, Esq.
3000 Idlewood Avenue
Richmond, VA 23221
(804) 358-2328

Counsel for Co-Defendant James:

Peter Eliades, Esq.
Eliades & Eliades
408 North Sixth Avenue
Hopewell, VA 23860
(804) 458-6366

Counsel for Co-Defendant Pulliam:

Janipher Robinson, Esq.
Robinson and Greene
2415 Westwood Avenue

Richmond, VA 23230
(804) 321-1728

4. *United States v. Rivenbark*, No. 3:94CR93 (1995), before the Hon. Robert R. Merhige, United States District Court for the Eastern District of Virginia.

   I was sole counsel in two jury trials involving the defendant. The defendant tried to steal his neighbor's ten million dollar estate, which his neighbor had left in an educational trust for the impoverished children of Weems, Virginia. The victim of the fraud had amassed his money by playing stock options, despite a lifetime serving as a tugboat captain with a sixth grade education. As a felon, the defendant also illegally possessed weapons, including an assault rifle. Judge Merhige separated the fraud trial from the weapons trial. Both jury trials resulted in a guilty verdict in 1995. The convictions were sustained on appeal, which I also handled as sole counsel.

   Counsel for Defendant:

   Joseph Kaestner (deceased)

   Brian Pitney, Esq.
   Sands Anderson Marks & Miller, PC
   1111 East Main Street, Suite 2400
   Richmond, VA 23219
   (804) 648-1636

5. *United States v. Zebrowski*, No. 3:96CR41 (1996 – 1999), before the Hon. James R. Spencer, United States District Court for the Eastern District of Virginia.

   This was a sixteen defendant drug conspiracy, in which I served as second chair. The charges stemmed from a multi-year investigation (including a Title III wiretap) of an organization that shipped multi-kilo amounts of cocaine, both crack and powder, between New Jersey, Virginia, and Florida. The lead charge alleged that the defendant operated a continuing criminal enterprise, the kingpin statute. Money laundering charges were included in the multi-count indictment. During the course of the conspiracy, the lead defendant was stopped on Interstate 95 in Virginia with approximately 3.5 kilos of powder cocaine and over $300,000 cash in his car. Each defendant pled guilty, leading to further indictments. We ultimately charged the source from Columbia for drug-related conduct. We did not extradite the source from Colombia as there was an open case in Florida against him.

   Lead Prosecutor:

   The Honorable David J. Novak
   Former Criminal Chief, United States Attorney's Office for the Eastern District of Virginia
   United States Magistrate Judge, Eastern District of Virginia

701 East Broad Street
Richmond, VA 23219
(804) 916-2270

Counsel for Co-Defendant Zebrowski:

Jeffrey Everhart, Esq.
Rice Everhart & Baber
4100 East Parham Road, Suite C
Richmond, VA 23228
(804) 672-1087

Counsel for Co-Defendant Harris:

Robert J. Wagner, Esq.
Office of the Federal Public Defender, Suite 3600
701 East Broad Street
Richmond, VA 23219
(804) 343-0800

6. *United States v. Reid*, No. 3:98CR064 (1998), before the Hon. James R. Spencer, United States District Court for the Eastern District of Virginia.

This case followed the prosecution of the Zebrowskis, which is described above. The defendant, with four others, was charged with conspiracy to distribute power cocaine. The defendant received kilogram quantities from the Zebrowskis and re-distributed the cocaine in Maryland. I was second chair. Judge Spencer denied the defendant's motion to suppress after hearing evidence and argument in open court. After a full day of trial and into the second day before the jury, the defendant decided to plead guilty as charged.

Lead Prosecutor:

The Honorable David J. Novak
Former Criminal Chief, United States Attorney's Office for the Eastern District of Virginia
United States Magistrate Judge, Eastern District of Virginia
701 East Broad Street
Richmond, VA 23219
(804) 916-2270

Counsel for Defendant:

John Zwerling, Esq.
Zwerling Leibig & Moseley PC
114 North Alfred Street

Alexandria, VA 22314
(703) 835-9664

Mark Rochon, Esq.
Miller & Chevalier
655 Fifteenth Street, N.W., Suite 900
Washington, D.C. 20005
(202) 626-5800

7. *United States v. Garner*, No. 3:97CR104 (1997 – 1999), before the Hon. Robert R. Merhige, Jr., United States District Court for the Eastern District of Virginia.

I was the lead prosecutor in this seventeen defendant drug conspiracy case, dubbed Operation Crossfire. The charges stemmed from a multi-year investigation of a continuing criminal enterprise. This conspiracy operated between California and Virginia. Defendant and others, all associated with the L.A. Crips, procured and shipped multi-kilo amounts of powder cocaine to Richmond via UPS. A second defendant led the Richmond end of the organization, which received the cocaine, cooked it into crack, and sold it. The proceeds of the sales were sent to California by Western Union. Over seven million dollars of Western Union wires were identified. All defendants pled guilty (including to continuing criminal enterprise for the lead defendant) and several "cold homicides" were resolved. One cold homicide was resolved by a separate guilty plea to murder in state court.

Counsel for Defendant Garner:

Gerald Zerkin, Esq.
Office of the Federal Public Defender
701 East Broad Street, Suite 3600
Richmond, VA 23219
(804) 343-0800

Counsel for Co-Defendant W. Peyton:

Reginald Barley, Esq.
2025 East Main Street, Suite 210
Richmond, VA 23223
(804) 783-8468

8. *United States v. Lewis*, No. 3:93CR139 (1999 – 2001), before the Hon. Robert E. Payne, United States District Court for the Eastern District of Virginia.

This case, which involved a Hell's Angels organization, initially was indicted and tried by John Douglass. The defendant became a fugitive, and I later worked on his extradition from Mexico. Although I had formally joined the Civil Division, I tried the case with another Assistant United States Attorney because Professor Douglass

had left the office. The defendant led the chapter of the Hell's Angels that tried to establish its home base in Hopewell, Virginia. He fled when initially indicted in 1993 (before I had joined the U.S. Attorney's Office). Along with other illegal conduct, the defendant and his organization attempted to manufacture and sell large quantities of methamphetamine. He was charged in a 25-count indictment with operating a continuing criminal enterprise and with money laundering. The jury found him guilty on nearly all charges, including the continuing criminal enterprise and money laundering counts. The convictions were sustained on appeal, which I handled with co-counsel.

Co-Lead Prosecutor:

Stephen W. Miller, Esq.
United States Attorney's Office, Eastern District of Virginia
600 East Main Street, Suite 1800
Richmond, VA 23219
(804) 819-5400

Counsel for Defendant:

David Whaley, Esq.
Law Office of C. David Whaley LLC
9 East Franklin Street
Richmond, VA 23219
(804) 643-0147

9. *Trigon Ins. Co. v. United States*, No. 3:00CV365 (2002 – 2003), before the Hon. Robert E. Payne, United States District Court for the Eastern District of Virginia.

I worked closely with counsel in the Tax Division of the Department of Justice on this case. In a case of first impression, Trigon (formerly Blue Cross Blue Shield) sued the IRS, challenging decisions to deny Trigon tax refunds owed when Blue Cross Blue Shield became subject to taxation in 1986. This case involved a series of challenging motions and hearings before Judge Payne. The trial lasted at least seven days in which I facilitated logistics and handled some witnesses. Equally extensive post-trial briefing and argument followed. Judgment was entered in favor of the United States because the plaintiff could not reliably establish the value of the contracts for which it claimed deductions. After a motion to reconsider, Judge Payne entered final judgment for the United States, but ordered fees to be paid to the plaintiff for spoliation of electronic drafts prepared by some expert witnesses.

Lead Counsel for the United States:

Charles P. Hurley, Esq.
Former Tax Division Trial Attorney
Mayer Brown

1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000

Counsel for Plaintiff:

Gilbert E. Schill, Esq.
McGuireWoods LLP
901 East Cary Street
Richmond, VA 23219
(804) 775-1000

10. *Austin v. Dep't of Def.*, No.3:02CV598 (2002 – 2003), before the Hon. Richard L. Williams, United States District Court for the Eastern District of Virginia.

I was lead counsel in this case that consolidated seven complaints of discrimination brought by police officers at the Defense Supply Center, a federal property. Based on allegations about training and other policies, the officers complained that racial discrimination existed in the department. Because the case involved departmental policies, I led negotiations to see if programmatic changes could address the plaintiffs' concerns. The case was subsequently settled.

Co-Counsel (second chair) for the United States:

Tara Casey, Esq.
Former Assistant United States Attorney
University of Richmond School of Law
28 Westhampton Way
University of Richmond, VA 23173
(804) 289-8740

Counsel for Plaintiff:

Curtis Hairston, Jr., Esq.
McEachin & Gee PC
4719 Nine Mile Road
Henrico, VA 23223
(804) 226-4111

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have never performed any lobbying, nor have I registered as a lobbyist.

The most significant legal activity I have undertaken as a magistrate judge is the formation of a Second Chance-Offender Rehabilitation Effort ("SCORE") court for offenders released from prison on probation or supervised release. This program attempts to offer necessary resources to re-enter society successfully. The program targets offenders who have a documented history of substance abuse, and offers court supervision to assist in rehabilitation when violations occur. The SCORE program seeks to develop long-term crime-free life rather than reincarceration due to drug use. When we began designing the program in 2007 or 2008, it was one of six in the nation. We were the first federal re-entry court in Virginia. This effort has been well received within the community.

The SCORE team consists of the two Magistrate Judges, the U.S. Probation Office, the U.S. Attorney's Office, the Federal Public Defender, and treatment professionals. Other SCORE members, including the Clerk's office and community volunteers, are integral to the success of the program we now have.

The reentry court is an intensive rehabilitation process that relies on the existing probation supervision process for drug screening, supervision, education, employment and community service. In order to graduate, our participants must be drug-free for at least six months, but generally they have been drug-free for a much longer time period. Participants usually have gotten a GED or vocational training, a valid operator's license, and are working unless disabled. The program is designed to save court resources and taxpayer dollars when participants engage in a substance-free and crime-free life. The alternative option, incarceration, would be costly to taxpayers as well as less desirable for the participants.

I have also been extensively involved with bar organizations. Each organization promotes community and civic involvement. For instance, the John Marshall American Inn of Court (JMIOC) encourages longstanding practitioners and judges, through educational and other opportunities, to mentor and provide career support to younger lawyers. Like all Inns of Court, the JMIOC encourages an open discussion about professionalism beyond knowing the law. The Metropolitan Richmond Women's Bar Association (MRWBA) similarly provides an environment where women lawyers can engage with each other to better each other's professional lives, to enrich the bar, and to encourage community involvement so that the bar betters the greater Richmond area. Like the Richmond Bar Association, the MRWBA has an active set of pro bono initiatives. For instance, members of the MRWBA prepared a domestic violence pamphlet – made available in English and Spanish – that distilled rights and resources available to those subject to domestic violence. The MRWBA has made these informational pamphlets available in local Juvenile and Domestic Relations Courts, and at places in the community who serve as a resource to women in need.

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.

    2010 – 2013, Adjunct Assistant Professor, John Marshall Scholars Program, University of Richmond, T.C. Williams School of Law. The John Marshall Scholars is a class for the academic scholarship students. First, second, and third year students participate. This class discussed legal topics of interest, with an emphasis on engaging students in practical application of those topics. We have discussed leadership, medical ethics, and the financial crisis. The John Marshall Scholars Program hopes to promote excellence, and to expose students to the breadth of service their legal careers could encompass. Spring 2013 syllabus supplied.

    1996 – 2006, Adjunct Assistant Professor, Lawyering Skills III – Trial Advocacy (Fall Semester) and Lawyering Skills IV – Appellate Advocacy (Spring Semester), University of Richmond, T.C. Williams School of Law. These classes are required for all second year law students at the University of Richmond. Fall 2004 and Spring 2006 syllabi supplied.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    I do not have such sources of income.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    If confirmed, I have no plans, commitments, or agreements to pursue outside employment. I have ceased teaching at the University of Richmond Law School due to time constraints.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       I would decide recusal issues in accordance with 28 U.S.C. §§ 144 and 455, and the Code of Conduct for United States Judges. I would continue the practice my office currently undertakes to maintain a list of cases in which I was involved as an Assistant United States Attorney. Before addressing any case, I would ask staff to match that case against my conflict list to determine whether or not I have a conflict as to any party.

       Similarly, my office would continue to maintain a list of stock holdings that my husband, my children, or I have. Those would be checked against any incoming cases and, if a conflict exists, I would not preside over the case. I would continue to use the current system through which I, and my office, are informed immediately upon any change in holdings. I would review that list periodically to ensure it is up to date.

       I do not know of any other conflict that any family members, parties, categories of litigators, or financial arrangements that could present potential conflicts of interest other than those identified immediately above.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

       To the extent such potential conflicts were to arise, I would resolve them through careful adherence to 28 U.S.C. §§ 144 and 455, and the Code of Conduct for United States Judges.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

    While at Anderson Kill, I assisted on a case in which a woman sought a bone marrow transplant to treat her cancer. The insurance coverage had been denied because the treatment was considered experimental.

At the United States Attorney's Office and as Magistrate Judge, my ability to provide pro bono legal services has been restricted. However, I have considered engagement with bar organizations an important aspect of community service. All of the bar groups I have served with have significantly contributed to the Richmond community and the Commonwealth in varied and meaningful ways. For example, these bar organizations engage in pro bono services, tutoring, and providing information to litigants to increase access to the courts.

I also have served on the Board and, eventually, as Board President of my daughter's former preschool at St. Stephen's Church, a not-for-profit preschool which is part of the Episcopalian Church associated with St. Christopher's and St. Catherine's school.

We do most of our community service as a family and through the schools where my husband teaches and my children attend. Over the years, this has been extensive and hands on. Generally, we have focused our service on schools, health/cancer programs, military needs, and animal shelters. As for schools, our family has collected and donated school supplies regularly for St. Andrew's School (a Richmond City Episcopalian School for needy students) and, last year, for Connor's Heroes Backpack Project. For six years we have helped clean and supply other after-school community programs such as the Peter Paul Development Center and the William Byrd Community House, which provide a safe and educational environment in troubled neighborhoods for children to do homework, eat a healthy snack, or play. Through Peter Paul Development Center, we have helped "adopt" families during the holidays for the past ten years—raising money, purchasing gifts, and wrapping them.

Because we know people well who have been touched by these diseases, we have participated in collection, and/or fundraising walks, for breast cancer, cystic fibrosis, pancreatic cancer, and diabetes (including juvenile diabetes). Over the past twelve years we have regularly participated in food drives for the Virginia Food Bank and a few times for Ronald McDonald House. We have joined in as the schools sent out "Hero Boxes" for military members serving away from their home. Finally, there is an active community in Richmond that supports the welfare of abandoned animals. We have donated supplies to the local SPCA, the Richmond Animal Shelter (a no kill facility), and Hooligan's Rest, another shelter/placement program.

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 May 2013, Senators Mark Warner and Timothy Kaine asked the Virginia State Bar to evaluate candidates for a vacancy on the U.S. District Court for the Eastern District of Virginia. On June 6, 2013, I submitted an Evaluation Questionnaire to the Virginia State Bar and 11 other Bar Organizations. On July 8, 2013, nine of the eleven organizations conducted in-person interviews. I interviewed with all organizations who gave me the opportunity to do so. On July 22, 2013, I was interviewed in Washington, D.C. by senior staff for Senators Warner and Kaine. On July 31, 2013, I was interviewed in Washington, D.C. by Senators Warner and Kaine. On August 6, 2013, I was called by a member of Senator Warner's staff and told that my name would be sent with one other person's to the White House for consideration for this judgeship. Since August 14, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On September 12, 2013, I was interviewed by officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On December 19, 2013, the President submitted my nomination to the Senate. On January 6, 2014, the President submitted my renomination 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
Lauck, M H.	United States District for the Eastern District of Virginia	01/06/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	**5a. Report Type (check appropriate type)** ☑ Nomination Date 1/06/2014 ☐ Initial ☐ Annual ☐ Final **5b.** ☐ Amended Report	**6. Reporting Period** 01/01/2013 to 12/23/2013
7. Chambers or Office Address U.S. District Court, EDVA 701 East Broad Street, Suite 5212 Richmond, VA 23219-3528		

IMPORTANT NOTES: ***The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.***

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Custodian	Wells Fargo Custodial Accounts
2.	Immediate Past President	John Marshall Inn of Court
3.	Board Member	Federal Bar Association
4.	Council Member	State-Federal Judicial Council of Virginia
5.	Member	Professionalism Advisory Committee

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of filing instructions.)*

☑ NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 11	Name of Person Reporting Lauck, M H.	Date of Report 01/06/2014

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1.	2012	University of Richmond, John Marshall Professor of Judicial Studies	$15,000.00
2.	2013	University of Richmond, John Marshall Professor of Judicial Studies	$7,500.00
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2013	St. Christopher's School - salary and benefits
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 11	Name of Person Reporting Lauck, M H.	Date of Report 01/06/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 11

Name of Person Reporting	Date of Report
Lauck, M H.	01/06/2014

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bank of America accounts	A	Interest			Exempt				
2. Wells Fargo bank accounts (X)	A	Interest	J	T					
3. Bank of America Custodial bank accounts	A	Interest							
4. Wells Fargo Custodial bank accounts (X)	A	Interest	J	T					
5. Brokerage account #1									
6. - Exxon	A	Dividend	K	T					
7. - International Business Machines	A	Dividend	K	T					
8. - Pfizer	A	Dividend	J	T					
9. - Under Armor, Inc.		None	K	T					
10. - Verizon	A	Dividend	J	T					
11. Brokerage account #2									
12. - AT&T	A	Dividend	J	T					
13. - Celgene Corp		None	J	T					
14. - Cisco Sys Inc	A	Dividend	J	T					
15. - Coach Inc	A	Dividend	J	T					
16. - ConocoPhillips	A	Dividend	J	T					
17. - Devon Energy Corp New	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 11	Name of Person Reporting Lauck, M H.	Date of Report 01/06/2014

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. - Dun & Bradstreet Corp Del New	A	Dividend	J	T					
19. - Dunkin Brands Group Inc	A	Dividend	J	T					
20. - E M C Corp Mass		None	J	T					
21. - Eaton Corp	A	Dividend	J	T					
22. - International Business Machines	A	Dividend	J	T					
23. - Life Technologies Corp Com		None							
24. - Lowes Companies	A	Dividend	J	T					
25. - Nuance Communications Inc		None	J	T					
26. - Omnicon	A	Dividend	J	T					
27. - Pitney Bowes Inc	A	Dividend							
28. - Target Corp	A	Dividend	J	T					
29. - Travelers Cos Inc Com	A	Dividend	J	T					
30. - US Bankcorp Del Com New	A	Dividend	J	T					
31. - Wells Fargo & Co New	A	Dividend	J	T					
32. - FPL Group Capital Inc Bond	B	Interest							
33. - H J Heinz Bond	A	Interest							
34. - Canadian Imperial Bank Bond	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
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Name of Person Reporting	Date of Report
Lauck, M H.	01/06/2014

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)
35. - Home Depot Inc Bond	A	Interest	J	T					
36. - Int'l Paper Co Bond	B	Interest	K	T					
37. - SunTrust Bank Atlanta CD	A	Interest	J	T					
38. - Fidelity Tax Free Money Market	A	Interest	L	T					
39. Trust #1	E	Int./Div.	P1	T					
40. - AT&T									
41. - Baxter Int'l Inc.(X)									
42. - Celgene Corp									
43. - Cisco Sys Inc									
44. - Coach Inc									
45. - ConocoPhillips									
46. - Consolidated Edison Holding									
47. - Dun & Bradstreet Corp Del New									
48. - Eaton Corp									
49. - EMC Corp MA									
50. - GE									
51. - International Business Machines									

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
I =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000

2. Value Codes (See Columns C1 and D3)
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market

3. Value Method Codes (See Column C2)
Q =Appraisal
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 7 of 11	**Name of Person Reporting** **Lauck, M H.**	**Date of Report** 01/06/2014

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)
52. - Johnson & Johnson									
53. - Kinder Morgan Inc									
54. - Life Technologies Inc									
55. - Lowes Companies									
56. - Medtronic Inc									
57. - Microsoft Inc									
58. -Nuance Communications									
59. - Omnicom Group									
60. - PepsiCo Inc									
61. - Southern Co.									
62. - TEVA Pharmaceutical ADR									
63. - Travelers Cos Inc Com									
64. - Walgreen Company									
65. - Wells Fargo & Co New.									
66. - HSBC Fin Corp Bond									
67. - American Express Credit Bond									
68. - Federal Home Loan Banks Bond									

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 8 of 11

Name of Person Reporting	Date of Report
Lauck, M H.	01/06/2014

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
69. - Hewlett Packard Co Bond									
70. - L-3 Communications Corp Bond									
71. - Ryder Systems Bond									
72. - Staples Inc Bond									
73. - Conagra Foods Inc Bond									
74. - Wellpoint Inc Bond									
75. - Discover Bank CD									
76. - Fidelity NJ Municipal Money Market									
77. GE SSP program (retirement)									
78. - GE Stock Fund	A	Dividend	J	T					
79. - GE US Eqty fund	A	Dividend	J	T					
80. - GE Income Fund	A	Dividend	J	T					
81. TIAA CREF (retirement)									
82. - TIAA Traditional		None	K	T					
83. - CREF Stock		None	M	T					
84. - CREF Growth		None	K	T					
85. - CREF Equity Index		None	K	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
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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
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U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 9 of 11	Name of Person Reporting **Lauck, M H.**	Date of Report 01/06/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. - CREF Social Choice		None	K	T					
87. AT&T (Custodian)	A	Dividend	J	T					
88. Pepco (Custodian)	A	Dividend	J	T					
89. BNY Mellon (Custodian)	A	Dividend	J	T					
90. VA529 College Savings Plan, prepaid, age-based, no control		None	L	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
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 10 of 11	Name of Person Reporting Lauck, M H.	Date of Report 01/06/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT Page 11 of 11	Name of Person Reporting Lauck, M H.	Date of Report 01/06/2014

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/ M H. Lauck

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		9	388	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule		798	909	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	471
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – personal residence		391	166
Real estate owned -- see schedule		927	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		284	835				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		363	198				
				Total liabilities		394	637
				Net Worth	1	988	693
Total Assets	2	383	330	Total liabilities and net worth	2	383	330
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	
AT&T stock	$ 15,002
Bank of New York Mellon Corp. stock	1,348
Canadian Imperial Bank of Commerce bond	12,384
Celgene Corp. stock	12,133
Cisco Systems Inc. stock	11,688
Coach Inc. stock	11,580
ConocoPhillips stock	10,920
CREF Equity Index	33,985
CREF Growth	31,430
CREF Social Choice	41,722
CREF Stock	166,886
Devon Energy Corp. stock	12,124
Dominion Resources Inc. stock	776
Dun & Bradstreet Corp. stock	11,685
Dunkin Brands Group Inc. stock	14,694
Eaton Corp. stock	10,899
EMC Corp. stock	10,724
Exxon Mobil stock	15,863
Fidelity Tax Free Money Market Fund	67,528
GE Common Stock Fund	1,722
GE Savings & Security Income Fund	1,269
GE Savings & Security U.S. Equity Fund	12,449
Home Depot Inc. bond	14,359
IBM stock	24,189
International Paper bond	27,289
Lowes Cos Inc. stock	9,496
Nuance Communications Inc. stock	6,760
Omnicom Group Inc. stock	10,718
Pepco stock	1,406
Pfizer Inc. stock	11,343
SunTrust Bank Atlanta CD	12,794
Target Corp. stock	12,786
TIAA Traditional Annuity	44,130
Travelers Companies Inc. stock	13,611
Under Armour stock	16,140
US Bancorp Del Com New Stock	11,766
Verizon stock	7,505
Virginia 529 prePAID Tier 1	52,600
Wells Fargo & Co. stock	13,206
Total Listed Securities	$ 798,909

Real Estate Owned	
Personal residence	$ 926,000
Timeshare	1,000
Total Real Estate Owned	$ 927,000

AFFIDAVIT

I, M. HANNAH LAUCK, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 3, 2014 (DATE) M. Hannah Lauck (NAME)

Kathy B Hancock #220352 (NOTARY)
Subscribed sworn & acknowledged this 3rd day of January, 2014.
Comm Exp. 1-31-17

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   Leo Theodore Sorokin

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the District of Massachusetts

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: United States District Court for the District of Massachusetts
   One Courthouse Way, Suite 7410
   Boston, Massachusetts 02210

   Residence: Brookline, Massachusetts

4. **Birthplace**: State year and place of birth.

   1961; Hartford, Connecticut

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1988 – 1991, Columbia Law School; J.D., 1991

   1979 – 1983, Yale College; B.A. (*cum laude*), 1983

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   January 2013 – present
   Boston University School of Law
   765 Commonwealth Avenue

Boston, Massachusetts 02215
Adjunct Professor

2005 – present
United States District Court for the District of Massachusetts
One Courthouse Way
Boston, Massachusetts 02210
Magistrate Judge (2005 – 2012)
Chief Magistrate Judge (2012 – present)

1997 – 2005
Federal Public Defender Office
51 Sleeper Street, Number Five
Boston, Massachusetts 02210
Assistant Federal Public Defender

1994 – 1997
Office of the Attorney General, Commonwealth of Massachusetts
One Ashburton Place
Boston, Massachusetts 02108
Assistant Attorney General and Opinions Coordinator (1996 – 1997)
Assistant Attorney General (1994 – 1996)

1992 – 1994
Mintz Levin
One Financial Center
Boston, Massachusetts 02111
Associate

September 1991 – August 1992
Honorable Rya W. Zobel
United States District Court for the District of Massachusetts
One Courthouse Way, Suite 6110
Boston, Massachusetts 02210
Law Clerk

January – April 1991
United States Attorney's Office for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
Intern

Summer 1990
Debevoise & Plimpton LLP
919 Third Avenue

New York, New York 10022
Summer Associate

July 1990 (one week)
Vera Institute of Justice
223 Broadway, 12th Floor
New York, New York 10279
Summer Intern

Summer 1989
New York City Law Department
(formerly, Corporation Counsel for the City of New York)
100 Church Street
New York, New York 10007
Summer Associate

Spring Semester 1989
Columbia Law School
435 West 116th Street
New York, New York 10027
Research Assistant for Professor Michael Young

1985 – 1988
Rowe Software, Inc.
Framingham, Massachusetts
Computer Programmer
(This company no longer exists.)

Fall 1983 – Spring 1985 (intermittently, part-time)
State Representative Richard Tulisano (deceased)
Rocky Hill, Connecticut 06067
Political Consultant

April – June 1984
Friedman & Atherton LLP
53 State Street
Boston, Massachusetts 02109
Paralegal

January – March 1984
Ground Round Restaurant
Fresh Pond Rotary
Cambridge, Massachusetts 02138
Waiter
(This location is no longer open.)

May – September 1983
Bob Kiley for Mayor of Boston Campaign
Boston, Massachusetts
Field Coordinator

Other affiliations (uncompensated)

2000 – 2008
Teachers as Scholars
Post Office Box 610405
Newton, Massachusetts 02461
Board Member

1996 – 2005
Center for First Amendment Rights, Inc.
(now part of the American Civil Liberties Union of Connecticut)
330 Main Street, First Floor
Hartford, Connecticut 06106
Board Member

1984 – 1988
Tennis en France, Inc.
Jamaica Plain, Massachusetts and New York, New York
Board Member
(This organization was founded by my wife, but discontinued in 1988.)

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.

   Citation for Judicial Excellence, Boston Bar Association (2009)

   Kent Scholar, Columbia Law School (1989 – 1990)

   Stone Scholar, Columbia Law School (1988 – 1989, 1990 – 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.

Boston Bar Association
Criminal Law Section Steering Committee (2004 – 2005)

Criminal Justice Act Panel Advisory Committee (2003 – 2004)

Criminal Justice Act Board
District Court Magistrate Judge Liaison (2006 – present)

Federal Bar Association

Federal Magistrate Judges Association
Federal Courts Law Review, At-Large Editor (2011 – present)

Massachusetts Association of Criminal Defense Lawyers

National Association of Criminal Defense Lawyers

Selection Committee for Chief United States Probation Officer, United States District Court for the District of Massachusetts (2010)

Selection Committee for Clerk of Court, United States District Court for the District of Massachusetts (2013)

United States District Court Committee on Court Security (2012 – present)

United States District Court Committee on Information Technology (2012 – present)

United States District Court Reentry Committee (2013 – present)

United States District Court Criminal Justice Act Plan Committee (2009 – present)

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Massachusetts; 1991

There have been no lapses in my membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court for the District of Massachusetts; 1992

United States Court of Appeals for the First Circuit; 1997

There have been no lapses in my memberships.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Brookline High School Parent Teacher Organization (2008 – present)

Brookline Recreation League Youth Soccer (2003 – present)

Center for First Amendment Rights, Inc. (1996 – 2005)
Board Member

Pierce School Parent Teacher Organization (2000 – present)

Teachers as Scholars (2000 – 2008)
Board Member

Tennis en France, Inc. (1984 – 1988)
Board 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 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.

The U.S. District Court Speaks: District of Massachusetts (MCLE, Inc. 2011) (contributing author). Copy supplied.

Federal Criminal Discovery: Handbook Regarding Exculpatory & Impeachment Material (MCLE, Inc. 2009) (contributing author). Copy supplied.

Court Assisted Recovery Effort flyer (D. Mass. 2009). Copy supplied.

The U.S. District Court Speaks: District of Massachusetts (MCLE, Inc. 2008) (contributing author). Copy supplied.

Apprendi *in the First Circuit*, Mass. Ass'n Crim. Def. Law. Newsl. (Dec. 2001). Copy supplied.

The Computerization of Government Information: Does It Circumvent Public Access Under the Freedom of Information Act and the Depository Library Program?, 24 Colum. J.L. & Soc. Probs. 267 (1991). Copy supplied.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Memorandum to Hon. Patti B. Saris and the United States District Judges for the District of Massachusetts re: Court Assisted Recovery Effort Update (Sept. 25, 2013). Copy supplied.

Memorandum to Chief Judge Mark L. Wolf, Judge Patti B. Saris, and the United States District and Magistrate Judges for the District of Massachusetts re: 2010 Report on the Court Assisted Recovery Effort (Mar. 25, 2010). Copy supplied.

Summary Memorandum to United States District Judges for the District of Massachusetts re: Court Assisted Recovery Effort (June 30, 2009). Copy supplied.

Mission Statement for Court Assisted Recovery Effort (2008). 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.

June 20, 2013: I spoke before the Town of Brookline Zoning Board regarding a neighbor's request for permission to add an attached single family dwelling to his existing single family home. Minutes supplied.

June 15, 2013: On behalf of the Court, I proposed a pilot coordination project between the Bureau of Prisons and the United States District Court for the District of Massachusetts. The Bureau of Prisons and the District Court are discussing how to implement the proposal. Copy of proposal supplied.

June 13, 2013: I spoke before the Town of Brookline Planning Board regarding a neighbor's request for permission to add an attached single family dwelling to his existing single family home. Minutes supplied.

January 28, 2010: On behalf of the Magistrate Judges in the District of Massachusetts, I proposed to the Court that it implement on a permanent basis a program to draw civil cases directly to the Magistrate Judges. A copy of the proposal memorandum is supplied.

November 2008: On behalf of the Magistrate Judges in the District of Massachusetts, I proposed to the Court that it initiate a two-year pilot program to draw civil cases directly to the Magistrate Judges. A copy of the proposal memorandum is supplied.

May 7, 2008: I testified before the Governor's Council of Massachusetts in support of the nomination of then-Assistant United States Attorney Timothy Feeley to the position of Justice of the Superior Court of the Commonwealth of Massachusetts. A copy of the text of my remarks is supplied.

March 7, 2006: I proposed to the United States District Court for the District of Massachusetts that it create the Court Assisted Recovery Effort reentry court program. Based on this proposal, a pilot program was adopted and later made permanent. A copy of the proposal is supplied.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

May 2007 – present: In the course of presiding over the Court Assisted Recovery Effort, I have spoken with visiting judges, probation officers, Assistant United States Attorneys, and Assistant Federal Public Defenders from other jurisdictions observing District of Massachusetts reentry court programs. These presentations took place in the United States District Court for the District of Massachusetts in Boston, Massachusetts. My comments have related to the structure and daily operation of our reentry court programs. I have no notes, transcript, or recording. The address for the United States District Court for the District of Massachusetts is One Courthouse Way, Boston, Massachusetts 02210.

April 2005 – present: As a U.S. Magistrate Judge, I have routinely presided over naturalization ceremonies, where I have given remarks to newly naturalized citizens and others in attendance in the U.S. District Court for the District of Massachusetts in Boston, Lowell, and Methuen, Massachusetts. I do not have a record of every instance in which I presided over such an event, however, a copy of the speech I typically give is supplied.

April 2005 – present: As U.S. Magistrate Judge, I have met with groups of students and teachers visiting the federal courthouse through the Discovering Justice Program. My comments have related to the role of a Magistrate Judge, my career as an attorney, and the basic structure of our legal system. I have no notes, transcript, or recording. The address for Discovering Justice is One Courthouse Way, Suite 3120, Boston, Massachusetts 02210.

1994 – present: Both as a practicing attorney and as a U.S. Magistrate Judge, I have served as a guest lecturer in classes at Boston College Law School, Harvard Law School, Suffolk University Law School, and Yale Law School. My presentations have related to trial advocacy, civil litigation, criminal law, reentry court, and the role of a federal Magistrate Judge. I do not have a record of the individual dates on which I have participated in these classes, and I have no notes, transcript, or recording.

October 16, 2013: Discussion leader, "Young Attorney Roundtable," U.S. District Court for the District of Massachusetts, Boston, Massachusetts. Notes supplied.

July 30, 2013: Moderator, panel discussion on Reentry Courts at the National Workshop for U.S. Magistrate Judges II, Federal Judicial Center; San Diego, California. The panel discussed the Northern District of Florida's Reentry Court Program. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle, Northeast, Washington, District of Columbia 20544.

June 18, 2013: Speaker, "Court Assisted Recovery Effort," Criminal Law Section of the Massachusetts Bar Association, Boston, Massachusetts. I gave an overview of the structure and operation of the reentry courts in the District of Massachusetts. I have no notes, transcript, or recording. The address for the Massachusetts Bar Association is 20 West Street, Boston, Massachusetts 02111.

April 30, 2013: Panelist at 2013 Judicial Forum; Massachusetts Continuing Legal Education, Inc., Boston, Massachusetts. I provided practice pointers for lawyers appearing in federal court. I have no notes, transcript, or recording. The address for Massachusetts Continuing Legal Education, Inc. is Ten Winter Place, Boston, Massachusetts 02108.

April 25, 2013: Panelist at the National Workshop for U.S. Magistrate Judges I, "Reentry Courts," Federal Judicial Center, New Orleans, Louisiana. My remarks focused on common problems and issues that arise in reentry court. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle, Northeast, Washington, District of Columbia 20544.

April 24, 2013: Moderator of panel at the National Workshop for U.S. Magistrate Judges I, "Reentry Courts," Federal Judicial Center, New Orleans, Louisiana. Recording supplied.

March 28, 2013: Panelist, "Criminal and Civil Practice before the Federal Magistrate Judges," Boston Bar Association, Boston, Massachusetts. My remarks focused on effective advocacy. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

March 20, 2013: Panelist, "Cutting Edge Approaches to Reentry Innovation," Boston Bar Association, Boston, Massachusetts. My remarks focused on the structure and operation of the Court Assisted Recovery Effort in the District of Massachusetts. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

October 19, 2012: Panelist at the 2012 Bench Bar Conference, "Chief Judges Roundtable," U.S. District Court for the District of Massachusetts, Newton, Massachusetts. My remarks focused on the role of Magistrate Judges in the federal system. I have no notes, transcript, or recording. The address for the U.S. District Court for the District of Massachusetts is One Courthouse Way, Boston, Massachusetts 02210.

September 6, 2012: Speaker, comments during the swearing-in ceremony for U.S. District Judge Timothy Hillman, U.S. District Court for the District of Massachusetts, Worcester, Massachusetts. Remarks supplied.

July 24, 2012: Panelist at the National Workshop for United States Magistrate

Judges II, "iPad for Judges," Federal Judicial Center, Denver, Colorado. PowerPoint supplied.

May 16, 2012: Speaker, "Breakfast with the Bench," Massachusetts Chapter of the Federal Bar Association, Boston, Massachusetts. My remarks focused on the impact of social media on the law. I have no notes, transcript, or recording, but press coverage supplied. The address for the Massachusetts Chapter of the Federal Bar Association is care of President Matthew Moschella, Sherin and Lodgen, LLP, 101 Federal Street, Boston, Massachusetts 02110.

April 18, 2012: Panelist at the National Workshop for United States Magistrate Judges I, "iPad for Judges," Federal Judicial Center, Miami, Florida. I used the same PowerPoint supplied for the July 24, 2012 event and recording supplied.

March 14, 2012: Panelist, "Criminal and Civil Practice before the Federal Magistrate Judges," Boston Bar Association, Boston, Massachusetts. My remarks focused on effective advocacy, recurring litigation issues, and the Court's reentry programs. I have no notes, transcript, or recording, but press coverage supplied. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

January 25, 2012: Panelist, "The Federal Jurisdiction and Venue Clarification Act of 2011," Suffolk University Law School, Boston, Massachusetts. My comments focused on recent changes to federal courts' removal jurisdiction. I have no notes, transcript, or recording, but press coverage supplied. The address for Suffolk University Law School is 120 Tremont Street, Boston, Massachusetts 02108.

October 27, 2011: Speaker, "Addiction, Treatment and Criminal Justice," Massachusetts General Hospital, Boston, Massachusetts. PowerPoint supplied.

September 8, 2011: Moderator of a panel at Facilitating Offender Reentry to Reduce Recidivism Conference: A Workshop for District Teams, Criminal Justice and Treatment Professionals, "Addiction Treatment, Recovery Management, and the Benefits and Difficulties that Arise When Treatment Professionals Address Patients within the Criminal Justice System," Federal Judicial Center and the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School, Cambridge, Massachusetts. Recording supplied.

September 8, 2011: Panelist at a conference on Facilitating Offender Reentry to Reduce Recidivism: A Workshop for District Teams, "The Judge's Role in Reentry," Federal Judicial Center and the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School, Cambridge, Massachusetts. Recording supplied.

September 7, 2011: Panelist at Facilitating Offender Reentry to Reduce

Recidivism Conference: A Workshop for District Teams, Reentry Courts & Post-Conviction Drug Courts, "Simulation: The Case Conference, Team Member Roles, and Group Dynamics," Federal Judicial Center and the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School, Cambridge, Massachusetts. My remarks focused on conducting a staffing session before reentry court. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle, Northeast, Washington, District of Columbia 20544.

July 18, 2011: Breakout Session Speaker at an Annual National Conference, Massachusetts CARE Program, National Association of Drug Court Professionals, Washington, D.C. PowerPoint supplied.

May 20, 2011: Panelist at the Annual National Seminar on the Federal Sentencing Guidelines, "Reentry Programs," United States Sentencing Commission, San Diego, California. My remarks focused on the structure and organization of the Court Assisted Recovery Effort. I have no notes, transcript, or recording. The address for the United States Sentencing Commission is One Columbus Circle, Northeast, Suite 2-500, Washington, District of Columbia 20002.

May 11, 2011: Panelist, Training Video on Facilitating Offender Reentry to Reduce Recidivism: Practical First Steps for USAOs, United States Department of Justice, Washington, D.C. Video supplied.

February 9, 2011: Panelist, "Meet the U.S. District Court Magistrate Judges," Boston Bar Association, Boston, Massachusetts. My remarks focused on the role of Magistrate Judges in civil cases, effective advocacy, and the Court's reentry programs. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

November 2, 2010: Panelist at the Administrative Office of the U.S. Courts' Experimental Study of Federal District Court Reentry Programs Training Seminar, "Simulation & Discussion: The Case Conference, the Role of Team Members, and Group Dynamics," Federal Judicial Center, Washington, D.C. My remarks focused on conducting a staff meeting before a reentry court session. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle, Northeast, Washington, District of Columbia 20544.

October 15, 2010: Speaker at the Occasional Series on Reentry Research, "Reentry Courts," John Jay College of Criminal Justice's Prisoner Reentry Institute, New York, New York. My remarks focused on the structure, organization, and successes of the reentry court programs in the District of Massachusetts. I have no notes, transcript, or recording. The address for the John Jay College of Criminal Justice's Prisoner Reentry Institute is 899 Tenth Avenue, New York, New York 10019.

September 16, 2010: Panelist at the Tenth Annual Criminal Law Bench Bar Conference, "Federal Law Panel," Boston Bar Association's Criminal Law Section, Boston, Massachusetts. My remarks related to the role of Magistrate Judges in criminal cases, effective advocacy, and reentry courts. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

September 13, 2010: Panelist at Facilitating Offender Reentry to Reduce Recidivism Conference: A Workshop for Teams, "Simulation: The Case Conference and the Role of Team Members and Group Dynamics," Federal Judicial Center, Stanford Criminal Justice Center, and Judicial Council of the California Administrative Office of the Courts, Stanford, California. The panel discussed the respective roles of the individuals who staff the reentry program in the District of Massachusetts, and the daily operation of the program. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle, Northeast, Washington, District of Columbia 20544.

June 2, 2010: Speaker at the 16th Annual Drug Court Training Conference, Reentry Court Symposium, National Association of Drug Court Professionals, Boston, Massachusetts. Conference report produced by the Department of Justice's Bureau of Justice Assistance and the Center for Court Innovation supplied.

May 6, 2010: Panelist, "Reentry Summit," Boston Bar Association's Criminal Law Section, Boston, Massachusetts. My remarks focused on the reentry court programs in the District of Massachusetts, effective advocacy related to reentry at sentencing, and the hallmarks of effective reentry programs. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

April 16, 2010: Speaker, "Courtroom as Classroom," Boston University School of Law, Boston, Massachusetts. My remarks focused on the role of a Magistrate Judge. I have no notes, transcript, or recording. The address for the Boston University School of Law is 765 Commonwealth Avenue, Boston, Massachusetts 02215.

February 7, 2010: Speaker at the Extending Drug Dependence Treatment to the Criminal Justice System Conference, "View from the Bench," National Rehabilitation Centre and National Institutes of Health, Abu Dhabi, United Arab Emirates. PowerPoint supplied.

December 3, 2009: Panelist at the Facilitating Offender Reentry to Reduce Recidivism: A Workshop for District Teams Conference, "Collaboration in the Eastern District of Pennsylvania & District of Massachusetts," Federal Judicial Center, Durham, North Carolina. The panel focused on the respective roles of

individuals who staff reentry programs and the daily operation of such programs. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle, Northeast, Washington, District of Columbia 20544.

November 19, 2009: Speaker, "An Insider's Guide to Using the Federal District Court ADR Program," Boston Bar Association, Boston, Massachusetts. My remarks focused on the structure, operation, and utility of the ADR program in the District of Massachusetts. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

November 13, 2009: Panelist at the Bail and Detention Workshop for Magistrate Judges, "Decision Making and Learning from Colleagues: Re-Entry Court," Federal Judicial Center, Washington, D.C. My remarks focused on the operation of the reentry court programs in the District of Massachusetts. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle, Northeast, Washington, District of Columbia 20544.

November 6, 2009: Panelist at the Second Annual Sentencing Advocacy Practice and Reform Institute with Special Focus on Reentry Conference, "Federal Reentry Efforts," American Bar Association's Criminal Justice Section, Washington, D.C. My remarks focused on the structure and operation of the reentry court programs in the District of Massachusetts. I have no notes, transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

November 5, 2009: Panelist at the 2009 Reentry Summit, "Model Reentry Program Descriptions and Start Up Issues/Opportunities Including Budget, Structure, Eligibility Criteria, Referral, Authorizing Policy, Legislation or Court Rules," American Bar Association's Criminal Justice Section, Washington, D.C. PowerPoint supplied.

September 16, 2009: Panelist at a Bench Bar Conference, "Federal Panel," Boston Bar Association's Criminal Law Section, Boston, Massachusetts. Notes supplied.

June 1, 2009: Award Recipient Acceptance Speech at Boston Bar Association Annual Law Day Dinner, Boston, Massachusetts. I received the Boston Bar Association's Citation for Judicial Excellence at this event and made brief remarks of thanks as well as mention of the Court Assisted Recovery Effort. I have no notes, transcript or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

May 5, 2009: Panelist, "Meet the Magistrate Judges," Boston Bar Association, Boston, Massachusetts. Notes supplied.

April 2 – 3, 2009: Speaker at a Reentry Conference, "District of Massachusetts

Court Assisted Recovery Effort," United States District Court for the District of Oregon, Portland, Oregon. PowerPoint supplied.

March 25, 2009: Panelist, "Internet Evidence: Finding It & Getting It Admitted," Massachusetts Continuing Legal Education, Inc., Boston, Massachusetts. My remarks focused on the judicial perspective regarding Internet evidence. I have no notes, transcript, or recording. The address for Massachusetts Continuing Legal Education, Inc. is Ten Winter Place, Boston, Massachusetts 02108.

January 27, 2009: Panelist, "Cutting Edge Issues in Criminal Law," Boston Bar Association's Criminal Law Section, Boston, Massachusetts. My remarks focused on the structure and operation of the reentry court programs in the District of Massachusetts. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

January 16, 2009: Panelist, Eighth Annual Business Law Conference, Massachusetts Continuing Legal Education, Inc., Boston, Massachusetts. Notes supplied.

December 3, 2008: Panelist, "Best Practices at Detention Hearings," Boston Bar Association's Criminal Justice Section, Boston, Massachusetts. My remarks focused on effective advocacy at detention hearings. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

November 18, 2008: Speaker, "Sentencing, Revocation and Supervision in the Post-Gall/Kimbrough Era," Boston Bar Association's Criminal Law Section, Boston, Massachusetts. My comments focused on innovative approaches to supervision, reentry programs, and effective advocacy in post-sentencing proceedings. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

November 13, 2008: Panelist at the Bail and Detention Workshop for United States Magistrate Judges, "Judicial Decision Making and Learning from Colleagues: Re-Entry Courts," Federal Judicial Center, Washington, D.C. PowerPoint and recording supplied.

November 7, 2008: Panelist at "High" Crimes: Punishing America's Drug Offenders Symposium, "The Use of Drug Courts as an Alternative to Traditional Punishments," New England Law School Journal on Criminal and Civil Confinement, Boston, Massachusetts. PowerPoint supplied.

October 30, 2008: Panelist at the Facilitating Offender Reentry to Reduce Recidivism Conference, "Innovative and Evidence-Based Reentry Programs in the Federal Courts," Federal Judicial Center, Durham, North Carolina. PowerPoint and recording supplied.

July 14, 2008: Panelist at the Alternatives to Incarceration Conference, "Federal Problem Solving Courts (View from the Court)," United States Sentencing Commission, Washington, D.C. PowerPoint and transcript supplied.

June 19, 2008: Speaker, "Litigating Civil Cases Before the Magistrate Judges: From Discovery to Jury Trial," Massachusetts Chapter of the Federal Bar Association, Boston, Massachusetts. My remarks focused on effective advocacy, participation of junior lawyers, and the direct assignment of civil cases to the Magistrate Judges. I have no notes, transcript, or recording, but press coverage supplied. The address for the Massachusetts Chapter of the Federal Bar Association is care of President Matthew Moschella, Sherin and Lodgen, LLP, 101 Federal Street, Boston, Massachusetts 02110.

May 22, 2008: Panelist, "Trying Your First or Next Criminal Case in the Federal Court," Massachusetts Continuing Legal Education, Inc., Boston, Massachusetts. My remarks focused on effective advocacy in preliminary criminal proceedings before Magistrate Judges. I have no notes, transcript, or recording. The address for Massachusetts Continuing Legal Education, Inc. is Ten Winter Place, Boston, Massachusetts 02108.

May 15, 2008: Panelist, "Federal Sentencing Nuts and Bolts," American Bar Association's Young Lawyers White Collar Crime Committee, Boston, Massachusetts. My remarks focused on the operation and structure of the reentry court programs in the District of Massachusetts. I have no notes, transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

January 11, 2008: Panelist, "Habeas Corpus," Boston Bar Association, Boston, Massachusetts. My remarks focused on effective advocacy in habeas proceedings. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

December 4, 2007: Panelist at a Bench Bar Conference, "Magistrate Judges Panel," Boston Bar Association, Boston, Massachusetts. My remarks focused on effective advocacy and the reentry court programs in the District of Massachusetts. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

July 23, 2007: Panelist at the National Workshop for United States Magistrate Judges II, "Drug and Reentry Courts: An Emerging Trend in the Federal System," Federal Judicial Center, Baltimore, Maryland. PowerPoint supplied.

June 15, 2007: Panelist at a Judicial Conference, "Criminal Pretrial Issues," United States District Court for the District of Massachusetts, Newton, Massachusetts. My remarks focused on effective advocacy and recurring issues

arising in preliminary criminal proceedings before Magistrate Judges. I have no notes, transcript, or recording. The address for the United States District Court for the District of Massachusetts is One Courthouse Way, Boston, Massachusetts 02210.

April 2, 2007: Panelist at the National Workshop for United States Magistrate Judges I, "Drug and Reentry Courts: An Emerging Trend in the Federal System," Federal Judicial Center, Austin, Texas. I used the same PowerPoint supplied for the July 23, 2007 event.

March 8, 2007: Panelist, "Pretrial Service Topics," United States District Court for the District of Massachusetts, Boston, Massachusetts. My remarks focused on the role of Pretrial Services in initial criminal proceedings. I have no notes, transcript, or recording. The address for the United States District Court for the District of Massachusetts is One Courthouse Way, Boston, Massachusetts 02210.

September 26, 2006: Panelist at a Bench Bar Conference, "Federal Panel," Boston Bar Association's Criminal Law Section, Boston, Massachusetts. My remarks focused on the reentry court programs in the District of Massachusetts. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

September 19, 2006, June 27, 2006, and March 24, 2006: Panelist at a seminar on Litigating Cases in Federal Court, Trial and Post-Trial Issues, Motion Practice and Summary Judgment, and Discovery and Pre-Trial Issues, Younger Lawyers Division of the Massachusetts Chapter of the Federal Bar Association, Boston, Massachusetts. Notes and related press report supplied.

June 21, 2006: Panelist, Federal Drug Court Symposium, National Association of Drug Court Professionals, Seattle, Washington. My remarks focused on the structure and operation of the reentry court program in the District of Massachusetts, and the role of the judge in such programs. I have no notes, transcript, or recording. The address for the National Association of Drug Court Professionals is 1029 North Royal Street, Suite 201, Alexandria, Virginia 22314.

January 25, 2006: Panelist at a Bench Bar Forum, "Magistrate Judges of the United States District Court Federal Criminal Practice," Boston Bar Association, Boston, Massachusetts. My remarks focused on effective advocacy in initial criminal proceedings before Magistrate Judges. I have no notes, transcript, or recording. The address for the Boston Bar Association is 16 Beacon Street, Boston, Massachusetts 02108.

November 18, 2005: Speaker, Closing Remarks at the Advanced Federal Criminal Appellate Practice Seminar, United States Court of Appeals for the First Circuit, Boston, Massachusetts. Notes supplied.

November 2, 2005: Panelist, "Discovery in Federal Court," Boston Bar Association, Boston, Massachusetts. Notes supplied.

May 10, 2005: Speaker, remarks at my swearing-in ceremony as a United States Magistrate Judge, United States District Court for the District of Massachusetts, Boston, Massachusetts. Remarks supplied.

1997 to 2005: Presenter, Criminal Justice Act panel training programs, Federal Public Defender Office, Boston, Massachusetts. My presentations focused on topics such as detention, discovery, sentencing, and trial. I have no notes, transcript, or recording. The address for the Federal Public Defender Office is 51 Sleeper Street, Number Five, Boston, Massachusetts 02210.

May 14, 2004: Presenter and panelist at a Federal Criminal Appellate Practice Seminar, "Preparing to Write the Brief and Common Substantive Issues," United States Court of Appeals for the First Circuit, Portland, Maine. Both my presentation and my panel comments focused on effective advocacy, brief writing, and recurring issues in federal criminal appeals. I have no notes, transcript, or recording. The address for the United States Court of Appeals for the First Circuit is One Courthouse Way, Boston, Massachusetts 02210.

March 24, 2004: Presenter and panelist at a Federal Criminal Appellate Practice Seminar, "Preparing to Write the Brief and Common Substantive Issues," United States Court of Appeals for the First Circuit, Boston, Massachusetts. Both my presentation and my panel comments focused on effective advocacy, brief writing, and recurring issues in federal criminal appeals. I have no notes, transcript, or recording. The address for the United States Court of Appeals for the First Circuit is One Courthouse Way, Boston, Massachusetts 02210.

2001 to 2004: Coordinator and faculty member, training course on federal criminal practice for lawyers participating on the Criminal Justice Act panel in the District of Massachusetts, Federal Public Defender Office and Criminal Justice Act Board, Boston, Massachusetts. I taught two-hour sessions on topics including detention, discovery, motions to suppress, plea bargaining, trial, and sentencing. I have no notes, transcript, or recording. The address for the Criminal Justice Act Board is care of John Salsberg, Salsberg & Schneider, 232 Lewis Wharf, Boston, Massachusetts 02110.

November 3, 2003: Presenter and panelist at a Federal Criminal Appellate Practice Seminar, "Preparing to Write the Brief and Common Substantive Issues," United States Court of Appeals for the First Circuit, San Juan, Puerto Rico. Both my presentation and my panel comments focused on effective advocacy, brief writing, and recurring issues in federal criminal appeals. I have no notes, transcript, or recording. The address for the United States Court of Appeals for the First Circuit is One Courthouse Way, Boston, Massachusetts 02210.

2001 and 2003: Co-leader at the National Workshop for Federal Public Defenders, "First Circuit Break-Out Group," Federal Judicial Center, Los Angeles, California (2001) and Portland, Oregon (2003). I facilitated sessions focused on current topics in federal criminal defense specific to practice in the First Circuit. I have no notes, transcript, or recording. The address for the Federal Judicial Center is One Columbus Circle, Northeast, Washington, District of Columbia 20544.

2003: Panelist, "Prosecution Trends in Federal Court," White Collar Crime Committee of the American Bar Association's Criminal Justice Section in the Northeast Region, Boston, Massachusetts. My remarks focused on developments in the types of cases being prosecuted in federal court in the District of Massachusetts. I have no notes, transcript, or recording. The address for the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Innovative Re-Entry Means Investing in the Individual, Beyond the Billable: Inspiring Lawyers to Do Good, Mar. 28, 2013. Copy supplied.

Valerie Cooke & Mark Sherman, Reentry Courts, Fed. Magistrate Judges Assoc. Bull., Jan. 2013. Copy supplied.

Denise LaVoie, Mass Ex-Cons Get New Chance with Federal Program, Assoc. Press State & Local Wire, June 17, 2009. Copy supplied.

Nicholas Phillips, Sweet Treatment: An Experimental Program Offers Rich Rewards to Drug-Addicted Ex-Cons in St. Louis Who Keep Themselves Clean, Riverfront Times, Jan. 28, 2009. Copy supplied.

Federal Offenders with Drug Problems Get Special Help, Third Branch, July 2007. Copy supplied.

Monica Brady-Myerov, untitled radio report regarding Court Assisted Recovery Effort, WBUR, June 2007. Audio recording supplied.

Serghino Rene, Court Assisted Recover Effort (CARE) Aids Addicts, Bay State Banner, Dec. 7, 2006. Copy supplied.

Shelley Murphy, Pilot Program Pushes Ex-Convicts Away from Perils: Judge's Sessions Part of Probation, Bos. Globe, Nov. 30, 2006. Copy supplied.

Press Release, U.S. District Court Approves C.A.R.E. Probation Program, Mass. Law. Wkly., May 8, 2006. Copy supplied.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In 2005, I was appointed to serve as a Magistrate Judge of the United States District Court for the District of Massachusetts by the Judges of the United States District Court for the District of Massachusetts. In 2013, I was reappointed to a second eight-year term as a Magistrate Judge. My duties and responsibilities have included: presiding over the trial of civil cases, both jury and non-jury, with the consent of the parties; issuing recommended decisions on dispositive motions and orders resolving non-dispositive motions in civil cases over which District Judges preside; managing pretrial proceedings in both civil and criminal cases over which District Judges preside; mediating civil cases pending before District Judges or other Magistrate Judges; issuing criminal complaints and search warrants upon a finding a probable cause; hearing and deciding motions to detain defendants due to flight or danger risks in felony criminal cases; and handling all aspects, including trial, of petty offenses and criminal misdemeanors.

On February 1, 2012, I became the Chief Magistrate Judge of the United States District Court for the District of Massachusetts. In addition to my other duties, I have assumed administrative responsibilities.

a. Approximately how many cases have you presided over that have gone to verdict or judgment?

My best estimate is 60 cases that have gone to verdict or judgment. The percentages below represent the approximately 15 cases that have gone to trial; the other cases noted above were resolved via dispositive motions.

i. Of these, approximately what percent were:

jury trials:	90 %
bench trials:	10 %
civil proceedings:	90 %
criminal proceedings:	10 %

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the

case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

(1) United States v. Cusick, No. 11-cr-10066-GAO

The grand jury charged Cusick (a crew member working on board a commercial fishing vessel) with two violations of 16 U.S.C. § 1857(1)(L), to wit: criminal sexual harassment and interfering with and impeding the duties of a federal at-sea monitor; and forcible assault and interfering with and impeding the duties of a federal at-sea monitor collector. My memorandum and order ruling that the size of the fine authorized by the statute entitled the defendant to a jury, rather than bench, trial on these misdemeanor charges can be found at 817 F. Supp. 2d 1 (D. Mass. 2011). The jury convicted Cusick of one count and acquitted him of the other. This case was the first trial (or, at least, one of the first) in the nation of criminal charges under this statute. My order rejecting the defendant's post-trial motion claiming insufficient evidence to support the jury's determination that defendant had threatened to inflict bodily harm on the victim can be found at 2012 WL 442005 (D. Mass. Feb. 9, 2012).

Lead Prosecutor: Suzanne M. Sullivan
Assistant United States Attorney
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Defense Counsel: Timothy G. Watkins
Federal Public Defender Office
51 Sleeper Street, Number Five
Boston, MA 02210
(617) 223-8061

(2) Pashamova v. New Balance Athletic Shoe, Inc., No. 11-cv-10001-LTS, and Carey v. New Balance Athletic Shoe, Inc., No. 11-cv-10632-LTS

The named plaintiffs in these two related cases sued New Balance on behalf of a proposed nationwide class of consumers alleging that New Balance violated truth-in-advertising laws in a marketing campaign for its toning shoes. My order resolving various discovery and procedural motions as well as deferring ruling on a partial motion to dismiss is supplied. The parties engaged in several mediation sessions with another magistrate judge. Although these sessions did not produce a settlement, the parties later settled the matter. In response to a joint settlement proposal from the parties, I certified a class for settlement purposes only in the final judgment, a copy of which is supplied.

Plaintiffs' Counsel: Howard Friedman
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(617) 742-4100

Tina Wolfson
Ahdoot & Wolfson
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Los Angeles, CA 90024
(310) 474-8585

Defense Counsel: R. David Hosp
Fish & Richardson P.C.
One Marina Park Drive
Boston, MA 02210
(617) 368-2125

(3) Zak Law Offices, P.C. v. Reed, No. 10-cv-10333-LTS

A software developer and several corporate entities related to the same legal practice brought an action for copyright infringement against an individual mortgage broker alleging that she wrongfully had accessed and copied a proprietary customer database. The defendant counterclaimed, alleging that she had formed a mortgage refinance business partnership with the attorney proprietor, and that she had been wrongfully excluded by him from the affairs of the partnership. She sought an accounting and her share of partnership profits. The parties settled the plaintiffs' claims. After I denied plaintiffs' motion to dismiss the counterclaim, the case proceeded to trial. A jury awarded damages to the defendant on her counterclaim. My memorandum and order on the plaintiffs' motion to dismiss the counterclaim can be found at 2010 WL 2802068 (D. Mass. July 13, 2010), and the First Circuit's decision upholding the jury verdict and the denial of post-trial motions is at Loan Modification Grp., Inc. v. Reed, 694 F.3d 145 (1st Cir. 2012).

Plaintiffs' Counsel: Isaac H. Peres
689 Massachusetts Avenue
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(617) 821-9824

Defense Counsel: Scott F. Gleason
Gleason Law Offices, P.C.
163 Merrimack Street
Haverhill, MA 01830
(978) 521-4044

(4) RBS Citizens, Nat'l Assoc. v. Aresty, No. 09-cv-10116-LTS

The defendant law firm deposited a client check into its account and wired the funds overseas. After discovering that the check was fraudulent, the plaintiff bank sued the law firm and the lawyer who owned the firm to recover the funds it lost in wiring the funds overseas. The parties disputed whether officials from the bank had informed the lawyer that the check had cleared. The case included substantial discovery disputes, as well as issues relating to the possible personal liability of the lawyer. I found insufficient evidence to render the lawyer liable by piercing the corporate veil of the law firm and, thus, entered summary judgment in the lawyer's favor. I also found that the remaining claims brought by the bank against the law firm presented disputed issues of fact requiring a trial. The parties settled the case on the day trial was to commence. My orders resolving motions in limine and summary judgment motions can be found at 2011 U.S. Dist. LEXIS 119237 (D. Mass. Oct. 14, 2011), and 2011 U.S. Dist. LEXIS 57343 (D. Mass. May 26, 2011).

Plaintiff's Counsel: Jeffrey S. Patterson
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Defense Counsel: William M. Zall
Cunningham, Machanic, Cetlin, Johnson & Harney LLP
220 North Main Street
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(5) Cameron v. Idearc Media Corp., No. 08-cv-12010-LTS

The defendant company terminated several union sales representatives ostensibly for failure to meet sales objectives outlined in the collective bargaining agreement. These sales representatives sued the employer, alleging age discrimination, violation of the Employment Retirement Income Security Act ("ERISA"), and violation of the collective bargaining agreement. They also sued their union, a union official, and the ERISA plan administrator, alleging breach of the duty of fair representation, and misrepresentation. I granted the union and union official's motion for judgment on the pleadings both on immunity grounds and the running of the limitations period for filing suit. I entered summary judgment in the employer's favor because the plaintiffs failed to adduce evidence from which a reasonable jury could find that the employer's stated reason for discharge to be pretextual, and because the claims were barred by section 301 of the Labor Relations Management Act. The sales representatives appealed my summary judgment ruling. The First Circuit affirmed on the employment discrimination theory and did not reach the preemption issue. My memorandum

and order on motions to amend, dismiss, and for judgment on the pleadings can be found at 2009 WL 2496439 (D. Mass. Aug. 13, 2009); my memorandum and order on the motion for summary judgment can be found at 2011 WL 4054864 (D. Mass. Sept. 9, 2011); and the First Circuit's decision on appeal is at 685 F.3d 44 (1st Cir. 2012).

Plaintiffs' Counsel: Francis G. Gleason, Jr.
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(508) 881-2955

Defense Counsel: Arthur G. Telegen
Seyfarth Shaw, LLP
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(6) Amicas, Inc. v. GMG Health Sys., Ltd., No. 08-cv-11589-LTS

A medical software company sued a customer for breach of contract. The customer counterclaimed for breach of contract, negligent misrepresentation, and violation of Chapter 93A of the Massachusetts General Laws. I entered summary judgment in the plaintiff's favor on the breach of contract claim and against the defendant on its counterclaims. The defendant sought reconsideration of the amount of damages pursuant to Fed. R. Civ. P. 60(b). I reaffirmed the damage award, and the plaintiff also recovered attorneys' fees. My memoranda and orders on a motion for judgment on the pleadings, cross-motions for summary judgment, and a motion for reconsideration can be found at 2009 WL 943870 (D. Mass. Apr. 7, 2009), 2010 WL 5068142 (D. Mass. Dec. 3, 2010), and 2011WL 1584369 (D. Mass. Apr. 26, 2011), respectively. The First Circuit's decision affirming the latter two orders is at 676 F.3d 227 (1st Cir. 2012).

Plaintiff's Counsel: Joseph M. Downes, III
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Defense Counsel: Kevin G. Kenneally
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(7) Cape Ann Marina v. Watson Ins. Agency, Inc., No. 07-cv-11983-LTS

A marina and motel suffered a fire destroying the motel. The owner of the complex alleged it had inadequate insurance proceeds to rebuild after the fire because the defendant insurance broker negligently failed to procure adequate insurance coverage and negligently failed to explain the effect of certain policy provisions. The parties disputed whether special circumstances existed under Massachusetts law that might impose a heightened duty of care. I denied summary judgment, and the case proceeded to trial. In response to a motion for a directed verdict, I found no breach of contract claim separate from the negligence claim arising out of the contractual relationship and no right to either lost profits or attorneys fees. The jury found the defendant negligent, but concluded that the plaintiff's comparative negligence was greater than the defendant's resulting in no award for the plaintiff. My order denying summary judgment is supplied; my order resolving motions for a directed verdict can be found at 2010 WL 2991664 (D. Mass. July 26, 2010).

Plaintiff's Counsel: Joseph M. Orlando
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Defense Counsel: Richard E. Heifetz
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(8) Kingsborough v. Sprint Commc'ns Co., No. 07-cv-10651-LTS

The plaintiffs in this putative nationwide class action were owners of land underlying or adjacent to railroad rights of way in 46 states, and the defendants were companies involved with the commercial use of fiber-optic telecommunications systems. The plaintiffs alleged that, beginning in the 1980s and without notice to them, the defendants entered into agreements by which they paid railroads to install their fiber optic cables in rights of way previously granted to the railroads by the plaintiffs, constituting a trespass. The parties negotiated 49 settlement agreements and a Common Administration Agreement, and filed a complaint in the District of Massachusetts. This was not the first proposed settlement. See Smith v. Sprint Commc'ns Co., 387 F.3d 612 (7th Cir. 2004); Zografos v. Qwest Commc'ns Corp., 225 F. Supp. 2d 1217, 1223 (D. Or. 2002). Class members were to be compensated based on the number of linear feet comprising their affected property at different rates, depending on a state-by-state analysis. The settlement provided for the Court to enter an easement on the titles of approximately 350,000 parcels of land adjoining the railroad tracks,

authorizing a perpetual easement and right of way. The total value of the settlement was estimated at $188.5 million, with $41.5 million to be awarded by separate motion to Settlement Class Counsel. Objectors challenged the Court's subject matter jurisdiction to adjudicate trespasses to land located outside of Massachusetts. I rejected the settlement, determining that a trespass matter is inherently and uniquely local in nature, presenting determinations of title and land ownership, and jurisdiction over title to real property is vested in the courts of the state in which the property at issue is located. My decision, which can be found at 673 F. Supp. 2d 24 (D. Mass. 2009), was not appealed.

Plaintiffs' Counsel: Nels Ackerson
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Defense Counsel: Emily Brubaker Harris
Corr Cronin Michelson Baumgardner & Preece LLP
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Representing Qwest Communications

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Fraser Stryker PC LLO
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Omaha, NE 68106
(402) 341-6000
Representing Level 3 Communications

J. Emmett Logan
Stinson Morrison Hecker LLP
1201 Walnut Street, Suite 2900
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(816) 691-2745
Representing Sprint Communications

(9) Farmers Ins. Exch. v. Ripple Commc'n, Inc., No. 07-cv-10494-LTS

Ripple Communication provided hardware and software to enable conference calling, chat lines, and other such services over the phone company's telecommunications system. Men using Ripple's chat lines met a Jane Doe minor and sexually assaulted her. The minor, through her parents, sued the phone company and settled with them. The contract between Ripple and the phone company contained an indemnification provision holding the phone company

harmless for claims arising from Ripple's equipment. In the action before me, Ripple's insurer sought a declaration that it had no duty to indemnify the phone company for the minor's claims against the phone company, arguing that her claim was not covered by its policy and that the indemnification agreement should not be enforced. The phone company cross-claimed seeking to enforce the indemnification agreement. I entered summary judgment in favor of Ripple and the insurer because the contract unambiguously did not provide a basis for indemnification. The First Circuit affirmed. My summary judgment memorandum and order is supplied; the First Circuit's decision is at 632 F.3d 777 (1st Cir. 2011).

Plaintiff's Counsel: Steven Joseph Bolotin
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(617) 439-7500

Defense Counsel: Roger D. Matthews
Ropes & Gray LLP
Prudential Tower
800 Boylston Street
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(617) 951-7000
Representing Ripple Communication, Inc.

Jennifer B. Hardy
Hamel, Marcin, Dunn, Reardon & Shea, P.C.
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(617) 482-0007
Representing RNK, Inc.

(10) Mulligan v. Maritrans Operating Co., No. 06-cv-10492-LTS

The plaintiff sustained injuries while fighting a fire aboard an oil tender. He alleged that the fire resulted from the negligence of the crew, that the vessel was unseaworthy, and that the defendant had denied him cure (i.e., the payment of reasonable medical expenses) to which he was entitled under the Jones Act. At counsel's request, I reserved for post-trial decision the issue of whether the defendant acted in a callous, willful, or recalcitrant manner with respect to the payment of cure. The jury found for the plaintiff on the negligence claim and the claim for cure, and for the defendant on the unseaworthiness claim. I denied the defendant's motions to amend the judgment and for judgment as a matter of law, and awarded punitive damages for the willful and wanton disregard of the maintenance and cure obligation for a portion of the relevant time period. After considering additional evidence not previously presented, I amended my

judgment and awarded no punitive damages or attorneys' fees. My Orders on the issues of punitive damages and fees can be found at 2010 WL 1930282 (D. Mass. May 12, 2010), and 2010 WL 3038091 (D. Mass. July 30, 2010). A copy of my unpublished order denying defendant's motion to alter or amend the judgment and a copy of my unpublished order denying the defendant's motion for judgment as a matter of law are supplied.

Plaintiff's Counsel: Brian S. McCormick
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Defense Counsel: Thomas E. Clinton
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Boston, MA 02210
(617) 723-9165

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) Brockton Power LLC v. City of Brockton, No. 12-cv-11047-LTS, --- F. Supp. 2d ----, 2013 WL 2407220 (D. Mass. May 30, 2013)

Plaintiffs' Counsel: Mark E. Robinson
and Siobhan E. Mee
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Defense Counsel: Douglas I. Louison
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Representing the City, the Planning Board, and Balzotti

John J. Davis
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William P. Breen, Jr.
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Philip A. Tracy, Jr.
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(617) 523-2345
Representing Harrington

Kurt B. Fliegauf
Conn, Kavanaugh, Rosenthal, Peisch & Ford, LLP
Ten Post Office Square
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Representing Nicastro

(2) United States v. Pani, No. 08-cr-40034-FDS, 2011 WL 4344336 (D. Mass. Aug. 3, 2011)

Lead Prosecutor:
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Defense Counsel:
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Dhar Law LLP
1600 Providence Highway
Walpole, MA 02110
(508) 922-9794

(3) Nuon v. City of Lowell, 768 F. Supp. 2d 323 (D. Mass. 2011)

Plaintiff's Counsel:
Jeffrey P. Wiesner
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Myong J. Joun
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Brian W. Leahey
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Representing the City of Lowell

(4) Matamoros v. Starbucks Corp., No. 08-cv-10772-NMG, 2011 WL 1044654 (D. Mass. Feb. 8, 2011), approved and adopted, 2011 WL 1002740 (D. Mass. Mar. 18, 2011), aff'd, 699 F.3d 129 (1st Cir. 2012)

Plaintiffs' Counsel: Shannon E. Liss-Riordan
Lichten & Liss-Riordan, P.C.
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Defense Counsel: Daniel L. Nash
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(5) United States v. Mehanna, 669 F. Supp. 2d 160 (D. Mass. 2009)

Lead Prosecutor: Aloke Chakravarty
Assistant United States Attorney
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One Courthouse Way

Boston, MA 02210
(617) 748-3658

Defense Counsel: J.W. Carney, Jr.
Carney & Bassil
20 Park Plaza, Suite 1405
Boston, MA 02116
(617) 338-5566

(6) United States v. Massachusetts, No. 05-cv-10112-DPW, 2009 U.S. Dist. LEXIS 126548 (D. Mass. July 29, 2009), and 2008 U.S. Dist. LEXIS 112571 (D. Mass. June 6, 2008), approved and adopted, 724 F. Supp. 2d 170 (D. Mass. 2010), rev'd in part, vacated in part, United States v. Coalition for Buzzards Bay, 644 F.3d 26 (1st Cir. 2011)

Plaintiff's Counsel: Joshua E. Gardner
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Defense Counsel: Seth Schofield
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(7) Interface Partners Int'l, Ltd. v. Hananel, No. 06-cv-11708-RCL, ECF No. 66 (D. Mass. May 29, 2008) (copy supplied), approved and adopted, Electronic Order (D. Mass. July 2, 2008), aff'd 575 F.3d 97 (1st Cir. 2009)

Plaintiff's Counsel: Andrew H. Schapiro
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Defense Counsel: Lawrence G. Green
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125 Summer Street
Boston, MA 02110
(617) 345-3216

(8) In re Bextra & Celebrex Mktg. Sales Practices & Prod. Liab. Litig., 249 F.R.D. 8 (D. Mass. 2008)

Petitioner's Counsel: John C. Dougherty
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6225 Smith Avenue
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Respondent's Counsel: Paul W. Shaw
K & L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111
(617) 261-3100

(9) United States v. Pesaturo, 519 F. Supp. 2d 177 (D. Mass. 2007)

Lead Prosecutor: David G. Tobin
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Defense Counsel: William J. Cintolo
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(10) Wayside Youth & Family Support Network, Inc. v. Town of Framingham, No. 06-cv-11060-LTS, ECF No. 30 (D. Mass. Mar. 9, 2007) (copy supplied)

Plaintiffs' Counsel: Kenneth N. Margolin
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Defense Counsel: Judy A. Levenson
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(617) 880-7100

e. Provide a list of all cases in which certiorari was requested or granted.

McGarry v. Geriatric Facilities of Cape Cod, Inc., No. 10-cv-11343-GAO, 2011 U.S. Dist. LEXIS 69073 (D. Mass. Mar. 23, 2011), approved and adopted, 2011 U.S. Dist. LEXIS 69184 (D. Mass. June 28, 2011), reconsideration denied, 2011 U.S. Dist. LEXIS 103263 (D. Mass. Sept. 12, 2011), summarily aff'd, No. 11-2292 (1st Cir. Dec. 27, 2011), cert. denied, 132 S. Ct. 2441 (2012)

Wood v. Spencer, No. 05-cv-12021-GAO, ECF No. 19 (D. Mass. Aug. 1, 2006), approved and adopted, ECF No. 21 (D. Mass. Sept. 27, 2006), aff'd 487 F.3d 1 (1st Cir. 2007), cert. denied, 552 U.S. 912 (2007)

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

United States v. O'Brien, No. 12-cr-40026-FDS, 2013 WL 1057929 (D. Mass. Mar. 13, 2013), objection sustained in part, ECF No. 128 (D. Mass. June 18, 2013) (copy supplied) (government's objections to order allowing defendants' discovery motion with respect to certain categories of information sustained as to one category based on finding that the information sought was not exculpatory).

Young v. Wells Fargo Bank, N.A., No. 11-cv-10757-LTS, 2012 WL 734187 (D. Mass. Mar. 7, 2012), aff'd in part, vacated in part, 717 F.3d 224 (1st Cir. 2013) (order granting bank's motion to dismiss claims by homeowner vacated in part, with breach of contract and Mass. Gen. Laws ch. 93A claims remanded for further proceedings).

Harper v. Credit Control Servs., Inc., No. 11-cv-10072-NMG, 2012 U.S. Dist. LEXIS 70403 (D. Mass. Apr. 9, 2012), rejected, in part, 863 F. Supp. 2d 125 (D. Mass. 2012) (recommendation to deny, in part, debt collector's request for summary judgment in Telephone Consumer Protection Act case based on plaintiff's affidavit not adopted in part by the District Court, which found no genuine factual dispute and granted summary judgment in full).

Paradise v. Eagle Creek Software Servs., Inc., No. 10-cv-11678-GAO, 2011 U.S. Dist. LEXIS 109126 (D. Mass. June 16, 2011), rejected, 2011 WL 4499008 (D. Mass. Sept. 26, 2011) (recommendation to transfer action based on forum selection clause in arbitration agreement not adopted by the District Court, which found there was a genuine dispute regarding the validity of the agreement).

Varela v. E*Trade Bank, No. 10-cv-10186-MLW, 2010 WL 8228829 (D. Mass. Oct. 22, 2010), rejected, in part, 2011 WL 6757434 (D. Mass. Dec. 23, 2011) (recommendation to dismiss some claims and not others in predatory lending case

not adopted in part by the District Court, which found as to one claim that no preemption analysis was necessary because the relevant state statute had not been enacted until after the dates of the loans at issue).

United States v. Massachusetts, No. 05-cv-10112-DPW, 2009 U.S. Dist. LEXIS 126548 (D. Mass. July 29, 2009), approved and adopted, 724 F. Supp. 2d 170 (D. Mass. 2010), rev'd in part, vacated in part, United States v. Coalition for Buzzards Bay, 644 F.3d 26 (1st Cir. 2011) (recommendation to enter summary judgment in favor of the United States in action seeking to enjoin enforcement of state oil spill regulations adopted by the District Court, but the First Circuit reversed based on finding that agency's violation of NEPA was not harmless).

Likely v. Ruane, No. 06-cv-10342-PBS, ECF No. 23 (D. Mass. July 21, 2009) (copy supplied), rejected, 681 F. Supp. 2d 107 (D. Mass. 2010), aff'd, 642 F.3d 99 (1st Cir. 2011) (recommendation to grant state prisoner's federal habeas petition based on admission of chemist's certificate of analysis in violation of the Confrontation Clause not adopted by the District Court, which denied petition; denial affirmed on appeal).

Augustin v. Danvers Bank, No. 06-cv-10368-NMG, 2007 U.S. Dist. LEXIS 102330 (D. Mass. Feb. 13, 2007), rejected, in part, 468 F. Supp. 2d 99 (D. Mass. Mar. 28, 2007) (recommendation to dismiss debtor's claims against lenders, companies, and attorneys, but not to dismiss claims against bank, not adopted in part by the District Court, which found claims against the bank related to property in the bankruptcy estate and only trustee, not debtor, had standing to pursue such claims).

Essex Ins. Co. v. BloomSouth Flooring Corp., No. 03-cv-10275-LTS, ECF No. 58 (D. Mass. Aug. 16, 2006) (copy supplied), rev'd, 562 F.3d 399 (1st Cir. 2009) (summary judgment entered in favor of insurer in action by insurer seeking declaration that it had no duty to defend or indemnify its insured in state-court negligence action arising from odor allegedly caused by defective carpet installation; the First Circuit reversed as to duty to defend).

Adelson v. Hananel, No. 04-cv-10357-RCL, 2006 U.S. Dist. LEXIS 98451 (D. Mass. Mar. 28, 2006), approved and adopted, 2006 WL 6493338, rev'd, in part, 510 F.3d 43 (1st Cir. 2007) (recommendation to find personal jurisdiction but dismiss declaratory judgment action, brought by American businessman against Israeli former employee, for forum non conveniens adopted by the District Court, but the First Circuit reversed as to forum non conveniens).

In re Neurontin Mktg., Sales Practices, & Prods. Liab. Litig., MDL No. 1629, Master File No. 04-cv-10981-PBS, ECF No. 269 (D. Mass. Jan. 31, 2006) (copy supplied), rejected, in part, 433 F. Supp. 2d 172 (D. Mass. June 12, 2006) (recommendation to grant in part motion to dismiss, including certain state-law fraud and unjust enrichment claims, not adopted in part by the District Court,

which concluded that some of the fraud claims were pled with sufficient particularity and cognizable injury was adequately alleged, and that unjust enrichment could be pled in the alternative along with the fraud claims).

TLT Constr. Corp. v. RI, Inc., No. 05-cv-10223-LTS, ECF No. 28 (D. Mass. Dec. 28, 2005) (copy supplied), rev'd, 484 F.3d 130 (1st Cir. 2007) (summary judgment entered in favor of general contractor, which alleged its extended negotiations with a subcontractor resulted in a contract that the subcontractor had then breached, but the First Circuit reversed based on finding no contract had formed).

Neshewat v. Titan Corp., No. 03-cv-10841-PBS, ECF No. 105 (D. Mass. Nov. 21, 2005) (copy supplied), rejected, ECF No. 109 (D. Mass. Mar. 8, 2006) (copy supplied) (recommendation to grant summary judgment in favor of defendants in race discrimination/failure-to-hire case not adopted by the District Court, which found a genuine dispute existed regarding the reason the plaintiff was not hired).

Pechner-James v. City of Revere, No. 03-cv-12499-MLW, ECF No. 88 (D. Mass. Oct. 12, 2005) (copy supplied), rejected, in part, ECF No. 136 (D. Mass. Mar. 20, 2006) (copy supplied) (recommendation to grant summary judgment in favor of individual defendants in civil rights suit not adopted in part by the District Court, which concluded claims against individuals in their official capacities should proceed to trial).

Vt. Pure Holdings, Ltd. v. Nestle Waters N. Am., Inc., No. 03-cv-11465-DPW, ECF No. 117 (D. Mass. Sept. 23, 2005) (copy supplied), rejected, 2006 WL 839486 (D. Mass. Mar. 28, 2006) (recommendation to deny reconsideration of the District Court's ruling that certain FDA regulations preempted state law claims not adopted by the District Court, which granted reconsideration and concluded it had applied the wrong test for preemption).

g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Of the more than 400 opinions that I have written as a U.S. Magistrate Judge, only a small number have been published in the Federal Supplement, although more appear on LEXIS and/or Westlaw. The unpublished opinions are docketed by the Clerk's Office and are available to members of the public via the Court's public access website.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Brockton Power LLC v. City of Brockton, --- F. Supp. 2d ----, 2013 WL 2407220 (D. Mass. May 30, 2013)

Nuon v. City of Lowell, 768 F. Supp. 2d 323 (D. Mass. 2011)

Jones v. Scotti, No. 08-cv-10583-LTS, 2011 WL 4381919 (D. Mass. Sept. 13, 2011), aff'd, 493 F. App'x 139 (1st Cir. 2012)

Afreedi v. Bennett, No. 05-cv-12461-MLW, 2007 U.S. Dist. LEXIS 74676 (D. Mass. Aug. 2, 2007), approved and adopted, 517 F. Supp. 2d 521 (D. Mass. 2007), summarily aff'd, No. 09-2460 (1st Cir. July 2, 2010)

Mahar v. Hall, No. 01-cv-10354-GAO, ECF No. 70 (D. Mass. Jan. 9, 2007) (copy supplied), approved and adopted, 2008 U.S. Dist. LEXIS 50906 (D. Mass. July 3, 2008), appeal dismissed, No. 08-2154 (1st Cir. Nov. 7, 2008)

i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal appellate court.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I assess recusal in accordance with 28 U.S.C. § 455. The United States District Court for the District of Massachusetts does not have an automatic recusal system. We do have a conflict checking feature in our electronic case management system, which alerts me if I have a potential conflict with someone or some entity that is a party in a newly filed case assigned to me.

Upon becoming a Magistrate Judge, I recused myself from any matters in cases pending in the Federal Public Defender Office on my last day of work there. In

addition, I have recused sua sponte in the following cases:

Marchionne v. Metro. Life Ins. Co., No. 13-cv-10223-GAO (a family member held a financial interest, as that term is defined in Title 28, in Metropolitan Life Insurance Company)

Bridge St. Auto., Inc. v. Green Valley Oil, LLC, No. 12-cv-10750-PBS (longstanding personal friendship with one attorney)

Brickley v. CitiMortgage, Inc., No. 11-cv-10022-NG (a family member held a financial interest, as that term is defined in Title 28, in Citibank)

United States v. Hoskins, No. 12-cr-10151-JLT (a family member held a financial interest, as that term is defined in Title 28, in Target, the victim in this case)

Aresty Int'l Law Firm, PC v. Citibank, NA, No. 10-cv-11861-GAO (a family member held a financial interest, as that term is defined in Title 28, in Citibank)

Nwaubani v. Citibank, NA, No. 10-cv-11777-DJC (a family member held a financial interest, as that term is defined in Title 28, in Citibank)

Cambridge Place Inv. Mgmt. Inc. v. Morgan Stanley & Co., No. 10-cv-11376-NMG (a family member held a financial interest, as that term is defined in Title 28, in Citibank, which was a party by way of a subsidiary)

Mason v. CitiMortgage, Inc., No. 10-cv-11167-JGD (a family member held a financial interest, as that term is defined in Title 28, in Citibank)

Metz v. Bank of Am. Corp., No. 08-cv-11598-NG (a family member held a financial interest, as that term is defined in Title 28, in Bank of America)

Fernandes v. Havkin, No. 08-cv-11498-MBB (Countrywide Home Loans was a defendant in this action, and a family member held a financial interest, as that term is defined in Title 28, in Bank of America)

Vincent-Tyndall v. Beckmann, No. 08-cv-10416-PBS (CitiMortgage was a defendant in this action, and a family member held a financial interest, as that term is defined in Title 28, in Citibank)

Tuli v. Brigham & Women's Hosp., No. 07-cv-12338-NMG (I previously had served as a judicial mediator in this case)

Crooker v. Microsoft Corp., No. 07-cv-10403-JGD (a family member held a financial interest, as that term is defined in Title 28, in Microsoft)

Marchant v. Mass. Dep't of Corr., No. 05-cv-12446-RGS (this case was related to consent decree litigation in which I represented the Commonwealth defendants both in the District Court and in the First Circuit, see King v. Greenblatt, 127 F.3d 190 (1st Cir. 1997))

Bastien v. Wal-Mart Stores, Inc., No. 05-cv-11468-RBC (a family member held a financial interest, as that term is defined in Title 28, in Wal-Mart)

Portela v. Wal-Mart Stores E., LP, No. 05-cv-10844-MBB (a family member held a financial interest, as that term is defined in Title 28, in Wal-Mart)

United States v. Catron, No. 04-cr-10108-MEL (this defendant was represented by the Federal Public Defender Office during my service in that office)

Jaynes v. Mitchell, No. 03-cv-11582-JLT (the petitioner was represented by the Federal Public Defender Office during my service in that office)

United States v. Leone, No. 03-cr-10045-RWZ (I appeared as counsel of record in this action)

United States v. Holliday, No. 02-cr-10343-GAO (this defendant was my client)

United States v. Jones, No. 02-cr-10110-RGS (this defendant was represented by the Federal Public Defender Office during my service in that office and I had some involvement in his case)

United States v. Barry, No. 02-cr-10069-GAO (this defendant was my client)

United States v. De La Cruz, No. 01-cr-10118-JLT (I appeared in this case as a counsel of record)

United States v. Neves, No. 01-cr-10093-GAO (this defendant was represented by the Federal Public Defender Office during my service in that office)

United States v. Wilkerson, No. 00-cr-10426-MLW (this defendant was represented by the Federal Public Defender Office during my service in that office)

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have 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.

From 1977 to 1984, I served as an intermittent political consultant for Connecticut State Representative Richard Tulisano's campaign activities. This was primarily an unpaid volunteer position, except for a few periods between the fall of 1983 and the spring of 1985, when I held the position as a part-time, paid position. From May to September 1983, I was a paid field coordinator for Bob Kiley's campaign to be mayor of Boston. From May to November 1980, I was a volunteer field coordinator for Chris Dodd's campaign for U.S. Senate. While in high school, I volunteered with the West Hartford Democratic Party in get-out-the-vote efforts, voter registration activities, phone calling, and leafleting.

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 1991 to August 1992, I clerked for the Honorable Rya W. Zobel, District Judge of the United States District Court for the District of Massachusetts.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1992 – 1994
Mintz Levin
One Financial Center
Boston, Massachusetts 02111
Associate

1994 – 1997
Office of the Attorney General, Commonwealth of Massachusetts
One Ashburton Place

Boston, Massachusetts 02108
Assistant Attorney General and Opinions Coordinator (1996 – 1997)
Assistant Attorney General (1994 – 1996)

1997 – 2005
Federal Public Defender Office
51 Sleeper Street, Number Five
Boston, Massachusetts 02210
Assistant Federal Defender

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 formally served as a mediator or arbitrator in any alternative dispute resolution.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Following my graduation from law school, and until my appointment as a Magistrate Judge, my law practice focused exclusively on litigation and trial of civil and criminal matters.

After completing my clerkship, I practiced at Mintz Levin from 1992 to 1994, where I handled, with other counsel, a variety of commercial litigation matters pending in both state and federal court. In addition, as part of a pro bono program, I represented victims of domestic violence seeking restraining orders.

While at the Office of the Attorney General from 1994 to 1997, I defended the Commonwealth in lawsuits. These included challenges to state statutes or programs for alleged violations of the Constitution or federal or state laws, appeals from agency decisions, and allegations of employment discrimination or civil rights violations by state employees. In each of my cases, I was responsible for all aspects of the Commonwealth's defense, from the answer through the conclusion of any appeals. I handled many preliminary injunction hearings and litigated numerous dispositive motions. My clients included the Governor's Legal Counsel Office, in cases with a larger impact, and, more typically, the Commissioner or General Counsel of a defendant agency.

During my almost eight years as an Assistant Federal Defender from 1997 to 2005, I represented indigent defendants indicted in federal court for

criminal violations of federal laws. I represented my clients from initial appearance through the conclusion of all appeals. The cases I handled represented the full spectrum of federal criminal prosecutions. I defended numerous clients charged with fraud, ranging from individuals accused of passing altered or stolen checks, to a real estate developer accused of committing securities fraud in the course of selling shares for an overseas development to American investors. I regularly represented people charged with violations of federal criminal laws governing immigration, firearms, controlled substances, and the United States mail, as well as possession or distribution of child pornography. The cases ranged from small single-defendant cases, such as a letter carrier accused of throwing away mail rather than delivering it, to complicated multi-defendant drug or fraud prosecutions.

ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1992 to 1994, I represented commercial entities. In addition, as part of a pro bono Domestic Violence Project, I represented victims of domestic violence seeking state-court restraining orders.

From 1994 to 1997, I represented the Commonwealth of Massachusetts and its agencies in civil litigation.

From 1997 to 2005, my typical client was an indigent individual facing criminal charges in federal court.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Before becoming a Magistrate Judge, 100% of my practice was in litigation. I appeared in court daily during my time at the Federal Public Defender Office (1997 to 2005), frequently during my time at the Office of the Attorney General (1994 to 1997), and occasionally during my time at Mintz Levin (1992 to 1994).

i. Indicate the percentage of your practice in:
   1. federal courts: 67%
   2. state courts of record: 33%
   3. other courts: >1%
   4. administrative agencies: 0 %

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 40%
   2. criminal proceedings: 60%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While at the Federal Public Defender Office, I tried between ten and 15 federal criminal felony cases to verdict before juries. In each case, I was lead counsel; in approximately half of these cases, I was sole counsel. Before becoming an Assistant Federal Defender, I had tried two or three civil non-jury trials to verdict. In each case, I was lead counsel.

i. What percentage of these trials were:
   1. jury: 83%
   2. non-jury: 17%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

City of Edmonds v. Washington State Building Code Council, No. 94-23 (amicus brief on behalf of the Attorney General of Massachusetts, et al., supporting the circuit's ruling that the federal Fair Housing Act's exemption for reasonable restrictions in local zoning ordinances on the maximum number of persons who may occupy a dwelling did not apply. 1995 U.S. S. Ct. Briefs LEXIS 31).

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. Martin, No. 04-cr-10200 (D. Mass.); Judge William Young. July 2004 indictment, February 2005 trial.

A grand jury indicted Martin for one count of distribution of cocaine base arising out of an alleged hand-to-hand sale of crack cocaine to an undercover informant.

The Court appointed me to represent Martin. Subsequently, Martin invoked his constitutional right to proceed pro se, at which point the Court (with Martin's consent) appointed me to serve as standby counsel to assist him with his defense at trial. Mr. Martin faced a mandatory minimum sentence of ten years, with an even longer range recommended under the United States Sentencing Guidelines. With my assistance, Mr. Martin defended himself at trial and the jury acquitted him.

Lead Prosecutor: William H. Connolly
(formerly Assistant United States Attorney
for the District of Massachusetts)
Law Offices of William H. Connolly
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Boston, MA 02210
(617) 542-0200

(2) United States v. Lewis, 375 F. Supp. 2d 1 (D. Mass. 2005), aff'd in part, vacated and remanded in part, 406 F.3d 11 (1st Cir. 2005); Judge Edward Harrington, and Judges Sandra Lynch, Kermit Lipez, and Pierre Leval. September 2002 entry of appearance, April 2003 trial, April 2005 decision on appeal.

I served as lead counsel for the defendant, Lewis, who was charged with the masked armed robbery of the restaurant. The government's evidence consisted primarily of jailhouse phone calls in which Lewis revealed substantial knowledge of the robbery in discussions with a co-defendant. Later the co-defendant pled guilty. At Lewis' trial, I introduced a novel theory of defense that he was the co-defendant's drug dealer and that after the robbery the co-defendant purchased drugs from Lewis and boasted of the robbery. This defense was based, in part, on physical evidence, not presented by the government, that Lewis had sold drugs. In addition, this case raised important questions regarding the authority of law enforcement officers generally to listen to the routine recordings made of pretrial detainees' telephone calls. The jury convicted Lewis and he was sentenced to 319 months imprisonment. On appeal, the defendant's sentence was vacated, and the matter remanded for resentencing, pursuant to United States v. Booker, 543 U.S. 220 (2005), which was decided after Lewis' sentencing.

Lead Prosecutor: Donald Cabell
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Co-Counsel: Hon. Catherine K. Byrne
Administrative Office of the District Court
(formerly Assistant Federal Public Defender,

District of Massachusetts)
Edward W. Brooke Courthouse
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Boston, MA 02114
(978) 532-3100

(3) United States v. Gomes, No. 00-cr-10327 (D. Mass.); Judge Douglas Woodlock. September 2000 indictment, January 2001 dismissal.

I served as lead counsel for the defendant, Eduardo Gomes. The state police stopped Gomes for driving a car with excessively tinted windows. During the stop, they discovered evidence of fraudulent immigration documents in the car. He was arrested for and charged with these offenses. My work revealed that the Massachusetts tinted window law does not apply to cars registered out of state, and, therefore, the stop of my client's car was without legal authority. This resulted in the outright dismissal of all charges against Gomes.

Lead Prosecutor: John Capin
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(4) United States v. Daway, No. 98-cr-10241 (D. Mass.); Judge Richard Stearns. August 1998 indictment, February 1999 plea, October 2000 sentencing.

A grand jury indicted Daway for conspiracy to distribute cocaine base and three counts of distribution of cocaine base. The charges arose from three sales of narcotics Daway made to an undercover agent recorded on video. Although Daway had no criminal record, she faced a mandatory minimum sentence of ten years and a maximum punishment of life in prison. The Court appointed me to represent Daway at her initial appearance. Sometime after graduating from college, Daway had become an addict who used and sold crack cocaine. My advocacy helped Daway obtain pretrial release to an in-patient drug treatment program. She seized this opportunity, became sober, returned home, and reestablished a law-abiding life. Ultimately, she pled guilty. As a result of her safety-valve interview and cooperation, the government recommended a sentence of three years in prison. At the sentencing hearing, however, I persuaded the Court to impose only a period of probation, which Daway completed successfully.

Lead Prosecutor: Theodore Heinrich
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(5) United States v. Leviner, 31 F. Supp. 2d 23 (D. Mass. 1998), Judge Nancy Gertner. October 1997 indictment, December 1998 plea and sentencing.

Leviner was indicted for being a felon in possession of a firearm. The charges arose out of a traffic stop during which the police found a firearm. Leviner pled guilty. At his sentencing, I highlighted for the Court the effect certain motor vehicle violations had on Leviner's sentencing range under the United States Sentencing Guidelines and sought a downward departure. In response to this argument, Judge Gertner concluded that police stopped cars driven by African Americans in disproportionate numbers, as compared to stops of cars driven by non-African Americans. The media coverage spurred further efforts to study the problem and reconsider law enforcement practices regarding the treatment of African Americans. In the end, Judge Gertner imposed a sentence below the applicable Guidelines range. Although the government filed an appeal of Judge Gertner's ruling, it ultimately withdrew the appeal.

Lead Prosecutor: Hon. Marianne C. Hinkle
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Co-Defendant's Counsel: Roger Witkin
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(617) 523-0027

(6) United States v. Meade, 986 F. Supp. 66 (D. Mass. 1997), aff'd, 175 F.3d 215 (1st Cir. 1999); Judge Edward Harrington, and Judges Bruce Selya, Norman Stahl, and Michael Boudin. July 1997 indictment, May 1998 trial, May 1999 decision on appeal.

I represented the defendant. A grand jury indicted him for possession of a firearm by one who has a prior misdemeanor conviction for domestic violence, in violation of 18 U.S.C. § 922(g)(9), and by one who was subject to a judicial anti-harassment or anti-stalking order, in violation of 18 U.S.C. § 922(g)(8). The case raised questions of first impression concerning whether the underlying misdemeanor conviction must contain, as an element, the domestic relationship specified in the federal statute, whether the statutes violated the Tenth Amendment to the United States Constitution and whether the restraining order statute violated the Due Process Clause by failing to require the state court to

inform the subject of a restraining order of the federal criminal consequences of possession of a gun while the order is in effect. The District Court rejected these arguments and, after conviction at trial, the Court of Appeals upheld the statutes.

Lead Prosecutors:

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(formerly Assistant United States Attorney
for the District of Massachusetts)
First Justice, Woburn District Court
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Jennifer Zacks
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(7) United States v. Daboul, No. 97-cr-10135 (D. Mass.); Judges Mark Wolf and William Young. May 1997 indictment, November 1999 plea, February 2000 sentencing.

The grand jury charged Daboul and a co-defendant with fraud arising out of statements they made in the course of seeking investments for the financing of a time-share development in Anguilla. I, along with co-counsel, developed substantial evidence from officials in Anguilla that these officials had supported or encouraged the project, which was contrary to the government's assertion that time shares were not permitted in Anguilla. As a result, the prosecutors dismissed all fraud charges, and the two defendants pleaded guilty only to the Indictment's obstruction charge. Daboul was sentenced to 12 months of probation, rather than jail time.

Lead Prosecutors:

William Stimson
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for the District of Massachusetts)
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Cambridge, MA 02138
(617) 354-5527

(8) Morton Bldgs., Inc. v. Comm'r of Revenue, 683 N.E.2d 720 (Mass. App. Ct. 1997); Judges Perretta, Gillerman, and Kass. 1996 – 1997.

I was lead counsel for the Department of Revenue in its appeal from a Tax Board decision rejecting the Department's imposition of a use tax on prefabricated building parts. On behalf of the Department, I argued that Morton's transformation of raw lumber into trusses and other parts for its prefabricated buildings did not remove the raw materials from the reach of the use tax. The Appeals Court ultimately ruled in favor of the taxpayer, concluding that the principles governing application of the tax laws requiring the resolution of doubts in the favor of taxpayers precluded the court from closing the loophole found by the taxpayer.

Appellee's Counsel: Abraham M. Stanger (deceased)

Richard Brunell
68 Adella Avenue
West Newton, MA 02465
(617) 435-6464

(9) Bombardieri v. Gnazzo, Civil No. 96-6833, 1996 WL 735242 (Mass. Super. Ct. Dec. 19, 1996), and Nat'l Assoc. of Gov't Emps. v. Gnazzo, Civil No. 97-0280 (Mass. Super. Ct.); Suffolk County Superior Court Judges Fremont-Smith and Hinkle. 1996 – 1997.

In 1996, the Massachusetts Registry of Motor Vehicles ("RMV") made a major change to promote efficient service by allowing new car dealers to register, online, the cars they sold. A Massachusetts business specializing in waiting in line at the RMV, on behalf of new car dealers and others, sued the Commonwealth claiming that the new system violated both a 1972 Massachusetts law prohibiting private companies from using the RMV's computers or databases, and Massachusetts privacy laws. The union representing many RMV employees quickly filed a similar lawsuit. The cases received extensive media coverage. I argued that the dealer's access to the system did not violate individual privacy,

that neither the union nor the company had standing to sue under the 1972 law and that the 1972 law precluded a different type of private use of RMV computers not at issue in this lawsuit. I made these arguments both in opposition to a motion for a preliminary injunction and regarding all parties' competing motions for summary judgment. The Superior Court rejected the plaintiffs' requests for a preliminary injunction, and entered summary judgment for the RMV (in an unreported decision by Judge Hinkle). After I left the Attorney General's Office, the Supreme Judicial Court affirmed the Superior Court's entry of summary judgment in favor of the RMV.

Lead Plaintiffs' Counsel:

David A. Bunis
Senior Vice President and Chief of Staff
Brandeis University
Irving Presidential Enclave 113
415 South Street
Waltham, MA 02453
(781) 736-3993

Joseph L. DeLorey
Eight Beacon Street
Boston, MA 02108
(617) 376-0220

(10) Provencal v. Police Dep't of Worcester, 670 N.E.2d 171 (Mass. 1996); Justices Liacos, Abrams, O'Connor, Greaney, and Fried. 1994 – 1996.

In the course of layoffs, a local police department provided a disabled veteran with preference over other more senior officers in determining which officers to layoff, but in the course of the layoffs demoted him from sergeant to patrolman. The police officer challenged the demotion under a state law providing disabled veterans with a preference in employment. The Civil Service Commission upheld the department's application of the preference and the officer appealed to court. In a brief order, the superior court upheld this decision. On further appeal by the officer, the case went directly to the Supreme Judicial Court. The case presented a question of first impression regarding the interpretation of this preference statute and the meaning of the phrase "retained in employment." I served as lead counsel for the Civil Service Commission in the proceedings before the Supreme Judicial Court. The Supreme Judicial Court followed my analysis that the terms "position," "employment" and "retained in employment" in the preference statute should be construed in the same fashion as those terms in other statutes governing public employment. The Court upheld the Civil Service Commission's ruling that the statutory employment preference the plaintiff enjoyed as a disabled veteran protected his employment with the police department, even during layoffs, but did not entitle him to a specific position within the department.

Appellant's Counsel:	Peter B. Clifford Clifford & Clifford 47 Harvard Street Worcester, MA 01609 (508) 757-8338
Co-Appellee's Counsel:	Steven Mourginis Law Office of Steven Mourginis, Esq. 2619 Warren Avenue North Seattle, WA 98109 (206) 466-2956

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.)

Court Assisted Recovery Effort: In 2006, at my suggestion, the District of Massachusetts formed the Court Assisted Recovery Effort ("CARE"), a reentry court over which I preside. CARE is aimed at helping federal offenders returning to Massachusetts from prison to create and maintain sober, employed, and law-abiding lives. Defendants participating in CARE face more frequent drug testing, closer supervision, ongoing judicial oversight, and the imposition of swift sanctions including jailing upon a positive drug test or other non-compliance. They also receive treatment, referral to resources provided by local bar associations or in the community, the Court's encouragement, and hope. CARE was one of the first reentry courts in the federal system; now, it is a model for such programs in other federal courts. United States Attorney General Eric Holder, Director of National Drug Control Policy Gil Kierlikowske, Massachusetts Governor Deval Patrick, and Boston Police Commissioner Edward Davis each have endorsed CARE and spoken to CARE graduates.

Since June 2012, at my suggestion, the Federal Bureau of Prisons ("BOP") and the Court have been working to create a unique pilot program integrating the BOP's substance abuse treatment and reentry efforts with the Court's reentry programs. The proposed program will offer the prospect of reducing recidivism, improving public safety, and rehabilitating offenders without increased spending or changes to the law.

Assignment of Civil Cases to Magistrate Judges: Magistrate Judge Neiman and I spearheaded a proposal to assign a percentage of civil cases, upon filing in the District Court, directly to the Magistrate Judges in Boston and Worcester. The District Court approved the proposal as a pilot in 2008, then made the program permanent in 2010 due to its success.

Training, Education, and Administrative Activities: I have participated in numerous education and training programs, both as a practicing attorney and a Magistrate Judge, for groups including judges, lawyers, students, and public school teachers.

While an Assistant Federal Defender, I started a listserve email group so that attorneys representing indigent defendants in federal court could easily share information. I also led the Federal Defender Office's successful effort to provide indigent defendants with counsel at, rather than after, the initial appearance.

Lobbying: I have neither performed nor engaged in lobbying activities during my legal 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.

    I currently teach a section of trial advocacy at Boston University School of Law. I received an adjunct appointment to teach this class starting in the Spring 2013 academic semester. The class teaches law students how to conduct the various parts of a trial – opening statement, examination of witnesses and closing argument – and culminates in the students conducting a mock trial. Spring 2013 and Spring 2014 syllabi supplied.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    To the best of my knowledge, I expect to receive no such income or benefits.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

    If confirmed, my only future commitment is to teach trial advocacy at Boston University School of Law again during the Spring 2014 semester.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See attached Net Worth Statement.

24. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       I am aware of no such persons, parties, categories of litigation, or financial arrangements, and anticipate no likely conflicts of interest.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

       I would continue to follow the federal recusal statute and the Code of Conduct for Federal Judges. I also would continue to use the District Court's Judge Conflict/Exclusion List. This system sends me an alert if a listed person or entity is named as a party or counsel in any of my cases. I would continue to personally review each case assigned or referred to me for potential conflicts and, if necessary, I would seek advice from the Code of Conduct Committee of the Judicial Conference. I have erred, and always will err, on the side of caution.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

    Each summer, I participate in the District Court's David Nelson Fellows Program, which is a mentoring program for disadvantaged high school students from Boston. One of the fellows is assigned to me from late June until mid-August. The fellows take classes arranged by the Court, meet with public officials, and become a part of chambers staff for the summer. In addition, I continue to mentor my former fellows.

    Since 2005, I have volunteered with Discovering Justice, a non-profit organization dedicated to promoting civic education for young people in Massachusetts. The program brings teachers to the Courthouse for training in a civic curriculum it has developed; I regularly speak with these teachers. I also preside over a mock trial as part of Discovering Justice's annual mock trial program.

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 2013, Senator Warren formed a selection committee to consider applicants for the vacancies on the United States District Court for the District of Massachusetts. I applied to the selection committee and was interviewed in May 2013 in Boston, Massachusetts. I met with Senator Warren and her staff on September 16, 2013, and then with Senator Markey and his staff on September 26, 2013 in Washington, D.C. Since September 30, 2013, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 3, 2013, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On December 19, 2013, the President submitted my nomination to the Senate. On January 6, 2014, the President re-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
Sorokin, Leo T.	District Court, Massachusetts	01/24/2014
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge	☑ Nomination Date 1/6/2014 ☐ Initial ☐ Annual ☐ Final 5b. ☑ Amended Report	1/1/2013 to 12/27/2013
7. Chambers or Office Address		
U.S. District Court One Courthouse Way Boston, MA 02210 Suite 7400		

***IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information.*

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of filing instructions.)*

☐ NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Trustee	Trust #6
2.	Trustee	Trust #7
3.	Executor	Estate #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.		

FINANCIAL DISCLOSURE REPORT Page 2 of 19	Name of Person Reporting Sorokin, Leo T.	Date of Report 01/24/2014

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	Adjunct Professor, Boston University School of Law	$7,900.00
2.			
3.			
4.			

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*
(Dollar amount not required except for honoraria.)

☐ NONE *(No reportable non-investment income.)*

	DATE	SOURCE AND TYPE
1.	2013	Self-employed - Psychologist
2.	2013	Adjunct Professor, Boston College
3.		
4.		

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)

☐ NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT Page 3 of 19	Name of Person Reporting Sorokin, Leo T.	Date of Report 01/24/2014

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)*

☑ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

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/Vacation Property Barnstable Cty., MA	D	Rent	N	W	Exempt				
2. Bank of America Accounts	A	Interest	J	T					
3. IRA #1	A	Dividend	K	T					
4. -Fidelity Contrafund									
5. -Fidelity Pacific Basin Fund									
6. IRA #2	A	Dividend	K	T					
7. -Davis NY Venture Fund C									
8. -Wells Fargo Cash									
9. IRA #3	B	Dividend	L	T					
10. -Amazon Stock									
11. -Wells Fargo Cash Account									
12. -Citigroup									
13. -AllianzGI Opportunity Fund									
14. -AllianzGI Mid-Cap Fund									
15. -PIMCO Total Return Fund									See Note
16. Brokerage Acct#1									
17. -Wells Fargo Money Market Fund	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
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

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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
18. -Home Properties, Inc.	A	Dividend	J	T					
19. -Vanguard Total Stock Market ETF	A	Dividend	J	T					
20. -Bristol Myers Squibb	A	Dividend	K	T					
21. -Wisdomtree Investments, Inc.		None	J	T					
22. -Healthcare Realty Trust, Inc.	B	Dividend	K	T					
23. -Aethena Health		None							
24. -Berkshire Hawthaway -B		None	J	T					
25. -Hannon Armstrong Sustainable Infrastructure stock	A	Dividend	J	T					
26. -Otelco Inc.		None							
27. -Saul Centers Inc. note	A	Dividend	J	T					
28. -Apple	A	Dividend	K	T					
29. -Technology SPDR (ETF)	A	Dividend	K	T					
30. DWS Scudder High Income Trust	B	Dividend	K	T					
31. Matthews Pacific Tiger Fund	A	Dividend	K	T					
32. IRA #4	C	Dividend	M	T					
33. -Vanguard 500 Index Fund Adm									
34. -Vanguard Intermediate Term Investment Grade Fund									

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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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS – *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
35. -Vanguard U.S. Value Fund									
36. -Vanguard Emerging Markets Stock Index Adm									
37. Brokerage Acct#2									
38. -Vanguard U.S. Value Fund	A	Dividend	J	T					
39. Brokerage Acct#3									
40. -Vanguard 500 Index Fund	A	Dividend	J	T					
41. -Vanguard Long Term Treasury Fund	A	Dividend	K	T					
42. -Vanguard Extended Market Index Fund	A	Dividend	J	T					
43. Brokerage Acct#4									
44. -American Century Income and Growth Fund	A	Dividend	K	T					
45. IRA #5	B	Dividend	L	T					
46. -American Century Equity Income									
47. -American Century Prime Money Market									
48. -American Century Small Cap Value Fund									
49. Brokerage Acct#5									
50. -American Century Equity Income Fund	B	Dividend	K	T					
51. Brokerage Acct#6									

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 19	**Name of Person Reporting** **Sorokin, Leo T.**	**Date of Report** 01/24/2014

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. -American Century Giftrust Fund	A	Dividend	J	T					
53. Brokerage Acct#7									
54. -American Century Giftrust Fund	A	Dividend	J	T					
55. Bear Hollow Lender LLC		None	J	U					
56. Bear Hollow Lender LLC		None	J	U					
57. Wolf Paca I LLC	D	Int./Div.	J	U					
58. Limited Partnership Joppa East		None	J	U					
59. OC, LLC		None	M	T					See Note
60. Brokerage Account 11									
61. -Vanguard 500 Index Fund	A	Dividend	J	T					
62. IRA Account 12A	A	Dividend	K	T					
63. -Wells Fargo Bank Deposit Sweep Option									
64. -Matthews Pacific Tiger Fund									
65. -Home Properties, Inc.									
66. Brokerage Account 12B		None	J	T					
67. -Wisdomtree Investments		None	J	T					
68. -Vanguard Total Stock Market ETF	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
Q =Appraisal
U =Book Value

B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
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S =Assessment
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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

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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
69. -Sterling Bank Corp.	A	Dividend	J	T					
70. -Wells Fargo Bank Deposit Sweep Option	A	Interest	K	T					
71. IRA Account 13A	A	Dividend	K	T					
72. -Wells Fargo Bank Deposit Sweep Option									
73. -Matthews Pacific Tiger									
74. Brokerage Account 13B									
75. -Wells Fargo Bank Deposit Sweep Option	A	Int./Div.	J	T					
76. -Sterling Bank Corp	A	Dividend	J	T					
77. -Vanguard Total Stock Market ETF	A	Dividend	J	T					
78. IRA Account 14A	A	Dividend	K	T					
79. -Wells Fargo Bank Deposit Sweep Option									
80. -Matthews Pacific Tiger									
81. Brokerage Account 14B									
82. -Wells Fargo Bank Deposit Sweep Option	A	Interest	J	T					
83. -Sterling Bank Corp	A	Dividend	J	T					
84. Trust #4	D	Int./Div.	M	W					See Note
85. -Raymond James Bank Deposit Program									

1. Income Gain Codes: (See Columns B1 and D4) A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000; J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000
2. Value Codes (See Columns C1 and D3) R =Cost (Real Estate Only); S =Assessment; T =Cash Market; V =Other; W =Estimated
3. Value Method Codes (See Column C2) Q =Appraisal; U =Book Value

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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
86. - Fund Royce Opportunity Fund Investment Class N/L									
87. - Fund The Third Avenue Value Fund N/L									
88. -Fund Oppenheimer DevMkts Fund									
89. - Kinder Morgan									
90. - Fund Thornburg Int'l Value Fund									
91. -Berkshire Hathaway B									
92. -Crown Castle									
93. - Stock Alleghany Corp									
94. -Flow 2006 LLC									
95. -PNC Bank Account									
96. -Fund Hartford Capital Appreciation Fund Class A									
97. -Liberty Media									
98. -Fund Third Avenue Focused Credit Fund Investor Class									
99. -Longleaf Smallt-cap Fund									
100. -Putnam Capital Spectrum									
101. -Arbitrage Fund (Y)									
102. -Williams Companies, Inc.									

1. Income Gain Codes: (See Columns B1 and D4) A =$1,000 or less; B =$1,001 - $2,500; C =$2,501 - $5,000; D =$5,001 - $15,000; E =$15,001 - $50,000; F =$50,001 - $100,000; G =$100,001 - $1,000,000; H1 =$1,000,001 - $5,000,000; H2 =More than $5,000,000
2. Value Codes (See Columns C1 and D3) J =$15,000 or less; K =$15,001 - $50,000; L =$50,001 - $100,000; M =$100,001 - $250,000; N =$250,001 - $500,000; O =$500,001 - $1,000,000; P1 =$1,000,001 - $5,000,000; P2 =$5,000,001 - $25,000,000; P3 =$25,000,001 - $50,000,000; P4 =More than $50,000,000
3. Value Method Codes (See Column C2) Q =Appraisal; R =Cost (Real Estate Only); S =Assessment; T =Cash Market; U =Book Value; V =Other; W =Estimated

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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
103. Janus Worldwide Fund	A	Dividend	J	T					
104. Trust #5	D	Dividend	N	W					See Note
105. -Wells Fargo Bank Deposit Sweep									
106. -Stock Sector Spdr TR Tech Select Sector XLK									
107. -Dow Chemical Co Internotes (Y)									
108. -Richie Associates LLC (Y)									
109. -Bear Hollow Lender LLC									
110. -Gunpowder W Corp.									
111. -Joppa East Limited Partnership									
112. -Mayfield W, Inc.									
113. -MfW, LLC									
114. -Exploration Capital 2005									
115. -Wolf Realty Corp.									
116. -Saul Centers Inc. Note									
117. -Tenn Valley Authority Bond									
118. -VSECU Bank Account									
119. -Merck									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
120. -GSV Capital									
121. -Loan to Trust #4									
122. Brokerage Account 15									
123. -Matthews Pacific Tiger Fund	A	Dividend	J	T					
124. IRA Account 20	A	Dividend	K	T					
125. -Wells Fargo Money Market									
126. -Tesla Motors, Inc.									
127. IRA 17	A	Dividend	M	T					
128. -IQ Global Resources ETF									
129. -ASTON/Fairpoint Mid Cap Fund									
130. -Acadian Emerging Market Portfolio									
131. -Allianz NFJ Small Cap Value									
132. -American Funds American Mutual Fund									
133. -Brown Capital Management Small Company Fund									
134. -Cohen & Steers Realty Shares									
135. -Columbia Acorn International Fund									
136. -Spartan 500 Index Fund									

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)
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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
137. -Fidelity Advisor New Insights Fund									
138. -Harbor International Fund									
139. -Aberdeen Total Return Bond Fund									
140. -Fidelity Floating Rate High Income Fund									
141. -Fidelity Total Bond Fund									
142. -PIMCO Total Return Instl									
143. -Osterweis Strategic Income Fund									
144. -Cohen & Steers International Realty Fund									
145. -IQ Alpha Hedge Strategy Fund									
146. -Putnam Absolute Return 700 Fund									
147. -Fidelity Cash Reserves									
148. Trust #6	A	Interest							
149. -Berkshire Bank Account (Y)									
150. -Single Family Home, West Hartford, CT (Y)									
151. Trust #7	A	Int./Div.							
152. -GE Interest Plus									
153. -Schwab Adv Cash Reserve									

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
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V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 13 of 19	**Name of Person Reporting** **Sorokin, Leo T.**	**Date of Report** 01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
154. -Schwab US Treasury Money Fund									
155. -Caterpillar Fin Powernotes Due 5/15/13									
156. -Gen Elec Cap CP Note Due 7/15/13									
157. -Historic TW Inc Bonds due 1/15/13									
158. -Kraft Foods Inc Notes due 10/1/13									
159. -Protective Life Internotes Due 2/15/13									
160. -Connecticut St Go UTX Due 6/1/13									
161. -Connecticut St Go UTX due 1/1/15									
162. -Wisconsin St Tran Due 7/1/13									
163. -Bank Baroda NY CD Due 2/19/13									
164. -TIB Independent Bankers CD Due 1/30/13									
165. -AFLAC Inc.									
166. -AVNET									
167. -CDI Corp									
168. -Danaher Corp									
169. -Forest City Ent									
170. -General Electric Co.									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
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R =Cost (Real Estate Only)
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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
171. -Graco Inc.									
172. -Johnson & Johnson									
173. -Noble Corp									
174. -Pepsico Inc.									
175. -Procter & Gamble									
176. -Total Systems Services									
177. IRA 18	D	Int./Div.	N	T					
178. -Schwab Adv Cash Reserves									
179. -American Exp CR Notes Due 8/20/13 (Y)									
180. -Case New Holland Notes due 9/1/13 (Y)									
181. -General Electric Cap Internotes Due 3/15/13 (Y)									
182. -Greif Brothers Notes due 2/1/17									
183. -Ingles Mkts Notes due 5/15/17 (Y)									
184. -Marriott Intern Notes due 2/15/13 (Y)									
185. -Plum Crk Tmbrlnd Bonds due 3/15/21									
186. -Wells Fargo Mtg Frn 2033 REMIC due 3/25/33									
187. -Bank Baroda NY CD due 2/19/13 (Y)									

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
Q =Appraisal
U =Book Value

B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
R =Cost (Real Estate Only)
V =Other

C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
S =Assessment
W =Estimated

D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000
T =Cash Market

E =$15,001 - $50,000

FINANCIAL DISCLOSURE REPORT Page 15 of 19	Name of Person Reporting Sorokin, Leo T.	Date of Report 01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

☐ NONE *(No reportable income, assets, or transactions.)*

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
188. -TIB Independent Bankers CD Due 1/30/13 (Y)									
189. -Acuity Brands									
190. -Auto Data Processing									
191. -BOFI Holding Inc.									
192. -CISCO Systems									
193. -General Electric Co.									
194. -International Business Machines									
195. -Fidelity Japan Smaller Cap Fund									
196. -Johnson & Johnson (Y)									
197. -LICT Corp									
198. -PPG Industries									
199. -Reading International Class A									
200. -St Jude Medical									
201. -Stone Harbor Emerging FD									
202. -United Parcel Service Class B									
203. -Dynex Capital Inc. New REIT									
204. -Humboldt Redwood Note									See Note.

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
205. -GE Note Due 1/15/14									
206. -Hewlett Packard Note Due 6/2/14									
207. -Prudential Financial Note Due 6/16/14									
208. -Verizon Wireless Note (Y)									
209. -HD Supply Holdings (Y)									
210. -Centex HM Equity Flt 2033 Asset Backed Due 3/25/33 (Y)									
211. Utah Ed Savings Age Based Aggressive Global Fundn	A	Dividend	K	T					
212. Utah Ed Savings Age Based Aggressive Domestic Fund	A	Dividend	K	T					
213. Brokerage Account 19									
214. -Schwab Cash Account	A	Int./Div.	K	T					
215. -CNH Capital LLC Note	A	Int./Div.	K	T					
216. -Alaska Municipal Bond		None	J	T					
217. -Massachusetts Bay Notes		None	K	T					
218. -Massachusetts State Note	A	Int./Div.	J	T					
219. -AFLAC stock	A	Int./Div.	J	T					
220. -AVNET stock	A	Int./Div.	K	T					
221. -Danaher Corp stock	A	Int./Div.	J	T					

1. Income Gain Codes: (See Columns B1 and D4)
A =$1,000 or less
F =$50,001 - $100,000
J =$15,000 or less
N =$250,001 - $500,000
P3 =$25,000,001 - $50,000,000
B =$1,001 - $2,500
G =$100,001 - $1,000,000
K =$15,001 - $50,000
O =$500,001 - $1,000,000
C =$2,501 - $5,000
H1 =$1,000,001 - $5,000,000
L =$50,001 - $100,000
P1 =$1,000,001 - $5,000,000
P4 =More than $50,000,000
D =$5,001 - $15,000
H2 =More than $5,000,000
M =$100,001 - $250,000
P2 =$5,000,001 - $25,000,000
E =$15,001 - $50,000

2. Value Codes (See Columns C1 and D3)

3. Value Method Codes (See Column C2)
Q =Appraisal
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R =Cost (Real Estate Only)
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Name of Person Reporting	Date of Report
Sorokin, Leo T.	01/24/2014

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)*

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A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	B. (2) Type (e.g., div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	C. (2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, redemption)	D. (2) Date mm/dd/yy	D. (3) Value Code 2 (J-P)	D. (4) Gain Code 1 (A-H)	D. (5) Identity of buyer/seller (if private transaction)
222. -Forest City Enterprises, Inc. Stock		None	J	T					
223. -Graco Inc. stock	A	Int./Div.	J	T					
224. -Noble Corp stock	A	Int./Div.	J	T					
225. -Pepsico Inc. stock	A	Int./Div.	K	T					
226. -Procter & Gamble stock	A	Int./Div.	J	T					
227. -Kraft Foods Note	A	Int./Div.							
228. -CDI Corp. Stock	A	Int./Div.							
229. -GE Captial Note	A	Int./Div.							
230. -Connecticut State Note		None							
231. -Caterpillar Financial Note	A	Int./Div.							
232. -Total System Services	A	Int./Div.							
233. -GE Co. Inc. Stock	A	Int./Div.							
234. -Protective Life Note	A	Int./Div.							
235. -Johnson & Johnson		None							
236. -Bank Baroda CD	A	Int./Div.							
237. USAA Bank Accounts	A	Int./Div.	L	T					

1. Income Gain Codes: (See Columns B1 and D4)
2. Value Codes (See Columns C1 and D3)
3. Value Method Codes (See Column C2)

A =$1,000 or less
B =$1,001 - $2,500
C =$2,501 - $5,000
D =$5,001 - $15,000
E =$15,001 - $50,000
F =$50,001 - $100,000
G =$100,001 - $1,000,000
H1 =$1,000,001 - $5,000,000
H2 =More than $5,000,000
J =$15,000 or less
K =$15,001 - $50,000
L =$50,001 - $100,000
M =$100,001 - $250,000
N =$250,001 - $500,000
O =$500,001 - $1,000,000
P1 =$1,000,001 - $5,000,000
P2 =$5,000,001 - $25,000,000
P3 =$25,000,001 - $50,000,000
P4 =More than $50,000,000
Q =Appraisal
R =Cost (Real Estate Only)
S =Assessment
T =Cash Market
U =Book Value
V =Other
W =Estimated

FINANCIAL DISCLOSURE REPORT Page 18 of 19	Name of Person Reporting Sorokin, Leo T.	Date of Report 01/24/2014

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of report.)*

Part I Position - These positions were inadvertently omitted from my 2012 Annual Report. I earned no fees or income from any of these positions.
Estate #1 held no reportable asserts during the reporting period.

Lines 84, 104 (Trusts #s 4, 5) The valuation of each trust is listed as estimated because some of the assets of the trust are partial interests in illiquid limited partnerships. The value code was based upon the Cash Market value of the bank accounts and publicly traded assets combined with the trustee's estimate of the value of the partnership interests.

Line 233 - The income earned by this stock in 2013 was inadvertently omitted from my nomination report filed in December, 2013.

Line 237 This asset was inadvertently omitted from my nomination report filed in December, 2013.

Supplemental Notes With Amended Report

Line 15 - This asset appears on Line 14 of my 2012 Annual Report. It is the same asset with the name revised.
Line 59 - This asset appears on Line 96 of my 2012 Annual Report. It is the same asset with the name revised.
Line 204 - This asset appears on Line 250 of my 2012 Annual Report. It is the same assest with a new name.

The description of the asset listed on Line 121 of this report has been amended.

The asset listed on Line 59 of my 2012 Annual Report was sold in 2012, thus it does not appear on this nomination report. However, inadvertently, I omitted the Column D sale information from my 2012 Annual Report. The value code for the sale was L and the gain code F.

Trust #3 from my 2012 Annual Report (Lines 63-95 on the 2012 Annual Report), as of December 31, 2012, does not contain any reportable assets. On that date those members of my family who were beneficiaries of Trust #3 received a distribution of their proportionate share of the trust assets as reflected in Column D Line 63 of Part VII of my 2012 Annual Report. As of December 31, 2012, they ceased to have any interest whatsoever in Trust #3 or its remaining assets. Thus, neither Trust #3 nor its assets appear on this report.

The asset listed on Line 231 of my 2012 Annual Report was inadvertently omitted from this report. It now appears on Line 210.
The asset listed on Line 253 of my 2012 Annual Report was incorrectly listed on that report twice, once on Line 146 and again on Line 253. In preparing the nomination report, I corrected the mistake and listed the asset only once. It appears on Line 103.

FINANCIAL DISCLOSURE REPORT Page 19 of 19	Name of Person Reporting	Date of Report
	Sorokin, Leo T.	01/24/2014

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/ Leo T. Sorokin

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		76	642	Notes payable to banks-secured (auto)		13	366
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities – see schedule	1	442	607	Notes payable to relatives			
Unlisted securities – see schedule		193	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable – see schedule		448	468
Real estate owned – see schedule	1	351	600	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		35	500				
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plan		472	254				
				Total liabilities		461	834
				Net Worth	3	109	769
Total Assets	3	571	603	Total liabilities and net worth	3	571	603
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	
Aberdeen Total Return Bond Fund	$ 10,400
Acadian Emerging Market Portfolio	3,288
Acuity Brands Inc. stock	3,746
ADP stock	5,408
AFLAC stock	6,725
Alaska municipal bond	10,246
Allianz NFJ Small Cap Value Fund	2,773
AllianzGI Mid-Cap Fund	20,354
AllianzGI Opportunity Fund	9,547
Amazon stock	21,894
American Century Equity Income Fund	48,518
American Century Gifttrust	6,788
American Century Income & Growth Fund	32,436
American Century Money Market Fund	21,037
American Century Small Cap Value Fund	11,527
American Funds American Mutual Fund	3,314
Apple stock	42,006
ASTON/Fairpoint Mid Cap Fund	8,452
Avnet stock	21,715
Berkshire Hawthaway -B stock	11,800
BOFI Holding Inc. stock	31,304
Bristol Myers Squipp stock	18,602
Brown Capital Management Small Company Fund	4,159
Cisco Systems stock	4,404
Citigroup stock	783
CNH Capital LLC note	15,487
Cohen & Steers International Realty Fund	1,630
Cohen & Steers Realty Shares	2,603
Columbia Acorn International Fund	3,261
Danaher Corp. stock	10,324
Davis New York Venture Fund	34,517
DWS High Income	22,320
Dynex Capital Inc. stock	2,157
Fidelity Advisor New Insights Fund	3,164
Fidelity Cash Reserves	12,137
Fidelity Contrafund	29,206
Fidelity Floating Rate High Income Fund	6,387
Fidelity Japan Smaller Capitalization Fund	4,663
Fidelity Pacific Basin Fund	14,969
Fidelity Total Bond Fund	8,135
Forest City Enterprises, Inc. stock	6,356
General Electric note	10,011

General Electric stock	12,300
Graco Inc. stock	12,995
Grief Brothers note	35,630
Hannon Armstrong Sustainable Infrastructure stock	10,387
Harbor International Fund	6,205
Healthcare Realty Trust	34,008
Hewlett Packard note	15,260
Home Properties Inc. stock	10,826
Humboldt Redwood Note	185
IBM stock	24,800
IQ Alpha Hedge Strategy Fund	2,641
IQ Global Resources ETF	1,789
Janus Worldwide Fund	2,151
LICT Corp. stock	2,400
Massachusetts Bay notes	25,461
Massachusetts State note	10,205
Matthews Pacific Tiger Fund	58,021
Noble Corp. stock	7,394
Osterweis Strategic Income Fund	3,772
Pepsico Inc. stock	15,218
PIMCO Total Return Fund	29,412
Plum Creek Timber Co. bond	7,230
PPG Industries stock	9,389
Procter & Gamble stock	6,888
Prudential Financial InterNote	10,164
Putnam Absolute Return 700 Fund	3,442
Reading International Inc.	3,992
Saul Centers Inc. note	10,975
Schwab Cash Account	81,498
Spartan 500 Index Fund	7,021
St Jude Medical stock	5,166
Sterling Bank Corp. stock	4,217
Stone Harbor Emerging Markets Total Income Fund	3,156
Technology SPDR (ETF)	35,580
Tesla stock	15,112
United Parcel Service stock	6,911
Utah Ed. Savings Age Based Aggressive Domestic Fund	42,071
Utah Ed. Savings Age Based Aggressive Global Fund	43,405
Vanguard 500 Index Fund	64,762
Vanguard Emerging Stock Markets Index Fund	30,112
Vanguard Extended Market Index Fund	7,326
Vanguard Investment Grade Fund	14,693
Vanguard Long Term Treasury Fund	17,491
Vanguard Total Stock Market ETF	26,273
Vanguard U.S. Value Fund	28,017
Wells Fargo bond	682

Wells Fargo cash	640
Wells Fargo Money Market Fund	70,896
WisdomTree Investments, Inc.	15,885
Total Listed Securities	$1,442,607

Unlisted Securities	
Bear Hollow Lender, LLC	$ 17,000
Joppa East Limited Partnership	1,000
OC, LLC	110,000
Wolf PACA I, LLC	65,000
Total Unlisted Securities	$ 193,000

Real Estate Owned	
Personal residence	$ 970,600
Vacation home	381,000
Total Real Estate Owned	$ 1,351,600

Real Estate Mortgages Payable	
Personal residence mortgage	$ 404,058
Personal residence home equity line of credit	44,410
Total Real Estate Mortgages Payable	$ 448,468

AFFIDAVIT

I, Leo T. Sorokin, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 3, 2014
(DATE)

(NAME) Leo T. Sorokin

(NOTARY)
DANIEL P. LYONS
MY COMMISSION EXPIRES
10/29/2015

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   John Charles Cruden

2. **Position**: State the position for which you have been nominated.

   Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Environmental Law Institute
   2000 L Street, NW
   Suite 620
   Washington, DC 20036

   Residence: Annandale, Virginia

4. **Birthplace**: State date and place of birth.

   1946; Topeka, Kansas

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Army Command and General Staff College, Fort Leavenworth, Kansas, 1981 to 1982

   Army Judge Advocate General's Legal Center and School, Advanced Class, Charlottesville, Virginia, 6/1974 to 6/1975

   Woodrow Wilson Graduate School, University of Virginia, Virginia, 9/1974 to 9/1975
   Master of Arts in Foreign Affairs, 1975

   School of Law, University of Santa Clara, California, 1971 to 1974
   Juris Doctorate, 1974 (summa cum laude)

   United States Military Academy, West Point, New York, 1964 to 1968
   Bachelor of Science, 1968

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether

or not you received payment for your services. Include the name and address of the employer and job title or description.

My employment history is in three distinct areas: from 1968 to 1991 as an officer in the military, 1991-2011 at the Department of Justice, and 2011 to the present at the Environmental Law Institute.

President, Environmental Law Institute, 7/2011-present
2000 L Street NW, Suite 620, Washington, DC 20036

Deputy Assistant Attorney General; Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, 1995-2011
950 Pennsylvania Avenue NW, Washington, DC 20530

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, 1991-95
950 Pennsylvania Avenue NW, Washington, DC 20530

Chief Legislative Counsel, Department of the Army, U.S. Department of Defense, 7/1988-6/1991
Pentagon, Arlington, VA 22202

Special Counsel to the Assistant Attorney General, Civil Division, U.S. Department of Justice (on detail from Army War College), 6/1987-6/1988
950 Pennsylvania Avenue NW, Washington, DC 20530

Staff Judge Advocate, Frankfurt, Germany, 6/1985-6/1987
HQ, 3d Armored Division, Frankfurt, Germany

Chief, Administrative and Civil Law Division, The Judge Advocate General's Legal Center and School, 6/1982-6/1985
600 Massie Road, Charlottesville, VA 22903

General Counsel, Defense Nuclear Agency, 6/1980- 6/1981
6801 Telegraph Road, Alexandria, VA 22310-3398

Trial Attorney, Litigation Division, Department of the Army, U.S. Department of Defense, 7/1978- 6/1980
Pentagon, Arlington, VA 22202

Chief, Litigation Branch, U.S. Army Europe, 9/1976-6/1978
HQ, U.S. Army Europe and 7th Army, Heidelberg, Germany

Trial Attorney (prosecutor and defense counsel), U.S. Army Europe, Germany, 9/1975-9/1976
3d Armored Division, Butzbach Legal Office, Butzbach, Germany

Clerk (Extern), Justice Stanley Mosk, California Supreme Court, 1973-1974

Member, U.S. Special Forces, Vietnam, 1970-1971

Senior Advisor, 33d and 38th Ranger Battalion, Vietnam, 1970

Platoon Leader and Battalion Operations Officer, 1969-1970
HQ, 2d Battalion, 509th Airborne, Mainz, Germany

7. **Military Service and Draft Status**: 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.

   Active Duty Military June 1968 – May 1991. Army, Colonel. OF 115129. Honorable Discharge. See also response to Question 6. I registered for selective service.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Muskie-Chaffee Award, U.S. Department of Justice, 2011

   The District of Columbia Court of Appeals Annual Federal Pro Bono Award was named in 2011 as "The John C. Cruden Federal Agency Pro Bono Leadership Award."

   Presidential Rank Award, President Barack H. Obama, 2010

   Santa Clara Law School, Distinguished Alumni Award, 2010

   American Bar Association, Mary K. Lawton Award, Outstanding Government Attorney, 2009

   Fairfax County Volunteer of the Year Award (for work with mentally impaired young people), est. 2005

   Presidential Rank Award, President George W. Bush, 2003

   Presidential Rank Award, President William J. Clinton, est. 1998

   EPA Medal Award (for Court of Appeals argument), 1994

   Federal Bar Association, Younger Award, 1981

   Outstanding Graduate, Army Judge Advocate General's Legal Center and School, Advanced Class, Charlottesville, Virginia, 1975

   Military Awards (Received 1969-1991):
   - Vietnamese Cross of Gallantry with Silver Star
   - Bronze Star
   - Legion of Merit with two Oak Leaf Clusters
   - Defense Meritorious Service Medal
   - Air Medal with Oak Leaf Cluster
   - Army Commendation Medal
   - National Defense Service Medal
   - Airborne, Ranger, and Special Forces Designations

   Eagle Scout, 1964

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.

District of Columbia Bar
Member, Board of Governors, 2001-04
President-Elect and President, 2004-06
Immediate Past President, 2006-07
Chair, Dues Reform Committee, 2007-09

American Bar Association, Section on Environment, Energy, and Resources
Council Member, 2003-07
Vice Chair, 2007-08
Chair Elect, 2008-09
Chair, 2009-10
Immediate Past Chair, Nominating Committee Chair, 2010-11

American Bar Association, House of Delegates
Member, 2008-present

National Conference of Bar Presidents
Member, 2004-2013
Governing Council, Chair Diversity Committee, 2006-2010

Standing Committee on Pro Bono Legal Services of the Judicial Conference of the District of Columbia Circuit (Appointed by Chief Judge, U.S. Court of Appeals for the District of Columbia)
Member, 2006-2011

District of Columbia Bar Foundation
Board of Governors, 2008-present

American Bar Foundation
Member, 2009-present

American College of Environmental Lawyers
Member, 2010-present

Administrative Conference of the United States
Public Member, 2013-present

Marten Distinguished Practitioner and Lecturer
University of Washington School of Law, 2013

California Bar Association
Member, 1975-present

Bar Association of the District of Columbia
Member, 1986-present

Washington Council of Lawyers
Member, 1986-present

International Network for Environmental Compliance and Enforcement (INECE)
Member, 2002-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 Bar, 1974
District of Columbia Bar, 1979

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, admitted approx. 1978

District of Columbia Federal District Court, admitted 6/1981

U.S. Court for Berlin, admitted 1980

Superior Court, District of Columbia, admitted 3/1979

Court of Appeals, District of Columbia, admitted 3/1979

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.

Military Officers Association of America, member, 1991 to present

Retired Judge Advocates Association, member, 1991 to present

Alumni Association, the Judge Advocate General's Legal Center and School, President (1982-85), and member (1982 to present)

Mountainside Villa Owners Association, member, 1982 to present (Board, 1982-85)

Environmental Law Institute, member, 2009 to present (President, 2011 to present)

75th Ranger Regiment Association, member, 2008 to present

D.C. Chapter of the West Point Association of Graduates, member, 2005 to present

b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of

membership policies. If so, describe any action you have taken to change these policies and practices.

None to my knowledge.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, and letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

I have done my best to identify published materials, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

LAW REVIEW ARTICLES

Subject	Source	Date
EPA GHG Regulation: Reflections on the D.C. Circuit's Decision (co-author)	IETA Greenhouse Gas Market	2012
Comment on *Environmental Enforcement in Dire Straits; There is No Protection for Nothing And No Data For Free*	Vol. 41 Environmental Law Reporter 10686	2011
Promoting Pro Bono Service by Government Attorneys	Vol. 53 The Federal Lawyer 30	November 2006
Federal Civil Environmental Enforcement: Process, Actors, and Trends (co-author)	Vol. 18, No. 4, Natural Resources and Environment Journal (ABA)	2004
Constitutional Torts and Official Immunity After *Chappell v. Wallace* (co-author)	Vol. LX, No. 3, Florida Bar Journal 51	1986
Book Review	Vol. 24, Virginia Journal of International Law 513	1984
The First Amendment and Military Installations (co-author)	Vol. 1984, Detroit College of Law Review 845	1984
The War-Making Process	Vol. 69, Military Law Review 35	1975
Government Recovery: Federal Medical Care Recovery Act, Automobile Insurance and Workmen's Compensation	Vol. 13, Santa Clara Lawyer 720	1973

COLUMNS WRITTEN AS PRESIDENT, ENVIRONMENTAL LAW INSTITUTE

Subject	Source	Date
They Punch Above Their Weight	Vol. 31, No. 1, The Environmental Forum	Jan/Feb 2014
A Conversation with George P. Shultz	Vol. 30, No. 6, The Environmental Forum	Nov/Dec 2013
The Brave New World of Private Governance	Vol. 30, No. 5, The Environmental Forum	Sep/Oct 2013
On the Importance of Judges	Vol. 30, No. 3, The Environmental Forum	May/June 2013
Improving the Nation's Ocean Management	Vol. 30, No. 2, The Environmental Forum	Mar/Apr 2013
Climate Change and New York City	Vol. 30, No 1, The Environmental Forum	Jan/Feb 2013
Our Exchange Visits with the Mexican Supreme Court	Vol. 29, No. 6, The Environmental Forum	Nov/Dec 2012
ELI at Rio+20: Forging Progress in the International Arena	Vol. 29, No. 5, The Environmental Forum	Sep/Oct 2012
Reflections on My First Year at ELI	Vol. 29, No. 4, The Environmental Forum	July/Aug 2012
We Should be Proud of Our Judiciary	Vol. 29, No. 3, The Environmental Forum	May/June 2012
Why Is the Environment the Invisible Issue at the Polls?	Vol. 29, No. 2, The Environmental Forum	Mar/Apr 2012
A Talk to a First Grade Class, a Lecture at a Law School	Vol. 29, No. 1, The Environmental Forum	Jan/Feb 2012
Four Leaders Who Are Still Leaving a Legacy of Accomplishment	Vol. 28, No. 6, The Environmental Forum	Nov/Dec 2011
Taking Over the Helm of an Incredible Organization	Vol. 28, No. 5, The Environmental Forum	Sep/Oct 2011

COLUMNS WRITTEN AS PRESIDENT, DISTRICT OF COLUMBIA BAR

Respecting Judicial Independence	Washington Lawyer	September 2005
Celebrating Legal Service Providers in the District of Columbia	Washington Lawyer	October 2005
The Case for More Women Leaders in the Profession	Washington Lawyer	November 2005
D.C. Bar Leads the Way in Government Pro Bono Service	Washington Lawyer	December 2005
Environmental Justice and Civil Rights	Washington Lawyer	January 2006
Diversity and the D.C. Bar	Washington Lawyer	February 2006
Lawyers Rendering Service: Becoming a Student of the Law	Washington Lawyer	March 2006
Encouraging, Mentoring, Enhancing Professionalism, Delivering Service	Washington Lawyer	April 2006
Lawyers Performing Community Service	Washington Lawyer	May 2006
The State of the Bar	Washington Lawyer	June 2006

BOOKS

Subject	Source	Date
Chapter 8, Federal Civil Environmental Enforcement in the United States: Process, Players, and Priorities (co-author)	Compliance and Enforcement in Environmental Law (Edward Elgar Publishing)	2011
Chapter 1, Environmental Protection	Environmental Legislation in North America (Commission for Environmental Cooperation)	2011
Chapter 32, Environmental Law and National Security	National Security Law, Second Edition (Carolina Academic Press)	2005

Copies provided of all listed materials unless otherwise noted.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a

report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

As a member of the *Standing Committee on Pro Bono Legal Services*, U.S. Court of Appeals for the District of Columbia, 2006-2011, I wrote portions of their reports in 2008 and 2010 on the status of pro bono work in the District of Columbia. Copies provided.

As President of the D.C. Bar, I contributed to their annual report of the year. Copy provided.

As Past-President of the D.C. Bar, I chaired a Dues Reform Committee from 2006-07 which prepared a report analyzing the financial status of the Bar Association. I have been unable to locate a copy of the report.

For the American Bar Association, I contributed to a report to the organization's House of Delegates in February 2007 concerning property rights and firearms. 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.

I have done my best to identify any testimony, official statements or other communications related, in whole or in part, to matters of public policy or legal interpretation, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Testimony, May 9, 2001, Subcommittee on Commercial and Administrative Law, House Committee on the Judiciary. Copy provided.

Testimony, August 1, 2006, Subcommittee on Fisheries, Wildlife and Water, Senate Committee on Environment and Public Works. Copy provided.

Testimony, April 16, 2008, House Committee on Transportation and Infrastructure. Copy provided.

Testimony, March 16, 2010, Subcommittee on Workforce Protections, House Committee on Education and Labor. Copy provided.

Testimony, February 3, 2012, Subcommittee on Courts, Commercial and Administrative Law, House Committee on the Judiciary. 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.

I have done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. Attached is a listing of speeches. I have identified in the attachment those speeches for which I have a text, notes, power point slides, or press accounts. For all other listed speeches no notes or transcripts are available.

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all interviews given, including through a review of personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

"EPA Air Cases On Deck as Obama Appointee Joins D.C. Circuit Bench," Greenwire (E and E News). September 6, 2013. Copy supplied.

"'No Economic Basis' for GOP Push to Curb U.S. Reimbursement of Enviro Legal Fees," Greenwire (E and E News). June 27, 2013. Copy supplied.

"Daily Environment Report: The Week Ahead for June 10," Bloomberg and BNA. June 10, 2013. Discussed ELI's Summit on Private Environmental Governance. Announcement supplied. I have been unable to locate a transcript.

"Interview with John Cruden, President – Environmental Law Institute," Clean Edison Blog, Clean Energy News. April 9, 2013. Copy supplied.

Interview by Reporter concerning recent Federal Court of Appeals decision, Greenwire (E and E News). February 21, 2013. Copy supplied.

"Old Lead Factories May Stick Taxpayers With Cleanup Costs," USA Today. December 19, 2012. Copy supplied.

"Gulf Spill: Judges Tread Carefully Over Possible Conflicts in BP Criminal Case," Greenwire (E and E News). December 7, 2012. Copy supplied.

"Supreme Court Set to Hear Arguments on Decisions in Los Angeles Stormwater Case," Greenwire (E and E News). December 3, 2012. Copy supplied.

"What Others Are Saying About BP Settlement of Oil Spill Criminal Charges," NOLA.Com Blog. November 2012. Copy supplied.

"EPA Mulls Options Post-CSAPR Verdict," Electric Power Daily. August 27, 2012. Copy supplied.

"Illegal Ocean Dumping Persists Despite DoJ Crackdown," iWatch News by the Center for Public Integrity. March 30, 2012. Copy supplied.

"DoJ's Cruden Named President of Environmental Law Institute," The Blog of Legal Times. June 14, 2011. Copy Supplied.

"Senior Attorney Departs," The New York Times. June 15, 2011. Copy supplied.

"Cleaning Up," National Journal. July 7, 2011. Copy supplied.

Fairfax County, Special Olympic Swim Coach, Parkatakes Magazine. June 2011. Copy supplied.

"Asarco Pays $1.79 Billion to Fix Sites," The New York Times. December 10, 2009. Copy supplied.

"Interview: John C. Cruden, Deputy Assistant Attorney General," Environmental Justice Blog. May 20, 2008. Copy supplied.

"Stability and Candor: The Professional Bar Executive," ABA Magazine, The Bar Leader. November 2007. Copy supplied.

"Meet the President," DC Bar Magazine, The Washington Lawyer. June 2005. Copy supplied.

"Polluting Companies Agree to Restore Waterway," Environment News Service. August 23, 2004. Copy Supplied.

During the period June 1987-1988, while serving as Special Counsel to the Assistant Attorney General, Civil Division, Department of Justice, I gave several interviews about drug testing law and litigation, although I have been unable to find any records from that period.

13. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Designated by President George W. Bush to be the Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, February 2001, and served until January 2002.

Designated by President Barack Obama to be the Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, January 2009, and served until November 2010.

Commissioned Officer of the U.S. Army, 1968-1991, from ranks Lieutenant to Colonel.

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.

None.

14. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Clerk (Extern), Justice Stanley Mosk, California Supreme Court, 1973-74

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.

Deputy Assistant Attorney General; Acting Assistant Attorney General, U.S. Department of Justice, Environmental and Natural Resources Division, 1995-2011
950 Pennsylvania Avenue NW, Washington, DC 20530

Chief, Environmental Enforcement Section, U.S. Department of Justice, Environment and Natural Resources Division, 1991-95
950 Pennsylvania Avenue NW, Washington, DC 20530

Chief Legislative Counsel, Department of the Army, U.S. Department of Defense, 7/1988-6/1991
Pentagon, Arlington, VA 22202

Special Counsel to the Assistant Attorney General, Civil Division, U.S. Department of Justice (on detail from Army War College) 6/1987-6/1988
950 Pennsylvania Avenue NW, Washington, DC 20530

Staff Judge Advocate, Frankfurt, Germany, 6/1985-6/1987
HQ, 3d Armored Division, Frankfurt, Germany

Chief, Administrative and Civil Law Division, The Judge Advocate General's Legal Center and School, 6/1982-6/1985
600 Massie Road, Charlottesville, VA 22903

General Counsel, Defense Nuclear Agency, 1980-81
6801 Telegraph Road, Alexandria, VA 22310-3398

Trial Attorney, Litigation Division, Department of the Army, U.S. Department of Defense, 7/1978-80
Pentagon, Arlington, VA 22202

Chief, Litigation Branch, U.S. Army Europe, U.S. Department of Defense, 9/1976-6/1978
HQ, US Army Europe and 7th Army, Heidelberg, Germany

Trial Attorney (prosecutor and defense counsel), U.S. Army Europe, Germany, 9/1975-9/1976
3d Armored Division, Butzbach Legal Office, Butzbach, Germany

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

While in the military, my initial years as a Judge Advocate were dominated by criminal trial practice in military courts-martial and general legal assistance to soldiers and their families in Europe. Later, in Litigation Division of the Department of the Army, my practice was entirely civil law in federal courts. Similarly, my work as General Counsel of the Defense Nuclear Agency and as Chief of the Administrative and Civil Law Division, The Judge Advocate General's Legal Center and School, was also primarily civil law. As Staff Judge Advocate, 3d Armored Division, Germany, I supervised a large legal (predominantly criminal) jurisdiction in central Europe with five separate offices.

Starting in 1991, my practice has been entirely in the area of environment, energy, and natural resources law. From 1991-1995, I served as the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, and in 1995, was selected to be the career Deputy Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice. That practice has continued in my current position as President, Environmental Law Institute.

ii) your typical clients and the areas at each period of your legal career, if any, in which you have specialized

In the military, my initial clients were soldiers that I represented in courts-martial and administrative discharge proceedings. As a military prosecutor, my client was the United States. Similarly, while at the U.S. Department of Justice, I represented the United States by and through many different federal agencies.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

While acting as a military judge advocate in my initial career, I practiced before military courts-martial and administrative elimination hearings. Later, in the Litigation Division at the Pentagon, my practice was predominantly before federal courts, and a few state courts, representing the Army and working with U.S. Attorneys and the U.S. Department of Justice. I also litigated one case before the Merit Systems Protection Board.

At the Department of Justice, my practice was almost all federal courts, with only a small part state courts or administrative agencies.

i. Indicate the percentage of your practice in:
   1. federal courts 75%
   2. state courts of record 5%
   3. other courts (military) 15%
   4. administrative agencies 5%

ii Indicate the percentage of your practice in:
   1. civil proceedings 80%
   2. criminal proceedings 20%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Although I participated in a large number of military cases, many of those were ultimately resolved by negotiated plea agreements. I estimate that about 12-15 reached a final verdict (and sentencing hearing). In addition, I was attorney of record in cases that I tried to completion in approximately five administrative hearings in the military and one case before the Merit Systems Protection board.

As Chief of the Environmental Enforcement Section, I supervised hundreds of cases and personally litigated in district court and argued appeals before the US Courts of Appeals for the 1st, 6th, and 9th Federal Circuits. As Deputy Assistant Attorney General and Acting Assistant Attorney General, I supervised several thousand cases, approved settlements and complaints, and led settlement negotiations in dozens of important cases.

i. What percentage of these trials were:
   1. jury 25%
   2. Non-jury 75%

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 personally argued orally before the Supreme Court. I am a member of the Supreme Court Bar. During my time at the U.S. Department of Justice, I worked closely with the Office of the Solicitor General on cases arising before the Supreme Court for matters within the jurisdiction of the Environment, Energy, and Natural Resources Division. As Acting Assistant Attorney General, and in accordance with Department procedure, all briefs to the Supreme Court originating from work done by the Environment and Natural Resources Division included my name on the brief (including briefs filed at the certiorari stage and briefs filed at the merits stage).

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

    1. United States v Fleet Factors Corporation, 819 F. Supp. 1079 (S.D. Ga. 1993).

       I supervised this litigation and jointly tried the case in District Court. This was an enforcement case brought under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against owners of a textile printing facility and the secured creditor of the facility, seeking reimbursement of government costs associated with the removal of hazardous substances from the facility. The Court ruled in favor of the United States.

       U.S. District Court for the Southern District of Georgia
       Judge Dudley Bowen

       Co-Counsel: Jon Mueller and Brad Campbell, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20044. Phone: (202) 514-2701

       Counsel for Defendants: Mary Jane Norville and Patricia Thrower Barmeyer, King and Spalding, 1180 Peachtree Street, Atlanta, GA 30309. Phone: (404) 572-4500

    2. United States v Charles George Trucking, Inc., 34 F.3d 1081 (1st Cir. 1994).

       I represented the United States in an appeal before the US Court of Appeals for the 1st Circuit and argued the case. The United States had agreed to two consent decrees that together resolved a majority of the cost recovery disputes associated with the cleanup of a hazardous waste site in Massachusetts. Appellants, who were the principal owners and operators of the site, appealed the district court's approval of the consent decrees. The Court upheld the position of the District Court, providing the standard of review for approving and reviewing federal consent decrees. This decision has been widely cited for its discussion of the correct legal standard for reviewing federal consent decrees, particularly those done under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act.

       U.S. Court of Appeals for the 1st Circuit
       Judges Selva, Cyr, and Zobel.

       Co-Counsel: Robert Oakley, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20044. Phone: (202) 514-2701

Opposing counsel: Richard E. Bachman, with whom John A. King and Hale, Sanderson, Byrnes & Morton, were on brief, for appellants. John King is at 130 Liberty Street, Brockton, MA 02301. Phone: (508) 427-6000

3. Environmental Protection Agency v Washington DC Water and Sewer Authority, U.S. District Court for the District of Columbia CV No. 1:CV00813TFH (December 2004)

I supervised this litigation and then was co-counsel for the settlement discussions. This was an enforcement case alleging illegal discharges of massive overflows of sewage contaminated storm water into the Anacostia River, Potomac River, and Rock Creek. During big storms and sudden snow melts, excessive runoff water was mixing with sewage in the District's combined sewer system, which exceeded the capacity of the sewer system. In an average rainfall year, District sewers were overflowing into the Anacostia River over 80 times. The parties reached a settlement. Under the settlement, virtually all of the District's sewage-laden storm runoff will be captured in three tunnels deep underground for processing later at a sewage treatment plant.

U.S. District Court for the District of Columbia
Judge Thomas F. Hogan

Government Counsel: Nancy Flickinger and Bicky Corman, Environment and Natural Resources Division, US Department of Justice, Washington, DC 20044. Phone: (202) 514-2701

Opposing Counsel: Avis Marie Russell, General Counsel, District of Columbia Water and Sewer Authority, 5000 Overlook Avenue, SW, Washington, DC 20032. Phone: (202) 787-2000; F. Paul Calamita, John A. Sheehan, Aqualaw PLC, 801 E. Main St., Suite 1002, Richmond, VA 23219. Phone: (804) 716-9021

4. Environmental Protection Agency v. Production Plated Plastics, 955 F.2d 45 (6th Cir. 1992) RC 1415, 22 Envtl. L. Rep. 20,899.

I represented the Environmental Protection Agency in this appeal and argued the case before the US Court of Appeals for the 6th Circuit. This was an environmental enforcement case brought against the company and its owner for multiple violations of the Resource Conservation and Recovery Act and the Michigan Waste Management Act for the illegal discharge of hazardous substances. The District Court found the company and its president liable (United States v. Production Plated Plastics, Inc., 742 F.Supp. 956, 960-91 (W.D.Mich.1990), and they appealed. I presented the argument on behalf of EPA and the State of Michigan. The Court of Appeals upheld the District Court decision.

U.S. Court of Appeals for the 6th Circuit

Judges Martin, Milburn, and Contie

State Counsel for Michigan: Steve Chester, currently Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Phone: (202) 272-0167

Counsel for Defendants: Douglas Van Essen, Clary, Nantz, Wood, Hoffius, Rankin & Cooper, 500 Calder Plaza, 250 Monroe Ave. NW, Grand Rapids MI 49503. Phone: (616) 459-9487; Nathan Driggers, Driggers, Schultz, Herbst & Paterson, 2600 W. Big Beaver Rd., Ste. 550, Troy MI 48084. Phone: (313) 649-6000

5. Environmental Protection Agency v City of New Orleans, Civil No 93-3212 (1998).

I supervised the litigation of this case from 1993 to 1998 and was lead counsel for the settlement, and later amendments, to the consent decree. This was an enforcement case brought primarily under the Clean Water Act for numerous unpermitted discharges by the City. After extensive litigation, the case was resolved in a well-publicized consent decree in April 1998 in which the Sewerage and Water Board agreed to renovate its sewage collection system to prevent future discharges, pay a $1.5 million penalty, and contribute $2 million for improving the water quality for Lincoln Beach on Pontchartrain Lake.

U.S. District Court for the Eastern District of Louisiana
Judge Mary Ann Vial Lemmon

Counsel for litigation and co-counsel for negotiations: Elizabeth Edmonds and Arnold Rosenthal, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20044. Phone: (202) 514-3446

Opposing Counsel: Henry Diamond and Benjamin Wilson, Beveridge and Diamond, 1350 I Street, NW, Suite 700, Washington, DC 20005. Phone: (202) 789-6000

6. United States v ASARCO Inc. and Southern Peru Holdings Inc., No CV 02-2079-PHC-RCB, U.S. District Court, Arizona, January 2003

I supervised the litigation and was co-counsel for the negotiations. This was an enforcement case brought by the United States against the ASARCO Mining Company, and others, to recover past and future government restoration expenses for work at a large lead-contaminated site in Idaho. During the litigation ASARCO sought to divest itself of extremely valuable property and the United States moved in federal court to block the transfer of the property as it could render the company unable to meet all of its environmental obligations because of its precarious financial condition. To assure that the transaction would not take place without court review, the United States sought a preliminary injunction and ASARCO subsequently agreed not to transfer the asset until a settlement was reached with the United States. In settlement negotiations, which I led, the mining company agreed to set aside a fund of $100 million to fund an independent environmental trust to pay for cleanup of environmental contamination at sites for which ASARCO is responsible.

U.S. District Court for Arizona
Judge Robert C. Broomfield

Government Counsel: David L. Dain and Kimberly J. Sabo, Environment and Natural Resources Division, US Department of Justice, Washington, DC 20044. Phone: (202) 514-2701

Opposing Counsel: Douglas E. McAllister, General Counsel, ASARCO, 1150 North 7th Avenue, Tucson, AZ 85705. Phone: (520) 798-7500

7. United States and State of Idaho v. ASARCO, Inc. and Hecla Mining Company,430 F.3d 972 (9th Circuit 2005).

   I supervised the litigation of this case and was co-counsel for settlement negotiations with Hecla Mining Company. This was an enforcement action brought by the United States and the Coeur d'Alene Tribe in 1996 against the Hecla Mining Company and others to establish liability for natural resource damages and recovery of government expenses for the cleanup of a heavily contaminated Superfund site in Idaho.

   The case history included a 78-day trial in 2001. After many years of extensive litigation, including an appeal, the case against Hecla Mining Company was resolved by consent decree in 2011. Under the settlement, Hecla agreed to pay $263.4 million plus interest to the United States, the Coeur d'Alene Tribe and the State of Idaho to resolve claims stemming from releases of wastes from its mining operations. Settlement funds were dedicated to restoration and remediation of natural resources in the Coeur d'Alene Basin.

   The settlement also includes a process for coordinating Hecla's future mining operations with cleanup activities in the Coeur d'Alene Basin.

   United States District Court for the District of Idaho
   Judge Edward J. Lodge

   Government Counsel: Ronald M. Spritzer and Greer S. Goldman, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20044. Phone: (202) 514-2701

   State Counsel: Curt A. Fransen, Deputy Attorney General, for plaintiff-appellant State of Idaho. Office of the Attorney General, 700 W. Jefferson Street, P.O. Box 83720, Boise, ID 83720-0010. Phone: (208) 334-2400

   Opposing Counsel: Elizabeth H. Temkin, Temkin, Wielga, and Hardt LLP, 1900 Wazee St, Suite 303, Denver, CO, 80202. Phone: (303) 382-2909

8. United States v Marine Shale Processors, Inc., (W.D. La.) United States of America, *et al.*, Plaintiffs, United States of America, Plaintiff-Appellee, Cross-Appellant, State of Louisiana, Intervenor-Appellee, Cross-Appellant, v. Marine Shale Processors, Defendant-Appellant, Cross-Appellee., 81 F.3d 1329, 91 F.3d 16 (5th Cir. 1996)

   I supervised the litigation and appeal of this case, and directed all settlement negotiations. This was an environmental enforcement case brought by the United States in 1990 against Marine Shale Processors ("MSP") for alleged violations of a number of environmental statutes arising out of MSP's incineration of hazardous wastes in a 275 foot rotary kiln from 1985 to 1996. The State of Louisiana ("State") joined in the case as co-plaintiff. After a lengthy trial in 1994, the Court awarded the United States and the State civil penalties against MSP and its owner, totaling $8 million for violations of the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. On appeal in 1996, the Fifth Circuit Court of Appeals affirmed $4 million of the civil penalty award to the government, but remanded the remaining $4 million of the award for further district court proceedings. In 2006, the Court approved a settlement between the governments, MSP, and the site owner whereby the Court entered:

- a $6.2 million judgment for penalties in favor of the United States and the State against MSP; and
- a separate $7 million in proceeds from MSP were transferred to the State, which the State has used for the closure and remediation of the MSP facility.

United States District Court for the Western District of Louisiana.
Judge Adrian Duplantier
Circuit Judges Garza, King and Higginbotham

Government Counsel: Tom Clark, Bruce Buckheit, Steve Silverman, Peter Appel, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20044. Phone: (202) 514-2701

State Counsel: John Baird King, Louisiana Dept. of Env. Quality, Legal Affairs Div., Baton Rouge, LA. John B. King is a partner with Breazeale, Sachse & Wilson, LLP, and 301 Main St., Baton Rouge, LA 70802. Phone: (225) 387-4000

Opposing Counsel: Jerrold J. Ganzfried, Christopher H. Marraro, Howrey & Simon, Washington, DC; K. Eric Gisleson, Chaffe, McCall, Phillips, Toler & Sarpy, 2300 Energy Ctr., New Orleans, LA 70112. Phone: (504) 585-7000; Sidney A. Cotlar, and Russ Herman, Herman Herman Katz & Cotlar, 820 O'Keefe Avenue, New Orleans, LA 70113. Phone: (504) 581-4892 for appellant.

9. United States v BP Exploration & Production Inc., BP American Production Company, and BP P.L.C., MDL 2179, Civ.A. No. 12-970, U.S. District Court for the Eastern District of Louisiana, 2011

I supervised the litigation and was co-counsel for the settlement negotiations. This was an enforcement case brought by the United States against BP for matters arising out of the Deepwater Horizon oil spill in 2010, which claimed the lives of eleven individuals and was one of the worse ecological disasters of our lifetime. The United States filed its civil complaint in 2009 under a number of federal statutes, including the Clean Water Act and the Oil Pollution Act. The litigation continues, but this interim settlement for $1 billion in restoration projects is being implemented now.

The following is an extract from the DoJ Press Release:

> "Under an unprecedented agreement announced today by the Natural Resource Trustees for the Deepwater Horizon oil spill, BP has agreed to provide $1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the spill. The Trustees involved are Alabama; Florida; Louisiana; Mississippi; Texas; the Department of the Interior (DOI); and the National Oceanic and Atmospheric Administration (NOAA). The Department of Justice provided assistance in reaching the agreement.
>
> "This early restoration agreement, the largest of its kind ever reached, represents a first step toward fulfilling BP's obligation to fund the complete restoration of injured public resources, including the loss of use of those resources by the people living, working and visiting the area. The Trustees will use the money to fund projects such as the rebuilding of coastal marshes, replenishment of damaged beaches, conservation of sensitive areas for ocean habitat for injured wildlife, and restoration of barrier islands and wetlands that provide natural protection from storms.

"The agreement in no way affects the ultimate liability of BP or any other entity for natural resource damages or other liabilities, but provides an opportunity to help restoration get started sooner. The selection of early restoration projects will follow a public process, and will be overseen by the Trustees.

"The full natural resource damage assessment process will continue until the Trustees have determined the full extent of damages caused by the Deepwater Horizon oil spill. At the end of the damage assessment process, the Trustees will take into account any benefits that were realized from these early restoration projects. In addition to funding early restoration projects, BP will continue to fund the damage assessment and, together with the other responsible parties, will ultimately be obligated to compensate the public for the entire injury. BP is providing the early restoration funds voluntarily, and is not required to do so at this stage of the damage assessment process. The agreement will speed needed resources to the Gulf Coast in advance of the completion of the assessment process."

U.S. District Court for the Eastern District of Louisiana

Judge Barbier

Co-counsel: Thomas Perrelli and William Brighton, U.S. Department of Justice, Washington, DC 20044. Phone: (202) 514-2701

Opposing Counsel: Tom Milch, Brian Israel, Law Firm of Arnold and Porter, 555 12th St. NW, Washington, DC 20004. Phone: (202) 942-5000

10. Miller v Newbauer, No 87-6573 DC CV-85-7707-RMT, U.S. Court of Appeals for the 9th Circuit, 1988.

I argued this case on appeal. A former Air Force sergeant sued five Air Force officers for common law and constitutional causes of action and interference with an employment relationship. He sought a multi-million damage award. As the Court opinion observed, the plaintiff "had been having problems in his unit for some time," and had received an unexcused absence letter and non-judicial punishment before resigning. The Court of Appeals upheld the District Court decision that the appellant's suit was barred by Supreme Court precedent.

U.S. Court of Appeals for the Ninth Circuit
Judges Fletcher, Alacaron and Hall

Co-counsel: John F. Cordes, Civil Division, U.S. Department of Justice, Washington, DC 20044. Phone: (202) 514-2701

Opposing counsel: Franklin L. Miller, P.O. Box 5173, Long Beach, CA 90805. Phone: (213) 638-7571.

16. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s)

or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

a. Serving as Deputy Assistant Attorney General or Acting Assistant Attorney General, Environment and Natural Resources Division. During the period 1995-2011, I served as Deputy Assistant Attorney General or Acting Assistant Attorney General (AAG), Environment and Natural Resources Division, U.S. Department of Justice. I served in that capacity in both Republican and Democratic Administrations for three different Presidents. As Acting AAG, I supervised over 650 individuals responsible for defending environmental challenges to government programs and activities, representing the United States in matters concerning the stewardship of the nation's natural resources and public lands, and bringing affirmative cases against those who violated the nation's anti-pollution laws. I worked with virtually every federal agency at all levels. During the time period that I was Acting AAG, the Environment and Natural Resources Division was rated the best place to work in the Federal Government.

b. Advancing Environmental Enforcement. From 1991-1995, I was Chief, Environmental Enforcement Section, U.S. Department of Justice, supervising 250 individuals responsible for the nationwide enforcement of the nation's environmental statutes in federal court. During that time period, I supervised the consent decrees in Exxon Valdez oil spill, Love Canal, and all other federal civil environmental enforcement cases involving the United States. During that time period we had several record-breaking years in environmental enforcement extending over both Democratic and Republican Administrations. Subsequently, as the career Deputy Assistant Attorney General, I supervised all federal civil environmental enforcement from 1995 to 2011, over three different administrations. At the request of the State Department, I also lectured to the first South American judicial conference on environmental law, and later as the lead representative of the Department of Justice, provided keynote speeches at international environmental enforcement conferences.

Three examples of settlements that I supervised and/or negotiated during that time period are:

United States v Colonial Pipeline. I supervised this case which, at the time, was the largest civil penalty for an environmental enforcement case.

The following is an extract from the DoJ press release:

"The Department of Justice and the Environmental Protection Agency today announced a settlement with Colonial Pipeline Company, resolving charges that the company violated the Clean Water Act on seven recent occasions by spilling 1.45 million gallons of oil from its 5,500 mile pipeline in five states. Under the consent decree, Colonial will upgrade environmental protection on the pipeline at an estimated cost of at least $30 million, and pay $34 million, the largest civil penalty a company has paid in EPA history.

"The government maintained that pipeline corrosion, mechanical damage, and operator error in seven recent spills resulted in the release of approximately 1.45 million gallons of oil and other petroleum products into the environment, including numerous rivers, streams, and wetlands. Oil spills from the pipeline damaged a variety of aquatic systems. In one spill, more than 950,000 gallons of

> diesel fuel spilled into the Reedy River in South Carolina in 1996, killing 35,000 fish and other species of wildlife, and dispersing more than 34 miles downstream. It can take years for an ecosystem to recover from damage caused by an oil spill. Other spills forming the basis of the penalty occurred in Georgia, Tennessee, Louisiana, and North Carolina."

United States v Virginia Electric Power Co. I supervised this case, which resulted in the largest Clean Air Act settlement of an enforcement matter against a utility. This settlement required Virginia Electric Power Co. (VEPCO), one of the nation's largest coal-fired electric utilities, to install new pollution control equipment and upgrade existing controls on eight VEPCO plants, six in Virginia and two in West Virginia, comprising 20 electricity-generating units, costing an estimated $1.2 billion, dramatically reducing both sulfur dioxide and nitrogen oxides emissions in Virginia and West Virginia. The settlement was the culmination of a well-coordinated partnership between EPA, the Justice Department and the states of New York, New Jersey, Connecticut, Virginia, West Virginia and the National Park Service. In addition to providing for major pollution reductions, VEPCO agreed to pay a $5.3 million civil penalty and spend at least $13.9 million for projects in each of the five states that participated in the case and its settlement to offset the impact of past emissions.

United States v Toyota. I led the settlement efforts in the environmental enforcement case against Toyota for alleged Clean Air Act violations. The United States alleged Toyota's on-board diagnostic system, which advised drivers of emission control system leaks, did not work properly. The following is an extract of the DoJ press release:

> "The Department of Justice and the Environment Protection Agency today announced a settlement of the government's lawsuit against Toyota Motor Corporation for Clean Air Act violations involving 2.2 million vehicles manufactured between 1996 and 1998. Under the settlement, Toyota will spend $20 million on a supplemental environmental project to retrofit up to 3,000 public diesel fleet vehicles to make them run cleaner and extend the emission control system warranty on affected vehicles. In addition, Toyota will accelerate its compliance with certain new emission control requirements, and pay a $500,000 civil penalty."

I continued this work as President of Environmental Law Institute. ELI has an active program training international judges in environmental law. I have spoken at training programs, coordinated study tours in the United States of judges and foreign enforcement or environmental officials, and advised federal and state agencies on creating effective and efficient enforcement programs. ELI does not lobby or litigate.

c. Protecting the Public Fisc. From 1995-2011, I served as Deputy Assistant Attorney General or Acting Assistant Attorney General, Environment and Natural Resource Division, U.S. Department of Justice. In that capacity I supervised federal litigation designed to protect the public fisc, such as by seeking reimbursement for money spent by EPA in the cleanup of hazardous waste sites, defending the military from environmental challenges, defending federal agencies when money judgments were sought, and assuring that the government's position was fully presented to each court.

The best example of this effort was my supervision of our action in bankruptcy against the American Smelting and Refining Company (ASARCO) mining company, the lead

actor at sites across the United States with potential debts to many states and numerous federal agencies. After ASARCO filed bankruptcy, the United States filed the largest proof of claim in its history, and then litigated the claim before Judge Richard Schmidt of the U.S. Bankruptcy Court in Corpus Christi, Texas.

In August 2009, following lengthy litigation, the U.S. Bankruptcy Court for the Southern District of Texas held a two-week hearing on competing plans of reorganization for ASARCO that would allow the company to be purchased out of bankruptcy.

In a case that I supervised and subsequently announced to the press, in December 2009 DoJ settled the largest environmental bankruptcy in U.S. history. ASARCO Mining Company agreed to pay $1.79 billion to fund environmental cleanup and restoration under bankruptcy reorganization of American Smelting and Refining Company LLC (ASARCO). The money from environmental settlements in the bankruptcy is being used to pay for past and future costs incurred by federal and state agencies at more than 80 sites contaminated by mining operations in 19 states, including Arizona, Alabama, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kansas, Missouri, Montana, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, Texas, Utah, and Washington.

d. Working constructively with States on Environmental Enforcement. As Chief of Environmental Enforcement, and later Deputy Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, I made working cooperatively with State Attorneys General and environmental officials a high priority. I initiated meetings with the National Association of Attorneys General, worked on common projects, and visited State offices. And, I initiated a policy that we would alert and communicate with State Attorneys General before filing an enforcement case in their jurisdiction. As a result of these partnership efforts, ENRD has brought joint civil enforcement cases with nearly every state. These joint cases are particularly effective in achieving positive results in an efficient manner and build positive relationships.

e. Advising Senior Military Commanders. While serving as a military judge advocate, I had the honor of teaching virtually every senior (brigade and higher) commander in the military in the mid-1980, in courses where we provided instruction on both criminal and civil law. In addition, I regularly traveled to Fort Leavenworth, Kansas, to provide instruction to new battalion commanders on both criminal law and the law of armed conflict.

f. Advancing trial practice education inside the U.S. Department of Justice. I instituted the very first set of instruction for new attorneys in the Environment Division, which has now led to a week long course on trial practice and legal ethics. I also emphasized mentorship and integrity to all new DoJ personnel and spoke to each new class of attorneys.

g. Promoting Rule of Law. As President of the Environmental Law Institute (ELI), I oversee a staff of over 55 attorneys and scientists, united in working to assure that ELI "fosters innovative, just, and practical law and policy solutions to enable leaders across borders and sectors to make environmental, economic, and social progress." ELI does not lobby or litigate, but works to advance the environment through publication, education, and research. Last year, for instance, ELI sponsored or co-sponsored over 80 educational programs while publishing the Environmental Law Reporter and The Forum magazine, as well as books and newsletters.

17. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

    In the military as Chief, Administrative and Civil Law Division, The Judge Advocate General's Legal Center and School, Charlottesville, Virginia, I supervised all administrative and civil law instruction, lectured on a wide variety of subjects, and personally taught Federal Civil Litigation, Military Personnel Law, and Management. I also provided instruction to new General Officers and senior Commanders on military and administrative law. I have been unable to locate a course syllabus from this period.

18. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

    I have a 403(b) pension plan with the Environmental Law Institute. In addition, I am receiving a pension due to my prior federal government and military service.

19. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

    None.

20. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

    Please see SF-278 as provided by the Office of Government Ethics.

21. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    Please see attached Financial Statement (Net Worth).

22. **Potential Conflicts of Interest**:

    a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

       In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In the event of a potential conflict of interest, I would consult the Department's designated agency ethics official.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While in the federal government, I strongly advocated that government attorneys should be involved in pro bono service to the community, and often led that effort inside the Department of Justice. Although there are times where government attorneys could not be involved, we found that they could play a key role in staffing clinics and providing advice in conjunction with the District of Columbia Bar and local legal service providers.

As District of Columbia Bar President, I made federal government pro bono service my most significant initiative, which was recognized that year by the ABA President. In that capacity I wrote to each agency general counsel encouraging them to have their organization develop a pro bono program and to join in a council created at the Department of Justice to assist in pro bono work. To achieve my goals, I met with many of the federal agencies including the Department of Defense. We were quite successful. See one of my final DC Bar columns (attached) entitled "D.C. Bar Leads the Way in Government Pro Bono Service." Subsequently, I prepared an article on government pro bono for the Federal Bar Association entitled "Promoting Pro Bono Service for Government Attorneys," which is attached.

In 2008, I was elected to the Board of Governors for the District of Columbia Bar Foundation, a non-profit organization with a mission to "fund, support, and improve legal representation of the poor, vulnerable, and otherwise disadvantaged in the District of Columbia." The Foundation supports pro bono work and provides funds for civil legal aid and lawyer loan repayment assistance.

For the past ten years, I have been the swim coach of the Wakefield Special Olympic Swim Team, which now has approximately 70 mentally handicapped swimmers who practice weekly, and then compete in the spring and early summer of each year. In that capacity I am ably assisted by ten or more volunteer assistant coaches.

I have personally provided pro bono service by participating on numerous occasions in the monthly clinics sponsored by the District of Columbia Bar Association in Southeast Washington, DC.

I was appointed by the Chief Judge of the U.S. Court of Appeals for the District of Columbia to be a member of the Standing Committee on Pro Bono Legal Services, and served in that capacity from 2006 to 2011. In that capacity, I authored or contributed to the federal agency portion of the annual pro bono reports, and met monthly with the Committee to advance pro bono service in the Federal Courts.

I am quite proud of the fact that the annual government pro bono award given in the U.S. Court of Appeals for the District of Columbia was named in 2011: "The John C. Cruden Federal Agency Pro Bono Leadership Award."

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NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		15	954	Notes payable to banks-secured			
U.S. Government securities-add schedule		219	092	Notes payable to banks-unsecured			
Listed securities-add schedule	3	928	988	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		678	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	500	Real Estate Tax		6	500
Cash value-life insurance		31	073				
Other assets itemize:							
ELI 403(b)		23	785				
				Total liabilities		6	500
				Net Worth	4	915	892
Total Assets	4	922	392	Total liabilities and net worth	4	922	392
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		0		Are any assets pledged? (Add schedule)		5	500
On leases or contracts		0		Are you defendant in any suits or legal actions?		NO	
Legal Claims		0		Have you ever taken bankruptcy?		NO	
Provision for Federal Income Tax		0					
Other special debt		0					

LISTED SECURITIES Cruden Account Values as of 12/31/13

John & Sharon Cruden Joint Account

DESCRIPTION	SYMBOL		VALUE
CASH		$	115,528.59
AT&T INC COM	T	$	52,740.00
BERKSHIRE HATHAWAY	BRKB	$	77,064.00
CISCO	CSCO	$	40,374.00
JOHNSON & JOHNSON	JNJ	$	59,533.50
INVESCO DEVELOPING MKTS	GTDCX	$	26,617.43
INVESCO CONVERTIBLE	CNSAX	$	98,267.67
INVESCO CONVERTIBLE	CNSCX	$	17,979.97
DREYFUS INTL BOND	DIBCX	$	37,449.10
DREYFUS INTL BOND	DIBAX	$	21,532.33
AMERICAN GROWTH FD OF AMERICA	GFAFX	$	191,475.41
WESTERN ASSET INTERM TERM MUNI	SMLLX	$	83,034.55
LORD ABBETT FLOATING RATE	LARCX	$	42,211.79
MAINSTAY HIGH YIELD OPPORTUNITIES	MYHAX	$	28,175.56
MET. WEST TOTAL RETURN BOND FD	MWTRX	$	158,884.78
MS FOCUS GROWTH FD	AMOCX	$	161,208.20
MS INSTL US REAL ESTATE	MUSDX	$	34,006.89
MS INSTL AC INTL ALLOCATION PORT	MSIBX	$	44,602.88
MSIF ACTIVE INTL ALLOCATION	MSLLX	$	61,431.74
PIONEER DISCIPLINED VALUE FD	CVFCX	$	182,243.51
PRUDENTIAL JENNISON MID CAP GROWTH	PEEAX	$	100,549.61
PRUDENTIAL SHORT TERM CORP BOND	PBSMX	$	143,424.46
RS FLOATING RATE	RSFLX	$	51,370.68
RS EMERGING MARKETS	GBEMX	$	19,355.82
ROYCE VALUE SERVICE	RYVFX	$	42,968.79
THORNBURG INTL VALUE	TGVAX	$	159,875.29
	TOTAL	**$**	**2,051,906.55**

John & Sharon Cruden Joint Account

DESCRIPTION	SYMBOL		VALUE
CASH		$	6,210.07
INVESCO S&P 500 INDEX	SPIAX	$	21,351.55
INVESCO SENIOR LOAN	XPRTX	$	18,273.50
	TOTAL	**$**	**45,835.12**

John & Sharon Cruden Joint Account

DESCRIPTION	SYMBOL		VALUE
CASH		$	15,157.01
GOLDMAN SACHS GROUP INC (BOND)	38141GNH3	$	61,122.00
ACAP STRATEGIC ONE	XCAPX	$	89,904.32

FIRST EAGLE HIGH YIELD	FEHAX	$	80,796.79
RS FLOATING RATE	RSFLX	$	78,687.29
VIRTUS REAL ESTATE CAPITAL		$	200,000.00
	TOTAL	**$**	**525,667.41**

John Cruden IRA Account

DESCRIPTION	SYMBOL		VALUE
CASH		$	1,367.38
FIRST TRUST DJ INTERNET INDEX FUND	FDN	$	8,619.84
FIRST TRUST CONSUMER DISCRETIONARY ALPHA FD	FXD	$	7,675.50
FIRST TRUST FINANCIALS ALPHADEX FUND	FXO	$	7,652.48
FIRST TRUST HEALTH CARE ALPHADEX FD	FXH	$	7,835.41
FIRST TRUST MATERIALS ALPHADEX	FXZ	$	7,747.18
ISHARES BARCLAYS SHORT TREASURY BOND FD	SHV	$	24,585.75
SPDR MORGAN STANLEY TECHNOLOGY ETF	MTK	$	7,704.74
SPDR KBW MORTGAGE FINANCE ETF	KME	$	8,341.50
SPDR S&P TRANSPORTATION ETF	XTN	$	7,404.67
SPDR SERIERS TRUST S&P COMPUTER ETF	XSW	$	7,602.00
SPDR SERIERS TRUST S&P AEROSPACE & DEFENSE ETF	XAR	$	8,119.96
SPDR SERIERS TRUST BARCLAYS 1-3M ETF	BIL	$	24,486.95
SPDR SERIERS TRUST S&P REGIONAL BANKING ETF	KRE	$	7,797.12
SPDR SERIERS TRUST S&P RETAIL ETF	XRT	$	8,193.30
SPDR SERIERS TRUST S&P PHARMACEUTICALS ETF	XPH	$	8,709.03
SPDR SERIERS TRUST S&P BIOTECH ETF	XBI	$	8,463.00
SPDR SERIERS TRUST S&P HOMEBUILDERS ETF	XHB	$	7,858.80
SECTOR SPDR TR SHS BEN INT CONSUMER STAPLES ETF	XLP	$	7,435.54
JP MORGAN CHASE BANK (BOND)	48126DJW0	$	39,063.20
361 MANAGED FUTURES FD	AMFQX	$	57,565.61
PIMCO ALL ASSET ALL AUTHORITY FD	PAUDX	$	16,986.37
	TOTAL	**$**	**291,215.33**

Sharon Cruden IRA Account

DESCRIPTION	SYMBOL		VALUE
CASH		$	2,868.54
INVESCO GLOBAL CORE EQUITY	AWSCX	$	14,477.49
INVESCO GROWTH AND INCOME	ACGKX	$	13,341.95
INVESCO CONVERTIBLE SECURITIES	CNSCX	$	12,924.60
DREYFUS INTL BOND	DIBCX	$	5,457.76
INVESCO SENIOR LOAN	XPRTX	$	6,712.03
IVY GLOBAL NATURAL RESOURCES	IGNCX	$	6,329.89
LORD ABBETT FLOATING RATE	LARCX	$	14,038.73
	TOTAL	**$**	**76,150.99**

TOTAL FIDELITY ACCOUNTS	**$ 2,990,775.40**

John Cruden FBO Ryan Mason 529

DESCRIPTION	SYMBOL		VALUE
EUROPACIFIC GROWTH FUND	CEUCX	$	8,575.92
GROWTH FUND OF AMERICA	CGFCX	$	13,030.75
INCOME FUND OF AMERICA	CIMCX	$	9,380.83
WASHINGTON MUTUAL INVESTORS FUND	CWMCX	$	13,365.69
	TOTAL	**$**	**44,353.19**

John Cruden FBO Lauren Campbell 529

DESCRIPTION	SYMBOL		VALUE
EUROPACIFIC GROWTH FUND	CEUCX	$	6,021.13
GROWTH FUND OF AMERICA	CGFCX	$	15,847.51
INCOME FUND OF AMERICA	CIMCX	$	6,940.70
WASHINGTON MUTUAL INVESTORS FUND	CWMCX	$	16,062.93
	TOTAL	**$**	**44,872.27**

John Cruden FBO Jonathan Mason 529

DESCRIPTION	SYMBOL		VALUE
EUROPACIFIC GROWTH FUND	CEUCX	$	5,806.04
GROWTH FUND OF AMERICA	CGFCX	$	15,468.80
INCOME FUND OF AMERICA	CIMCX	$	6,282.42
WASHINGTON MUTUAL INVESTORS FUND	CWMCX	$	15,429.09
	TOTAL	**$**	**42,986.35**

John Cruden FBO Katelyn Campbell 529

DESCRIPTION	SYMBOL		VALUE
EUROPACIFIC GROWTH FUND	CEUCX	$	4,507.57
GROWTH FUND OF AMERICA	CGFCX	$	13,964.94
INCOME FUND OF AMERICA	CIMCX	$	5,046.16
WASHINGTON MUTUAL INVESTORS FUND	CWMCX	$	13,759.23
	TOTAL	**$**	**37,277.90**

TOTAL 529 AMERICAN FUND ACCOUNTS	**$ 169,489.71**

John Cruden SunAmerica Variable Annuity

DESCRIPTION	SYMBOL	VALUE
SMALL & MID CAP VALUE	NA	$ 33,466.13
MARSICO FOCUSED GROWTH	NA	$ 130,823.27
EMERGING MARKETS	NA	$ 27,773.36
INTERNATIONAL DIVERSIFIED EQUITIES	NA	$ 62,425.54
INVESCO VI COMSTOCK FUND	NA	$ 132,707.54
HIGH YIELD BOND	NA	$ 58,848.53
GLOBAL BOND	NA	$ 87,337.80
REAL RETURN	NA	$ 82,826.06
	TOTAL	$ 616,208.23

Subtotal	**$ 3,776,473.34**

Vanguard	$130,370
Bob Evans Stock	$22,145
Total Listed Securities	3,928,988

ADDENDUM TO FINANCIAL STATEMENT

US GOVERNMENT SECURITIES

US Savings Bonds	$219,092.00

REAL ESTATE OWNED

Home, Annandale, Virginia 22003	$675,000.00
Time Share, Massanutten Resort, Virginia	3,000.00

ASSETS PLEDGED

Pledge to Church in 2014	5,500.00

AFFIDAVIT

I, _____ do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1/27/2014 John C. Cruden

(DATE) (NAME)

WEN HILLS ZHENG
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires March 31, 2016

_____
(NOTARY)

Statement for the Record of John C. Cruden
Before the Senate Judiciary Committee
February 25, 2014

Thank you, Chairman Franken, Ranking Member Grassley, and distinguished Members of this Committee.

It is an honor to appear before you today, and I thank you for considering my nomination. I appreciate the trust and confidence that both the President and the Attorney General have shown in me.

My career path may be considered unusual. I grew up in a small town in Michigan, the adopted son of a wonderful set of parents. After graduating from West Point, I became a military officer for the next several decades, first in ranger, airborne, and special forces units in Germany and Vietnam, and then as a military lawyer in a number of positions, starting as prosecutor and ultimately rising to the rank of Colonel and serving as the Chief Legislative Counsel of the Army. I am quite proud of my military service and continue to honor the patriotism and courage of our armed forces. The framed print on my wall in my office is of the West Point parade ground, with the names from the Vietnam memorial of my classmates who perished in that war superimposed, a constant reminder to me of what service means.

Following my military service, I became the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice. In that position I was responsible for enforcing the nation's environmental laws in federal courts, and was fortunate to have an extraordinary group of attorneys and environmental professionals working with me. Later, I was selected to become the Division's career Deputy Assistant Attorney General, and was Acting Assistant Attorney General during two different Administrations. I continued in that position until I was selected to become the President of the Environmental Law Institute three years ago. ELI is a non-partisan organization that provides environment, energy, and natural resource publications, education, and research. The Institute has a governing board of distinguished corporate leaders, academicians, environmental organizations, and private practitioners, with a vision statement promoting "A healthy environment, prosperous economies, and vibrant communities founded on the rule of law."

It is a distinct honor to be considered for return to the Department of Justice to lead the Environment and Natural Resources Division, which has the responsibility of enforcing the laws enacted in Congress and defending federal agencies' implementation of those laws. In existence for over one hundred years, the Division is built upon a history of service, integrity, and adherence to the rule of law. It has broad responsibilities present in the thousands of cases under the Division's jurisdiction: enforcing the nation's civil and criminal pollution-control laws, defending environmental challenges to federal agency programs and activities, protecting the public fisc, representing the United States in matters concerning the stewardship of the nation's natural resources and public lands, acquiring real property, bringing and defending cases under the wildlife protection statutes, and litigating cases concerning Native American rights.

I am grateful to have had the opportunity to spend two decades at the Department of Justice and to have received the Presidential Rank Award from three different Presidents of both parties. During my time in the government I witnessed the extraordinary efforts of career public servants who work countless hours, representing the United States in federal courts across our great nation. The Division's backbone is those career professionals who have dedicated their lives to public service: upholding our laws, improving the environment, protecting our natural resources, and assuring the health and safety of our citizens. And I have had the pleasure of working with leaders from virtually every federal agency and the privilege to work collaboratively with a number of U.S. Attorneys and State Attorneys General. I have also enjoyed working with members of Congress and their staff in various roles, ranging from the critical oversight function that Congress serves as well as providing briefings and background information on important legal developments

If I am fortunate enough to be confirmed, I will focus on advancing the mission of the Environment and Natural Resources Division and zealously representing the United States in all of its activities, while adhering to the law, promoting integrity, listening to all sides of an issue, providing candid advice, treating everyone I encounter with fairness and respect, and honoring, supporting, and advancing the efforts of the career professionals who are the core of the Division.

Finally, I would like to recognize my family, for their love and support over the years. Without them, I would not be here. My wife, Sharon, who I first met in high school, married immediately after I graduated from West Point, and who has had a distinguished career as an educator of learning disabled young people. My two daughters, Kristen and Heather, are also superb professionals, who are also with me today, along with their husbands: Major Scott Campbell, and Travis Mason. Their children are Ryan, Lauren, Jonathan, and Katelyn and two of them are here today.

Thank you again for the opportunity to appear before you today and for your consideration. I look forward to answering your questions.

Senator Chuck Grassley
Questions for the Record

Gregg Jeffrey Costa
Nominee, Circuit Judge
United States Court of Appeals for the Fifth Circuit

1. 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.

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 Federal Circuit precedents are binding on the Court of International Trade. 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?

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. Please describe your understanding of the workload of the Fifth Circuit. If confirmed, how do you intend to manage your caseload?

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. 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?

13. As a district 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. 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?

15. 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?

16. 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?

17. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

18. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

19. 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?

20. Do you believe that the death penalty is an acceptable form of punishment?

21. 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?

22. 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?

23. 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?

24. In *Brown v. Entertainment Merchants Ass'n*, 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?

25. The Fifth Circuit recently reversed your opinion in *Voting for America, Inc. v. Andrade* and disagreed with your holdings that a variety of provisions of Texas election law ran afoul of the First Amendment and the National Voter Registration Act. The Circuit disagreed with your holding that various activities comprising voter registration drives constituted expressive conduct within the meaning of the First Amendment.

    a. What is your view of the scope of non-speech conduct that qualifies as expressive activity protected by the First Amendment?

    b. Do you believe that the Circuit correctly held that the activities in question in *Andrade* are not entitled to First Amendment protection?

    c. Do you believe that the Circuit's decision is consistent with the Supreme Court's decisions in *Meyer v. Grant* and *Buckley v. American Constitutional Law Foundation*?

    d. Please explain the legal reasoning that led you to criticize the Texas Secretary of State for not producing evidence of "rampant fraud" committed by out-of-state VDRs.

    e. Do you believe that a State must demonstrate voter fraud before enacting provisions that require voters to present identification prior to voting?

    f. If so, what quantum of voter fraud do you believe is necessary?

26. In a 1999 law review article, you applied what you described as a "textual-contextual framework" in analysis of certain historical texts. Do you believe the "textual-contextual framework" is a tool of statutory interpretation appropriate for judges to apply?

27. In a 2012 interview you expressed your view that white-collar criminals are "more blameworthy" than socially disadvantaged offenders. Please explain this statement.

28. As a judge, does a criminal defendant's social, economic, or class status inform your judgment as to what is the appropriate sentence to render?

29. Do you believe that socially disadvantaged defendants are entitled to less severe punishment than other defendants who commit the same offense conduct?

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. Please describe with particularity the process by which these questions were answered.

33. Do these answers reflect your true and personal views?

Senator Grassley
Questions for the Record

Tanya Chutkan,
Nominee, U.S. District Judge for the District of Columbia

1. 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.

2. You have spent part of your career working as a criminal defense attorney.

    a. How will you transition from the role of advocate to that of a judge?

    b. What assurances can you provide that will assuage any concerns that you will have a bias in criminal cases?

3. What is the most important attribute of a judge, and do you possess it?

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

9. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

12. If confirmed, how do you intend to manage your caseload?

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

    a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

    b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

16. Please describe with particularity the process by which these questions were answered.

17. Do these answers reflect your true and personal views?

Senator Chuck Grassley
Questions for the Record

M. Hannah Lauck,
Nominee, U.S. District Judge for the Eastern District of Virginia

1. You were part of a judges panel on March 24, 2009. During the panel, one of the presenters said that all judges have biases and stereotypes they bring to the courtroom and that the judge needs to recognize them, set them aside and not let them cloud their views. And that if judges don't admit that they have biases and stereotypes, they're not telling the truth.

   a. Do you agree with this assertion?

   b. If so, what biases and stereotypes do you bring to the courtroom that you need to set aside and how do you do so?

2. In your questionnaire you indicated that you have been a member of The Club since 2012. Will you please tell us more about this organization?

3. You have expressed admiration for Justice Frankfurter. What do you admire about him?

4. In your notes from a "Women's Networking Forum" on June 22, 2005, you write "In our courthouse, we distinguish between bureaucrats and public servants." Can you please explain what you mean by distinguishing between bureaucrats and public servants?

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. 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

Leo Theodore Sorokin,
Nominee, United States District Judge
United States District Court for the District of Massachusetts

1. What is the most important attribute of a judge, and do you possess it?

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

4. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

5. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

7. In your view, is it ever proper for judges to rely on foreign law, or the views of the "world community", in determining the meaning of the Constitution? Please explain.

8. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

9. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

10. If confirmed, how do you intend to manage your caseload?

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

12. As a Magistrate Judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

13. As a Magistrate Judge, you proposed the creation of the District of Massachusetts's Court Assisted Recovery Effort.

    a. Do you envision an altered or expanded role for the program in the District Court's criminal docket?

    b. If so, please describe what defendants would be eligible and whether you think the current eligibility standards for admission should be changed.

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?

Senator Chuck Grassley
Questions for the Record
John Charles Cruden, Nominee, Assistant Attorney General,
Environment and Natural Resources Division, United States Department of Justice

1. You have previously criticized the Clean Water Act's statutory framework establishing a permit system for regulation of so-called "point sources" of pollution and suggested that moving from a point-source-based regulatory structure to a broader statutory grant is something "[t]hat ought to be on everybody's wish list" in order to address more potential sources of water pollution.

    a. Please describe the nature and scope of the regulatory framework that you envision as being preferable to the current point-source-based statutory grant.

    b. If confirmed, how do you plan to address sources of water pollution like runoff areas and streets, i.e., non-point-source pollution, using the current regulatory framework?

2. The Clean Water Act restricts federal regulatory jurisdiction to the "navigable waters" of the United States, a term which has been variously defined in *Rapanos* and *Carabell* as those waters that are "relatively permanent" and have a "continuous surface connection," and also as waters that have a "significant nexus" to what was traditionally regarded as navigable waters. The EPA's position regarding Clean Water Act regulatory jurisdiction is that the Act empowers regulation of the "waters of the United States."

    a. Do you agree with the EPA that "waters of the United States" is the proper extent of regulatory jurisdiction under the Act?

    b. If so, will you advocate on behalf of the United States for regulatory jurisdiction over all "waters of the United States" under the Act?

    c. If not, please describe what you believe to be the lawful extent of regulatory jurisdiction under the Act.

3. You have stated that the Department of Justice must be prepared to demonstrate Clean Water Act jurisdiction under the Scalia-plurality standard and the Kennedy standard outlined in *Rapanos* and *Carabell* and that "significant additional litigation resources must be devoted to addressing the concepts" related to the definition of "navigable waters" used in those opinions.

    a. Please describe whether, if confirmed, you plan to devote "significant additional resources" to the litigation described above.

    b. If so, please explain whether you anticipate taking resources from other areas of ENRD jurisdiction or whether reprioritizing ENRD's litigation goals would be necessary, in your view, to accomplish this goal.

4. In public statements you have routinely referred to the concept of "environmental justice." For example, in a 2008 interview you suggested that promotion of "environmental justice" was necessary due to the "disproportionately high and adverse human health or environmental effects" of polluters' "programs, policies, and activities on minority and low-income populations." You have also publically stated that "[p]eople of color and the poor" bear a "disproportionate share of environmental burdens."

    a. Please explain what you mean by the concept of "environmental justice."

    b. Please describe how the concept of "environmental justice" will inform your decisionmaking if you are confirmed as Assistant Attorney General.

    c. Please describe how the concept of "environmental justice" will inform the nature and scope of litigation you will undertake if confirmed as Assistant Attorney General.

5. In a 2013 article you described the EPA's electronic reporting requirements imposed on states as "federalism, cooperative federalism at its best." Please explain this statement.

6. Prior to your departure from ENRD in 2011, you had participated in the Deepwater Horizon Multidistrict Litigation that is currently underway in the Eastern District of Louisiana. If you are confirmed, please describe what role you anticipate ENRD will play in the litigation going forward and whether you plan to alter ENRD's current litigation posture with respect to litigation strategy or potential settlement and discovery negotiations.

7. You have previously criticized Congress for its "failure…to enact comprehensive climate change legislation," which, you maintained, "cost the United States its leadership position on this critical issue." You also stated that "it is imperative for this Administration to accomplish as much as it can through implementing the Clean Air Act."

    a. Please describe in detail the steps you believe to be imperative with respect to the Administration's implementation of the Clean Air Act.

    b. Please describe how, if confirmed, you anticipate you will use Clean Air Act litigation to achieve the goals you described above.

    c. Please describe how, if confirmed, you plan to demonstrate what you described as the United States' "leadership position" in your work as Assistant Attorney General and, specifically, through Clean Air Act litigation.

8. You have previously stated that there is "much more we can and should do" than merely maintain a commitment to reducing domestic greenhouse gas emissions ("GHG"). Please describe what, if confirmed, you plan to undertake in ENRD to contribute to reduction of GHG emissions.

9. You have described the D.C. Circuit's holding in *Coalition for Responsible Regulation v. EPA*, as "critical" and a "superb start" to the regulation of GHG emissions. Assuming that the EPA's actions are upheld by the Supreme Court, please describe what role enforcement of the EPA's endangerment finding, tailoring rule, and the so-called "tailpipe rule" will play in litigation involving the ENRD if you are confirmed at its Assistant Attorney General.

10. In a recent ELI report entitled "Climate Change and New York City," you suggested that anthropogenic climate change was the likely cause – or at least a contributing cause – of Superstorm Sandy.

    a. Please explain what role, if any, you believe anthropogenic climate change and, specifically, GHG emissions, played in Superstorm Sandy.

    b. Please explain what role, if any, you believe anthropogenic climate change plays in (1) the variation in worldwide sea levels; (2) Arctic and Antarctic snow/ice coverage; (3) global average temperatures; and (4) the recent drought in California's Central Valley.

11. Please describe what alterations, if any, you would make to ENRD's current litigation involving the Secure Border Initiative if you are confirmed.

12. Please describe what alterations, if any, you would make to ENRD's current litigation involving so-called R.S. 2477 litigation if you are confirmed.

13. Please describe what alterations, if any, you would make to ENRD's current litigation involving tribal-trust issues if you are confirmed.

14. Please describe with particularity the process by which these questions were answered.

15. Do these answers reflect your true and personal views?

Questions for John Cruden (AAG for Environment and Natural Resources Division)

Senator Cornyn:

1) The major environmental statutes (Air, Water, Waste, Endangered Species and others) have citizen suit provisions that allow environmental groups to bring suit against both the federal agency and private parties for failure to comply with statutory or regulatory provisions.
    a. In the last five years, how many citizen suits have been filed against the federal government?
    b. In the last five years how many citizen suits have been filed by environmental groups against private parties for alleged violations of any permit condition or emissions limitation?
    c. In the last five years, how many citizen suits has the DOJ settled with outside organizations?
    d. In the last five years, how many have resulted in the payment of attorneys' fees?
    e. When the DOJ or the agency you represent pays attorneys' fees, what is the source of appropriated funds for the payment of these awards?
    f. If confirmed, will you provide me a list of all citizen suit cases in which the U.S. paid attorneys' fees and the amount of each payment?

2) In 2011, two environmental groups settled a multi-district litigation with the Fish and Wildlife Service that resulted in a "work plan" for the agency to make endangered species list determinations for hundreds of species and the payment of expensive litigation fees to the plaintiffs. While the determinations may impact numerous states, communities, businesses and citizens, the settlement involved just one federal agency and two environmental groups willing to drown it in litigation. As head of ENRD, would you support efforts to improve the transparency of the settlement process and allow affected stakeholders to participate?
    a. Would you commit to the DOJ posting on its website copies of all complaints filed against any agency as a result of notices of intent to sue?
    b. Would you commit to DOJ posting on its website copies of all proposed consent decrees 30 days before submitting them to a court of law, to give stakeholders notice?
    c. Would you commit to meeting with local officials when a settlement agreement is being worked out if a substantial part of their jurisdiction will be impacted?

3) What would you do to ensure that the agency does not agree to deadlines through settlements that do not provide sufficient time for EPA or DOI to meet its obligations under the Administrative Procedure Act, the Regulatory Flexibility Act, the Small

Business Regulatory Enforcement Fairness Act, OMB Circular A-4, and other requirements that apply to EPA or DOI?

4) In a recent denial of several environmental groups' petition for a rulemaking under the Clean Air Act, Acting Administrator Robert Perciasepe stated that, "[e]ven under the best circumstances, the EPA cannot undertake simultaneously all actions related to clearly determined priorities as well as those requested by the public, and so the agency must afford precedence to certain actions while deferring others.... The EPA must prioritize its undertakings to efficiently use its remaining resources."
    a. How should DOJ prioritize the rulemakings that EPA or DOI decide to pursue through the use of Consent Decrees?
    b. Would you agree that the new commitments that EPA or DOI agree to in "sue and settle" agreements with environmental groups, including timetables for rulemakings or the listing of species, have an impact on EPA's or DOI's priorities as to the rulemakings or listings that it undertakes?
    c. Would you agree that the new commitments that EPA or DOI agree to in "sue and settle" agreements with environmental groups, including timetables for rulemakings, have an impact on EPA's or DOI's budgetary resources?

5) Out of all of the rules for which EPA has deadlines, how many of them have been met? And, how many of those deadlines have been missed?

6) Once an agency submits to a Consent Decree it is under the jurisdiction of the federal court and subject to contempt should it not comply with the Consent Decree. Since EPA issues between 300 – 400 regulations a year while entering into an average of 15 Sue and Settle Consent Decrees, it appears that those 15 Sue and Settle Consent Decrees under court supervision become the agency's priority rules for implementation. Isn't it correct that under Sue and Settle private parties are setting priorities for EPA and DOI?

7) Since, according to a CEI study, EPA cannot meet over 90% of all its statutory deadlines, the agency could theoretically be subject to a lawsuit on several hundred more regulations a year. How would you address this dilemma? Should we restrict citizens' suits or should we legislate longer time periods for agency regulatory actions?

8) Senator Vitter sent the Department of Justice a letter in October 2013 raising serious concerns about an armed raid conducted by EPA agents of a mine in Alaska.
    a. Are you aware of this letter?
    b. Would you commit the Department to answering Senator Vitter's letter?

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

Gregg Jeffrey Costa
Nominee, Circuit Judge
United States Court of Appeals for the Fifth Circuit

1. **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 a case should be determined by an objective evaluation of the relevant facts and legal authorities.

2. **What is the most important attribute of a judge, and do you possess it?**

   Response: The most important attribute of a judge is a commitment to fairly and impartially administering the law. This requires approaching each case with an open mind rather than any preconceived views, giving careful consideration to the arguments of both sides, and reaching the legally correct result regardless of the result's popularity. I believe that I have exhibited this quality during my time serving as a district judge.

3. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

   Response: A judge should keep an open mind about the issues in a case; respect the parties, lawyers, and other participants in the judicial process; appreciate that every case is significant to the parties involved regardless of its broader ramifications; and maintain a sense of humility when exercising the significant power our system entrusts to federal judges. I have strived to demonstrate these qualities while serving as a district judge and would continue to try and exhibit these qualities if I am confirmed to serve on the court of appeals.

4. **In general, Supreme Court precedents are binding on all lower federal courts, and Federal Circuit precedents are binding on the Court of International Trade. Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

   Response: Yes.

5. **At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In interpreting a constitutional provision, statute or regulation, I would first analyze whether the provision's plain language resolved the issue. If ambiguity existed, I would apply commonly accepted canons of construction, take into account the structure and purpose of the term at issue and related provisions, and consider case law interpreting analogous terms.

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 the decision even if I believed it was wrongly decided.

7. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: The principle of constitutional avoidance counsels that a court should avoid declaring a federal statute unconstitutional when an alternative basis exists for ruling in favor of the party making the constitutional challenge. When an alternative basis does not exist, a federal court should declare a federal statute unconstitutional only when the law exceeds the scope of the federal government's enumerated powers, impermissibly infringes on an individual constitutional right, or violates some other constitutional provision.

8. **Please describe your understanding of the workload of the Fifth Circuit. If confirmed, how do you intend to manage your caseload?**

Response: My understanding is that the Fifth Circuit is one of the busiest federal courts of appeals, second only to the far larger Ninth Circuit in terms of caseload. Managing that caseload in a manner that allows for both careful consideration of each case and prompt dispositions depends primarily on two things. The first is having procedures in place that maximize the efficiency of chambers' staff. On that issue, if I am fortunate enough to be confirmed, I will seek advice from Fifth Circuit judges about their procedures and implement those that seem to be the most efficient. The second factor is a willingness to work hard. If confirmed, I will bring to the Fifth Circuit the same work ethic I have displayed as a teacher, lawyer, and district judge.

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: I do not believe it is appropriate to rely on foreign law or the views of the "world community" when determining the meaning of the Constitution and would not rely on those materials unless required to do so by binding Supreme Court or circuit precedent.

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: First, as a district judge I have based my decisions on precedent, text, and other legal authorities rather than political ideology. Second, I have a strong belief that an independent judiciary committed to the impartial administration of justice is one of the most important features of our constitutional system.

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: Please see above response to Question 10.

12. 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: Overturning circuit precedent is rarely appropriate. A federal court of appeals can only overturn its own precedent when it sits as a full court. Such an en banc hearing is ordinarily warranted only when (1) it is needed to "maintain uniformity of the court's decisions" or (2) the case "involves a question of exceptional importance." *See* FED. R. APP. P. 35.

13. As a district 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: If the case involves the interpretation of a statute, regulation or procedural rule, the first thing I read is the text of the provision. Next I read the parties' briefs. After reading the briefs, I review Supreme Court and Fifth Circuit precedent that addresses the issues. If the proper decision is not clear at that point, I will consider persuasive authority from other courts and rely on that case law to the extent I think the opinion is well reasoned.

14. Do you think that collegiality is an important element of the work of a Circuit Court? If so, how would you approach your work and interaction with colleagues on the Court?

Response: Yes. One of the biggest differences between the work of trial and appellate judges is that the latter make judicial rulings in consultation with colleagues. Discussing and deciding cases with colleagues is one of the aspects of the court of appeals position that I most look forward to if I am fortunate enough to be confirmed. Collegiality requires keeping an open mind, listening to the views of one's colleagues, and, when disagreement remains after that process, doing so in a respectful manner that avoids personal attacks.

15. 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: Yes.

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.

16. 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. The premise of the Constitution, including its amendments, is that the American people have decided that principles or rights are so vital that they should be elevated to constitutional status and therefore are immune from future changes in public opinion (absent the supermajoritarian process of a subsequent constitutional amendment). The Constitution thus must be applied regardless whether a particular provision continues to enjoy popular support. Therefore, absent binding Supreme Court or Fifth Circuit precedent directing otherwise, I would not consider the "current preferences of the society" in ruling on a constitutional challenge or deciding whether to overrule circuit precedent (and I would not have the authority to overrule Supreme Court precedent).

17. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: The Constitution applies to modern statutes and regulations the same way it has applied to older legal enactments.

18. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

Response: As discussed in response to Question 16 above, allowing the modern-day popularity of a constitutional provision to affect its interpretation is inconsistent with the very notion of a written Constitution. Therefore, unless Supreme Court or circuit precedent dictated otherwise, I would not consider the evolving norms and traditions of our society when interpreting the Constitution.

19. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

Response: The Supreme Court has explained that "'there is room for play in the joints between' the Free Exercise and Establishment Clauses, allowing the government to accommodate religion beyond free exercise requirements, without offense to the

Establishment Clause." *Cutter v. Wilkinson*, 544 U.S. 709 (2005). I have not been confronted with an issue involving the interplay of the religion clauses as a district judge. If confronted with such an issue in the future, as with all issues, I would keep an open mind and reach a decision after careful consideration of the parties' arguments, the factual records, and the relevant legal authorities, including *Cutter*.

20. Do you believe that the death penalty is an acceptable form of punishment?

Response: The Supreme Court has held that the death penalty is constitutionally permissible when applied to certain categories of crime and when certain procedures are followed. I would follow binding Supreme Court and Fifth Circuit precedent with respect to the death penalty, as I would for any other area of the law.

21. 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: One of the greatest achievements of the Constitution is that the system of government it created has endured and continues to thrive in a twenty-first century environment that is far different from the eighteenth-century environment in which it was created. That does not mean however that the meaning of its provisions "is constantly evolving as society interprets it." The principles enshrined in the Constitution at different times in this nation's past do not change or evolve based on current public opinion. A judge's responsibility is to apply those historic principles to modern situations.

22. Do you believe there is a right to privacy in the U.S. Constitution?

a. Where is it located?

Response: The word "privacy" does not appear in the Constitution, but the Supreme Court has recognized that the Fourth Amendment protects privacy interests, *see United States v. Jones*, 132 S. Ct. 945, 950 (2012) (explaining that the Supreme Court has often determined when a search occurs by deciding whether "government officers violate a person's 'reasonable expectation of privacy'" (citing *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring))), particularly those associated with the home, *see, e.g.*, *Wilson v. Layne*, 526 U.S. 603, 610 (1999) ("The Fourth Amendment embodies this centuries-old principle of respect for the privacy of the home."). The Court has also held that the Due Process Clause protects an interest in "marital privacy." *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

b. From what does it derive?

Response: Please see response to Question 22(a).

c. What is your understanding, in general terms, of the contours of that right?

Response: If a case came before me that invoked the privacy interests described in response to Question 22(a), as with all issues, I would carefully consider the facts of the case and legal authorities related to the precise issue presented.

23. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the "penumbras" and "emanations" of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by "reading between the lines"?

Response: The Supreme Court's current approach to determining whether the Constitution protects an unenumerated right is to evaluate whether the claimed right is "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). *Glucksberg* is the precedent I would follow in this area.

b. Is it appropriate for a judge to go searching for "penumbras" and "emanations" in the Constitution?

Response: That approach is not consistent with current Supreme Court precedent.

24. In *Brown v. Entertainment Merchants Ass'n*, 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: In terms of the factual record, as a general matter appellate judges should consider only the trial court record. I would rely on outside sources to supplement the factual record only when authorized to do so by court rules.

b. When, if ever, do you think it is appropriate for appellate judges to base their opinions psychological and sociological scientific studies?

Response: This would be appropriate if the trial court record contained such studies. That situation would typically arise if an expert witness relied on such studies in his or her trial testimony.

25. The Fifth Circuit recently reversed your opinion in *Voting for America, Inc. v. Andrade* and disagreed with your holdings that a variety of provisions of Texas election law ran afoul of the First Amendment and the National Voter Registration Act. The Circuit disagreed with your holding that various activities comprising voter

registration drives constituted expressive conduct within the meaning of the First Amendment.

a. What is your view of the scope of non-speech conduct that qualifies as expressive activity protected by the First Amendment?

Response: The Supreme Court has found that non-speech conduct qualifies as expressive activity in a number of situations in which the expressive activity conveyed a political message. *See, e.g.*, *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (finding that wearing arm bands to protest the Vietnam War was entitled to First Amendment protection); *United States v. O'Brien*, 391 U.S. 367 (1968) (indicating that burning a draft card was entitled to First Amendment protection, though holding that the government was justified in prohibiting the practice); *Brown v. Louisiana*, 383 U.S. 131 (1966) (finding that sit-ins to protest segregation were entitled to First Amendment protection). Most commonly, though not exclusively (*see Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 566 (1991)), such expressive activity will convey a political message, as such messages lie at the core of the First Amendment.

b. Do you believe that the Circuit correctly held that the activities in question in *Andrade* are not entitled to First Amendment protection?

Response: The Fifth Circuit held that "there is nothing 'inherently expressive' about receiving a person's completed [voter registration] application and being charged with getting that application to the proper place." *Voting for America v. Steen*, 732 F.3d, 382, 392 (5th Cir. 2013). The Fifth Circuit did find that regulating the compensation of persons involved in voter registration activity implicated First Amendment concerns, *see id.* at 398 ("Because the provision applies to all persons—not just [volunteer deputy registrars]—and covers any activity that facilitates voter registration, it encompasses activities that involve expression, including voter drives where canvassers seek to persuade eligible voters to register."), but adopted a narrowing construction of those statutes that avoided the constitutional concern, *see id.* at 397-98. As with all binding precedent, this is the law that I would follow on this issue.

c. Do you believe that the Circuit's decision is consistent with the Supreme Court's decisions in *Meyer v. Grant* and *Buckley v. American Constitutional Law Foundation*?

Response: When I issued my decision, there was no Fifth Circuit precedent addressing whether those cases, which addressed First Amendment protections applicable to circulators of ballot-initiative petitions, also applied to voter registration campaigns. My approach was similar to the other federal district courts that had addressed the issue, all of which had found that *Meyer* and *Buckley* did extend to voter registration activity. A majority of the Fifth Circuit panel disagreed with

respect to the Texas laws aimed solely at volunteer deputy registrars and distinguished *Meyer* and *Buckley*, and as a judge I am bound to follow that precedent.

d. Please explain the legal reasoning that led you to criticize the Texas Secretary of State for not producing evidence of "rampant fraud" committed by out-of-state VDRs.

Response: During the course of this litigation, I held a two-day hearing on the plaintiffs' motion for a preliminary injunction. Among the criteria judges have to weigh when deciding whether to grant a preliminary injunction is the balance of harms—in this case, whether plaintiffs could demonstrate that the harms they would suffer if an injunction was not entered outweighed any harm the state would suffer if an injunction was entered. The Texas Secretary of State, as a defendant, elected not to call any witnesses or introduce any exhibits. I was not criticizing this litigation decision, but pointing out its impact on the balance of harms I was required to conduct. As a consequence of the evidence that was submitted during the hearing, the plaintiffs could point to a substantial evidentiary record in support of the claimed harm to their registration activities whereas the Secretary of State did not have any evidence in the record demonstrating how the injunction would undermine her efforts to combat voter fraud (which is a recognized state interest under the Supreme Court's decision in *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008)).

e. Do you believe that a State must demonstrate voter fraud before enacting provisions that require voters to present identification prior to voting?

Response: In *Crawford*, the Supreme Court recognized a state interest in preventing voter fraud even when the "record contain[ed] no evidence of any such fraud actually occurring in Indiana at any time in its history." 553 U.S. at 194.

f. If so, what quantum of voter fraud do you believe is necessary?

Response: According to *Crawford*, no quantum is necessary to recognize that the state has an interest in preventing voter fraud.

26. In a 1999 law review article, you applied what you described as a "textual-contextual framework" in analysis of certain historical texts. Do you believe the "textual-contextual framework" is a tool of statutory interpretation appropriate for judges to apply?

Response: I discussed that framework, which is used by some historians, in the context of a note I wrote during law school. The note provided a historical account of Chief Justice John Marshall's views on free speech issues that he confronted prior to his appointment to the Supreme Court, focusing primary on the controversy over the Sedition Act. That framework, which is used for historical scholarship, is not an approach that I would use for statutory interpretation. For questions of statutory interpretation, different considerations of text and context are commonly accepted as appropriate. *See, e.g., Lawson v. FMR LLC*,

No. 12-3 (U.S. Mar. 4, 2013) (Scalia, J., concurring) (holding that the majority's resolution of a question of statutory interpretation "logically flows from [the statute's] text and broader context" but noting his disagreement with "the Court's occasional excursions beyond the interpretative terra firma of text and context").

27. In a 2012 interview you expressed your view that white-collar criminals are "more blameworthy" than socially disadvantaged offenders. Please explain this statement.

Response: I was asked the following during an interview: "As a prosecutor, what motivated your focus on white-collar crimes?" My full answer was as follows: "There are a lot of crimes in our society born of desperation. That doesn't excuse them, but it's worth considering that these are people who see themselves as having no other options. Other crimes are born of greed or arrogance. To me, that's more blameworthy in a sense. Often the 18-year-old who has never had any real opportunities is getting a stiffer sentence than the businessman who has had every opportunity, and that's no way to build trust in the justice system." I was trying to capture the idea that in order for society to have confidence in our criminal justice system, they need to see rich and poor individuals alike held accountable when they violate the law. Of course, personal motivations for prior career decisions, like any other personal views I have, do not influence my rulings as a judge.

28. As a judge, does a criminal defendant's social, economic, or class status inform your judgment as to what is the appropriate sentence to render?

Response: No, unless the Sentencing Guidelines provide for enhanced punishment based on a defendant's employment status when the crime was committed as is this case for those who abuse a position of public trust or use a special skill, *see* U.S.S.G. § 3B1.3, or, for violations of the securities laws, if the defendant was an officer or director of a publicly traded company, a registered broker or dealer, or an investment advisor, *see* U.S.S.G. § 2B1.1(18). Apart from these and other situations in which the Sentencing Guidelines provide status enhancements, social, economic, or class status should not inform the sentencing decision. Congress has directed that among the many factors a judge must consider when sentencing a defendant is the "nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1), which might include consideration of the motive for the criminal activity.

29. Do you believe that socially disadvantaged defendants are entitled to less severe punishment than other defendants who commit the same offense conduct?

Response: No. Uniformity in sentencing when the offense conduct and other relevant factors are similar is an important principle. It was a concern about sentencing disparities that motivated the comments I made in the 2012 interview. I was expressing a concern that defendants who lack significant financial resources often receive "stiffer sentence[s]" than white-collar criminals who typically have greater financial resources. That is a common perception of the criminal justice system—and a perception that is borne out by what I observed during my years as a federal prosecutor and my knowledge of federal sentencing

statistics. In terms of sentencing data I have seen, white-collar defendants receive below-Guidelines sentences and sentences of probation at higher rates than other offenders.

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 held that a more exacting level of scrutiny than rational basis applies to Second Amendment challenges. *See District of Columbia v. Heller*, 554 U.S. 570, 628 n.27 (2008). However, the Supreme Court has not announced the precise level of scrutiny lower courts should apply in such cases. In reaching a decision on this issue, I would of course be bound by Fifth Circuit case law. *See, e.g., NRA v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 700 F.3d 185, 195 (5th Cir. 2012) (explaining, in case involving challenge to federal laws that prohibit federally licensed firearms dealers from selling handguns to persons under the age of 21, that a "regulation that threatens a right at the core of the Second Amendment—for example, the right of a law-abiding, responsible adult to possess and use a handgun to defend his or her home and family—triggers strict scrutiny" . . . but intermediate scrutiny applies as to "less severe regulation [] that does not encroach on the core of the Second Amendment").

31. What would be your definition of an "activist judge"?

Response: An activist judge is one who follows his or her own policy preferences rather than the law.

32. Please describe with particularity the process by which these questions were answered.

Response: After reading the questions, I conducted research and drafted answers. I then shared my draft answers with the Office of Legal Policy at the Department of Justice. After discussing my answers with an attorney in the Office of Legal Policy, I made revisions and finalized the answers for submission to the Committee.

33. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Gregg Jeffrey Costa
Nominee, Circuit Judge
United States Court of Appeals for the Fifth Circuit

1. **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: Etched into the facade of the law school I attended are the words "That they may truly and impartially administer justice." Though intended as a command for all the future lawyers entering the law school, it is a particularly apt description of a judge's duty. "Truly," meaning a judge should faithfully apply precedent and other governing legal authorities to the facts of the case. "Impartially," meaning a judge should follow the law without regard to the wealth or status of the litigants or public reaction to the decision. In terms of Supreme Court Justices, given the variety of issues that they decide, I am unable to select one whose philosophy would most closely mirror mine. I did have the great honor of serving as law clerk to Chief Justice William Rehnquist, from whom I learned a number of important lessons. Perhaps most relevant to the court of appeals position to which I have been nominated, Chief Justice Rehnquist always maintained very good relationships with his colleagues, an accomplishment attributable in large part to his sense of humor and humility.

2. **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: A court should consider originalist sources when interpreting a constitutional provision on which precedent has not provided an answer. Evidence concerning original public meaning is typically the most persuasive originalist evidence. *See District of Columbia v. Heller*, 554 U.S. 570, 605 (2008).

3. **If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?**

   Response: If confirmed as a court of appeals judge, I would not have the authority to overrule Supreme Court precedent. A court of appeals only has authority to overrule one of its own precedents when sitting as a full court. One of the limited circumstances in which it would be appropriate for an *en banc* court to overrule circuit precedent is when such a ruling is "necessary to secure or maintain uniformity of the court's decisions." *See* FED. R. APP. 35. Another situation would be when an intervening Supreme Court decision has cast doubt on the circuit precedent.

4. 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 confronted with the issue presented in *Garcia*, I would be bound to follow its holding, as with all Supreme Court precedent. In other cases involving federalism issues, however, the Supreme Court has found limitations on federal power to be judicially enforceable and rejected arguments that political safeguards alone are sufficient. *Compare United States v. Morrison*, 529 U.S. 590, 616 n.7 (rejecting the dissent's argument that *Garcia* means that the scope of federal power would be "defined solely by the political branches"), *with id.* at 649 (Souter, J., dissenting) (arguing that the "*Garcia* Court's rejection of 'judicially created limitations' in favor of the intended reliance on national politics was all the more powerful . . ."); *see also Printz v. United States*, 521 U.S. 898 (1997) (finding that provisions of the Brady Bill violated state sovereign rights over a dissent which cited *Garcia* for the argument that "the principal means chosen by the Framers to ensure the role of the States in the federal system lies in the structure of the Federal Government itself"). If a case presenting these issues came before me, I would carefully examine and take into account all relevant Supreme Court decisions.

5. 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 emphasized the non-economic nature of the activity being regulated in decisions holding that federal laws exceeded the scope of the Commerce Clause. *See United States v. Morrison*, 529 U.S. 598, 610-11, 613 (2000); *United States v. Lopez*, 514 U.S. 549, 560-61, 566-67 (1995). The Supreme Court has not held, however, that an exercise of the Commerce Clause power could never reach non-economic activity. In his synthesis of the caselaw in this area, Justice Scalia concluded that "Congress may regulate even non-economic activity if that regulation is a necessary part of a more general regulation of interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring).

6. What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: A President's ability to issue executive orders or actions "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The Supreme Court has adopted the "tripartite scheme" set forth in Justice Jackson's concurrence in the Steel Seizure Case as the legal framework governing this issue. *See Medellin v. Texas*, 552 U.S. 491, 524 (2008) (quoting *Youngstown*, 343 U.S. at 635 (Jackson, J., concurring)).

7. 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 when it is "deeply rooted in this Nation's history and tradition . . . and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotations and citations omitted).

8. **When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?**

Response: The Supreme Court has held that classifications that are "so seldom relevant to the achievement of any legitimate state interest," such as those based on race, are subject to strict scrutiny. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985). Classifications that "frequently bear[] no relation to ability to perform or contribute to society," such as sex, are subject to intermediate scrutiny. *Id.* at 440-41.

9. **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: Regardless of any personal expectations I may or may not have, I would follow *Grutter* (and other precedent in this area such as *Fisher v. University of Texas*, 570 U.S. __ (2013)) when confronted with an issue concerning the use of racial preferences in public higher education.

Senator Chuck Grassley
Questions for the Record

Tanya S. Chutkan
Nominee, United States District Court for the District of Columbia

1. **Do you believe that a judge's gender, ethnicity, or other demographic factor has any or should have any influence in the outcome of a case? Please explain.**

   Response: I do not believe that a judge's gender, ethnicity, or other demographic factor has or should have any influence in the outcome of a case.

2. **You have spent part of your career working as a criminal defense attorney.**

   a. **How will you transition from the role of advocate to that of a judge?**

      Response: In my career, I have represented a wide range of clients in criminal and civil litigation, and have tried close to 40 cases. As a result, I fully appreciate the separate role of the judge as a neutral arbiter, and while the transition from advocate to judge will be significant, I do not anticipate that it will be difficult. If confirmed as a District Judge, I will at all times bear in mind that my duty is to be impartial, to follow binding precedent, and to maintain the rule of law.

   b. **What assurances can you provide that will assuage any concerns that you will have a bias in criminal cases?**

      Response: As a practicing lawyer, I have represented both plaintiffs and defendants in criminal and civil matters. As a result, I understand the importance of appearing before judges who are open to hearing arguments on both sides and who will rule impartially, without any bias whatsoever. I believe that I have a reputation in the legal community as someone who is reasonable, fair, and unbiased.

3. **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 hear and decide cases based on applicable law and precedent and with complete impartiality. I believe I possess that 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: A judge should be open minded, prepared to listen, and should treat everyone who enters their courtroom with courtesy, patience and respect. I believe that I possess those qualities.

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: Stare decisis is the bedrock of our legal system. If confirmed, I will faithfully follow controlling Supreme Court and D.C. Circuit precedent and apply them to the cases that come before me, regardless of whether I personally agree or disagree with those 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?**

   Response: In deciding a case of first impression, I would first review the text of the applicable law or statute at issue, to determine if applying the plain language of the law or statute would allow me to decide the case. If the meaning of the provision was not clear from its text, I would look to Supreme Court or D.C. Circuit precedent involving analogous provisions. Absent such precedent, I would look to relevant cases from other circuits and districts for their persuasive authority, and in limited circumstances, where appropriate, I would examine the intent and history of the provision.

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 all controlling Supreme Court or D.C. Circuit precedent, regardless of any personal opinion I might have regarding that precedent.

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 a court should declare a statute unconstitutional only in the most limited of circumstances. Such circumstances may include when a statute clearly violates a provision of the Constitution, or where Congress has exceeded its constitutional authority. In considering a constitutional challenge, a district judge must apply any controlling Supreme Court or relevant Circuit Court precedent.

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.

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: A judge's rulings should never be affected by political ideology or motivation. I can state unreservedly that should I be confirmed, my rulings will be based on text and precedent, and my decisions will be made solely on the application of the law to the facts.

11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: I have been a criminal and civil litigator for more than 25 years, during which I represented individuals, corporations, and small businesses. Throughout my career, I have represented all parties with equal diligence, regardless of any personal beliefs and without regard to my clients' political beliefs, social status, or economic status. I have endeavored to maintain the highest ethical standard, and to treat people fairly, and with respect. If confirmed, I intend to be faithful to my judicial oath and to uphold the rule of law with impartiality.

12. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I intend to manage my caseload by maintaining reasonable and efficient schedules in all matters, deciding motions and other issues promptly, making appropriate use of Magistrate Judges, and encouraging dispute resolution through mediation where appropriate.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Judges play an important role in conducting the fair and prompt resolution of matters that come before them. If confirmed, I intend to ensure that cases move efficiently by ruling on motions promptly, encouraging dispute resolution, and adhering to scheduling orders.

14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: If confirmed, I intend to resolve legal issues based on applicable constitutional and statutory provisions, along with Supreme Court and D.C. Circuit precedent. I have been fortunate to have had substantial criminal litigation experience in the District of Columbia courts, which adhere to the Federal Rules of Evidence, and to have experience in a wide range of civil matters in federal courts throughout the country. However, I have not had extensive experience in federal sentencing issues, and I expect to fully familiarize myself

with the U.S. Sentencing Guidelines, which serve a very important function by helping to ensure consistency and uniformity in sentencing, and to thoroughly avail myself of the substantial resources available to assist me in making a smooth transition.

15. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: "To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator's judicial selection committees".

a. Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.

Response: No.

b. Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.

Response: No.

16. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on March 4, 2014. I personally drafted my responses that evening and the next day and forwarded my draft to members of the Department of Justice Office of Legal Policy for review and comment. I then finalized my answers and authorized them to be submitted on my behalf.

17. Do these answers reflect your true and personal views?

Response: Yes.

Senator Ted Cruz
Questions for the Record

Tanya S. Chutkan
Nominee, United States District Court for the District of Columbia

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: I believe a judge should be impartial, open-minded, prepared, and respectful to all who come before him or her. I do not consider myself to be a student of the philosophies of the Supreme Court justices, and therefore do not have a view as to whose philosophy is most analogous with mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: The Supreme Court has examined the original public meaning of constitutional provisions in deciding on the constitutionality of statutes, *see, e.g., District of Columbia v. Heller,* 554 U.S. 570 (2008), and, if confirmed, I will follow 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: I would not under any circumstance overrule precedent.

Explain whether you agree that "State sovereign interests . . . are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528, 552 (1985).

Response: If confirmed to be a District Judge, I would apply *Garcia* and all other binding precedents, regardless of whether I agreed or disagreed with them.

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 held that the Commerce Clause authorizes the regulation of three categories of activity: (1) "the use of the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce," and activities that threaten such instrumentalities, persons or things, and (3) "activities that substantially affect interstate commerce." *United States v. Lopez,* 514 U.S. 549, 558-559 (1995); *see also United States v. Morrison,* 529 U.S. 598, 613 (2000) and *Gonzales v. Raich,* 545 U.S. 1, 37 (2005) (Scalia, J. concurring) ("Congress may regulate even noneconomic local activity if

that regulation is a necessary part of a more general regulation of interstate commerce."). Although the Court highlighted the non-economic nature of the activity being regulated in *Lopez* and *Morrison* before striking down the statute or portion of the statute that was at issue in those cases, it has not specifically excluded non-economic activity from congressional regulation. If confirmed, I would apply the analysis set forth in *Lopez, Morrison, Raich,* and other applicable precedents in determining whether an activity is covered by 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 ability to issue executive orders or take executive action is limited by the authority granted to him in the Constitution or by an act of Congress. In *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 635-638 (1952), Justice Jackson, in his concurrence, defined the judicially enforceable limits on presidential acts, and the Supreme Court has adopted his analysis. If confirmed, I would apply that analysis to any cases in which I am required to assess the legality of presidential executive orders or actions.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has "regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are objectively, 'deeply rooted in the Nation's history and tradition' and 'implicit in the concept of ordered liberty' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Washington v. Glucksberg,* 521 U.S. 702, 720-721 (1997) (internal quotation marks and citations omitted). If confirmed, I would follow that binding precedent.

When should a classification be subjected to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has ruled that certain classifications, such as race, gender, national origin, or classifications that burden a fundamental right, are subject to a higher level of scrutiny under the Equal Protection Clause. *See City of Cleburne, Tex. v. Cleburne Living Ctr.,* 473 U.S. 432, 440-442 (1985); *Zablocki v. Redhail,* 434 U.S. 374, 388 (1978). If confirmed, I would follow Supreme Court precedent with respect to the evaluation of classifications and levels of scrutiny for purposes of the Equal Protection Clause, as in all other cases.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003).

Response: If confirmed, I would apply binding Supreme Court precedent concerning the use of racial preferences in public higher education, including *Grutter* and the Court's decision in *Fisher v. Univ. of Texas at Austin,* 133 S. Ct. 2411 (2013), regardless of any personal view or expectation I might have.

Senator Chuck Grassley
Questions for the Record

Responses by M. Hannah Lauck,
Nominee, U.S. District Judge for the Eastern District of Virginia

1. **You were part of a judges panel on March 24, 2009. During the panel, one of the presenters said that all judges have biases and stereotypes they bring to the courtroom and that the judge needs to recognize them, set them aside and not let them cloud their views. And that if judges don't admit that they have biases and stereotypes, they're not telling the truth.**

   a. **Do you agree with this assertion?**

      Response: I cannot speak for other judges, but I feel that I do not bring any bias or stereotype to the courtroom. I have followed the rule of law in a fair and impartial manner. In my nearly nine years as a magistrate judge, I have approached each case by objectively and carefully assessing the factual record while impartially following the precedents of the United States Supreme Court and the Court of Appeals for the Fourth Circuit, giving those precedents full force and effect. If I were fortunate enough to be confirmed as a district judge, I would continue that practice.

   b. **If so, what biases and stereotypes do you bring to the courtroom that you need to set aside and how do you do so?**

      Response: I do not feel that I bring any bias or stereotype to the courtroom. I believe that my record as a magistrate judge demonstrates my ability to render thoughtful, even handed, and impartial decisions in a wide array of cases, civil and criminal.

2. **In your questionnaire you indicated that you have been a member of The Club since 2012. Will you please tell us more about this organization?**

   Response: The Club is a group largely made up of academics who meet monthly during the academic year. Members have included local university presidents and other scholarly leaders at the university and secondary school levels, teaching medical doctors, leaders in the local arts community, historians, authors, university chaplains, and judges. The members are lifelong learners with an interest in hearing from others about their areas of expertise. An in-depth topic of academic study and a book review are presented each month, but I have not yet made a presentation to the group.

3. **You have expressed admiration for Justice Frankfurter. What do you admire about him?**

   Response: Justice Frankfurter served on the Supreme Court of the United States as a naturalized citizen. I conduct naturalization ceremonies, and when I welcome newly

naturalized citizens, I mention several accomplished naturalized citizens in this nation's history. I include Justice Frankfurter as an admirable example of how much any citizen (naturalized or natural born) can, with hard work, achieve in the United States.

4. **In your notes from a "Women's Networking Forum" on June 22, 2005, you write "In our courthouse, we distinguish between bureaucrats and public servants." Can you please explain what you mean by distinguishing between bureaucrats and public servants?**

Response: In the Eastern District of Virginia, we strive to create an atmosphere in which all court employees, including judges, operate with courtesy and professionalism. I was trying to indicate that the ethos in the Eastern District was to act as public servants, and not as someone getting a job done for the sake of finishing. I meant to describe what constitutes a key component to public service: being patient, helpful and courteous to the public that is served. I expressed my belief that, generally, employees in our court embody that desire to help individuals find where to get an answer, even if they have received a call from someone that they, themselves, cannot answer directly. Any reference to bureaucratic actions was in contrast to how individuals, including me, in our court operate.

5. **What is the most important attribute of a judge, and do you possess it?**

Response: While a judge must possess many vital attributes, the most important would be the commitment to follow the rule of law while fairly, impartially, and objectively deciding cases. I believe my decisions as a magistrate judge demonstrate that I strictly adhere to the rule of law, and render decisions fairly and impartially.

6. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: A trial judge should be respectful, patient, hard-working, and courteous. Each litigant should be given a full and fair opportunity to be heard while a judge applies the rules and the law to the facts with fairness and clarity. I believe I have displayed this temperament while serving as a magistrate judge for nearly nine years.

7. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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 bedrock responsibility of a district judge is to follow controlling precedent. If confirmed, I would follow the binding precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit at all times, regardless of my personal views.

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 cases of first impression I would first turn to the text of the applicable regulation, statute, or constitutional provision and apply the canons of statutory construction to determine whether the provision's meaning was clear and unambiguous. If the meaning were clear and unambiguous, the statute would be applied as written. If the language were ambiguous, following the same canons of construction, I would turn to precedent from the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit for guidance, such as looking to whether they have interpreted provisions in other laws with similar wording. If further guidance were needed, I would review case law from other jurisdictions within the United States analyzing the same or analogous regulatory, statutory or constitutional provision.

9. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?**

Response: A district judge cannot render a decision inconsistent with controlling precedent regardless of his or her personal views regarding the correctness of the binding precedent. I have followed controlling precedent as a magistrate judge, and I would continue to do so if I were fortunate enough to be confirmed as a district judge.

10. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes enacted by Congress are presumed to be constitutional. Without reaching constitutional questions it need not address, a federal court should declare a statute unconstitutional only in the rare circumstances when Congress has clearly exceeded its authority under the Constitution when enacting the statute, or when the statute itself violates the Constitution. If it became necessary to consider the constitutionality of a particular statute, I would apply the standards established by the Supreme Court of the United States and the United States Court of Appeals for the Fourth Circuit in my analysis.

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. It is not proper for judges to 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?**

Response: I am deeply committed to the rule of law, which requires strict adherence to *stare decisis* independent of any judge's ideology or motivation. My record over nearly nine years as a magistrate judge demonstrates that I ground my decisions in precedent, the text of the law, and the facts before me. I have never allowed my personal beliefs to influence my judicial decision-making, and, if confirmed as a district judge, I would continue this strict adherence to the rule of law.

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: My record as a magistrate judge over nearly nine years provides the best evidence of my commitment to putting aside personal views and treating all who come before me fairly, respectfully, and impartially. A review of my decisions attests to my objectivity and impartiality. If confirmed as a district judge, I would continue to adhere to the principle of equal treatment under the law.

14. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would continue to manage my caseload as I have the significant caseload I have carried for the past nine years as a magistrate judge. I currently utilize the reports available under the district court's electronic filing system. In addition, I have developed my own system for case management, which includes issuing scheduling orders with strict discovery deadlines and firm trial dates in accordance with the Federal Rules of Civil Procedure and our local rules. If confirmed, I would continue to manage actively my caseload with the assistance of chambers, and clerk's office, staff. I would work to promptly dispose of motions and discovery disputes, including being available for status conferences. I would encourage the parties, early on and during all aspects of the case, to consider settlement options while they continue to litigate assiduously.

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: I believe that judges have an essential role in controlling the pace and conduct of litigation. Evenly applied, final, and predictable deadlines ultimately serve all who participate in the judicial system well. If confirmed, I would play an active role in managing my cases. I would set firm scheduling deadlines, promptly decide motions, and efficiently resolve discovery disputes. I would encourage consideration of settlement options, which, in our division, often involves referral to a magistrate judge for that purpose. I would abide by the Speedy Trial Act in criminal cases. I would, however, look to the needs of each case individually, allowing attorneys to establish a record as to the matters at issue, and their needs in discovery and litigation. I would balance efficiency alongside assuring that each litigant had a full and fair opportunity to be heard.

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: In addressing the record before me, I begin with a thorough review of the facts because any legal analysis must flow from the facts at bar. I then study the controlling law and precedent, consider the parties' arguments, and issue a decision fairly and impartially, applying the controlling law from the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit under the appropriate standard of review. When issuing a written decision, I strive to communicate clearly in an organized and understandable manner. In deciding cases, I seek to assure that, even when parties do not prevail, they believe they have had an opportunity to be heard and that their case has been given full and fair consideration.

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 received the questions from personnel at the Department of Justice on the afternoon of March 4, 2014. I prepared responses and reviewed them with a representative of the Office of Legal Policy of the Department of Justice, and asked that my responses be submitted to the Senate Judiciary Committee after that review.

19. **Do these answers reflect your true and personal views?**

Response: Yes, these answers reflect my true and personal views.

Questions for the Record
Senator Ted Cruz

Responses from M. Hannah Lauck,
Nominee, United States District Judge for the Eastern District of Virginia

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 cannot say that my approach to judging can readily be captured in a word describing a judicial philosophy. I do, however, approach judging with certain principles in mind. I exhibit a strong commitment to *stare decisis* and the rule of law, I respect the limited role of the federal courts within the separate branches of government, and I seek to apply binding law to the facts in a fair and impartial manner. I work hard and attend court prepared, approaching each matter mindful of how important the case is to the litigants. I also hear cases with an open mind, seeking to give each litigant a fair shot within the appropriate constraints that binding precedent places on all of us. While I do not claim to know the philosophies of the justices of the Warren, Burger, or Rehnquist courts sufficiently well to compare my approach to any of theirs, I believe that many, if not all, of the justices presiding in those courts might likely embrace the practices I describe.

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 would follow the precedent of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit, including the analysis in cases such as *District of Columbia v. Heller*, 554 U.S. 570 (2008), where the Court considered the original public meaning of the text.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed, as a district judge, I would not, and could 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: If confirmed as a district judge, I would be bound by, and would follow, the Supreme Court's decision in *Garcia* without regard to any personal agreement or disagreement with its reasoning. This would be true of any Supreme Court or Fourth Circuit case.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: United States Supreme Court precedent dictates that the Commerce Clause allows congressional regulation of commerce in three ways: Congress may (1) "regulate the use of the channels of interstate commerce"; (2) "regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and, (3) "regulate those activities having a substantial relation to interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995); *see also United States v. Morrison*, 529 U.S. 598 (2000). If confirmed, I would follow binding Supreme Court and Fourth Circuit precedent in assessing the scope 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: The Supreme Court has articulated the judicially enforceable limits on the President's authority to act in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) and *Medellin v. Texas*, 552 U.S. 491, 524 (2008). Those cases provide that the President's authority to act must flow either from an act of Congress or from the Constitution. If confirmed, I would apply that Supreme Court precedent and any Fourth Circuit precedent defining the limits of executive action.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: The Supreme Court has held that rights are "fundamental" for purposes of substantive due process when they are freedoms protected by the Bill of Rights that are "objectively, 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, 720-21 (1997) (internal citations omitted) (internal quotation marks omitted). If confirmed, I would follow Supreme Court and Fourth Circuit precedent in deciding issues concerning whether 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?

Response: The Supreme Court has held that government actions affecting the immutable and protected classifications of race, alienage, and national origin are subject to strict scrutiny under the Equal Protection Clause, while government actions implicating gender and illegitimacy are subject to intermediate scrutiny. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed, I would follow Supreme Court and Fourth Circuit precedent in determining what classifications are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

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: Respectfully, as a magistrate judge or if confirmed as a district judge, I would not express any opinion or projection as to the status of racial preferences in public higher education 15 years from now. If confirmed, I would, impartially and objectively, apply the binding precedent established in *Grutter* and in the Supreme Court's recent decision of *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013), as well as any Fourth Circuit decisions, when addressing racial preferences in public higher education.

Senator Chuck Grassley
Questions for the Record

Leo Theodore Sorokin,
Nominee, United States District Judge
United States District Court for the District of Massachusetts

1. **What is the most important attribute of a judge, and do you possess it?**

   Response: Commitment to rendering impartial decisions under the rule of law is the most important attribute of a judge. I believe that my record as a magistrate judge for almost nine years demonstrates that 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: Judges must treat each person before the Court with respect and civility. Judges must also possess the patience to listen, with humility, to the parties, witnesses and counsel. I believe I possess these qualities and that I have demonstrated these qualities in the course of my service as a magistrate judge since 2005.

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: If confirmed as a district judge, I will follow the legal precedents of the Supreme Court and the First Circuit regardless of any personal opinions or whether I agree or disagree with those precedents, as I have done for almost nine years as a magistrate judge.

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 as a district judge, in deciding a case of first impression, I would first turn to the text of the applicable statute, regulation or provision. If the language of the applicable text was unambiguous, that language would control. If the language was ambiguous, I would use the canons of construction established by the Supreme Court and the First Circuit to assist me in interpreting the text. I would also consider precedents from other courts (i.e., courts other than the Supreme Court and the First Circuit) that have interpreted the same or similar texts --- precedents from other courts would not be

controlling, but would be worthy of consideration if persuasive. Finally, I would follow the principle of judicial restraint by endeavoring to decide only the issue requiring decision in order to resolve the case before the court.

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: I would apply the binding Supreme Court and First Circuit precedent without regard to my personal opinions.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Judges act consistent with their duties in declaring a statute enacted by Congress unconstitutional when the statute in question, considered under the applicable precedent, necessarily either exceeds Congress's authority or violates a provision of the Constitution despite the presumption of constitutionality assigned to such statutes and when the case at hand requires resolution of the constitutional question.

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.

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 am committed to rendering impartial decisions under the rule of law. I believe that my record as a magistrate judge for almost nine years demonstrates that commitment.

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: If confirmed as a district judge, I pledge to decide cases based upon an impartial application of the law after considering with an open mind the arguments of all parties before the Court. I will treat all parties before me with fairness, respect, civility and patience. I consider the oath of office to be a solemn oath. I pledge to follow the oath without reservation as I believe I have done in my service as a magistrate judge.

10. **If confirmed, how do you intend to manage your caseload?**

Response: If confirmed as a district judge, I will manage my caseload as I have managed my cases (both consent and referred) as a magistrate judge. In accordance with the Federal

Rules of Criminal and Civil Procedure as well as the District of Massachusetts Local Rules, I establish scheduling orders with firm deadlines and trial dates. I regularly convene status conferences to ensure that cases move forward expeditiously, and I issue prompt rulings on motions filed by the parties. I have found active management of cases promotes their fair and timely resolution.

11. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. The parties should always have the opportunity to discuss with the Court the proper pace and manner in which the litigation should proceed. The Court, however, must ensure that the case proceeds in a fair and timely manner giving consideration to the relevant facts and circumstances of the individual case. Trial judges have a number of tools available to them to control the pace of litigation, including issuing scheduling orders, convening regular status conferences to review the case and establishing firm trial dates.

12. As a Magistrate 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: First, I determine the question presented for decision by the case and the relevant facts in light of the testimony or written factual submissions to the Court. To arrive at a decision, I apply the relevant law to the facts of the case considering the applicable constitutional or statutory provisions. Finally, I try to explain the reasons for my decision to the parties in clear and understandable terms so that each party, win or lose, understands that I listened to and considered fully and fairly their arguments.

13. As a Magistrate Judge, you proposed the creation of the District of Massachusetts's Court Assisted Recovery Effort.

a. Do you envision an altered or expanded role for the program in the District Court's criminal docket?

Response: I have not considered altering or expanding the District of Massachusetts Court Assisted Recovery Effort (CARE) which has operated, under my direction, for almost eight years. If I did consider altering or expanding it, I would consult with the other judges of the court, the Probation Office, the United States Attorney's Office and the Federal Public Defender's Office, as I did when starting CARE. On behalf of the District of Massachusetts, I have proposed a pilot program to the Bureau of Prisons (BOP) that would coordinate the BOP's Residential Drug Abuse Program (RDAP) with the CARE program so that drug addicted defendants participating in RDAP in prison transition seamlessly into the CARE program upon the commencement of supervised release. This proposal to the BOP is referenced in response to Question 12(c) of my Senate Judiciary Questionnaire. If implemented, the coordination would not change the eligibility standards for admission to CARE.

b. If so, please describe what defendants would be eligible and whether you think the current eligibility standards for admission should be changed.

Response: Please see my response to Question 13(a).

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 and read these questions on March 4, 2014. On March 5, 2014, I prepared my answers to the questions and forwarded them to an attorney in the Office of Legal Policy of the Department of Justice for review. On March 7, 2014, I finalized my responses and authorized transmittal of the answers to the Committee.

16. Do these answers reflect your true and personal views?

Response: Yes.

Questions for the Record
Senator Ted Cruz

Leo Theodore Sorokin,
Nominee, United States District Judge
United States District Court for the District of Massachusetts

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court Justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy is that a judge must always handle each case with an impartial and unbiased mind. A judge should treat all parties with respect and patience and give the legal arguments of all parties serious consideration. A judge must apply the law as written and follow binding precedent. This is the cornerstone of our system of justice under the law. I do not have sufficient information to state which Supreme Court Justice on the Warren, Burger, or Rehnquist Courts has a judicial philosophy 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: The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008), recognized that the public understanding of the Constitution, at the time it was ratified, is an important consideration relative to constitutional interpretation. If confirmed as a district court judge, I will follow Supreme Court and First Circuit precedent on this issue.

If a decision is precedent today while you're going through the confirmation process, under what circumstance would you overrule that precedent as a judge?

Response: If confirmed as a district court judge, I would not overrule any precedent. I would be bound by the precedent of the Supreme Court and the First Circuit.

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 as a district court judge, I would be bound by the Supreme Court's decision in *Garcia* and subsequent decisions which identify constitutional limitations on congressional power. I would apply the holdings in those cases without regard to whether or not I personally agreed with the decisions.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In *Gonzales v. Raich*, 545 U.S. 1, 37 (2005), Justice Scalia observed in a concurrence that Congress may regulate non-economic activity that has a substantial relation to interstate commerce, or when "regulation is a necessary part of a more general regulation on interstate commerce." In *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), and *United States v. Morrison*, 529 U.S. 598, 608-09 (2000), the Supreme Court struck down federal statutes where Congress lacked authority under the Commerce Clause. If confirmed as a district court judge, I would follow Supreme Court and First Circuit precedent in deciding issues concerning 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: The authority of the President to act "must stem from either an act of Congress or from the Constitution itself." *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (internal citations omitted). The applicable analysis for a court to determine whether executive action exceeds presidential authority is set out in Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 634-55 (1952). If confirmed as a district court judge, I would follow Supreme Court and First Circuit precedent in deciding any challenges to executive action.

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, 720-21 (1997) (internal citations omitted), the Supreme Court held 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[.]" If confirmed as a district court judge, I would follow Supreme Court and First Circuit precedent in deciding issues concerning fundamental rights.

When should a classification be subjected 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. They include race, alienage, and national origin, which are subject to strict scrutiny; and gender and illegitimacy, which are subject to intermediate scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985). If confirmed as a district court judge, I would follow Supreme Court and First Circuit precedent in determining what classifications are subject to heightened scrutiny and how to apply such scrutiny to the facts of a particular case.

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 information or expertise to have any personal expectation on this issue, and in any event, my personal expectation would play no role in any judicial

decisions. If confirmed as a district court judge, I would follow the holdings of *Grutter*, *Fisher v. University of Texas at Austin*, 133 S. Ct. 2411 (2013), and any other Supreme Court or First Circuit precedent on the use of race in admissions to public institutions of higher education.

March 10, 2014

The Honorable Patrick Leahy
Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

Thank you again for giving me the opportunity to appear before the Committee on February 25, 2014. Enclosed please find my responses to the Questions for the Record that I received from Ranking Member Grassley and Senator Cornyn.

Sincerely,



John C. Cruden

Enclosure

Senator Chuck Grassley
Questions for the Record
John Charles Cruden, Nominee, Assistant Attorney General,
Environment and Natural Resources Division, United States Department of Justice

1. You have previously criticized the Clean Water Act's statutory framework establishing a permit system for regulation of so-called "point sources" of pollution and suggested that moving from a point-source-based regulatory structure to a broader statutory grant is something "[t]hat ought to be on everybody's wish list" in order to address more potential sources of water pollution.

    a. Please describe the nature and scope of the regulatory framework that you envision as being preferable to the current point-source-based statutory grant.

    Answer: If confirmed as Assistant Attorney General, Environment and Natural Resources Division (ENRD or "the Division"), I would be enforcing the law as enacted by Congress and interpreted by relevant courts. As I have served over two decades in ENRD, during the administrations of two Republican and two Democratic Presidents, I understand that ENRD is not a policy making entity, but dedicated to law enforcement. Proposals to change the Clean Water Act would come from Congress or other federal agencies charged with that responsibility.

    b. If confirmed, how do you plan to address sources of water pollution like runoff areas and streets, i.e., non-point-source pollution, using the current regulatory framework?

    Answer: If confirmed as Assistant Attorney General, my responsibility would be to enforce existing law. I note that, in most enforcement cases, ENRD receives a referral from the responsible federal agency. If facts confirm that water pollution from runoff areas and streets violates the law, I would take appropriate action to enforce the law.

2. The Clean Water Act restricts federal regulatory jurisdiction to the "navigable waters" of the United States, a term which has been variously defined in *Rapanos* and *Carabell* as those waters that are "relatively permanent" and have a "continuous surface connection," and also as waters that have a "significant nexus" to what was traditionally regarded as navigable waters. The EPA's position regarding Clean Water Act regulatory jurisdiction is that the Act empowers regulation of the "waters of the United States."

    a. Do you agree with the EPA that "waters of the United States" is the proper extent of regulatory jurisdiction under the Act?

Answer: Various provisions of the Clean Water Act (CWA) define the jurisdictional scope of the CWA as "navigable waters." Section 502(7) defines "navigable waters" as "the waters of the United States, including the territorial seas." Agencies have then published regulations defining that term. Accordingly, "waters of the United States, including the territorial seas" as interpreted by federal courts and in regulations of federal agencies, is the proper extent of the jurisdiction of the Act.

b. If so, will you advocate on behalf of the United States for regulatory jurisdiction over all "waters of the United States" under the Act?

Answer: If confirmed, I would be bound by applicable law. Specifically, the jurisdiction of the United States in applying the CWA is over "the waters of the United States, including the territorial seas," as interpreted in applicable court decisions and federal regulations.

c. If not, please describe what you believe to be the lawful extent of regulatory jurisdiction under the Act.

Please see answer to question 2.b. above.

3. You have stated that the Department of Justice must be prepared to demonstrate Clean Water Act jurisdiction under the Scalia-plurality standard and the Kennedy standard outlined in *Rapanos* and *Carabell* and that "significant additional litigation resources must be devoted to addressing the concepts" related to the definition of "navigable waters" used in those opinions.

a. Please describe whether, if confirmed, you plan to devote "significant additional resources" to the litigation described above.

Answer: My statement about significant additional resources was intended to mean that because the standards articulated in the Scalia and Kennedy opinions may require detailed fact-finding by the courts in certain cases, it may be necessary to expend additional resources to litigate some of these jurisdictional issues. As I have not been involved in any of this litigation since 2011, I do not know the current dedication of resources to this type of litigation. If confirmed, I will learn about the dedication of resources to this important subject, as well as other areas of the Division's responsibility.

b. If so, please explain whether you anticipate taking resources from other areas of ENRD jurisdiction or whether reprioritizing ENRD's litigation goals would be necessary, in your view, to accomplish this goal.

Answer: Since I am not at the Department now, I lack sufficient information to determine whether additional resources would be needed to handle CWA matters or other areas within the Division's responsibility.

4. In public statements you have routinely referred to the concept of "environmental justice." For example, in a 2008 interview you suggested that promotion of "environmental justice" was necessary due to the "disproportionately high and adverse human health or environmental effects" of polluters' "programs, policies, and activities on minority and low-income populations." You have also publically stated that "[p]eople of color and the poor" bear a "disproportionate share of environmental burdens."

   Please explain what you mean by the concept of "environmental justice."

   Answer: EPA defines the term as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies." I think the EPA definition fairly summarizes my own views of the term.

   a. Please describe how the concept of "environmental justice" will inform your decision-making if you are confirmed as Assistant Attorney General.

      Answer: If confirmed as Assistant Attorney General, I would abide by the rule of law. In that regard, I would remain committed to ensuring that all Americans receive full protection under our environmental laws, regardless of their race, color, national origin or income.

   b. Please describe how the concept of "environmental justice" will inform the nature and scope of litigation you will undertake if confirmed as Assistant Attorney General.

      Answer: If confirmed, I would abide by the rule of law, making certain that ENRD enforces the law as enacted by Congress, based on a fair assessment of facts. In that regard, I would remain committed to ensuring that all Americans receive full protection under our environmental laws, regardless of their race, color, national origin or income.

5. In a 2013 article you described the EPA's electronic reporting requirements imposed on states as "federalism, cooperative federalism at its best." Please explain this statement.

   Answer: In February 2013, I moderated a panel discussion of three experts concerning "Key Legal Issues Facing the Administration in 2013: Environment, Energy and Natural Resources." After the experts spoke, I read questions given to

me by the audience. Specifically, I read this question: "Scott, I have a question for you from our listening audience. This comes from someone at GAO [U.S. Government Accountability Office]. How can EPA push down further on states given the budget climate? Haven't states resisted efficiency measures such as electronic reporting requirements? This is federalism, cooperative federalism at its best." The entire discussion, including this question, was printed verbatim in 43 Environmental Law Reporter 10395, with this particular question at page 10404.

Although I do support electronic reporting as a valuable concept, I do understand that all States may not agree. While electronic reporting on environmental matters is within the domain of EPA, I remain committed to working collaboratively with States, particularly State Attorneys General, in those areas in which ENRD is charged with primary responsibility.

6. Prior to your departure from ENRD in 2011, you had participated in the Deepwater Horizon Multidistrict Litigation that is currently underway in the Eastern District of Louisiana. If you are confirmed, please describe what role you anticipate ENRD will play in the litigation going forward and whether you plan to alter ENRD's current litigation posture with respect to litigation strategy or potential settlement and discovery negotiations.

   Answer: It is my understanding that the United States continues to be represented in the Deepwater Horizon Multidistrict Litigation by a joint trial team composed of experienced attorneys from both the Civil Division and ENRD. As the trial is ongoing, I anticipate that ENRD will continue to play the same role in the future that it has so far. If I am fortunate enough to be confirmed, I will confer with the trial team to determine whether there should be any changes to the current strategy.

7. You have previously criticized Congress for its "failure…to enact comprehensive climate change legislation," which, you maintained, "cost the United States its leadership position on this critical issue." You also stated that "it is imperative for this Administration to accomplish as much as it can through implementing the Clean Air Act."

   a. Please describe in detail the steps you believe to be imperative with respect to the Administration's implementation of the Clean Air Act.

      Answer: I firmly believe that the Administration should adhere to the language and requirements of the Clean Air Act, including relevant court decisions and regulations, in addressing this important issue. I note, however, ENRD is not a policy-making entity, and the implementation of the Clean Air Act is the responsibility of other federal agencies.

   b. Please describe how, if confirmed, you anticipate you will use Clean Air Act litigation to achieve the goals you described above.

Answer: If confirmed, then my mandate will be to carefully apply the law in an equal and fair manner. As ENRD is not a policy-making entity, it will be up to other agencies with that statutory responsibility to determine how best to implement the Clean Air Act to meet its statutory goals.

c. Please describe how, if confirmed, you plan to demonstrate what you described as the United States' "leadership position" in your work as Assistant Attorney General and, specifically, through Clean Air Act litigation.

Answer: ENRD is not a policy-making entity. Accordingly, leadership on this important issue is the responsibility of other federal agencies. If confirmed, my "leadership" role would be to uphold the law. ENRD is responsible for representing EPA and other federal agencies in the courts. Consistent with its responsibility, ENRD would defend Clean Air Act rules issued by EPA and would enforce compliance with the Act and implementing regulations.

8. You have previously stated that there is "much more we can and should do" than merely maintain a commitment to reducing domestic greenhouse gas emissions ("GHG"). Please describe what, if confirmed, you plan to undertake in ENRD to contribute to reduction of GHG emissions.

Answer: The Assistant Attorney General for the Environment and Natural Resources Division does not make policy and is charged with upholding and enforcing the law. If confirmed, I will use my position to uphold existing law. Other federal agencies are charged with developing Administration policy on reducing GHG emissions.

9. You have described the D.C. Circuit's holding in *Coalition for Responsible Regulation v. EPA*, as "critical" and a "superb start" to the regulation of GHG emissions. Assuming that the EPA's actions are upheld by the Supreme Court, please describe what role enforcement of the EPA's endangerment finding, tailoring rule, and the so-called "tailpipe rule" will play in litigation involving the ENRD if you are confirmed at its Assistant Attorney General.

Answer: The unanimous decision by the Court of Appeals for the D.C. Circuit has now been appealed and argued before the Supreme Court, in a case now titled Utility Air Regulatory Group v. EPA. If the Supreme Court upholds EPA's regulations, enforcement of violations of those rules would then be governed by the normal process by which the Department of Justice makes all enforcement decisions. Enforcement decisions would be based on the law and the facts presented.

10. In a recent ELI report entitled "Climate Change and New York City," you suggested that anthropogenic climate change was the likely cause – or at least a contributing cause – of Superstorm Sandy.

    a. Please explain what role, if any, you believe anthropogenic climate change and, specifically, GHG emissions, played in Superstorm Sandy.

    Answer: The information in this question came from a one page column I wrote in January 2013. I began that column by honoring New York City for its response to Superstorm Sandy, stressing the importance of planning and preparation in advance of those serious events. I stated, "Even those who disagree with its cause cannot disagree that the results of Superstorm Sandy were monumental and that we should prepare for such devastation in the future. We can debate the cause and still work together in combating possible weather effects." As I am not a scientist, I cannot – and have not – stated that Superstorm Sandy was the direct result of anthropogenic climate change or GHG emissions. Rather, I have used it as an example of a devastating impact that coastal communities should be prepared to address.

    b. Please explain what role, if any, you believe anthropogenic climate change plays in (1) the variation in worldwide sea levels; (2) Arctic and Antarctic snow/ice coverage; (3) global average temperatures; and (4) the recent drought in California's Central Valley.

    Answer: As I am not a scientist, I do not believe I am competent to discuss the impact of anthropogenic climate change in these important areas. Moreover, if confirmed, I will not be making policy or scientific judgments of this nature, but rather applying existing law to litigation under the purview of ENRD.

11. Please describe what alterations, if any, you would make to ENRD's current litigation involving the Secure Border Initiative if you are confirmed.

    Answer: I believe this question refers to work by ENRD on behalf of the Department of Homeland Security to secure our borders. I am not aware of what the Division is currently doing in that regard and lack sufficient information to determine whether there should be any alterations.

12. Please describe what alterations, if any, you would make to ENRD's current litigation involving so-called R.S. 2477 litigation if you are confirmed.

    Answer: I am aware that there has been litigation concerning the application of R.S. 2477, which granted a right of way across public lands in some circumstances. If confirmed, I would seek to learn about the nature of any current litigation. I lack

sufficient information to determine whether there should be alterations in the current litigation.

13. Please describe what alterations, if any, you would make to ENRD's current litigation involving tribal-trust issues if you are confirmed.

Answer: I am aware that there has been litigation concerning trust issues with some Native American tribes. I do not, however, have any current information. If confirmed, I would seek to learn about the nature of any current litigation. I lack sufficient information to determine whether there should be alterations in the current litigation.

14. Please describe with particularity the process by which these questions were answered.

Answer: I reviewed your questions and personally prepared my responses. I had conversations with representatives at the Department of Justice who are familiar with this process, and I asked a friend to review my draft to identify grammatical errors. I sent my responses to the Department of Justice for submission to you.

15. Do these answers reflect your true and personal views?

Answer: Yes.

Questions for John Cruden (AAG for Environment and Natural Resources Division)

Senator Cornyn:

1) The major environmental statutes (Air, Water, Waste, Endangered Species and others) have citizen suit provisions that allow environmental groups to bring suit against both the federal agency and private parties for failure to comply with statutory or regulatory provisions.
    a. In the last five years, how many citizen suits have been filed against the federal government?

       Answer: I am not currently at the Department; therefore I am not in a position to respond to this question.

    b. In the last five years how many citizen suits have been filed by environmental groups against private parties for alleged violations of any permit condition or emissions limitation?

       Answer: I am not currently at the Department; therefore I am not in a position to respond to this question.

    c. In the last five years, how many citizen suits has the DOJ settled with outside organizations?

       Answer: I am not currently at the Department; therefore I am not in a position to respond to this question.

    d. In the last five years, how many have resulted in the payment of attorneys' fees?

       Answer: I am not currently at the Department; therefore I am not in a position to respond to this question.

    e. When the DOJ or the agency you represent pays attorneys' fees, what is the source of appropriated funds for the payment of these awards?

       Answer: Some statutes, like the Clean Air Act and Clean Water Act, contain provisions authorizing payment of attorney's fees to a prevailing party. In those instances, attorney's fees are generally paid from the Judgment Fund. If the relevant statute does not contain an attorney's fees provision, a litigant may seek fees under the Equal Access to Justice Act. In those instances, it is my understanding that any award of fees is typically payable from the appropriations of the agency involved.

    f. If confirmed, will you provide me a list of all citizen suit cases in which the U.S. paid attorneys' fees and the amount of each payment?

Answer: If confirmed, I will work with the Committee to accommodate its oversight needs, consistent with law and the Department's responsibilities.

2) In 2011, two environmental groups settled a multi-district litigation with the Fish and Wildlife Service that resulted in a "work plan" for the agency to make endangered species list determinations for hundreds of species and the payment of expensive litigation fees to the plaintiffs. While the determinations may impact numerous states, communities, businesses and citizens, the settlement involved just one federal agency and two environmental groups willing to drown it in litigation. As head of ENRD, would you support efforts to improve the transparency of the settlement process and allow affected stakeholders to participate?
   a. Would you commit to the DOJ posting on its website copies of all complaints
   b. Would you commit to DOJ posting on its website copies of all proposed consent decrees 30 days before submitting them to a court of law, to give stakeholders notice?
   c. Would you commit to meeting with local officials when a settlement agreement is being worked out if a substantial part of their jurisdiction will be impacted?

   Answer to Questions 2a, 2b, and 2c: I was not at the Department of Justice at the time that the settlement you describe in this question was prepared or completed. However, I strongly support transparency and public participation in government decision-making. Congress has enacted somewhat different processes for settlements involving particular statutes and agencies, so the details of public participation will vary among situations. In all cases, I will act in accordance with law. However, in my experience, complaints and settlement agreements are public documents and available to the public. And, where the settlement results in a deadline for the future issuance of agency rulemakings, then that proposed rule would be subject to notice and comment, thereby allowing the public an opportunity for participation. If confirmed, however, I will be briefed on the current policy of the Department on these issues, current agency practices, and applicable legal requirements. In addition, I would be willing to meet with local or state officials in appropriate cases.

3) What would you do to ensure that the agency does not agree to deadlines through settlements that do not provide sufficient time for EPA or DOI to meet its obligations under the Administrative Procedure Act, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, OMB Circular A-4, and other requirements that apply to EPA or DOI?

   Answer: If confirmed, it will be my responsibility to assure that agreements reached by the Department of Justice on behalf of any federal agency are consistent with the law, and meet the needs of the federal agency involved.

4) In a recent denial of several environmental groups' petition for a rulemaking under the Clean Air Act, Acting Administrator Robert Perciasepe stated that, "[e]ven under the best circumstances, the EPA cannot undertake simultaneously all actions related to clearly determined priorities as well as those requested by the public, and so the agency must afford precedence to certain actions while deferring others.... The EPA must prioritize its undertakings to efficiently use its remaining resources."
   a. How should DOJ prioritize the rulemakings that EPA or DOI decide to pursue through the use of Consent Decrees?

      Answer: If confirmed, I would need to meet with federal agencies, including the EPA, to understand their priorities. If a consent decree were to be negotiated, that should be done in close collaboration with the agency involved to assure that it meets their priorities, that they are capable of meeting the terms of the agreement, and that any term of the agreement is in accordance with applicable law.

   b. Would you agree that the new commitments that EPA or DOI agree to in "sue and settle" agreements with environmental groups, including timetables for rulemakings or the listing of species, have an impact on EPA's or DOI's priorities as to the rulemakings or listings that it undertakes?

      Answer: As I am not in the government, I do not have any current information about commitments that DOI or EPA may be making in settlement agreements with environmental groups, or other petitioners. If I am confirmed that is an area I would want to understand better to assure that all actions taken by the ENRD are in compliance with the law.

      Would you agree that the new commitments that EPA or DOI agree to in "sue and settle" agreements with environmental groups, including timetables for rulemakings, have an impact on EPA's or DOI's budgetary resources?

      Answer: As I am not in the government, I do not have any current information about commitments that DOI or EPA may be making in settlement agreements with environmental groups, or other petitioners, or the impact of such commitments on agency budgets. If I am confirmed, I would want to be briefed on current practices to assure that all ENRD actions are in compliance with the law, and meet the needs of the federal agencies ENRD is representing.

5) Out of all of the rules for which EPA has deadlines, how many of them have been met? And, how many of those deadlines have been missed?

   Answer: As I am not in the government, I lack sufficient information to respond to this question.

6) Once an agency submits to a Consent Decree it is under the jurisdiction of the federal court and subject to contempt should it not comply with the Consent Decree. Since EPA issues between 300 – 400 regulations a year while entering into an average of 15 Sue and Settle Consent Decrees, it appears that those 15 Sue and Settle Consent Decrees under court supervision become the agency's priority rules for implementation. Isn't it correct that under Sue and Settle private parties are setting priorities for EPA and DOI?

Answer: As I am not in the federal government, I do not know how many regulations EPA or DOI is issuing or the number of consent decrees that the Department is negotiating on either agency's behalf. Accordingly, I lack sufficient information to respond to this question.

7) Since, according to a CEI study, EPA cannot meet over 90% of all its statutory deadlines, the agency could theoretically be subject to a lawsuit on several hundred more regulations a year. How would you address this dilemma? Should we restrict citizens' suits or should we legislate longer time periods for agency regulatory actions?

Answer: I am not aware of the CEI study or the number of times that EPA cannot meet its statutory deadlines. If confirmed, I will work with federal agencies to determine the best and most efficient way for them to meet congressionally-mandated requirements.

8) Senator Vitter sent the Department of Justice a letter in October 2013 raising serious concerns about an armed raid conducted by EPA agents of a mine in Alaska.
   a. Are you aware of this letter?
   b. Would you commit the Department to answering Senator Vitter's letter?

Answer to 8a and 8b: As I am not in the Department and have no knowledge of this letter, I am not in a position to respond to this question pertaining to activities of the EPA.



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VIA EMAIL AND FIRST-CLASS MAIL

December 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 Gregg Jeffrey Costa to the United States Circuit Court for the Fifth Circuit***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Gregg Jeffrey Costa who has been nominated for a position on the United States Circuit Court for the Fifth Circuit. As a result of our investigation, the Committee is of the opinion that Gregg Jeffrey Costa is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Judge Costa.

Sincerely,

Bettina B. Plevan

Bettina B. Plevan
Chair

BBP:ds

cc: The Honorable Gregg Jeffrey Costa
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 December 20, 2013.

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VIA EMAIL AND FIRST-CLASS MAIL

December 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 Tanya S. Chutkan to the United States District Court for the District of Columbia***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Tanya S. Chutkan who has been nominated for a position on the United States District Court for the District of Columbia. As a result of our investigation, the Committee is of the opinion that Tanya S. Chutkan is Unanimously Qualified for this position.

A copy of this letter has been provided to Ms. Chutkan.

Sincerely,

Bettina B. Plevan
Chair

BBP:ds

cc: Tanya S. Chutkan, 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 December 20, 2013.

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VIA EMAIL AND FIRST-CLASS MAIL

December 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 M. Hannah Lauck to the United States District Court for the Eastern District of Virginia***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of M. Hannah Lauck who has been nominated for a position on the United States District Court for the Eastern District of Virginia. As a result of our investigation, the Committee is of the opinion that M. Hannah Lauck is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Judge Lauck.

Sincerely,

Bettina B. Plevan
Chair

BBP:ds

cc: The Honorable M. Hannah Lauck
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 December 20, 2013.

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VIA EMAIL AND FIRST-CLASS MAIL

December 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 Leo T. Sorokin to the United States District Court for the District of Massachusetts***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Leo T. Sorokin who has been nominated for a position on the United States District Court for the District of Massachusetts. As a result of our investigation, the Committee is of the opinion that Leo T. Sorokin is Unanimously Well Qualified for this position.

A copy of this letter has been provided to Judge Sorokin.

Sincerely,

Bettina B. Plevan
Chair

BBP:ds

cc: The Honorable Leo T. Sorokin
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 December 20, 2013.

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February 3, 2014

Via Fax and Electronically

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 2510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

By this letter, I express my strong support for the confirmation of John Cruden to be the Assistant Attorney General in charge of the Environment and Natural Resources Division of the Department of Justice.

Having served as AAG for ENRD from 1981 to 1983, and thereafter as the Deputy Attorney General in 1984-85, I am very familiar with the Division and what is required to lead it effectively. Without question John possesses the experience and personal qualities that will ensure the Division will be in the best possible hands. John joined ENRD after my departure, so my experience with him in the Division has been on opposite sides of the table, not always successfully for my clients. John was unfailingly courteous, attentive, available, and reasoned in his response. It is always gratifying to know one can rely on the preparation, wisdom and integrity of the public officials with whom one deals. John exemplifies the highest level of all those qualities.

It has also been my privilege to serve in other professional arenas with John. He is one of my successors in chairing the American Bar Association's Section on Environment, Energy, and Resources. For many years we have been members of the faculty for the American Law Institute's short courses on environmental litigation, and we were both elected Fellows in the early years of the American College of Environmental Lawyers. As

Chair of ABA President Karen Mathis' Appointments Committee, it was my privilege to recommend that she appoint John to chair a standing committee, which she did.

John's exemplary military record is one of his many outstanding qualifications to serve as AAG, and his leadership in the Division as Chief of the Environmental Enforcement Section and subsequently as the Deputy AAG left an ineffable font of goodwill among the career people in ENRD. John's sterling and richly-deserved reputation within the Department as a whole will contribute to John's being among the most effective AAGs ever appointed to head ENRD.

I recommend John with great enthusiasm and without reservation.

Sincerely,

Carol E. Dinkins

UNIVERSITY of MARYLAND
FRANCIS KING CAREY
SCHOOL OF LAW

February 17, 2014

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are writing to express our enthusiastic support for John Cruden's nomination to become Assistant Attorney General for the Environment and Natural Resources Division (ENRD) of the Department of Justice.

The undersigned are professors of environmental law who recognize the importance of continuing the ENRD's long tradition of even-handed enforcement and defense of our nation's environmental and natural resources laws. We strongly believe that John Cruden is a superb choice to fulfill this role.

Mr. Cruden has devoted nearly his entire working life to public service, including a distinguished career in the military and two decades of service in the very Justice Department division that he has been nominated to lead. Following his graduation from West Point, John served in airborne, ranger and Special Forces units in Germany and Vietnam. After graduating from law school, he served as legal counsel to the military for 14 years in a variety of positions including General Counsel to the Defense Nuclear Agency and Chief Legislative Counsel of the Army.

Mr. Cruden's more than twenty years of experience at the ENRD make him superbly qualified to lead the division. During his service as Chief of the Environmental Enforcement Section and as the career Deputy Assistant Attorney General, Mr. Cruden played a leading role in nearly every major environmental case handled by the ENRD. He acquired a reputation as a "lawyer's lawyer" who represented the interests of the United States with enormous skill and unfailing fairness.

Mr. Cruden has distinguished himself in virtually everything he has done. For his military service Mr. Cruden was awarded the Bronze Star, the Legion of Merit, the Defense Meritorious Service Medal, the Air Medal with Oak Leaf Clusters, and the Vietnamese Cross of Gallantry with Silver Star. For his service in the U.S. Department of Justice, Mr. Cruden received the Presidential Rank Award from three different Presidents, the Department's Muskie-Chaffee Award, the Federal Bar Association's Younger Award, and the American Bar Association's Mary C. Lawton Award for Outstanding Government Service. In addition Mr. Cruden was the first government attorney to be elected and serve as president of the D.C. Bar.

In his current position as president of the Environmental Law Institute, Mr. Cruden has worked tirelessly to improve understanding of environmental law and policy and to bring diverse groups together.

Those of us who have worked directly with John feel privileged to have been able to collaborate with him. All of us know of his outstanding reputation and we are confident that, if confirmed, he again will serve the United States with the greatest distinction. We endorse his nomination with the utmost enthusiasm.

For all of these reasons we urge the Senate to confirm John Cruden to serve as the Assistant Attorney General for the ENRD.

Sincerely,

Robert V. Percival
Robert F. Stanton Professor of Law
Director, Environmental Law Program
University of Maryland Francis King Carey School of Law

Todd Aagaard
Professor of Law
Villanova University School of Law

Adell L. Amos
Associate Professor
Associate Dean for Academic Affairs
Dean's Distinguished Faculty Fellow
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Emeritus Professor in Environmental Law
Australian Centre for Climate and Environmental Law
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February 18, 2014

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are writing to express our strong support for John Cruden's nomination to become Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice.

The undersigned include the current chair and past chairs of the American Bar Association ("ABA") Section of Environment, Energy, and Resources ("SEER"). We are a diverse group of lawyers who come from private practice, academic institutions, government service and non-governmental organizations. For many of us our professional association with John includes handling matters on behalf of clients, as well as working for the profession through the ABA.

Our support represents our personal endorsement and not that of the ABA. However, we all know and have worked with Mr. Cruden throughout his distinguished service to our organization. SEER has some 10,000 members who enjoy member benefits of educational programming, publications and outreach to lawyers and society. Mr. Cruden was chair of SEER for 2009-2010. All of us hold him in the very highest regard, and admire his leadership skills, his ability to work with people in a positive way, his integrity, his exceptional intellect, and his superb legal judgment.

Mr. Cruden is uniquely qualified for this position. He is currently the President of the well-respected Environmental Law Institute ("ELI"), a nationally recognized non-profit association that provides research, education, and publications in the area of environmental law and policy. Prior to his career at ELI, he had a distinguished career with the Environment and Natural Resources Division of the Department of Justice, holding several leadership positions, including Deputy Assistant Attorney General for 16 years and Chief of Environmental Enforcement for five years. He has also served as Acting Assistant Attorney General. During his career at the Department of Justice he was known by environment and resource lawyers as hard working as well as fair and even-handed with a keen sense of the true meaning of "justice." He encouraged government lawyers at all levels to better themselves by associating with lawyers

in the both the D.C. Bar Association, where he was a past president, and in SEER. We can assure you that Mr. Cruden's leadership in SEER has provided substantial benefit to all lawyers practicing in the area of environment and natural resources.

As chair of SEER, Mr. Cruden led a number of initiatives. These initiatives included recognition of distinguished environmental advocates and focus on environmental justice initiatives. In addition, he brought more awareness of environmental and resource issues through his highly acclaimed speaking roles and participation in SEER educational programs.

We believe that now more than ever Mr. Cruden's skills are needed at the Department of Justice. Certainly, protection of our environment and natural resources cannot be overstated; however, having the right person to lead this important Division of the Justice Department will provide a legacy of environmental protection into the future. Mr. Cruden's leadership skills allow him to balance strong environmental enforcement with the rights of the regulated community.

For all these reasons we hope that the Senate will confirm Mr. Cruden promptly to serve as the Assistant Attorney General for the Environment and Natural Resources Division.

Sincerely,

William L. Penny (2013/2014)
Stites and Harbison, PLLC
Section Chair
bill.penny@stites.com

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Office of the Vice President
Corporate Environmental Affairs and Product Safety

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February 19, 2014

Sent via Fax and Electronic Mail

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Leahy and Grassley:

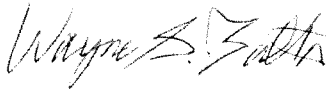
I'm writing to express my enthusiastic support for the nomination of John Cruden to serve as Assistant Attorney General, Environment and Natural Resources Division, at the U.S. Department of Justice.

I have come to know John well during the last two and one half years. In addition to my role at IBM Corporation, I served as Vice Chairman of the Board of Directors of the Environmental Law Institute (ELI) and Chair of the Board's Finance Committee when John was hired as ELI's President in June 2011. I worked closely with John on several occasions from then until my departure from ELI's Board of Directors in December 2013.

I have been thoroughly impressed not only with John's professional skills but also with his personal demeanor on all occasions. John exemplifies leadership. During my experience working with John, he has been attentive, prepared, thorough, and fair. John earned respect quickly at ELI, demonstrating an extraordinary ability to meaningfully engage people at every level of the organization. John showed great diligence and capability in discharging his professional responsibilities. At the same time John showed he cares deeply about people. The way in which John courteously related to people of all backgrounds and points of view has made him a role model to me.

John conducted himself as I've described no matter how challenging or contentious an issue may have been. John is a man of great personal integrity. He sought and considered all sides of topics during his leadership of the Environmental Law Institute. He ensured ELI reached out to its many constituents across the legal profession, government, non-governmental organizations, and business. I've seen John bring out the best in people. I've seen him demonstrate conviction and resilience, equity and good judgment. He is a uniter. Our nation is most fortunate to have mature leaders of John's caliber willing to serve the public interest.

Sincerely.



Wayne S. Balta

Vice President
Corporate Environmental Affairs and
Product Safety

February 20, 2014 Via Fax and Electronically

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 2510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

The undersigned strongly endorse the confirmation of John Cruden to be the Assistant Attorney General in charge of the Environment and Natural Resources Division of the Department of Justice.

We have known John Cruden both personally and professionally for nearly 50 years. We stood beside John at the United States Military Academy on July 1, 1964, and swore to support and defend, and to bear true faith and allegiance to the Constitution of the United States. In the 50 years since, John has held firm to that oath and has lived his life according to the values of 'Duty, Honor, Country' which West Point teaches. John's personal character and ethics are exceptional, without question.

John Cruden has a unique blend of education, training, professional experience, and leadership style to enable him to be superbly capable of leading this division of the Department of Justice to enforce the law and defend the interests of the United States according to the law.

John Cruden is an accomplished leader of the highest character and committed to the best interests of our nation. We recommend John without reservation. Our nation deserves none better.

Sincerely,

Larry C. Baker
USMA Class of 1968

Robert H. Beahm
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February 24, 2014

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The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

I respectfully recommend that John C. Cruden be confirmed as the Assistant Attorney General of the Environment and Natural Resources Division of the U.S. Department of Justice.

I have known John since 1979 when he was a litigation attorney in the Pentagon. He was the most impressive officer-attorney I met then and has continued to be absolutely superb, first as an Army attorney and then as a leader at the Department of Justice.

John and I were assigned to Germany at the same time in mid-1980s where I observed first-hand not only his inestimable legal skills but also his leader and interpersonal skills. John was available to all—peers, younger lawyers, and superiors, though he had no peers and clearly was destined to surpass all his superiors. He is one of a kind—superior intellect, unsurpassed work ethic, completely dedicated to service to the nation, and a warm, caring human being.

Please do not hesitate to contact me personally regarding this recommendation.

Respectfully submitted,

John D. Altenburg, Jr.
Major General, U.S. Army, Retired

February 24, 2014

Via Fax and Electronically

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 2510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are all former employees of the Environment and Natural Resources Division (ENRD) of the Department of Justice who are proud of our service and contributions to that important organization. We are each especially proud and privileged to have either served with, and under the outstanding leadership of, John Cruden or (for those of us who completed their service to ENRD prior to John's arrival) to have gotten to know and respect John from his outstanding accomplishments and impeccable reputation. Each of us enthusiastically supports John's confirmation to be the Assistant Attorney General in charge of the Environment and Natural Resources Division of the Department of Justice. John's confirmation would recognize the extraordinary accomplishments and skills of one of the truly great public servants of our time, would be eagerly welcomed by the hundreds of hard working career employees in ENRD who uniformly share our respect and admiration for John, and would strongly advance ENRD's important mission, including the fair and effective enforcement of our nation's environmental laws and the vigorous protection of our natural resources.

As you know, before joining the Department of Justice, John had a long and exemplary military career, as a West Point graduate, a distinguished officer in Special Forces and other units in Germany and Vietnam, and, after graduating from law school, serving the Army in a number of leadership roles, culminating with his being named Chief Legislative Counsel of the Army. None of us knew John during this period of his public service, but we all came to admire and respect him when John was selected to be the Chief of the Environmental Enforcement Section (EES), the largest Section within ENRD, in 1991. Many of us served in EES while John was its Chief or later when he was promoted to Deputy Assistant Attorney General, with supervisory responsibility for EES. Among us, some served in attorney positions and others in administrative ones; some served in management positions and others in operational ones. But whatever our position and assignments, John valued and supported the work and contributions of every one of us. And even more importantly, he worked tirelessly to get to know each of us personally, and to support us in whatever way he could. As a result, we each consider John to be a friend and a mentor.

John is also an outstanding leader and manager, who brought his decades of wide ranging experience, and his great skills and wisdom, to his management of EES and ENRD. He quickly studied and mastered substantive environmental law (in which he is now recognized as a leading national expert), and he learned and then led the mission and day to day functioning of EES and ENRD in enforcing the environmental laws and doing so in close and effective coordination with the Section's partners, including client agencies (like EPA, DOI and DOD), other components of DOJ (like the 94 U.S. Attorney's offices) and state enforcement officials (who are responsible for most environmental enforcement in the United States). John was also very effective in working with ENRD political leadership from both parties. Equally importantly, John established constructive relationships with the leaders of the private environmental bar (of which some of us are now members) who always knew that John would give them a fair audience on important enforcement and policy issues impacting U.S. industry, even as John remained focused on the Section's mission of protecting the environment through enforcing the law.

Some of us worked in other Sections within ENRD and got to work closely with John when he assumed the position of Deputy Assistant Attorney General, which he held from 1995 to 2011. He demonstrated to each of us as well the same skills, judgment and caring for which he had already become well known in ENRD during his tenure as Chief of EES. Others of us served in ENRD before John arrived but have maintained our respect and interest in ENRD's important work, and have, in a variety of contexts, gotten to know John well and have come to admire his unique leadership style and his absolute credibility.

The great respect in which John held across the spectrum of the legal community (both the public and private bar, and across political lines) is evidenced, among other things, by his having been the first government official to serve as the elected President of the District of Columbia Bar, by his selection as Chair of the American Bar Association Section on the Environment, Energy and Resources, and by his tremendous accomplishments the past two years while serving as the President of the Environmental Law Institute.

In short, there is not a better person in the United States to serve as Assistant Attorney General of the Environment and Natural Resources Division. We each recommend John to you with great enthusiasm.

Sincerely,

David F. Askman*
Senior Counsel, Environmental Enforcement Section, 1991 to 2011

Catherine Barbour
Chief, Administrative Services Group, Environment and Natural Resources Division, 1980 to 2004

Joan Barilla
Paralegal, Environmental Enforcement Section, 1994 to 1996, General Litigation Section, 1996 to 1998

Bernard Bell
Trial Attorney, Environmental Enforcement Section, 1989 to 1994

Joseph G. (Jerry) Block
Environmental Crimes Section 1985 to 1991, including Chief, 1988 to 1991

J. Tom Boer
Trial Attorney, Environmental Enforcement Section, 2001 to 2008

Larry A. Boggs
Attorney, Appellate Section, 1974 to 1980

David T. Buente, Jr.
Chief, Environmental Enforcement Section, 1985 to 1990

Bradley M. Campbell
Trial Attorney, Policy, Legislation and Special Litigation Section, 1990 to 1995

Patricia Kablach Casano
Trial Attorney, Environmental Enforcement Section, 1984 to 1994

Pearl Chase
Staff Assistant, Environmental Enforcement Section, 1979 to 2013

Ross L. Connealy
Assistant Chief, Environmental Enforcement Section, 1987-2001.

Jim Dragna
Senior Attorney, Environmental Enforcement Section, 1982 to 1987

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* Note that in cases where a signatory held multiple positions, we have listed the final one.

Albert M. Ferlo
Reviewing Attorney, Appellate Section, 1979 to 1980 and
1990 to 1997

Catherine M. Flanagan
Trial Attorney, Policy Legislation & Special Litigation Section, 1990 to 1997

Myles E. Flint
Environment and Natural Resources Division, 1968 to 1994, including Deputy Assistant Attorney General, 1984 to 1994

Kevin A. Gaynor
Assistant Section Chief, Environmental Enforcement Section, 1983 to 1987

Leonard Gelman
Trial Attorney, Environmental Enforcement Section, 1989 to 1999

Steve C. Gold
Senior Attorney, Environmental Enforcement Section, 1989 to 2007

Robert C. Goodman
Trial Attorney, environmental Enforcement Section, 1989 to 1991

Michael D. Goodstein
Senior Attorney, Environmental Enforcement Section, 1988 to 2000

Joel M. Gross
Environmental Enforcement Section 1983 to 2000, including Chief 1995 to 2000

David Hackett
Trial Attorney, Environmental Enforcement Section, 1985 to 1989

Robert L. Hines
Trial Attorney, Environmental Enforcement Section, 1986 to 1988

Kevin P. Holewinski
Trial Attorney, Environmental Enforcement Section, 1991 to 1994

Robert Homiak
Senior Attorney, Environmental Enforcement Section, 1985 to 2000

Leslie A. Hulse
Trial Attorney, Environmental Enforcement Section, 1990 to 1993

Brian D. Israel
Trial Attorney, Environmental Enforcement Section, 1996 to 2000

Sheila Jones
Assistant Chief, Environmental Enforcement Section, 1983 to 1989

Helen Kang
Trial Attorney, Environmental Enforcement Section, 1990 to 1997

Julie Kaplan
Trial Attorney, Environmental Enforcement Section, 1990 to 2000

Robert R. Kuehn
Trial Attorney, Environmental Enforcement Section, 1984 to 1988

Adam M. Kushner
Senior Counsel, Environmental Enforcement Section, 1991 to 2002

Suzanne C. Lacampagne
Trial Attorney, Environmental Enforcement Section, 1990 to 1995

Thaddeus R. Lightfoot
Trial Attorney, Environmental Enforcement Section, 1991 to 1994

Thomas A. Lorenzen
Assistant Section Chief, Environmental Defense Section, 1997 to 2013

Darlene Lyons
Staff Assistant, Environmental Enforcement Section, 1985 to 2013

Francis X. Lyons
Trial Attorney, Environmental Enforcement Section, 1994 to 1999

Kevin Lyskowski
Senior Counsel, Environmental Enforcement Section, 2000 to 2013

Roger J. Marzulla
Environment and Natural Resources Division, 1983 to 1989, including Assistant Attorney General, 1987 to 1989

William J. Moore, III
Trial Attorney, Environmental Enforcement Section, 1993 to 1998

Matthew W. Morrison
Senior Attorney, Environmental Enforcement Section, 1995 to 2008

Jon A. Mueller
Senior Attorney, Environmental Enforcement Section, 1987 to 2004

Stacey H. Myers
Trial Attorney, Environmental Enforcement Section, 1998 to 2002

Jeremy D. Peterson
Trial Attorney, Environmental Crimes Section, 2007 to 2012

Stephen D. Ramsey
Chief, Environmental Enforcement Section, 1980 to 1985

Kenneth A. Reich
Assistant Chief, Environmental Enforcement Section, 1979 to 1986

J. Steven Rogers
Assistant Section Chief, Environmental Defense Section, 1986 to 2004

Allison B. Rumsey
Counsel to the Assistant Attorney General, Environment and Natural Resources Division, 1993 to 2000

Steven E. Rusak
Senior Trial Attorney, Environmental Defense Section, 1993 to 2006

Justin A. Savage
Senior Counsel, Environmental Enforcement Section, 2004 to 2013

Susan Schneider
Senior Attorney, Environmental Enforcement Section, 1984 to 1999
Trial Attorney, Indian Resources Section, 1999 to 2013

Anne Shields
Policy Legislation & Special Litigation Section 1979 to 1993,
including Section Chief, 1984 to 1993

Steven P. Solow
Chief, Environmental Crimes Section, 1994 to 2000

Nancy J. Spencer
Senior Counsel, Environmental Enforcement Section, 1990-1998

Dolores Steenland
Chief, Case Management Group, Environment & Natural Resources Divisions, 1989 to 2006

Scott Stewart
Trial Attorney, Environmental Enforcement Section, 2001 to 2009

Diane Stone
Chief, Administrative Unit, Environment Enforcement Section, 1984 to 2012

Gregory L. Sukys
Senior Attorney, Environmental Enforcement Section, 1990 to 2013

Timothy K. Webster
Trial Attorney, Environmental Enforcement Section, 1992 to 1999

Noel Wise
Trial Attorney, Environmental Enforcement Section, 1994 to 1997 and 1999 to 2002 and Environmental Crimes Section, 1997 to 1999

Anna Wolgast
Senior Attorney, Environmental Enforcement Section, Deputy Chief, Environmental Defense Section, 1984-1999

February 24, 2014

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
244 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Grassley:

We are writing to express our strong support for the nomination of John Cruden to become Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice. He is a proven leader, a superb lawyer, and a patriot.

The undersigned are 26 former Presidents of the District of Columbia Bar. With more than 100,000 members, the D.C. Bar is the second largest unified bar in the United States. Its core functions include licensing lawyers, operating a disciplinary system to deal with professional misconduct, and maintaining a Clients' Security Fund. The Bar also undertakes educational and public service activities, including an award-winning program to provide pro bono legal representation to the poor. The President of the D.C. Bar is elected by the entire active membership.

John Cruden was President of the D.C. Bar in 2005-2006. He was the first person to serve as Bar President while working as a government lawyer. Leading by example, he strongly encouraged other government lawyers to provide pro bono legal assistance to people unable to afford a lawyer. He worked at Saturday morning clinics providing legal advice to low-income residents of the District of Columbia. He made the Bar more responsive to the needs of government lawyers and recruited government lawyers to participate for the first time in Bar activities. His legacy is a Bar that better serves the needs of its community, particularly those who cannot afford to pay for a lawyer; that reflects the diversity of law practice in its community; and that provides better support to its members in the public sector.

John's entire career has been devoted to public service. A graduate of West Point and a former Army Ranger, he had a distinguished career in military. He took the Law School Admission Test while he was serving in Vietnam. He was awarded the Bronze Star, the Legion of Merit, and the Defense Meritorious Service Medal. The quality of his work as a lawyer for the Army and as Deputy Assistant Attorney General in the Environmental and Natural Resources Division is reflected in numerous citations.

The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley
February 24, 2014

The vision and leadership John exhibited in getting elected President of the Bar and then in serving so ably in that position are talents he would bring to bear as Assistant Attorney General. John's integrity inspires trust. His unceasing good humor inspires loyalty. His intellect and judgment inspire confidence. Based on John's work with the Bar and on his long distinguished career in public service, we have no doubt that he would be a highly effective leader for the Division.

We urge that John be confirmed as Assistant Attorney General for the Environmental and Natural Resources Division.

Sincerely,

Sara-Ann Determan
DC Bar President, 1990-1991
Ronald S. Flagg
DC Bar President, 2010-2011
Jamie S. Gorelick
DC Bar President, 1992-1993
Shirley A. Higuchi
DC Bar President, 2003-2004
George W. Jones, Jr.
DC Bar President, 2002-2003
Kim M. Keenan
DC Bar President, 2009-2010
John C. Keeney, Jr.
DC Bar President, 2004-2005
Philip A. Lacovara
DC Bar President, 1988-1989
Carolyn B. Lamm
DC Bar President, 1997-1998
Myles V. Lynk
DC Bar President, 1996-1997
Andrew H. Marks
DC Bar President, 1998-1999
Darrell G. Motley
DC Bar President, 2011-2012
John W. Nields, Jr.
DC Bar President, 2000-2001
Daniel A. Rezneck
DC Bar President, 1975-1976
James Robertson
DC Bar President, 1991-1992
James J. Sandman
DC Bar President, 2006-2007
Pauline A. Schneider
DC Bar President, 1994-1995
Robert, J. Spagnoletti
DC Bar President, 2008-2009
Joan H. Strand
DC Bar President, 1999-2000
Marna S. Tucker
DC Bar President, 1984-1985
Mark H. Tuohey III
DC Bar President, 1993-1994
Robert L. Weinberg
DC Bar President, 1978-1979
Robert N. Weiner
DC Bar President, 1995-1996
Melvin White
DC Bar President, 2007-2008
Thomas S. Williamson, Jr.
DC Bar President, 2012-2013
Charles R. Work
DC Bar President, 1976-1977

5229 Baltimore Avenue
Bethesda, MD 20816
February 24, 2014

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Bulding
Washington, D.C. 20510

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The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, D. C. 20510

Re: Nomination of John C. Cruden for Assistant Attorney General for the Environment

Dear Chairman Leahy and Ranking Member Grassley:

I am a happily retired former Trial Attorney who worked in the Environmental Enforcement Section of the Department of Justice for almost 20 years. I support the confirmation of John C. Cruden as Assistant Attorney General for the Environment and Natural Resources Division at the Department of Justice (DOJ) based on my experience as lead attorney on a very difficult and very political case against a municipality. After contentious litigation, the Mayor requested the Assistant Attorney General for the Environment to provide high level involvement in negotiations. The Assistant Attorney General directed Deputy Assistant Attorney General John Cruden to participate in those negotiations. During the negotiations John Cruden displayed characteristics which are very valuable in an Assistant Attorney General. He asked relevant questions about the case, he listened to the advice of the DOJ and EPA staff and the expert witnesses, he considered the positions expressed by the municipality, and he approved a fair and reasonable settlement.

As a result of his environmental experience and the characteristics shown during these negotiations, I believe John Cruden would be an outstanding Assistant Attorney General for the Environment and Natural Resources Division.

Sincerely,
Elizabeth A. Edmonds

Elizabeth A. Edmonds

BEVERIDGE & DIAMOND PC

C. Scott Fulton
1350 I Street, N.W.
Suite 700
Washington, D.C. 20005-3311
Direct: (202) 789-6030
Fax: (202) 789-6190
sfulton@bdlaw.com

February 24, 2014

The Honorable Patrick J. Leahy
Chairman, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

By this letter, I am strongly supporting John Cruden's confirmation as Assistant Attorney General for the United States Justice Department's Environment and Natural Resources Division (ENRD). I have worked closely with Mr. Cruden in various capacities over the last twenty years, through both Republican and Democratic Administrations, principally in my role as a senior leader in one of ENRD's most significant client agencies – the United States Environmental Protection Agency (EPA). During his fifteen years as ENRD's Deputy Assistant Attorney General (and his service as Acting Assistant Attorney General), I was one of his most immediate counterparts while serving, successively, as EPA's Deputy General Counsel and General Counsel (2009-2013). In earlier years, when John was Chief of ENRD's Environmental Enforcement Section, I was a senior leader in EPA's enforcement program. As these experiences suggest, I have had the opportunity to observe him in many different settings, and have many times over been the beneficiary of his tremendous legal skills and outstanding

counsel. I count him as one of the top lawyers, senior executives, and public servants that I encountered in my 31 years of public service.

Through the years, John responded to the needs of my former Agency, EPA, with remarkable skill, grit, and steadfast determination. Our successes in court through the years were in no small measure attributable to John's sound judgment, legal expertise, litigation understanding, and tactical abilities. He also demonstrated remarkable deftness in working through EPA/DOJ disagreements and proved masterful in brokering solutions to disputes between his client agencies that surfaced in the litigation process. John is unfailingly thoughtful and even-tempered in his approach, is articulate and compelling in expression, and holds himself to the highest ethical standards.

It is no wonder John is one of most trusted and respected attorneys in his field, or, for that matter, in the legal profession at large. He inspires those who work for him, commands the respect of those who work beside him, and engenders trust and confidence in those he serves.

In short, John possesses every possible attribute one would look for in a successful Assistant Attorney General. Having served myself in a Presidentially Appointed/Senate Confirmed position, and understanding well the demands and intensity of this kind of role, I have every confidence that John is not only up to the task, but will prove to be one of the best who has ever held the post.

It is our country's good fortune that he has accepted the President's nomination for this position and has once again responded to his country's call to service. With great enthusiasm and without reservation, I endorse his nomination.

Sincerely,

C. Scott Fulton

C. Scott Fulton
Principal

William K. Suter
Clerk of the U.S. Supreme Court (Ret.)
Major General, Judge Advocate General's Corps, U. S. Army (Ret.)

5917 Reservoir Heights Ave.
Alexandria, VA 22311

703-379-1482 (H) 703-907-9283 (C)
w.suter1@verizon.net

February 24, 2014

Honorable Patrick J. Leahy
Chairman, Judiciary Committee
U. S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Charles E. Grassley
Ranking Minority Member, Judiciary Comm
U. S. Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

I am honored to submit this letter of recommendation in support of John C. Cruden who is under consideration for appointment to be the Assistant Attorney General, Environmental and Natural Resources Division.

I have known John since the early 1970s when we served together as career Army Judge Advocates. He first came to my attention when I was director of JAG Personnel. I was always on the lookout for young officers with great potential. John was at the top of my list. His past assignments as a combat arms officer in Vietnam and, after law school, as a Judge Advocate, reflected that he had "the right stuff." He quickly proved himself as a talented attorney, manager and leader. He is also very scholarly. His seminal article on the War Powers Resolution continues to be cited by scholars and appellate courts as the defining work on that contentious law.

My predictions about John were correct. He quickly moved through the ranks to the top, performing superbly in every assignment. In the early 1980s, when I was Commandant of the Judge Advocate General's School, I requested that he be assigned to the School to head the most important academic division. He was so assigned. His work exceeded my expectations. I relied on him for the most difficult assignments. On one occasion, the Chief of Staff of the Army appointed me, a Colonel, to conduct a study of the Army-wide confusing issue of fraternization. I tasked John with demanding tasks that had to be accomplished in a short period. He produced just what was needed. The policies the study group developed continue in existence today.

John is one of the very best officers with whom I served in three decades in the Army. He demonstrated his exceptional abilities time and again. He was admired and respected by subordinates, peers, and superiors. He sets and maintains high standards and has an unimpeachable character.

I strongly recommend John for this appointment. The Department of Justice and our Nation will benefit greatly by his talent and leadership.

Sincerely,

William K. Suter

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